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# The Visible Effects of an Invisible Constitution: The Contested State of Transdnistria's Search for Recognition through International Negotiations

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THE VISIBLE EFFECTS OF AN INVISIBLE CONSTITUTION:  
THE CONTESTED STATE OF TRANSNISTRIA'S SEARCH FOR RECOGNITION  
THROUGH INTERNATIONAL NEGOTIATIONS

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**Nadejda Mazur**  
**The Visible Effects of an Invisible Constitution:**  
**The Contested State of Transnistria's Search for Recognition**  
**through International Negotiations**

Most scholars agree that modern states share several defining characteristics: a population, territory, government, and the capacity to enter into international relations. More recently, this list has expanded to include the criteria of democracy, the rule of law, and the protection of human rights. These traditional and contemporary criteria for statehood are likewise essential for settling the status of de facto states, entities that seek international recognition yet are rebuffed by the world community.

By examining the criteria for international recognition from the perspective of constitutional law, this dissertation reveals the existing but overlooked relationship between the recognition process and constitutionalism. As is shown, a constitution performs more than its usual functions of organizing and regulating a polity, limiting the government, and ensuring individuals protection. It also plays a key role in asserting and realizing both the traditional and contemporary criteria for state recognition. This linkage between constitutionalism and the recognition process is then tested on the case study of Transnistria, an entity within the Republic of Moldova that has all the attributes of a state and seeks recognition of its statehood.

As one of the first analyses of unrecognized foundational legal frameworks, this dissertation offers insight into how an “invisible” constitution affects the recognition process and the political status of an unrecognized state. It shows that, while the Transnistrian constitution has not influenced the entity’s search for recognition, it has had other important effects on the negotiation process, such as consolidating Transnistrian statehood, hardening

the entity's position in negotiations, and influencing the nature of its interactions with international actors. These outcomes broaden the understanding of the contemporary criteria for recognition and the functions of a constitution with respect to their application in unrecognized states. They also demonstrate the limitations of the prevailing approach in the literature that democratization is necessarily beneficial for the purposes of conflict resolution. In such a way, this research additionally helps to present a more nuanced picture of post-Cold War politics, law, and international relations in Europe.

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## INTRODUCTION

The end of the Cold War brought the dissolution of Yugoslavia and the Soviet Union and led to a proliferation of new states on the world map. These developments also increased the number of entities that have declared their independence but remained fully or partially unrecognized by the international community.<sup>1</sup> The unsettled political status of these entities creates regional and international instability, threatens security and peace, complicates the free exercise of people's rights and freedoms within those entities, and increases tensions between these entities and the outside world.<sup>2</sup> The existence of these unrecognized states also highlights the discrepancies between their claims to statehood and the norms of international law, which raises questions over what criteria should be used for assessing and evaluating entities' claims for recognition.

A number of disciplines, such as international law, international relations, and conflict resolution, have examined these claims to independence and the options for settling their political status by focusing on the principle of states' territorial integrity. As a result, the disciplines mentioned above mainly justify the non-recognition of these entities and suggest an autonomous status for them within the already recognized states. However, the insistence of de facto states on having their independence and international recognition, as well as their long-lasting existence, suggest that the traditional approach towards these category of entities is inefficient, and that the settlement of their political status requires a more in-depth understanding of their nature, claims, and internal development, considered together from an interdisciplinary perspective.

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<sup>1</sup> For more on the definition of unrecognized states, see Chapter 2. Here and throughout this work, the term "entity" refers to unrecognized states: those state-like entities that have declared their independence and seek international recognition as a state, but whose claims are rejected by most or all members of the world community.

<sup>2</sup> UN Office of the High Commissioner for Human Rights. "Human Rights Do Not Have Any Borders: Pillay." *News Release*, February 14, 2013.

This dissertation seeks to contribute to the interdisciplinary analysis of de facto states and their claims from the perspectives of international and constitutional law. More specifically, this work seeks to add to the scholarship on the functions of a constitution and the criteria for state recognition – in particular, their contemporary elements – in relation to their practical application in unrecognized states. It approaches recognition from hitherto unexplored perspectives, pointing out the existing but overlooked relationship between the process of recognition and constitutionalism, and its importance for the determining the status of an unrecognized state. In particular, this dissertation explores whether an unrecognized state’s constitutional framework has any effect on the process of granting a state-like entity international recognition.

This research demonstrates that, during the process of granting international recognition, the international community expects the internal practices of a state seeking formal recognition or admission to an intergovernmental organization to be based on constitutional principles. It also suggests that, by pursuing constitutionalism on a domestic level,<sup>3</sup> an unrecognized state may consolidate its claim based on the contemporary criteria for recognition. As a result, a constitution plays a more prominent role in an unrecognized state as it becomes an instrument to win the trust of international community in the entity’s search for recognition. In addition, the assessment of an entity’s claims for recognition becomes a more complex process in which the entity’s internal constitutional dynamics matter for the negotiation process and for the ultimate decision of the actors involved in negotiations. Thus, this dissertation explores how the elements of constitutionalism (a) are integral to the process of recognition; (b) shape the response of an unrecognized state in its search for recognition; and (c) influence an entity’s international political status.

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<sup>3</sup> Here and throughout this work, the term “domestic” in reference to an unrecognized state implies its internal structures and affairs.

The first chapter defines the concepts of international recognition, a constitution, and constitutionalism. It then analyzes the existing political and legal doctrines on the formal recognition of states and governments, as well as on states' potential to become members in international organizations. This chapter develops a doctrinal framework that argues for the importance of a constitution for the international recognition of a state and lays the groundwork for analyzing the effects of an unrecognized constitution for the recognition of a state-like entity.

The second chapter defines the concept of unrecognized states and introduces the case study of Transdniestria. It argues that the particular features of unrecognized states – their long existence, control over the territory, governance through independent state institutions, and their search for recognition – make them ideal environments in which to study the relationship between a constitution and the recognition process. It then details the example of Transdniestria as an unrecognized state and justifies its relevance as a case study.

The third chapter assesses the effects of the Transdniestrian constitution on the entity's search for international recognition. It explores the ways in which Transdniestria has enacted both the traditional and contemporary criteria for recognition, as well as how external actors have responded to Transdniestria's constitutional development and recognition claims. The research shows no evidence of the direct impact of Transdniestria's constitution on the entity's recognition process. However, this research demonstrates that the entity's constitution has strengthened Transdniestrian statehood and enhanced external actors' engagement with that region.

The fourth chapter continues the examination of the contemporary criteria for recognition as stated and, in particular, democracy, by looking at the electoral practices of Transdniestria. The findings confirm the dissertation's general argument that the Transdniestrian constitutional



framework has largely had no impact on the process of the region's recognition. In other words, despite the theoretical relevance of a constitution to the standards for recognition and the use of constitutional evidence in other cases, the constitution seems to have had no effect on recognition for Transdniestria. The chapter does provide support, however, for the role of the constitution in consolidating Transdniestrian statehood, bolstering its recognition claims, and increasing the region's engagement with external actors.

The fifth and concluding chapter summarizes key findings, discusses their implications, and identifies possible directions for future research. In particular, this chapter offers some preliminary thoughts on why constitutional elements have played no role in Transdniestria, as opposed, for example, to Kosovo. It also raises the possibility that Transdniestria's experience may be similar to those of other unrecognized entities. Finally, it outlines possibilities for further research on the question of whether constitutional development has had other impacts on the process of conflict resolution aside from recognition.

As one of the first analyses of the role of unrecognized foundational legal tools for the viability of a de facto state and for the negotiation process, this research provides insight into the internal dynamics of an unrecognized state. It contributes to the literature on state recognition by analyzing the traditional and contemporary criteria for recognition in the context of an unrecognized state. It shows that an unrecognized state takes seriously the official recognition requirements and strives to meet them, although the final decision in granting recognition remains at the discretion of already-recognized states. The research also expands scholarly knowledge of functions that a constitution has in a state beyond those recognized as sovereign. It suggests that, apart from its usual functions such as the organization and regulation of a polity, limitation of a government, and the protection of human rights, a constitution also serves as a

mechanism to seek international recognition. The dissertation concludes that the effects of a constitution on the international recognition and political status of an unrecognized state, which had until now been largely unexplored topics, in fact yield valuable avenues for further interdisciplinary research.

# **CHAPTER ONE. DOCTRINAL FRAMEWORK: THE ROLE OF CONSTITUTIONALISM IN THE STATE RECOGNITION PROCESS**

## **Introduction**

The existing literature widely discusses the meaning and importance of a constitution in a sovereign state and debates the nature and criteria of a state's official recognition. The scholarship on constitutional and international law, however, are silent on the role of a constitution in the recognition process. This first chapter, therefore, draws on the existing literature on state recognition in international law and on constitutionalism in order to develop a doctrinal framework that evidences the importance of a constitution for the recognition of a state. This framework contextualizes the research question on the effects of the constitution in an unrecognized state and lays the groundwork for answering it in the third and fourth chapters.

In particular, this chapter argues that the theory and practice of recognition include criteria that reflect constitutional principles of governance and involve a constitution – a fundamental mechanism that embodies and realizes those principles – thereby making a constitution an important element of the recognition process. On this basis, there is a theoretical expectation that the constitutional development of an entity seeking recognition would have an effect on other states' decision to grant recognition.

To develop this argument, section one defines the concepts of recognition, a constitution, and constitutionalism. Section two analyzes in chronological order the existing political and legal doctrines on the recognition of sovereign states and governments, and these states' potential to become members in international organizations. In so doing, this analysis reveals the close relationship between the process of recognition and a constitution. The doctrines examined here include the Tobar Doctrine, the Montevideo Convention, membership criteria for the United

Nations, the Helsinki Final Act, the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, and the Copenhagen criteria on European Union membership. Section two also explores Croatian and Kosovar practices to show that they demonstrate some consistency with the pattern the doctrinal framework predicts.

## **1. Defining the Recognition of a State, a Constitution, and Constitutionalism**

The analysis of the key features of the concepts of recognition and constitutionalism suggests that a constitution matters for the recognition process. It both represents a mechanism that asserts an entity's statehood and projects the commitment of the aspiring state to be a member of the international community.

### **1.1 The Recognition of States**

*Defining the recognition of states.* In international relations, recognition generally refers to the acknowledgment of "certain changes in the world community"<sup>1</sup> and usually concerns recognition of a new state or government. Formal recognition of a state implies the acceptance of its "legitimated authority over peoples and territories"<sup>2</sup> and its admission to the arena of international relations as one of the members of the system of sovereign states. Recognition of a new government suggests the acknowledgement of a person's or group of persons' authority to act as an official organ of the state and to represent it in international relations.<sup>3</sup> Taken in a broader context, recognition also refers to the admission of a state to official international organizations that have been established as communities of states either on an international (e.g.

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<sup>1</sup> Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution* (Westport: Praeger, 1999), ix

<sup>2</sup> Wolfgang Friedmann, *The Changing Structure of International Law* (New York: Columbia University Press, 1964). 213

<sup>3</sup> Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (Oxford, New York: Clarendon Press, 1998). The notion of the recognition of government is further discussed below, in Section 2.

the United Nations) or regional (e.g. the European Union) level. By applying to such an organization and attempting to meet its membership criteria, a state seeks its recognition as a member. To explore the relevance of a constitution for the recognition of a state as a potential participant in international relations, this chapter draws on international legal theory and practice regarding the recognition of states, as well as governments and international organizations.

While the state has been the foundation of international order since the Treaty of Westphalia (1648),<sup>4</sup> the very meaning of statehood and the function of recognition remain controversial and ambiguous. The literature on this subject is characterized by a range of debates on the criteria for statehood and the concept of recognition.<sup>5</sup> One set of debates on recognition in international legal theory concerns its constitutive and declarative models. Constitutive theory suggests that the state emerges after meeting the criteria for statehood and gaining recognition from other states,<sup>6</sup> whereas declarative theory claims that the act of recognition simply asserts the existence of the state and serves as an instrument for acknowledgement of the state's political existence.<sup>7</sup> Related to this traditional debate, but distinct from it, is the tension concerning whether recognition is a legal or political act.<sup>8</sup> Finally, discussions also focus on the changing international practices of recognition from a unilateral and discretionary process to a collective

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<sup>4</sup> The Treaty of Westphalia is generally seen as the basis of the system of independent states. See Antonio Cassese, *International Law in a Divided World* (Oxford: Clarendon Press, 1991), 34-37.

<sup>5</sup> For the scholarship addressing the issues of recognition of a state, see Richard Caplan, *Europe and the Recognition of New States in Yugoslavia* (Cambridge University Press, 2005); James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979); John Dugard and David Raic, "The Role of Recognition in the Law and Practice of Secession," in *Secession: International Law Perspectives*, ed. Marcelo G. Kohen (New York: Cambridge University Press, 2006); Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (Oxford, New York: Oxford University Press, 2010); Grant, 1999; Hans Kelsen, "Recognition in International Law," *American Journal of International Law* 35, no. 4 (1941); Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999); Hersch Lauterpacht, *Recognition in International Law* (Cambridge: University Press, 1947); Michael W. Reisman and Eisuke Suzuki, "Recognition and Social Change in International Law: A Prologue for Decisionmaking," in *Toward World Order and Human Dignity*, ed. Michael W. Reisman and Burns H. Weston (London: Collier Macmillan Publisher, 1976).

<sup>6</sup> Lauterpacht, 1947; Kelsen, 1941.

<sup>7</sup> Crawford, 1979.

<sup>8</sup> Grant, 1999.

and more coordinated approach.<sup>9</sup> This chapter takes into consideration these debates but mainly addresses a different aspect of the recognition process, namely its interrelation with the constitutional development of a state-like entity.

On the whole, **formal recognition** represents the acceptance of a new entity as a state by an authoritative body of another, sovereign state, if the entity meets the criteria for statehood defined below.<sup>10</sup> Through this process, authorized decision-makers signal the willingness of their state to respond to and accept certain changes in the world community and to consider a new state as a part of that community.<sup>11</sup>

*The criteria for statehood.* The concept of statehood, which is defined as “a claim of right based on a certain factual and legal situation,”<sup>12</sup> has evolved throughout both legal thought and the historical practice of the recognition process. First, it includes traditional criteria for recognition of states found in 1933 Convention on Rights and Duties of States, also known as the Montevideo Convention. The Montevideo Convention asserts that a state should possess the following qualifications to satisfy the requirements for statehood: “(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.”<sup>13</sup> Second, the criteria for recognition have also come to include additional contemporary requirements, such as an emergent state’s non-violation of international law, in particular its *jus*

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<sup>9</sup> John Dugard, *Recognition and the United Nations* (Cambridge: Grotious Publications, 1987). Since there is no international authority responsible for determining whether an entity claiming to be a state meets the above requirements, each state or international organization makes the determination through its own assessment and decides whether the new entity should enter the community of nations, thereby showing whether the accepting state is willing to deal with a new-admitted entity. See Dugard and Raic, 2006. Formal recognition is also characterized by both a quantitative aspect – how many of the other states recognize the entity or not – as well as a qualitative one – recognition by a great power is of more utility than recognition by a less powerful state. See Francis Owtram, “The Foreign Policies of Unrecognized States,” in *Unrecognized States in the International System*, ed. Nina Caspersen and Gareth Stansfield (NY: Routledge, 2011).

<sup>10</sup> Lori F. Damrosch et al., eds., *International Law: Cases and Materials*, 5th ed. (West Publishing, 2009), 300.

<sup>11</sup> Ian Brownlie, *Principles of Public International Law*, 4th ed. (Oxford: Clarendon Press, 1990), 87-88.

<sup>12</sup> Crawford, 1979, 31, 119.

<sup>13</sup> Article 1, *Montevideo Convention on Rights and Duties of States*, 1933. The provisions on government and capacity to enter into relations with other states are discussed in detail in Section 2.

*cogens* norms (the prohibitions against genocide, maritime piracy, slavery, torture, and aggression),<sup>14</sup> as well as the entity's adherence to democratic principles, the rule of law, and the protection of human and minority rights.<sup>15</sup>

The focus of the international community on democracy, the rule of law and human/minority rights reveals a revised approach to the character of its membership. This approach suggests that the internal structure of a state has gradually become more important for states as it influences the international system's functioning. Previously regarded as a purely domestic issue, the constitutional nature of a country has increasingly become a significant concern for international society, especially in the twentieth century.<sup>16</sup> Organizing a state around constitutional principles serves as confirmation of the state's willingness and capacity to fulfill its international obligations, thereby ensuring the peaceful and stable co-existence of states in the eyes of international community.<sup>17</sup>

In the context of the recognition process and Western constitutionalism, the conventional usage of terms "democracy," "the rule of law," and "human rights" mainly refer to the following definitions.

- *Democracy* represents a form of governance that ensures the participation of all citizens of the state on an equal basis in political decision-making at every level of governance. It

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<sup>14</sup> M. Cherif Bassiouni, "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes'," *Law and Contemporary Problems* 59, no. 4 (1996), 68. *Jus cogens* norms represent the peremptory norms of international law, which are accepted and recognized by the community of states as norms, and derogation from which is not permitted. Article 53, *Vienna Convention on the Law of Treaties*, 1969. For the debates on the content of *jus cogens*, see also Dugard, 1987.

<sup>15</sup> Damrosch et al., 2009, 312; Caplan, 2005; Grant, 1999, 84.

<sup>16</sup> Daniel Thurer, a Swiss scholar of public international law, has explored international influence on national processes of constitution-making and showed that involvement in the constitutional affairs of a country range from initiating (by accompanying and steering), to the instatement of such processes. Daniel Thurer, cited in Ulrich K. Preuss, "Perspectives on Post-Conflict Constitutionalism: Reflections on Regime Change through External Constitutionalization," *New York Law School Law Review* 51, no. 3 (2006-2007), 493.

<sup>17</sup> Christian Hillgruber, "The Admission of New States to the International Community," *European Journal of International Law* 9, no. 3 (1998), 501.

includes free and fair elections, political pluralism, freedom of press and speech, legal restrictions of executive powers, and an independent judiciary.<sup>18</sup>

- *The rule of law*<sup>19</sup> implies that government authority may only be exercised in accordance with the law, which itself has been adopted through an established procedure. It prioritizes the supremacy of the law instead of arbitrary rulings.<sup>20</sup>

- *Human rights* are commonly understood as the universal, inalienable, and egalitarian entitlements of human beings. These include a set of civil, political, economic, and social rights (e.g. right to life, right to freedom of movement, and equality before the law). The term *minority rights* mainly refers to special guarantees for members of racial, ethnic, religious, or linguistic minority groups (e.g. language rights and the establishment of social and religious institutions).<sup>21</sup>

These notions have come to constitute important principles for the international community, including in its activity related to the recognition process of states, for three key reasons. First, leading state actors, who often define the nature of the development of international law and relations, widely share and value the concepts of democracy, the rule of law, and the protection of human rights. Second, the absence of democracy and arbitrary power in a state might result in domestic oppression and cause instability in the international system.<sup>22</sup> Third, many states share a position that democracies do not go to war against one another, and,

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<sup>18</sup> David Held, *Models of Democracy* (Stanford: Stanford University Press, 1987).

<sup>19</sup> The concept of *the rule of law* is legally employed in the Anglo-American context; in German context, it is *Rechtsstaat* and in French it is *état de droit*.

<sup>20</sup> Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge, UK; New York: Cambridge University Press, 2004), 91-101.

<sup>21</sup> Henry J. Steiner, Philip Alston, and Ryan Goodman, eds., *International Human Rights in Context: Law, Politics, Morals*, 3d ed. (Oxford, New York: Oxford University Press, 2008).

<sup>22</sup> Grant, 1999, 102. In his work, Grant refers to the shared belief of some theorists that nondemocratic states tend toward international aggression as well as domestic oppression and brings examples of North Korea and Iraq. See, Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 203. For further discussion on the reasons of limiting government sovereignty through human rights regimes See Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54, no. 02 (2000), 217-252.



therefore, the establishment of more democratic regimes represents one way to achieve international peace.<sup>23</sup>

In addition, the protection of human rights as a criterion for state recognition ensures the limitation of governments' power domestically and constitutes a cross-state understanding of the "standard threats' to human dignity."<sup>24</sup> Due to increased awareness of an individual's significance and dignity, the prevention of these threats becomes an issue of international concern and obligation.<sup>25</sup> Therefore, only states that are committed to the protection of human rights are seen as potential members of international society and guarantors of international peace and security. Minority rights guarantees, more specifically, hush minorities' fears of oppression and quiet domestic opposition, which helps to avoid tensions and prevent the spillover of conflicts into the inter-state arena.<sup>26</sup>

Historical support for the importance of human rights for the recognition process goes back to nineteenth century when, similar to the EU's approach in the 1990s,<sup>27</sup> the parties to the 1878 Treaty of Berlin<sup>28</sup> linked the recognition of Bulgaria, Serbia, Montenegro, and Romania to respect for minority rights in those newly established states.<sup>29</sup> The Entente Powers also established minority rights provisions as a condition for their recognition of Poland, Czechoslovakia, and the Kingdom of Serbs, Croats and Slovenes created after World War I. In this way, the Great Powers sought to respond to threats to "European stability posed by

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<sup>23</sup> On Liberal Peace Theory, see Miriam Fendius Elman, ed. *Paths to Peace: Is Democracy the Answer?* (Cambridge, MA: The MIT Press, 1997).

<sup>24</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2d ed. (Ithaca: Cornell University Press, 2002), 57 (citing Shue, 1980, at 29-34).

<sup>25</sup> *Ibid.*, 57.

<sup>26</sup> Grant, 1999, 103.

<sup>27</sup> European Community. *Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union"* and "Declaration on Yugoslavia," December 16, 1991, discussed in detail in the next section.

<sup>28</sup> Austria, France, Germany, Great Britain, Italy, Russia and Turkey.

<sup>29</sup> *The Treaty of Berlin*, 1878, cited in Caplan, 2005, 62.

unalleviated minority grievances.”<sup>30</sup> As a result, international society establishes specific eligibility criteria for membership, i.e. protection of minorities, in order to ensure that the goals of the community are achieved. In addition, an effective democratic system, coupled with the rule of law and protection of human rights, enables each individual to maintain and practice an identity, a freedom that reduces, if not eliminates, minorities’ claims for separation and secures peace within the state and stability in a region.

Consequently, the norms governing recognition have tended toward the inclusion of elements “with substantial bearing on relations among states,”<sup>31</sup> in other words, norms with cross-border effects that would help to achieve the aims of international law. Therefore, these additional contemporary criteria for recognition are seen as good practice in international affairs<sup>32</sup> to consolidate and protect common values, in particular democracy, the rule of law and human rights.<sup>33</sup>

Thus, the **criteria for state recognition** include population, territory, government, capacity to enter into relations with other states, respect for *jus cogens* norms, and adherence to democratic principles, the rule of law, and human rights. The evolution of these criteria reflects not only the factual conditions of the state (its population, territory), but also the international community’s expectations of the qualitative features of the internal organization of a state and the principles of the membership in the community of states. These elements are realized through a constitutional state – an increasingly prevalent political state organization throughout the

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<sup>30</sup> Ibid., 62.

<sup>31</sup> Grant, 1999, 102.

<sup>32</sup> Although the concept of human rights is not an inherent structural element in international affairs, but rather is a political preference, it has played an increasingly important role in international obligations, and therefore strengthens the relationship between human rights and international affairs. Even though human rights differ from other international obligations in their lack of reciprocity, they are constantly present in the discourse about the aims of international coexistence. See Damrosch et al., 2009, 956-973, 285-293.

<sup>33</sup> Roland Bieber, “European Community Recognition of Eastern European States: A New Perspective for International Law?,” *American Society of International Law Proceedings* 86 (1992), 377.

world, which ensures compliance with international legal requirements on the protection of minorities and human rights through the establishment of constitutional mechanisms on democracy, the separation of powers, and guarantees of basic rights.<sup>34</sup> As a result, making internal constitutional provisions (e.g. those guaranteeing minority rights) a part of the recognition process helps to ensure the fulfillment of international obligations through the admission process of new entities into the international community<sup>35</sup> and to strengthen the role of a constitutional state itself, a development that is discussed in the next sub-section.

## 1.2 Constitutions and Constitutionalism

*Constitution.* Widely explored by social scientists<sup>36</sup> and legal positivists,<sup>37</sup> the notion of a constitution lacks a clear and decisive list of inherent characteristics.<sup>38</sup> However, regardless of the differences in national traditions,<sup>39</sup> many constitutions share basic principles originally

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<sup>34</sup> Hillgruber, 1998, 501.

<sup>35</sup> Caplan, 2005.

<sup>36</sup> For example, sociologists and anthropologists have identified certain “starting mechanisms” that are necessary for creating norm-based social systems, one of which is the basic rule of reciprocity, which helps to sustain a community over time. See generally, Alec Stone Sweet, “Judicialization and the Construction of Governance,” *Contemporary Political Studies* 32 (1999).

<sup>37</sup> For example, legal positivists distinguish modern legal systems from other normative systems. H.L.A. Hart, for instance, claims that “pre-law” societies, or communities governed by “unofficial” norms and authority structures, were “inefficient” insofar as their regimes lacked “secondary rules,” which are the means of adapting norms to changing circumstances. Such “secondary rules are typically developed as constitutional law, enabling a community to overcome the common governance problems.” H.L.A. Hart, *The Concept of Law*, ed. Joseph Raz and Penelope Bullock, 2 ed., Clarendon Law Series (USA: Oxford University Press, 1994).

<sup>38</sup> The debates regarding the concept of a constitution concern its emergence (political revolution versus continuous evolution); form (written versus unwritten constitutions); amendment process (flexible versus rigid constitutions); division of powers; checks and balances; the rule of law; containment; the incorporated governmental structure; the hierarchy of law; and certain basic rights. Absent from the debate is a clear and comprehensive conceptualization of a constitution and its inherent elements. See generally, Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* (New Haven: Yale University Press, 1999); Ruth Gavison, “What Belongs in a Constitution?,” *Constitutional Political Economy* 13 (2002).

<sup>39</sup> Ulrich K. Preuss, “Constitutionalism,” in *Routledge Encyclopedia of Philosophy*, ed. Craig E. (1998); Gavison, 2002.

established by “Western templates” in that they organize and institutionalize a polity<sup>40</sup> and fulfill a set of functions that are conventionally divided into the internal and external.<sup>41</sup>

The *internal functions* of a constitution have been widely explored in the literature and are directly linked to the contemporary criteria for state recognition. These functions address a set of issues related to basic governmental structures and functions of government; fundamental values and commitments; and human rights.<sup>42</sup> They seek to create or contribute to the stability and legitimacy of governance. A constitution represents:

a body of meta-norms, those higher-order legal rules and principles that specify how all other lower-order legal norms are to be produced, applied, enforced, and interpreted. [...W]ritten constitutions are the ultimate, formal source of state authority. They establish governmental institutions, such as legislatures, executives, and courts, and grant them the power to make, apply, enforce, and interpret laws,[...] and determine how legislative authority is constituted through ... elections.<sup>43</sup>

In this context, the concept of the rule of law also captures the relationship between a constitution and political institutions as it implies “that the state’s bodies act according to the prescriptions of law, and law is structured according to principles restricting arbitrariness.”<sup>44</sup>

There is also a relationship between a constitution and democracy,<sup>45</sup> in that constitutions sustain,

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<sup>40</sup> Karolina Milewicz, “Emerging Patterns of Global Constitutionalization: Toward a Conceptual Framework,” *Indiana Journal of Global Legal Studies* 16, no. 2 (2009), 417.

<sup>41</sup> For example, in referring to internal functions of a constitution, Raz describes them as the mechanism that, inter alia, “defines the ... powers of the main organs of the different branches of government.” Joseph Raz, “On the Authority and Interpretation of Constitutions: Some Preliminaries,” in *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander (Cambridge, New York: Cambridge University Press, 1998), 152-153.

<sup>42</sup> Gavison, 2002, 89.

<sup>43</sup> Alec Stone Sweet, “Constitutionalism, Legal Pluralism, and International Regimes,” *Indiana Journal of Global Legal Studies* 16, no. 2 (2009), 626.

<sup>44</sup> See András Sajó, *Limiting Government: An Introduction to Constitutionalism* (Budapest, New York: Central European University Press, 1999), 205.

<sup>45</sup> Scholars point out the complex nature of the constitution-democracy paradigm. A number of them agree that, despite the tensions for democracy that arise from limitations on majority decision-making enshrined in a basic document, a constitution and democracy tend to reinforce each other. For example, a state’s commitment to democracy affects the structure of the regime, but whether a democratic regime is parliamentary, presidential or mixed, it includes regular elections and an effective multi-party system. Democracy also requires some civil and political rights (e.g. the rights to vote and to be elected, and some freedom of speech and association), but affirmation of these rights requires effective mechanisms for their enforcement, which place some limits on democracy. See Gavison, 2002, 90.

promote<sup>46</sup> or limit democracy<sup>47</sup> through a number of mechanisms, for example, elections, a multi-party system, or human rights.<sup>48</sup>

Overall, the internal functions of a constitution aim to establish rules that can influence human behavior and keep government in order and efficient through the separation of powers.<sup>49</sup> They also seeks to foster security and predictability in society;<sup>50</sup> establish politics “where the rules serve the common good;”<sup>51</sup> create a system that enables people to be part of political life through their citizenship;<sup>52</sup> and protect individual rights, placing limits on majority decision-making to avoid political changes that could weaken the minority.<sup>53</sup> As a result, the main purposes of a constitution in a liberal, rule-of-law state<sup>54</sup> within the liberal international order<sup>55</sup> are to protect the freedoms and basic rights of individuals against the power of the state and, additionally, to limit state power through the domestic separation of powers. It is a mechanism

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<sup>46</sup> Cass Sunstein, “Constitutions and Democracies: An Epilogue,” in *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad (Cambridge: Cambridge University Press, 1988).

<sup>47</sup> Among the constitutional mechanisms that limit democracy, scholars discuss judicial supremacy, see Rogers Smith, “Judicial Power and Democracy: A Machiavellian View,” in *The Supreme Court and the Idea of Constitutionalism*, ed. Steven et al. Krautz (Philadelphia: University of Pennsylvania Press, 2009), 199-217; and rights, including their judicial interpretation, see Jeremy Waldron, “Precommitment and Disagreement,” in *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander (Cambridge, New York: Cambridge University Press, 1998), 271-99, 290-92. Democracy can also limit or pose a threat to constitutionalism because the centrality of democracy to liberal constitutionalism is itself a contested question. See Steven Krautz, “On Liberal Constitutionalism,” in *The Supreme Court and the Idea of Constitutionalism*, ed. Steven et al. Krautz (Philadelphia: University of Pennsylvania Press, 2009), 30-49; Larry Alexander, “Constitutionalism and Democracy: Understanding the Relation,” *Ibid.*, 161-169.

<sup>48</sup> Gavison, 2002, 90.

<sup>49</sup> Richard Kay, “American Constitutionalism,” in *Constitutionalism: Philosophical Foundations*, 1998; Stephen Holmes, “Precommitment and the Paradox of Democracy,” in *Constitutionalism and Democracy*, 1988.

<sup>50</sup> Kay, 1998.

<sup>51</sup> Krautz, 2009, 2.

<sup>52</sup> Bruce A. Ackerman, “Neo-federalism?,” in *Constitutionalism and Democracy*, 1988, 187.

<sup>53</sup> Minorities get veto power over political decision. See generally, John Elster and Rune Slagstad, eds., 1988; Holmes, 1988; Jennifer Nedelsky, “American Constitutionalism and the Paradox of Private Property,” *Ibid.*; Rune Slagstad, “Liberal Constitutionalism and Its Critics: Carl Schmitt and Max Weber,” in *Constitutionalism and Democracy*, 1988; Waldron, 1998.

<sup>54</sup> The dominant model of a state since the mid-twentieth century.

<sup>55</sup> Liberal values constitute the basis of formal democratic institutions and are promoted in the international arena. Anne-Marie Gardner, “Beyond Standards Before Status: Democratic Governance and Non-state Actors,” *Review of International Studies* 34, no. 03 (2008), 536.

for the citizens to organize governance and to check the power of the state.<sup>56</sup> In this context, the idea of internal constitutional functions refers to the realization of the fundamental tasks related to the internal political organization of a state.

Some of these functions are also characteristic of authoritarian constitutions. The rules established by the constitutions in authoritarian regimes restrain authoritarians' actions, define the limits of acceptable and legitimate political discourse, and ensure intra-elite coordination.<sup>57</sup> This suggests that a constitution matters and can make a difference regardless of the political regime in a state-like entity.

Along with its internal functions, a constitution also has *external functions*. This feature has been largely overlooked by scholars of western constitutions, but has received some attention through the study of non-Western constitutional experiences. The practices of Arab and African constitutions suggest that, in addition to the establishment of the structure for the exercise of government power, constitutions also serve “constitutive” external functions.<sup>58</sup> The purpose of these external functions is to establish a convincing sovereign presence for other nations in the international arena. By having a constitution, a polity asserts its legitimate and sovereign

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<sup>56</sup> As some scholars put it, the aims of a constitution are “[1] to authorize, and to create limits on, the powers of political authorities, [2] to enhance the legitimacy and the stability of the political order, [and 3] to institutionalize a distinction between ‘regular politics’ and ‘the rules of the game’ and other constraints (such as human rights) within which ordinary politics must be played.” Gavison, 2002, 90. See also Sweet, 2009, 627; Michel Rosenfeld, “Introduction: Modern Constitutionalism as Interplay Between Identity and Diversity,” in *Constitutionalism, Identity, Difference, and Legitimacy: Theoretical Perspectives*, ed. Michel Rosenfeld (Durham: Duke University Press, 1994), 3. On the basis of constitutional authority, see Larry Alexander, ed. *Constitutionalism: Philosophical Foundations*, 1998; Frank Michelman, “Constitutional Authorship,” in *Constitutionalism: Philosophical Foundations*, 1998; Michael Perry, “What is ‘the Constitution’? (and Other Fundamental Questions),” *Ibid.*; Joseph Raz, “On the Authority and Interpretation of Constitutions: Some Preliminaries,” *Ibid.*; Jed Rubenfeld, “Legitimacy and Interpretation,” *Ibid.*

<sup>57</sup> Tom Ginsburg and Alberto Simpser, “Introduction,” in *Constitutions in Authoritarian Regimes*, ed. Ginsburg Tom; Simpser Alberto (Cambridge University Press, 2013), 14.

<sup>58</sup> Nathan Brown, *Constitutions in a Nonconstitutional World. Arab Basic Laws and the Prospects for Accountable Government* (Albany: State University of New York Press, 2001); H.W.O. Okoth-Ogendo, “Constitutions Without Constitutionalism: Reflections on an African Political Paradox,” in *Constitutionalism and Democracy: Transitions in the Contemporary World*, ed. Douglas Greenberg, et al. (New York: Oxford University Press, 1993).

existence, a condition that is reflected in the declaration of sovereignty in many constitutional provisions.<sup>59</sup>

The division between internal and external functions seen in the constitutional practices of recognized states is arbitrary, since each category reinforces the other and becomes *internal* or *external* depending on the context. At the same time, this delimitation can be a useful analytical tool for examining the role of a constitution in the cases of state-like entities seeking recognition, a topic that is discussed further in Section Two.

*Constitutionalism.* Since the end of World War II, there has been a tendency to distinguish between constitutionalism and a constitution to emphasize the importance of values laid down in constitutions and not simply their formal character.<sup>60</sup> Constitutionalism is regarded as “a systematization of thinking about constitutions grounded in the development since the mid-twentieth century of supranational normative systems against which constitutions are legitimated.”<sup>61</sup> As a result, communities of nations refer to that systematization to “legitimate [...] their actions against non-legitimate governments under principles of international law, or against which the populace can legitimately rebel.”<sup>62</sup> Thus, constitutionalism differs from a

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<sup>59</sup> In the Arab World, this function is secondary to domestic concerns of the organization or increase of a state’s authority and the embodiment of a certain ideological appeal. See Brown, 2001. For African states, the idea of the constitutive value of a constitution, which demonstrates a state’s sovereignty, remains preeminent. See Okoth-Ogendo, 1993.

<sup>60</sup> See Larry Gata Backer, “God(s) Over Constitutions: International and Religious Transnational Constitutionalism in the 21st Century,” *Mississippi College Law Review* 27 (2008), 34-37.

<sup>61</sup> Larry Gata Backer, “From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems,” *Penn State Law Review* 113, no. 3 (2009), 106.

<sup>62</sup> *Ibid.*, 106. Backer clarifies the idea of nations’ reliance on the systematization of thinking about constitutions in the following citation: “In the discourse on international relations, we routinely differentiate between various categories of states and label them according to certain criteria that we consider relevant for our understanding of the dynamics of international politics. Sometimes these criteria are purely factual, but mostly they have an evaluative, even moralizing, overtone.” See also Ulrich K. Preuss, “Equality of States - Its Meaning in a Globalized Legal Order,” *Chicago Journal of International Law* 9, no. 1 (2008-2009).

constitution in that the former serves “as a means of evaluating the form, substance and legitimacy of the [latter].”<sup>63</sup>

Scholarly literature does not subscribe to a particular way of understanding the notion of constitutionalism. Rather, the meaning varies depending on the foundational notions of how, in a given political system, the citizens and their representatives organize the state, constitute the government, provide for representation and participation, protect minorities, promote equality, and so on.<sup>64</sup> Some scholars define constitutionalism as the commitment of a given political community to be governed by constitutional rules and principles in conformity with meta-norms.<sup>65</sup> In contrast, others use constitutionalism to refer either to those practices of government that derive from a particular constitutional order<sup>66</sup> or to “the basic ideas, principles, and values of a polity [that] aspire to give its members a share in the government.”<sup>67</sup> The extant literature also includes cultural views of constitutionalism, which conceptualize it as an overarching ideology of politics, community, and the state. To such scholars, constitutions express the collective identity of a specific people through their aspirations, values, and idealized essence. In this view, constitutionalism, then, is a legitimizing resource for the political body.<sup>68</sup>

Overall, *constitutionalism* is a complex group of ideas about constituting and limiting the government’s authority that are derived from a body of foundational laws. A political organization is constitutional to the extent that it “contain[s] institutionalized mechanisms of

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<sup>63</sup> Backer, 2009, 106-107.

<sup>64</sup> Raz, 1998, 154.

<sup>65</sup> Sweet, 2009, 626, 628.

<sup>66</sup> Neil Walker, “European Constitutionalism and European Integration,” *Public Law* 2 (1996), 266, 267, cited in Sweet, 2009, 627.

<sup>67</sup> Ulrich K. Preuss, “The Political Meaning of Constitutionalism,” in *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, ed. Richard Bellamy (Aldershot: Avebury Publishing, 1996), 11, 12.

<sup>68</sup> See, e.g., Jo Shaw, “Postnational Constitutionalism in the European Union,” *Journal of European Public Policy* 6 (1999); Robert Post, “Democratic Constitutionalism and Cultural Heterogeneity” (Berkeley: University of California, Institute of Governmental Studies, 2000).



power control for the protection of the interests and liberties of the citizenry, including those that may be in the minority.”<sup>69</sup>

The current dissertation employs the notions of both a constitution and constitutionalism. It implies that **a constitution** is a mechanism used to assert the sovereign existence of an entity to other states in the international arena, and to establish fundamental norms for internal governance and external interactions. It refers to **constitutionalism** as a set of ideas on political organization with limited government authority and functions that helps to ensure the establishment and implementation of constitutional provisions, and provides for popular participation in governance, the separation of powers, and respect for human rights.

## **2. Constitutions as a Part of the Recognition Process**

### **2.1. Doctrinal Framework for the Relevance of a Constitution for the Prospects of Recognition**

International law establishes a set of rules to organize the interactions of states in order to maintain their peaceful and secure co-existence in the international arena.<sup>70</sup> Some of these rules concern the formal recognition process – for example, admission to the system of states based on the criteria for statehood – which themselves also aim to maintain international order and stability. In this process, constitutions as mechanisms for constituting and limiting internal power (for creating internal democratic governance) generally serve as the basis to realize the criteria for recognition or the standards of the international community for the would-be state; to signal the state’s eligibility to participate in international relations; and to affirm a potential state’s commitment to fulfilling the international community’s aims of peace and stability.

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<sup>69</sup> Gordon Scott, *Controlling the State: Constitutionalism from Ancient Athens to Today* (Cambridge: Harvard University Press, 1999).

<sup>70</sup> Peace and security are among the key goals of the international community. See, e.g. Damrosch et al., 2009, 6.

Although some criteria for recognition, for instance, the protection of human rights, could also be accomplished through ordinary laws or statutes, the distinctive characteristics of a constitution (or other fundamental law) make it more effective for the purposes of meeting the criteria for state recognition for several reasons. First, a constitution is the *supreme* document in a state with *foundational characteristics*. Several notable features ensures its supremacy over ordinary laws and statutes: 1) “it is, and is meant to be, of long duration;” 2) “it has a canonical formulation” (that is, it is codified and purports to be comprehensive); 3) it constitutes a fundamental law that is “justiciable”; and 4) amendments to it are “legally more difficult to secure than ordinary legislation,”<sup>71</sup> a practice that safeguards a constitution against modification through legislation or judicial review.<sup>72</sup> Although the degree of rigidity may vary by state, the additional approval mechanisms for amendments, together with the fundamental provisions contained within a constitution (organization of government, basic values, and human rights) ensure its superiority over ordinary legislation.

Furthermore, a constitution creates a foundation “as document (law, covenant), as deed (action, event), and [sometimes] as performance” (when the institution of a constitution is performed through referendum), thus establishing the key institutions of the state.<sup>73</sup> As a result, introducing a set of provisions related to the recognition criteria into a constitution indicates an entity’s serious commitment to be bound by the international recognition requirements and to follow those criteria.

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<sup>71</sup> Raz, 1998, 152, 153.

<sup>72</sup> Milewicz, 2009, 418.

<sup>73</sup> Irina Culic, “State Building and Constitution Writing in Central and Eastern Europe after 1989,” *Regio-Minorities, Politics, Society (English Edition)*, no. 1 (2003), 39.

Second, the adoption of a constitution as a way to organize a polity and limit governmental power has become almost a *universal practice*.<sup>74</sup> As a result, the international community expects that an entity seeking recognition would reflect its commitments through a constitution as a generally recognized fundamental tool of societal organization. In this sense, a constitution solidly demonstrates the entity's intention to assert its sovereignty, to respect the commitments required by the recognition criteria, and to follow commonly accepted practices.

In addition, the *constitutionality of a state* becomes an important element in fulfilling international obligations, thus influencing the recognition process. In general, a constitutional state is a system that ensures the state's capacity to respect international responsibilities, namely by establishing a political organization based on public participation in governance, separation of powers, and guarantees of human rights. Furthermore, a constitution provides the necessary conditions for a state to abide by international obligations, such as the maintenance of peace and stability and respect for human and minority rights.<sup>75</sup> Also, as mentioned above, the foundational and supreme nature of a constitution suggests the seriousness of the commitments to respect international responsibilities undertaken by a state-like entity seeking recognition and its potential reliability as a member of international community.

In specific cases, for example, secession,<sup>76</sup> the issue of constitutionality relates to the practices of separation from a parent state. First, compliance with the parent state's constitutional provisions on secession – or their deliberate infringement by a secessionist entity – point to the

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<sup>74</sup> Bruce A. Ackerman, "The Rise of World Constitutionalism," *Virginia Law Review* 83 (1997), 771-797.

<sup>75</sup> Hillgruber, 1998, 501.

<sup>76</sup> In international law, the right to secession is seen in the context of the broader principle of self-determination. The relationship of this principle to the constitution and to international law was particularly addressed by the Advisory Opinion of the Supreme Court of Canada concerning Quebec. In its opinion, the Supreme Court examined the questions of whether Quebec can secede from Canada unilaterally under the Constitution of Canada, whether the right to self-determination exists under international law, and what should prevail in case of conflict between international and domestic law. See *Reference re Secession of Quebec*, 2 S.C.R. 217 (1998), in Damrosch et al., 2009, 329-337.

existing relationship between constitutionality and the process of recognition. In the former case, a constitution contributes to the legitimacy of the secession process and favorably predisposes the states that consider the granting of recognition to do so.<sup>77</sup> In the latter case, a parental constitution serves for the secessionist entity as a foil against which to stage its claim for the right to secede and its search for recognition. Second, a secessionist entity that respects the constitutional norms of a parent state may have a better image in the eyes of the international community from the perspectives of its potential to comply with the international obligations it would undertake if admitted.<sup>78</sup> Therefore, constitutionality, i.e. acting in accordance with a constitution and the realization of constitutional functions, helps the state-like entity meet the international legal criteria for recognition and, thus, makes the entity a more attractive candidate for admission to the international community of states.

Finally, there is a strong link between a constitution and the criteria for recognition that appears in a closer analysis of a particular set of international legal initiatives. These initiatives reflect either the procedural or substantive character of a constitution in the process of obtaining official recognition. They include the Tobar Doctrine (1907), the Montevideo Convention (1933), the UN membership criteria (1945), the Helsinki Final Act (1975), the EU Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union (1991), and the Copenhagen criteria on EU membership (1993). A chronological discussion of these political and legal ideas shows the gradual convergence on recognition standards that are more attentive to the constitutional behavior of a state.

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<sup>77</sup> *Reference re Secession of Quebec* (1998), 329-337. See also Akhil Amar, "Some New World Lessons for the Old World," *University of Chicago Law Review* 58 (1991), who directly argues that the secession of an independent polity should not be recognized if it violated the municipal law of the parent state.

<sup>78</sup> As Grant puts it, "If an independent movement treats municipal constitutional norms cavalierly, what are the prospects that as a state it will respect international law?" Grant, 1999, 104.

In particular, these doctrines and documents demonstrate that the criteria for recognition imply the presence of a functioning constitution in a state-like entity because of the constitution's potential to ensure those criteria are fulfilled. First, the constitutional affirmation of territory and statehood fulfills the traditional recognition criteria for the existence of a defined territory and a permanent population. Second, the recognition process's requirement of the existence of government and the capacity to enter into relations with other states dovetails with the external constitutional function of asserting sovereignty. Third, the recognition process's requirements of democratic government, the rule of law, and the protection of human rights correspond to the internal functions of the constitution that limit governmental authority: the adoption of a democratic constitution sets up the mechanisms for organizing governance according to principles of democratic participation, separation of powers, and the protection of human rights. Although both categories of internal and external constitutional functions are geared towards securing recognition of a state and are part of that final goal, it is convenient to keep this categorization for the purposes of comparing constitutional functions in recognized and unrecognized states.

Thus, the analysis below of the interactions between international legal doctrines and constitutionalism suggests that, for the entity seeking recognition (as a state or of a membership), a constitution simultaneously represents a mechanism to assert the entity's conformity with international expectations regarding the character of a participant in international relations and a way to claim its recognition.

### 2.1.1. The Tobar Doctrine

In the international arena, states not only extend formal recognition to other states, but also grant recognition to the governments of states. Although recognition of a state and recognition of a government are two different notions, they are closely interconnected. First, a government is the essential criterion for statehood: to gain recognition, a state must have an effective government throughout its territory. It must also display the capacity to engage in international relations, including the ability to fulfill the obligations of international treaties to which it is party, a capacity that can be realized only through a government. Second, both notions are essential for the emergence and/or continuity of diplomatic relations, which lays the foundation for engagement with and interactions between states in international relations. Therefore, discussions over recognition of a government affect the discussions over recognition of a new state. They reveal the features that established states value in the process of recognition for the purposes of international co-existence.

Recognition of a new government means that a recognizing state acknowledges a person or group of persons as authorized to act as the organ of the state and to represent it in its international relations.<sup>79</sup> The need for this type of action usually emerges in circumstances where changes in government affect the continuity of diplomatic relations.<sup>80</sup> Until the early twentieth century, states mainly extended recognition to those governments that were in power and fulfilled their international obligations.<sup>81</sup> This approach changed with the emergence of the

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<sup>79</sup> Talmon, 1998.

<sup>80</sup> The continuity of diplomatic relations between governments may be jeopardized if a new government comes to power by illegal means (a coup d'état), or when an existing government refuses to allow a democratically elected opposition to take power.

<sup>81</sup> Donald Marquand Dozer, "Recognition in Contemporary Inter-American Relations," *Journal of Inter-American Studies* 8, no. 2 (1966), 321, 320.

Tobar Doctrine, a theory of government recognition<sup>82</sup> that directly linked a constitution with the recognition process. Despite remaining a historical rather than a contemporary doctrine, this theory provides an important insight into the role that a constitution plays in the recognition process. The Tobar Doctrine explicitly sees a constitution as integral to the process, asserts that recognition should only be extended to democratic and constitutional governments, and proscribes the recognition of any government that comes to power by extra-constitutional means.<sup>83</sup>

After a period of serious political disorder in Central America, the policies of recognition began to take on new importance. In 1907, several Central American states<sup>84</sup> adopted a document, the so-called Tobar Doctrine,<sup>85</sup> in which they agreed not to recognize new regimes in Central America that came to power as a result of a coup d'état or a revolution against an internationally recognized government. This novel policy of recognition required an appraisal of the constitutional validity of a new regime before it would be recognized. This new requirement pointed to the development of multilateral or collective recognition – that is, of recognition based upon international consultation. The criteria for extending recognition to a new regime in the Americas now mandated the representation of the will of the people in government; no

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<sup>82</sup> See Talmon, 1998, 7-10 (describing four traditional models of government recognition). Talmon notes that, “the term ‘recognition’ or ‘non-recognition’ may be meant [as] an indication of [the] willingness or unwillingness on the part of the recognizing government to establish or maintain official, but not necessarily intimate, relations with the government in question.” Ibid., 23. See also Edward G. Lee, “Book Reviews and Notes,” *American Journal of International Law* 93, no. 1 (1999). [Review on the book *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, by Stefan Talmon. Oxford, New York: Clarendon Press, 1998] (reviewing Dr. Talmon's treatment of the topic of recognition of governments under international law and opining that his work represents the leading treatise concerning the recognition of governments in exile); Wendy T. Wylegala, “Book Annotations,” *New York University Journal of International Law and Politics* 31, no. 2-3 (1998-1999). [On the same book] (observing that while Talmon does an impressive job of creating a “taxonomy” of recognition and attempts to develop rules and exceptions in this area, he fails to provide a “cohesive picture of recognition whether descriptive or prescriptive”).

<sup>83</sup> Philip Marshall Brown, “The Recognition of New States and New Governments,” *The American Journal of International Law* 30, no. 4 (1936); Charles L. Stansifer, “Application of the Tobar Doctrine to Central America,” *The Americas* 23, no. 3 (1967).

<sup>84</sup> These countries were Costa Rica, Guatemala, Honduras, Nicaragua, El Salvador, and Ecuador.

<sup>85</sup> Named for Carlos R. Tobar, a former foreign minister of Ecuador.

considerable threat to the new regime's power; the commitment to fulfill its international obligations; and the approval of the principles and system of new governance by the recognizing government.<sup>86</sup>

The Tobar Doctrine provided that:

[t]he American Republics for the sake of their good names and credit, apart from other humanitarian or altruistic considerations, should intervene in the internal dissensions of the Republic of the Continent. Such intervention might consist at least in the non-recognition of de facto, revolutionary governments created contrary to the constitution.<sup>87</sup>

Although officially adopted by only five Central American states, other countries followed the Tobar Doctrine, thus demonstrating broader international expectations for internal governance based on the principles of democracy and constitutionalism. In particular, the United States followed this policy by refusing to recognize the Tinoco regime, which came to power in Costa Rica by means of a coup d'état, or the Huerta regime, which seized power by revolutionary action in Mexico.<sup>88</sup> In its recognition policy, the US underscored that it would support the will of people, not the personal ambitions of those who seize power, and insisted on democratic procedures for changing power.<sup>89</sup> As a result, the early interwar period in the Americas was marked by the "considerable use of constitutional legitimism."<sup>90</sup>

In 1923, the Central American states further emphasized the political principle of recognition by agreeing not to recognize any government that came into power through a coup d'état or a revolution against a recognized government, so long as the freely elected representatives of the people thereof had not constitutionally reorganized the country. More broadly, the states refused to recognize any new "government which arises from the election to

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<sup>86</sup> Dozer, 1966, 321, 324.

<sup>87</sup> Brown, "The Legal Effects of Recognition," *American Journal of International Law* 44 (1950), 62, quoting the Tobar Doctrine, emphasis added.

<sup>88</sup> Dozer, 1966, 322.

<sup>89</sup> *Ibid.*, 322.

<sup>90</sup> M.J. Peterson, *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995* (New York: St. Martin's Press, 1997), 75.



power of a citizen expressly and unquestionably disqualified by the Constitution of his country as eligible to election as President, Vice-President, or Chief of State designate.”<sup>91</sup>

This conditional nature of recognition was partly connected to the increased international attention on governments’ character that occurred during and after both World Wars. The idea of democratic government as the ideal form of governance was also coupled with recognition policy during the Mexico City Conference, where Guatemala proposed that recognition should be denied to “anti-democratic regimes” on the grounds that they constituted “a serious danger to the unity, solidarity, peace and defense of the Continent.”<sup>92</sup> Although this proposal was not approved, the Conference made it clear that non-recognition of a government could be used as a lever against non-compliant states to spur them to enact democratic policies to ensure peace and security.<sup>93</sup> As a result, the Tobar Doctrine formulated in the Latin American conventions of 1907 and 1923 “sought to protect constitutional governments against revolution by threatening revolutionary regimes with non-recognition.”<sup>94</sup>

The experience of Central America demonstrates how recognition came to be used as a means for maintaining democratic regimes and promoting democratic or constitutional legitimacy. The policy contributed to some degree of constitutional stability,<sup>95</sup> respect for democratic institutions,<sup>96</sup> orderly processes of government, and the safety of the lives and property of foreigners,<sup>97</sup> thereby promoting the aims of the international community on peace and security.

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<sup>91</sup> Dozer, 1966, 323.

<sup>92</sup> Inter-American Conference on Problems of War and Peace, Mexico City, February 21-March 8, 1945. “Report of the Delegation of the United States of America.” U.S. Government Printing Office, (1946), 7.

<sup>93</sup> Dozer, 1966, 325.

<sup>94</sup> Dugard, 1987, 26.

<sup>95</sup> Dozer mentions that, “under [the Tobar Doctrine] ambitious revolutionary leaders were sometimes deterred from starting revolts by fear of [being] non-recogni[zed].” Dozer, 1966, 323.

<sup>96</sup> Dugard, 1987, 26.

<sup>97</sup> Dozer, 1966, 323.

*Criticism of the Tobar Doctrine.* Critics of the Tobar Doctrine maintained that requiring one nation to arbitrate the interpretation of another's constitution violated the principle of non-intervention. In particular, in retaliation for the interventionist policies of the United States in 1930, Mexican Foreign Minister Genaro Estrada proposed instead that recognition of a new government should be granted automatically, regardless of its origin or the means through which it came to power. The Mexican government argued that formal declarations of recognition are

an insulting practice and one which, in addition to the fact that it offends the sovereignty of other nations, implies that judgment of some sort may be passed upon the internal affairs of those nations by other governments, inasmuch as the latter assume, in effect, an attitude of criticism, when they decide, favorably or unfavorably, as to the legal qualifications of foreign regimes.<sup>98</sup>

The Estrada doctrine, as it came to be known, asserted that, when a new government took office, its diplomatic relations with other nations should continue unbroken. Based on the assumption that recognition was the right of a new government,<sup>99</sup> Latin American governments promoted the Estrada doctrine “as a means of preventing recognition from being used for the purpose of applying pressure on a new government” and from violating the principle of non-intervention.<sup>100</sup>

Several years later, in 1948, the XXXV Resolution adopted at the Ninth International Conference of American States in Bogota reaffirmed the idea of continuity in diplomatic relations regardless of the legitimacy or illegitimacy of a new regime. In particular, the Resolution declared:

- (1) That continuity of diplomatic relations among the American States is desirable,
- (2) That the right of maintaining, suspending or renewing diplomatic relations with another government shall not be exercised as a means of individually obtaining unjustified advantages under international law, and

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<sup>98</sup> “Statement of Secretary of Foreign Relations of Mexico Estrada, 27 September 1930.” 1963, 85.

<sup>99</sup> Most authorities on international law have disagreed with this assumption, which has been advanced by Latin American writers. See Dozer, 1966, 326.

<sup>100</sup> *Ibid.*, 326.

(3) That the establishment or maintenance of diplomatic relations with a government does not imply any judgment upon the domestic policy of that government.<sup>101</sup>

Thus, these American states emphasized the historical principle of non-intervention, while at the same time distinguishing between the recognition of a government and approval of its new regime.<sup>102</sup> This move from the Tobar to the Estrada Doctrine demonstrated a countervailing trend in recognition law and practice, highlighting the predominance of the principles of non-intervention and sovereignty (i.e. the discretion of a state to grant or deny recognition) in international relations.

To summarize, the recognition practices of the governments of the Americas and elsewhere greatly varied during the twentieth century, fluctuating between the Tobar and Estrada Doctrines. At the same time, democratic values and institutions constantly remained under states' close attention. For example, the spread of fascism during World War II strengthened efforts to use democratic legitimacy as a criterion for governments' recognition, pushing some states, including Estrada's Mexico, to deny recognition to the Franco government of Spain because of its fascism. Additionally, the growing importance of democracy for the international community influenced the decision of some states to delay "recognizing the [People's Republic of China] for long periods,"<sup>103</sup> or to condemn "the unconstitutional overthrow of the democratically elected Government in Pakistan...in 1999."<sup>104</sup>

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<sup>101</sup> Bogota Ninth International Conference of American States, Colombia, March 30-May 2, 1948, "Report of the Delegation of the United States of America, with Related Documents," (Department of State Publication, Nr.3263), 271.

<sup>102</sup> This suggestion was introduced by the US delegation, and supported by the other American states. See Dozer, 1966, 327.

<sup>103</sup> Peterson, 1997, 75.

<sup>104</sup> Heads of Government of the Commonwealth, meeting in Durban, declared that they "believed that no legitimacy should be accorded to the military regime and called for the restoration of civilian democratic rule without delay. [...] Recognizing the unconstitutionality of the regime, Heads of Government urged that Prime Minister Nawaz Sharif and others detained with him be released immediately and that the rule of law in Pakistan be duly observed." "Durban Communiqué of the Commonwealth Head of Government Meeting held in Durban, South Africa", para. 18, 20.

In addition, the increasing significance of democratic values and human rights proclaimed after World War II influenced the periodic usage of non-recognition as “a weapon in the global effort to promote democracy [...] resting on a belief that one form of government is better than all others and deserves to be promoted through concerted international action.”<sup>105</sup> As a result, although the policy of recognition based upon a test of the constitutionality of a new regime was not applied to the recognition of any non-American government, the Tobar Doctrine represented an important development in the general principles of international relations among states. It also contributed to later efforts to link membership in the international community with the concepts of democracy, protection of human rights, and the rule of law.

### **2.1.2. The Montevideo Convention**

The concept of state’s recognition is closely related to the Montevideo Convention, which is the most widely accepted formulation of the key criteria for statehood in international law. The Convention establishes the traditional criteria for recognition,<sup>106</sup> which are strongly connected to a constitution, its meaning, and its functions. The Montevideo requirements for recognition of a state include a permanent population, defined territory, government, and the capacity to enter into relations with other states. Despite their wide criticism,<sup>107</sup> the factual and broad character of these criteria helped to create consensus among different territorial entities on the general approach towards recognition. This, in turn, has contributed to the maintenance of the

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<sup>105</sup> Peterson, 1997, 183.

<sup>106</sup> Article 1, *Montevideo Convention on Rights and Duties of States*, 1933.

<sup>107</sup> Criticism mainly concerns the how the provisions are defined and who determines whether the criteria have been fulfilled. For example, the term “permanent population” excludes nomadic people. In addition, the lack of a special international authority to decide whether the conditions for the statehood were fulfilled leaves the definition of a “State” a controversial and “politically loaded subject.” Jorri Duursma, *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood*, (Cambridge, New York: Cambridge University Press, 1996), 113-115.

international order<sup>108</sup> and the accommodation of the wide range of possibilities that exist in practice.<sup>109</sup> Although these requirements do not explicitly refer to a constitution, there are several points of intersection between the traditional criteria for recognition and constitutional provisions.<sup>110</sup>

First, a constitution usually defines a state's territory and either reflects the entity's existing borders or creates new ones. Thus, a constitution frequently satisfies the Montevideo Convention criteria on territory and population. The preambles of constitutions (and declarations of independence) are informative in this respect because they often assert the basis for a new state's existence and sovereignty, which may include elements of its historical existence or show the continuity of nationhood by referring to its traditions, language, heroic history, cultural inheritance, and territory<sup>111</sup> As a part of state building, a constitution establishes a demarcated territory<sup>112</sup> and references the people living on this territory and the development of their statehood.<sup>113</sup> As a foundational document, a constitution exercises its key *external functions* of legitimizing and asserting the existence, sovereignty, independence, and perspectives of the

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<sup>108</sup> In 1824, with respect to Spain's newly independent Latin America, Britain's representative emphasized that, "[...]if so large a portion of the globe should remain much longer without recognized political existence [...], the consequences of such a state of things must be [...] most injurious to the interests of all European nations. For this reason, [...] the Recognition of such of the New States as have established, de facto, their separate independence, cannot be much longer delayed." Cited in C.K. Webster, *Britain and the Independence of Latin America, 1812-1830*, vol. II (Oxford: Oxford University Press, 1938), 414.

<sup>109</sup> Caplan, 2005, 53.

<sup>110</sup> The interplay between recognition and a constitution represents one example of international constitutionalism. Some others refer to analysis of national, regional, and functional constitutional regimes as a part of international community. See e.g., Erika De Wet, "The International Constitutional Order," *International and Comparative Law Quarterly* 55 (2006).

<sup>111</sup> Culic, 2003, 47.

<sup>112</sup> Often constitutions establish a political unit within a clearly demarcated territory. However, there are also cases, in which a constitution or a fundamental law lacks provisions on specific territory. See generally, "Statement of US Representative Philip Jessup to the UN Security Council Regarding the Admission of Israel to the United Nations," December 2, 1948, 9-11.

<sup>113</sup> For example, the Czech constitution talks of "the reconstitution of an independent Czech State, true to all the sound traditions of the ancient statehood of the Lands of the Crown of Bohemia as well as of Czechoslovak statehood," Preamble, *The Constitution of the Czech Republic*. 1992.

state.<sup>114</sup> It also helps abjure other's claims to the new entity's territory – an important feature for the international system's functioning.<sup>115</sup> Although the mere existence of a constitution is insufficient cause to consider a state independent and eligible for recognition, it nonetheless represents an instrument to signal an entity's aspirations to assert its sovereignty and to participate in international relations:

A territorial entity must have a constitution which is independent of other constitutions to be termed, in the specified sense, sovereign, and hence able to look forward to membership in the collectivity of states.<sup>116</sup>

Second, the criteria on government and the capacity to enter into relations with other states imply the existence of a constitution (or other fundamental law) in a state as a contemporary mechanism to organize government and to establish sovereignty. The requirement of government, or other effective authority, presumes a certain degree of internal stability that is expressed through a functioning government, the loyalty of the majority of population,<sup>117</sup> and legal order.<sup>118</sup> The other criterion, the capacity to enter into relations with other states, depends on the power of a government to carry out its international obligations effectively.<sup>119</sup> Although these claims can vary in how stringently they are interpreted with respect to assessing statehood,<sup>120</sup> the existence of a system of government in a specific territory is, in general, a pre-

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<sup>114</sup> Culic, 2003, 48.

<sup>115</sup> For example, the Declaration on Yugoslavia from 1991 specifically provided that, to be recognized, a Yugoslav republic must “adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighboring Community State.” These types of provisions ensure the continued existence of an international system based on the sovereignty of states as individual units.

<sup>116</sup> Alan James, “System or Society?,” *Review of International Studies* 19, no. 3 (1993), 285, emphasis added.

<sup>117</sup> Lauterpacht, 1947, 28.

<sup>118</sup> Some suggest that legal order should be listed among the “other criteria” for statehood, which represent the most important pieces of evidence. See Crawford, 1979, 71-76.

<sup>119</sup> *Ibid.*, 51.

<sup>120</sup> In some cases, factors other than the effective government favor the statehood of the entity, for example, in cases of Congo, Rwanda, and Burundi. In other cases, when the claim for secession is not supported by the principle of self-determination, the requirement of effectiveness is applied more strictly, for example, in the case of Biafra. *Ibid.*, 46.

condition for statehood and the normal conduct of international relations,<sup>121</sup> the lack of which may cause the denial of recognition. As a result, the criterion of government is partly realized through *internal constitutional functions*. The practice of recognition suggests that there must exist

some known and defined form of government, acknowledged by those subject thereto, in which the functions of government are administered by usual methods, competent to mete out justice to citizens and strangers, to afford remedies for public and for private wrongs, and able to assume the correlative international obligations and capable of performing the corresponding international duties resulting from its acquisition of the right of sovereignty.<sup>122</sup>

Thus, a constitution becomes one of the tools used to define the form and the functions of a government and make them known to the subjects of a state. In addition, in the modern state,<sup>123</sup> legal order (or the existence of basic rules) allows the international community to determine the power exercised by a government.<sup>124</sup> A constitution or other fundamental domestic law reveals the scope of a government's power and the legal conditions in which it operates within the modern state.

As a result, the constitution becomes a mechanism for establishing a defined form of government, its functions, and legal order. Along with government, to take root, to flourish, and to function as an instrument of a democratic political life, a constitution needs statehood – the political organization of the society. In this way, modern constitutionalism, an important tool of rationalizing state power,<sup>125</sup> is strongly connected to the development of the modern state and its diplomatic capabilities<sup>126</sup> and helps to meet the criteria for recognition.

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<sup>121</sup> Ibid., 47.

<sup>122</sup> President Ulysses Grant explaining the denial of recognition to Cuba in 1875. Moore J.B., cited in Lauterpacht, 1947, 28-29.

<sup>123</sup> The modern state is defined as the territorial basis for a centralized legal order. Hans Kelsen, *The Pure Theory of Law*, trans. Max Knight, 2d ed. (Berkeley: University of California Press, 1967), 284-7.

<sup>124</sup> Ibid., 284-7.

<sup>125</sup> Preuss, 2006-2007, 482, 485.

<sup>126</sup> Ibid., 485.

To summarize, the provisions of the Montevideo Convention imply a constitution as an important mechanism in the modern liberal democratic order for establishing sovereignty and organizing government. In this way, a constitution serves the interests of the international system in fostering stable and peaceful relations among the members of the international community and in ensuring each country's fulfillment of its international obligations.

### **2.1.3. United Nations Membership**

Taken in a broader context, recognition also refers to the acceptance of states as members in an official international community (e.g. the United Nations) or in regional organizations (e.g. the European Union) based on certain criteria. The development of these criteria takes into consideration not only formal and factual criteria, but also commitments to substantive values, for example, the protection of human rights. The idea of “civilized states” has long implied the physical control of a defined territory and population with its own history, progress, and development.<sup>127</sup> In the aftermath of World War II, however, this concept also gradually came to encompass such elements as human rights and constitutionalism. The promotion of human rights and the liberal political model around the globe helped to universalize these concepts<sup>128</sup> and became “a civilizing crusade,”<sup>129</sup> expanding the list of the features “civilized states” must possess. As a result, after World War II, the rhetoric on the character of international relations within the “club of civilized nations” and the membership requirements to belong to organizations such as the United Nations or the European Union increasingly demanded respect for the principles of the peaceful settlement of disputes, democracy, the rule of law, and human

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<sup>127</sup> Hegel, cited in Makau Mutua, *Human Rights: A Political and Cultural Critique* (Pennsylvania: University of Pennsylvania Press, 2008), 17.

<sup>128</sup> Makau Mutua. “The Ideology of Human Rights,” *Virginia Journal of International Law* 36, no. 3 (1996), 653.

<sup>129</sup> Mutua, 2008, 19, also 15-22.



rights.<sup>130</sup> In these circumstances, states in search not only of diplomatic recognition but also of membership in certain organizations have had to meet various types of entrance requirements linked to constitutionalism. As a result, a domestic constitution has become one of the key instruments used in meeting the requirements for admission to the international or a regional community.

The United Nations is the world's most important international organization. As such, membership in it has come to be viewed as affirmation of independence and statehood (as happened for the new countries that emerged during decolonization),<sup>131</sup> or as guarantee of protection under the UN Charter (in the case of Eastern European states after the Cold War).<sup>132</sup> The admission of a new member state to the UN does not imply its recognition by all UN member countries, or convey the recognition of its government. For example, Israel was admitted to the UN in 1949<sup>133</sup> but to the present day continues to be unrecognized by a group of the UN members.<sup>134</sup> Similarly, the absence of a state's membership in the UN does not mean that it lacks statehood and may not be recognized by other states.<sup>135</sup> However, in most cases, acceptance in the United Nations indicates that "a new state has come into being, and that the international system will treat the new entity as a state"<sup>136</sup> with legal rights and under protection of international law.

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<sup>130</sup> See generally, Oscar Schachter and Christopher Joyner, eds., *United Nations Legal Order* (Cambridge: Grotius Publications, 1995), chapter on Human Rights by Hurst Hannum.

<sup>131</sup> Dugard, 1987, 3.

<sup>132</sup> UN General Assembly. *A/47/60, S/23329, Letter of the Permanent Representative of Belarus to the United Nations Addressed to the Secretary General (Alma Ata Protocols)*. (December 27, 1991), Annex V, 8.

<sup>133</sup> See UN Security Council. *UN SCOR, S/PV/383. Israel's Application for Admission to Membership in the United Nations (statement of Philip C. Jessup)*. (1948), 8.

<sup>134</sup> At present, there are 32 United Nations member states that do not recognize the State of Israel. See [http://en.wikipedia.org/wiki/International\\_recognition\\_of\\_Israel#cite\\_note-usres-11](http://en.wikipedia.org/wiki/International_recognition_of_Israel#cite_note-usres-11).

<sup>135</sup> For example, Switzerland did not enjoy full membership in the UN from 1945 to 2002, though it remained an internationally recognized state during that period. UN General Assembly, "With Admission of Switzerland, United Nations Family Now Numbers 190 Member States," News Release, GA/10041, September 10, 2002.

<sup>136</sup> David O. Lloyd, "Succession, Secession, and State Membership in the United Nations," *New York University Journal of International Law and Politics* 26, no. 4 (1993-1994), 766.

The general UN practice embraces some of the basic principles of constitutionalism and suggests the importance of democratic governance and the protection of human rights for membership in international society. Although silent on the constitutional form of an acceding (or a member) state, the overall structure of the UN articulates certain fundamental values of the international community and pushes states toward accepting some elements of constitutionalism. This can be seen in several examples: the character of the UN Charter provisions; the practice of Rhodesia's non-recognition; the employment of recognition as a tool for protecting human rights in Bosnia-Herzegovina; UN officials' promotion of democratic governance; and the UN practice in defining the notion of statehood.

First, the UN Charter explicitly sets standards for admission to the United Nations in order to hold emerging states to the ideals upon which the UN was founded. The Charter states:

Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.<sup>137</sup>

According to the International Court of Justice's interpretation, the Charter implies five conditions for membership: "an applicant must (1) be a state; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out those obligations; and (5) be willing to do so."<sup>138</sup> These conditions must be met "in the judgment of the Organization," and admission to the UN is granted by a decision of the General Assembly upon the recommendations of the Security Council.<sup>139</sup>

Although the exact meaning of these criteria has historically been the subject of much debate, there is wide consensus that a newly emerging state must abide by these standards if it

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<sup>137</sup> Article 4, para. 1, *Charter of the United Nations*, 1945.

<sup>138</sup> International Court of Justice, *Conditions of Admission of a State to Membership in the United Nations*, May 28, 1948, 57, 62.

<sup>139</sup> Article 4, para. 2., *Charter of the United Nations*.

wants to be a member of the United Nations.<sup>140</sup> Since the last four criteria are strongly interrelated, they could be summarized as two criteria for UN membership: a prospective member must be a state and must abide by the UN Charter.

As discussed earlier, the Montevideo Convention provides the most common definition of this first criterion, that a prospective member be a state. Although the international community has often recognized entities that do not meet the Montevideo criteria,<sup>141</sup> this definition is still widely accepted<sup>142</sup> and is used in UN admission practices.<sup>143</sup>

The second criterion, willingness to abide by the UN Charter, refers to a general principle in international law that a newly independent state cannot accede to a treaty if its accession would be incompatible with the object and purposes of the treaty.<sup>144</sup> By joining the UN, states assume a number of obligations and commitments, for example, the maintenance of international peace and security, and the readiness to cooperate in solving international problems of an economic, social, cultural, or humanitarian character.<sup>145</sup> The requirements the UN Charter imposes on prospective UN members to meet these goals suggest domestic changes may be necessary in some states. These changes must ensure that a state refrains from threatening international peace and security and from using force against other states;<sup>146</sup> respects the principle of equal rights and self-determination of peoples;<sup>147</sup> and accepts the principles of international humanitarianism and human rights.<sup>148</sup> The special attention the UN Charter pays,

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<sup>140</sup> Lloyd, 1993-1994, 770.

<sup>141</sup> Crawford, 1979, 36-48.

<sup>142</sup> See David A. Ijalaye, "Was 'Biafra' at Any Time a State in International Law?," *American Journal of International Law* 65, no. 3 (1971), 551-52.

<sup>143</sup> The Palestine Liberation Organization, for example, is an observer rather than a member. UN General Assembly. *A/9631. Resolution 3237*, (1974), Supp. No. 31, 4.

<sup>144</sup> Article 17, para. 2., *Vienna Convention on the Law of Treaties*, 1969.

<sup>145</sup> Article 1, *Charter of the United Nations*.

<sup>146</sup> *Ibid.*, Article 2 (4).

<sup>147</sup> *Ibid.*, Article 55.

<sup>148</sup> *Ibid.*, Article 1 (3).

for instance, to the protection of human rights, equality, and peace shape the behavior of prospective members and may require them to enact some domestic constitutional changes to meet those obligations.

Second, although UN practices during the Cold War demonstrate that many states were admitted to the organization in violation of the Charter's principles, these and subsequent UN actions also show that some of the fundamental features of a constitutional state, such as human rights protections, and democratic governance (to a lesser degree),<sup>149</sup> are nonetheless present in the UN's admission process and in the UN's acceptance of a state-like entity as a state and as a participant in international relations. Then and now, aspirant states that lack these features risk the UN's non-recognition. The development of international relations and the system of sovereign states during the decolonization process shaped UN perspectives on the recognition of a state.<sup>150</sup> Some cases, such as Rhodesia and South Africa's "Homeland-States," directly address the importance of democratic governance and human rights' protections in formal recognition.

The non-recognition of Rhodesia from 1965 to 1980 provides an example of collective non-recognition, led by UN, of the undemocratic and racist regime controlling Rhodesia upon independence. Grounding its approach in the supplemental criteria for recognition, the General Assembly rebuffed the minority white regime that took power in Rhodesia during decolonization. The Assembly appealed "to all States...not to recognize any government in Southern Rhodesia which is not representative of the majority of the people."<sup>151</sup> In addition, the General Assembly's resolutions referenced the 1960 "Declaration of the Granting of

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<sup>149</sup> Some scholars have claimed that there is an emerging democratic entitlement in the international community, see, e.g., Thomas M. Franck, "The Emerging Right to Democratic Governance," *American Journal of International Law* 86, no. 1 (1992), but it is still debatable whether new members of the United Nations must be democracies.

<sup>150</sup> Classic case studies on recognition/non-recognition and membership include Manchukuo; the Republic of Korea; Israel; Guinea-Bissau and Angola; Bangladesh; Katanga; Rhodesia; South African's "Homeland-States": Transkei, Bophuthatswana, Venda, and Ciskei; the Turkish Republic of Northern Cyprus; Goa; and Namibia. A separate category of territorial disputes includes East Jerusalem and the Golan Heights. See Damrosch et al., 2009.

<sup>151</sup> UN General Assembly. *Resolution A/RES/2022(XX) (Question on Southern Rhodesia)*. (November 5, 1965).

Independence to Colonial Countries and Peoples” to emphasize the UN’s fundamental goals and condemned Rhodesian independence under minority rule, stressing the need for governance under majority rule<sup>152</sup> without policies of racial discrimination and segregation.<sup>153</sup>

After the minority white government declared independence, the Security Council made several similar pronouncements. First, it called upon all UN member states “not to recognize [the] illegal racist minority regime in Southern Rhodesia.”<sup>154</sup> Shortly thereafter, the Security Council declared that the “continuance [of the Declaration of Independence] in time constitutes a threat to international peace and security” and called upon “all States not to recognize this illegal authority and not to entertain any diplomatic or other relations with it.”<sup>155</sup> Subsequent declarations likewise emphasized the threat of the situation in Rhodesia to international peace and security, and urged the UN member states to refrain from recognizing the state.<sup>156</sup>

The case of Rhodesia thus demonstrates the existence of other criteria for recognition of a state. Although there is no scholarly consensus on what exactly these criteria encompass, they center on the principles of democracy and human rights. Some scholars, for example, assert that Rhodesia was not recognized due to absence of majority rule in the country, a prerequisite for recognition in such a situation.<sup>157</sup> Others point to “apartheid type” racial laws and policies,<sup>158</sup>

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<sup>152</sup> UN General Assembly. *Resolution A/RES/2138(XXI) (Question of Southern Rhodesia)*. (October 22, 1966); UN General Assembly. *Resolution A/RES/2262 (XXII) (Question of Southern Rhodesia)*. (November 3, 1967); UN General Assembly. *Resolution A/RES/2383(XXIII) (Question of Rhodesia)*. (November 7, 1968).

<sup>153</sup> UN General Assembly. *Resolution A/RES/2262 (XXII)*, 1967.

<sup>154</sup> UN Security Council. *Resolution S/RES/216 (Southern Rhodesia)*. (November 12, 1965).

<sup>155</sup> UN Security Council. *Resolution S/RES/217 (Southern Rhodesia)*. (November 20, 1965).

<sup>156</sup> UN Security Council. *Resolution S/RES/277 (Southern Rhodesia)*. (March 18, 1970); UN Security Council. *Resolution S/RES/288 (Southern Rhodesia)*. (November 17, 1970).

<sup>157</sup> Emilio S. Binavince, “Canadian Practice in Matters of Recognition,” in *Canadian Perspectives on International Law and Organization*, ed. Ronald MacDonald, Gerald Morris, and Douglas Johnston (Toronto: University of Toronto Press, 1974), 153, 164, 168, 169.

<sup>158</sup> Richard M. Cummings, “The Rhodesian Unilateral Declaration of Independence and the Position of the International Community,” *New York University Journal of International Law and Politics* 6, no. 1 (1973), 83.

while still others argue that an entity that systematically violates human rights simply cannot be recognized as a state.<sup>159</sup>

Despite this lack of consensus, there is general support for the idea that:

[there] must be added the requirement that [a regime of a new state] shall not be based upon a systematic denial in its territory of certain civil and political rights, including in particular the right of every citizen to participate in the government of this country, directly or through representatives elected by regular equal and secret suffrage.<sup>160</sup>

Thus, while Rhodesia met the Montevideo Convention's requirements for statehood, the precedent established by its lack of international recognition illustrates the power of the world community's expectations of the internal political organization of aspiring members. As additional criteria for recognition, democratic governance and the protection of human rights are directly related to the capacity of a state to meet its international obligations and pursue the aims of peace and security. Therefore, a democratic constitution, or other foundational law, becomes one way to establish a democratic government and enshrine the protection of human rights.

Since 1960, the Rhodesian precedent has been applied to other claims of statehood. One such notable example is South Africa's territorial units, which South Africa granted "independence" in order to segregate various African ethnic groups from the white minority.<sup>161</sup> The General Assembly called for the non-recognition of these units, which were created as an integral part of South Africa's policy of apartheid.<sup>162</sup> Among the principal reasons for non-recognition of those territorial units, then, was South Africa's apartheid policy, which was

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<sup>159</sup> Isaak I. Dore, "Recognition of Rhodesia and Traditional International Law: Some Conceptual Problems," *Vanderbilt Journal of Transnational Law* 13, no. 1 (1980), 40.

<sup>160</sup> J.E.S. Fawcett, "Security Council Resolution on Rhodesia," *British Yearbook of International Law* 41 (1965-1966), 97.

<sup>161</sup> John Dugard, "South Africa's Independent Homelands: An Exercise in Denationalization," *Denver Journal of International Law and Policy* 10, no. 1 (1980), 12-15.

<sup>162</sup> UN General Assembly. *Resolution A/RES/31/6A (On the So-called Independent Transkei and Other Bantustans)*. (October 26, 1976).

unlawful, contrary to the UN Charter and basic norms of international law,<sup>163</sup> and a violation of fundamental human rights.<sup>164</sup> The international community's response in these situations thus suggests that additional criteria, such as *jus cogens* norms (prohibition of apartheid), democratic governance, and the protection of human rights, are essential for recognition in international society because these demonstrate the capacity of a state-like entity to respect international obligations and ensure international peace and security.

Returning to the broader discussion of UN practice, it is important to consider how the use of international recognition helps to protect human rights as well as how the promotion of democratic governance and definition of statehood reinforces the founding principles of the organization. For example, the UN's decision to grant membership to Bosnia-Herzegovina in the face of serious human rights violations and military aggression by Serb and Croat troops during the Yugoslav crisis was seen by many as the best way to protect the rights of people in that entity.<sup>165</sup> But, recognition of Bosnian independence and its admission to the UN also adhered to the principles of the UN Charter on human rights protection and non-aggression. On the one hand, Bosnia had promised to respect the principles of human rights protection and non-aggression to gain recognition,<sup>166</sup> yet, on the other hand, needed protection from the Federal Republic of Yugoslavia (Serbia and Montenegro), which had carried out a sustained campaign of human rights violations.<sup>167</sup> Thus, considerations of statehood and, more importantly, the

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<sup>163</sup> Apartheid was condemned by the UN General Assembly resolutions and respectively, by Security Council as a threat to international peace (GA A/RES/2627(XXV); SC S/RES/418(1977)); and by international conventions (for example, *the International Convention on the Suppression and Punishment of the Crime of Apartheid*, 1973).

<sup>164</sup> Dugard, 1980.

<sup>165</sup> Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union," *European Journal of International Law* 4, no. 1 (1993), 50.

<sup>166</sup> Conference on Yugoslavia Arbitration Commission. *Opinions on Questions Arising from the Dissolution of Yugoslavia.* (1992). International Legal Materials. 31. 1488, at 1502 (Op. No. 4).

<sup>167</sup> UN Security Council. *Resolution S/RES/771 (Former Yugoslavia)*. (1992) (referring to reports of the imprisonment and abuse of civilians in detention centers, deliberate attacks on non-combatants, and "ethnic

principles of the UN Charter, influenced the UN's decision to extend recognition to Bosnia-Herzegovina.<sup>168</sup>

The practices of UN high officials provide further evidence that domestic democratic practices are related to the international community's aims of peace and security. For example, Boutros-Ghali, the former Secretary-General of the UN, expressly mentioned in one of his influential reports that:

[there is an] obvious connection between [...] the rule of law and transparency in decision-making... and the achievement of true peace and security in any new and stable political order. These elements of good governance need to be promoted at all levels of international and national political communities.<sup>169</sup>

This document, which emphasizes the significance of the constitution in state-building, laid the foundation for the various UN activities that followed in the coming years.<sup>170</sup>

Finally, by “certifying the existence of some states through its admission procedure and by denying the existence of others by means of non-recognition,”<sup>171</sup> the UN actively shapes understanding of (and limitations to) the notion of statehood. For example, before applying for full membership in the UN in 2011 and receiving a “non-member observer state” status in 2012,<sup>172</sup> Palestine submitted a declaration to the International Criminal Court in 2009 unilaterally recognizing the court's jurisdiction. However, the prosecutor of the Court rejected the Palestinian Authority's declaration on the grounds that, at the time, it had been only a “non-member entity”

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cleansing” practices); UN Security Council. *Resolution S/RES/827 (International Criminal Tribunal for the former Yugoslavia)*. (1993) (referring to “ethnic cleansing”).

<sup>168</sup> Lloyd, 1993-1994, 790.

<sup>169</sup> UN Secretary-General. *U.N. Doc. A/47/277, S/24111 An Agenda for Peace Preventative Diplomacy, Peacemaking and Peace-Keeping, delivered to the Members of the United Nations*. (June 17, 1992).

<sup>170</sup> Preuss, 2006-2007, 493.

<sup>171</sup> Dugard, 1987, 164.

<sup>172</sup> In September 2011, Mahmoud Abbas, the president of the Palestinian Authority, sought full member-state status at the UN. However, the Security Council was unable to “make a unanimous recommendation” and, in November 2012, Palestine submitted a downgraded request to the General Assembly for admission to the UN as a non-member observer state. This request was granted in 2012. See UN Media Monitoring Review. “The Committee on the Admission of New Members Submits Report on Palestine's Application.” (November 11, 2011).



in the UN. In its statement, the Court said that it could not act because Palestine was an “observer” at the UN and not a “state” as required by the Rome Statute.<sup>173</sup> It continued that, in cases where it was controversial or unclear whether an applicant constituted a “state,” the decision fell to the Secretary General, which had to follow or seek the General Assembly’s directives on the matter when applicable. For this practice, the Court referenced the General Assembly’s resolutions that discuss whether an applicant is a “State.”<sup>174</sup> Since the Security Council was unable to “make a unanimous recommendation,”<sup>175</sup> Palestine submitted a downgraded request to the General Assembly for admission to the UN as a non-member observer state, a status that it achieved in 2012.<sup>176</sup> As a result, UN bodies play a significant role in determining whether an applicant is considered a “state” and whether it belongs to the community of states by shaping policies on its defining attributes.

To summarize, in the course of admitting a state to membership in the world body, the UN largely exercises recognition as described earlier by jurists, namely as the act by which states

acknowledge the existence on a definite territory of a human society politically organized, independent of any other existing State, and capable of observing the obligations of international law, and by which they manifest therefore their intention to consider it a member of the international community.<sup>177</sup>

Importantly, the UN process for admission adds the elements of human rights and democracy to the recognition criteria and promotes their establishment through domestic constitutional means.

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<sup>173</sup> Article 12 of the Rome Statute establishes that a “State” can confer jurisdiction to the Court by becoming a Party to the Rome Statute or by making an ad hoc declaration accepting the Court’s jurisdiction.

<sup>174</sup> International Criminal Court, *Decision issued by the Office of the Prosecutor*, April 3, 2012. The Decision in footnote 3 indicates that the prerogative of General Assembly to determine if an applicant is a state “is set out in the understandings adopted by the General Assembly at its 2202nd plenary meeting on 14 December 1973.” See Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, ST/LEG/7/Rev. 1, paras. 81-83.

<sup>175</sup> UN Media Monitoring Review. “The Committee on the Admission of New Members Submits Report on Palestine’s Application” (November 11, 2012).

<sup>176</sup> UN General Assembly. *Resolution A/RES/67/19 (Status of Palestine in the United Nations)*. (November 29, 2012).

<sup>177</sup> Resolution of Institute of International Law, cited in *American Journal of International Law* 30 (1936) supplement, 185.

UN practice reflects new developments in international society and the expectations of international public order. Since much of international law exists for the purpose of “helping states achieve mutually beneficial outcomes by clarifying what counts as cooperation or coordination,” in such situations, international law amounts to a set of codified expectations that countries observe for their mutual benefit.<sup>178</sup> As a result, the system-wide interest in international peace and security implies that the criteria for recognition internalize democracy and the protection of human rights in order to achieve these international goals. Consequently, these features of constitutionalism find their place domestically in constitutional design and externally in the criteria for recognition.

#### **2.1.4. The Helsinki Final Act**

The process of recognizing states and membership in an intergovernmental organization also speak to the nature of relations between states in the international community. The Helsinki Final Act is one of key documents of the Cold War era that emphasizes the importance of constitutional principles for the development of peaceful and mutually secure international relations. The Act lays for the foundation for countries of differing ideologies to cooperate for the protection of human and minority rights and, more broadly, prioritizes the mutual co-existence and peaceful interaction of the states in the international arena. It also reveals states’ expectations that the promotion of fundamental rights and freedoms would, in part, help to achieve international peace and security. For this reason, the Helsinki Final Act has become part one of the texts referenced in debates over the recognition of new states.

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<sup>178</sup> Jack Goldsmith and Eric Posner, *The Limits of International Law* (Oxford, New York: Oxford University Press, 2005), 32-43.

Adopted in 1975 by the first Conference on Security and Cooperation in Europe, the Helsinki Final Act politically bound 35 states to the principle of *détente*.<sup>179</sup> The agreement comprises three main sections (also referred as baskets): the first covers issues related to security in Europe; the second concerns cooperation in the fields of economics, science, technology, and the environment; and the third involves cooperation in the humanitarian sector and in other fields such as culture and education. All three sections aim to frame the guiding principles of international relations among states to ensure international peace and stability.

More specifically, the Helsinki Final Act contains provisions that call for sovereign equality and respect for the rights inherent in sovereignty; restraint from the threat or use of force; the territorial integrity of states and inviolability of their frontiers; the peaceful settlement of disputes; non-intervention in countries' internal affairs; respect for human rights and fundamental freedoms, such as the freedom of thought, conscience, religion or belief; equal rights; the self-determination of peoples; cooperation among member states; and the fulfillment in good faith of members' obligations under international law. The Principle "Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief", in particular, is worth quoting at length here. It states that:

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

[...]

The participating States on whose territory *national minorities* exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

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<sup>179</sup> Conference on Security and Cooperation in Europe. *Helsinki Final Act*. (1975).

The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and wellbeing necessary to ensure the development of friendly relations and co-operation among themselves as among all States.<sup>180</sup>

As this excerpt reveals, the Helsinki Final Act and, specifically, its Principles,<sup>181</sup> created “a framework for progress”<sup>182</sup> based on constitutional norms that have had a noticeable impact on the process of recognition.

First, although this text does not explicitly reference a constitution, the principles it outlines clearly relate to many *internal functions* of a constitution, the very purpose of which is to limit state power. The obligation a state bears to protect the people within its borders necessitates mechanisms to implement the principles of the Helsinki Final Act and to limit the state’s activity in order to protect basic human rights. As “a codification of interstate relations and commitments that is grounded in long-established principles of international law and in such basic documents as the UN Charter,”<sup>183</sup> these Principles must be implemented “by legal acts,”<sup>184</sup> one of which is a constitution.

Second, as the example of many Central and Eastern European states after the end of the Cold War show, acceptance of the principles of the Helsinki Final Act has become a condition

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<sup>180</sup> Final Act of the Conference on Security and Cooperation in Europe, August 1, 1975, reprinted in 14 International Legal Materials (1975), 1292.

<sup>181</sup> *Declaration on Principles Guiding Relations between Participating States*, in Final Act of the Conference on Security and Cooperation in Europe, 1975.

<sup>182</sup> First Semiannual Report by the President to the Commission on Security and Cooperation in Europe, submitted to House Committee on International Relations, 94th Cong., 2d Sess. 5 (1976), cited in Alexandre Charles Kiss, and Mary Frances Dominick. “The International Legal Significance of the Human Rights Provisions of the Helsinki Final Act.” *Vanderbilt Journal of Transnational Law* 13, no. 2 (1980), 293-316, 299.

<sup>183</sup> Statement on behalf of the United States Delegation to the Belgrade Review Conference by Ambassador Sherer, Oct. 19, 1977, excerpted in Commission on Security and Cooperation in Europe, 95th Cong., 2d Sess., The Belgrade Followup Meeting to the Conference on Security and Cooperation in Europe, a Report and Appraisal 19 (Comm. Print 1978), cited in Kiss and Dominick, 1980, 304.

<sup>184</sup> Prevost, *Observations sur la Nature Juridique de l'Acte Final de la Conference sur la Securite et la Cooperation en Europe*. *Annuaire Francais De Droit International* (Centre National de la Recherche Scientifique), 1977, 149-53, cited in Kiss and Dominick, 1980, 309.

for regional and international recognition. For instance, the EU Guidelines on Recognition, explicitly stipulated that:

[T]he process of recognition of these new States, [] requires:

- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the *Final Act of Helsinki* and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights
- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE.<sup>185</sup>

For their part, requests for recognition by the states of the Central and Eastern Europe provided explicit assurances of their commitment to the goals and principles of the Final Act.<sup>186</sup>

The importance of democratic governance and the protection of human rights received additional emphasis in the Charter of Paris for a New Europe. This Charter was adopted by participating states in the Conference on Security and Cooperation in Europe (CSCE), which, in 1990, included most European countries, Canada, the United States, and the Soviet Union. The Charter of Paris explicitly states that:

We undertake to build, consolidate and strengthen *democracy as the only system of government of our nations*. In this endeavour, we will abide by the following:

*Human rights and fundamental freedoms* are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is *the first responsibility of government*. Respect for them is an essential safeguard against an overmighty State. Their observance and full exercise are the foundation of freedom, justice and peace.

Democratic government is based on the will of the people, expressed regularly through *free and fair elections*. Democracy has as its foundation respect for the human person and *the rule of law*. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.

*Democracy, with its representative and pluralist character*, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.

[...]

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<sup>185</sup> Declaration on the “Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union” and “Declaration on Yugoslavia”, December 16, 1991 (hereforth the EU Guidelines on Recognition, 1991), emphasis added.

<sup>186</sup> Kiss and Dominick, 1980, 295.

We affirm that the ethnic, cultural, linguistic and religious identity of *national minorities* will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law.<sup>187</sup>

The Charter of Paris further strengthened the document's grounding in the principles of the Helsinki Final Act by including the new "Guidelines for the Future," which stressed signatories' commitment to human and minority rights, democracy, and the rule of law.

As is evident, both the Helsinki Final Act and the Charter of Paris clearly communicate the international community's vision for a system of democratic states with strong state protection of human and minority rights. They also specify the requirements with which a new state must comply if it wishes to become a member of world community or to have relations with other countries. Finally, the two documents both implicitly link the admission to the inter-state community and the co-existence and cooperation of the states with an internal governance structure based on constitutional principles.

#### **2.1.5. The EU Guidelines on Recognition**

The process of recognizing states further evolved with the political transformations in the beginning of the 1990s and included the adoption of the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union and the Declaration on Yugoslavia (the EU Guidelines on Recognition) in 1991.<sup>188</sup> Together, these two documents demonstrate perhaps most decisively the role a constitution plays in the process of granting recognition. The EU Guidelines on Recognition explicitly broaden the criteria for recognition beyond the requirements of the Montevideo Convention and the non-violation of *jus cogens* norms to include respect for democracy, the rule of law, and human rights. That these principles were

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<sup>187</sup> Conference on Security and Co-operation in Europe. *Charter of Paris for a New Europe*. 1990, emphasis added.

<sup>188</sup> *The EU Guidelines on Recognition*, 1991. This section uses the term *the European Union* with respect to both the European Community and the European Union.

applied at such a crucial juncture in recent history evidences both the international community's clear expectations on the constitutional character of its future members, as well as the acceptance of these principles by new states in search of recognition through their domestic constitutional development.

The break-up of two multinational federations, Yugoslavia (SFRY) and the Soviet Union, in the beginning of the 1990s revived debates over the concept of state recognition in the context of political change.<sup>189</sup> While the dissolution of the Soviet Union was mostly peaceful,<sup>190</sup> the violent breakup of the SFRY required additional political responses from the international community, many of which centered on the question of the criteria for statehood. The adoption of additional criteria for the recognition of a state illustrated the European community's reaction to the Yugoslav crisis and represented an attempt to end the conflict caused by the country's dissolution. Though views vary on the success of the EU Guidelines on Recognition in managing conflicts (namely settlement of the Yugoslav crisis<sup>191</sup>) or in pursuing European political goals,<sup>192</sup> the majority of scholars credit this document with the introduction of supplementary criteria for

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<sup>189</sup> Some of the most significant transformations at the end of twentieth century included the end of the Cold War, growing liberalization, and democratization. Scholars emphasize several waves of democratization, namely: the transition to democracy after World War II (Germany, Italy, Japan, Austria), followed by the regime changes in the Mediterranean and in Latin America between 1974 to 1985 (Greece, Portugal, Spain, Brazil, Uruguay, and Argentina), and, finally, the end of communist rule in the Central and Eastern European countries. See Renske Doorensplee, "Reassessing the Three Waves of Democratization," *World Politics* 52 (2000).

<sup>190</sup> The Soviet republics, exercising their constitutional right to secede, peacefully declared independence, unopposed by the center. The complications that soon arose occurred largely within separate sovereign republics.

<sup>191</sup> See generally, Michael Libal, *Limits of Persuasion: Germany and the Yugoslav Crisis, 1991-1992* (Westport: Praeger, 1997); Caplan, 2005.

<sup>192</sup> Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington, DC: The Brookings Institution, 1995); Richard Caplan, "Conditional Recognition As An Instrument of Ethnic Conflict Regulation: The European Community and Yugoslavia," *Nations and Nationalism* 8, no. 2 (2002); Stephen Tierney, "In a State of Flux: Self-Determination and the Collapse of Yugoslavia," *International Journal on Minority and Group Rights* 6 (1999).

recognition, constitutional in nature, that existing states are to take into account when extending recognition.<sup>193</sup>

The requirement that a state-like entity comply with the principles of democracy, the rule of law, and protection of human/minority rights, which the international community adopted as a standard for recognition, reveals the common belief that a constitutional state is necessary to ensure the fulfillment of international legal obligations and to become a member in the system of states. The EU Guidelines on Recognition stipulate:

In compliance with the European Council's request, Ministers have assessed developments in Eastern Europe and the Soviet Union with a view to elaborating an approach regarding relations with new states.

In this connection they have adopted the following guidelines on the formal recognition of new states in Eastern Europe and in the Soviet Union:

The Community and its Member States confirm their attachment to the principles of the Helsinki Final Act and the Charter of Paris, in particular the principle of self-determination. They affirm their readiness to recognize, subject to the normal standards of international practice and the political realities in each case, those new States which, following the historic changes in the region, *have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process* and to negotiations.

Therefore, they adopt a common position on the process of recognition of these new States, which requires:

- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights
- *guarantees for the rights of ethnic and national groups and minorities* in accordance with the commitments subscribed to in the framework of the CSCE.

[...]

The commitment to these principles opens the way to recognition by the Community and its Member States and to the establishment of diplomatic relations. It could be laid down in agreements.<sup>194</sup>

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<sup>193</sup> Bieber, 1992; Caplan, 2005; Hillgruber, 1998; A.V. Lowe and Colin Warbrick, "Current Developments: Public International Law. Recognition of States. Part 1.," *International and Comparative Law Quarterly* 41 (1992); Rich, 1993; Marc Weller, "The International Response to The Dissolution of The Socialist Federal Republic of Yugoslavia," *American Journal of International Law* 86, no. 3 (1992).

<sup>194</sup> *EU Guidelines on Recognition*, 1991, emphasis added.



As the subsequent analysis of this document demonstrates, the presence of specific procedural and substantive features in a state-like entity's constitution has become a key condition for gaining recognition.

*The relevance of constitutional functions for the criteria for recognition.* The EU Guidelines on Recognition do not explicitly mention a constitution, except for the provision in the Declaration on Yugoslavia that states that the country must “adopt *constitutional* and political guarantees ensuring that it has no territorial claims towards a neighbouring Community State.”<sup>195</sup> However, following the Charter of Paris, the EU Guidelines mandate that an entity constitute itself on a democratic basis and strengthen the rule of law.<sup>196</sup> As outlined in the Helsinki Final Act,<sup>197</sup> they also require an aspiring state to promote the effective exercise of civil, political, social, and other rights. The EU Guidelines additionally call on new states to establish guarantees for ethnic and national minorities' rights (as envisioned under the framework of the Conference on Security and Cooperation in Europe<sup>198</sup>) in order to “afford [minorities] the full opportunity for the actual enjoyment of human rights and fundamental freedoms and [...] protect their legitimate interests.”<sup>199</sup> The requirement in the EU Guidelines that a state possess a democratic foundation and ensure the protection of human and minority rights suggests that the EU expects these fundamental commitments to be taken seriously. In this

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<sup>195</sup> Ibid., emphasis added. As mentioned above, constitutional provisions help to define the territory in which state asserts its sovereignty, as well as to adjure it over someone's else territory, and therefore ensure the functioning of international system.

<sup>196</sup> Section “Human Rights, Democracy, Rule of Law,” para. 7., *Charter of Paris for a New Europe*.

<sup>197</sup> Article a) VII, para. 2., *Helsinki Final Act*.

<sup>198</sup> The Conference on Security and Cooperation in Europe, or CSCE, was created under the Helsinki Framework. In 1995, it was renamed as the Organization for Cooperation and Security in Europe (OCSE), at which time it elaborated a set of provisions calling on states to ensure the protection of minority rights.

<sup>199</sup> Article a) VII, para.4, *Helsinki Final Act*.

respect, the domestic constitutional framework becomes, *inter alia*, one of the main ways to promote the principles of the rule of law, democracy, and human rights.<sup>200</sup>

*Internal constitutional functions* (creating a government, grounding its decisions in legal principles, and protecting individuals' rights) are expressed through various constitutional designs. Although specific constitutional provisions vary, the general structure includes provisions for free, fair, and periodic elections; balanced and checked power between the legislative, executive, and judicial branches; self-governance within the state; and protected civil, political, and social rights. As a result, entities seeking recognition are expected to enact these constitutional provisions through domestic legislation in order to demonstrate their compliance with the criteria for statehood. In this way, internal constitutional functions become vital for the recognition process.

The new states that emerged in the post-Soviet space in the 1990s widely employed this approach.<sup>201</sup> Although the former Soviet states adopted new constitutions only after they gained diplomatic recognition, their provisions on respect for democracy, the rule of law, and human rights came partly as a response to the initial assurance these states gave to the international community that they would fulfill the requirements of the EU Guidelines.<sup>202</sup> Because the European Union received statements from the former Soviet states declaring that, "they [were] prepared to fulfill the requirements [of the Guidelines],"<sup>203</sup> the EU proceeded with their

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<sup>200</sup> Sweet, 2009.

<sup>201</sup> Culic, 2003; Wojciech Sadurski, "Postcommunist Constitutional Courts in Search of Political Legitimacy," *EUI LAW* 11 (2001).

<sup>202</sup> European Political Cooperation. "EPC 91/469. Statement Concerning the Future States of Russia and Other Former Soviet Republics," V.7 European Political Cooperation Documentation Bulletin, 772 (1991), which reiterates the EC's readiness to recognize the former Soviet Republics as soon as it received assurances from these new states that the latter were willing to fulfill the EC Guidelines on Recognition.

<sup>203</sup> European Political Cooperation. "EPC 91/472. Statement Concerning the Recognition of Former Soviet Republics," V.7 European Political Cooperation Documentation Bulletin, 773 (1991).

recognition.<sup>204</sup> Similarly, these assurances also served as the basis for the US and other countries to issue statements on recognition for the majority of former Soviet republics. The US, for instance, stated explicitly that its decision to recognize the former Soviet republics was based on the republics' "commitments and assurances" on various issues, including democracy.<sup>205</sup>

The international community further elaborated the constitutional expectations first laid down in the EU Guidelines and refined through the opinions of the Arbitration Commission, which the EU established within the context of Yugoslav peace negotiations. Some of these opinions concerned the legal aspects of the recognition of Bosnia-Herzegovina, Macedonia, and Slovenia, and specifically mentioned constitutional norms among the key measures capable of meeting the requirements of the EU Guidelines on Recognition.

In assessing Bosnia-Herzegovina's request for recognition, for example, the Arbitration Commission closely examined the would-be-state's constitutional provisions, especially those related to human rights. The Commission noted with approval that the constitution guaranteed equal rights for "the nations of Bosnia-Herzegovina – Muslims, Serbs and Croats – and the members of the other nations and ethnic groups living on its territory," mandated respect for human rights, and would provide full guarantees for individual human rights and freedoms.<sup>206</sup> Despite the Arbitration Commission's statement that the absence of a referendum on independence meant that "the will of the peoples of Bosnia-Herzegovina to constitute [the republic] as a sovereign and independent State cannot be held to have been fully established," it nonetheless found that the various constitutional processes had been followed necessary for EU

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<sup>204</sup> United Kingdom Foreign and Commonwealth Office. "Demise of the Soviet Union, Background Brief (1992)", cited in Rich, 1993, 46.

<sup>205</sup> U.S. State Department. "President Bush Welcomes Commonwealth of Independent States, Dec.25, 1992." 2 Foreign Policy Bulletin 12 (Jan-Apr. 1992).

<sup>206</sup> Conference on Yugoslavia Arbitration Commission. *Opinion No. 4 on International Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States*, (January 11, 1992), 31 International Legal Materials 1992, 1502.

recognition.<sup>207</sup> Therefore, provided a referendum was conducted, Bosnia-Herzegovina was determined to have met the criteria for recognition in part through constitutional means.<sup>208</sup>

In its application for recognition, Macedonia also pointed to the constitutional measures it had already undertaken, as well as those planned for the future, that embodied the principles of the EU Guidelines on Recognition, including protection for human rights. These measures mainly entailed constitutional provisions, such as building relationships with other states in accordance with international law and the establishment of a special council for inter-ethnic relations.<sup>209</sup> In reviewing that application, the Arbitration Commission focused its deliberations on the constitutional steps Macedonia had taken to enact the democratic structures and guarantees for human rights.<sup>210</sup>

The Arbitration Commission also held a dialogue with Macedonia to determine whether one of the paragraphs of the EU Guidelines on Recognition and its Declaration on Yugoslavia in particular was satisfied. The Declaration on Yugoslavia states that:

The Community and its Member States also require a Yugoslav Republic to commit itself, *prior to recognition*, to adopt *constitutional* and political *guarantees* ensuring that it has no territorial claims towards a neighbouring Community State and that it will conduct no hostile propaganda activities versus a neighbouring Community State...<sup>211</sup>

In course of this dialog, the Assembly of the Republic of Macedonia amended its constitution on January 6, 1992, adding the phrase “the Republic of Macedonia has no territorial claims against neighbouring states.”<sup>212</sup> The Macedonian constitution’s careful account for the protection of minorities and for other EU Guidelines criteria for recognition eventually led the Arbitration

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<sup>207</sup> Ibid., 1503.

<sup>208</sup> This decision was confirmed later through the formal recognition of Bosnia-Herzegovina.

<sup>209</sup> Conference on Yugoslavia Arbitration Commission. *Opinion No. 6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States*. (January 11, 1992). 31 International Legal Materials 1992, 1507-12, 1508.

<sup>210</sup> Ibid.

<sup>211</sup> European Community. *Declaration on Yugoslavia*. (December 16, 1991), final paragraph, emphasis added.

<sup>212</sup> Quoted in *Opinion No. 6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States*, 1992, 1511.

Commission to conclude that Macedonia satisfied the EU Guidelines on Recognition and to imply the possibility of its recognition by EU member states.<sup>213</sup>

In examining whether Slovenia met the requirements in the EU Guidelines on Recognition, the Arbitration Commission likewise paid close attention to the Slovenian constitution, especially to those parts concerning democratic principles and the protection of human rights. The Commission focused particularly on the presence of provisions establishing an electoral system based on universal, equal, and direct suffrage, as well as the secret ballot; and provisions protecting human rights, including those that guaranteed specific rights for Italian and Hungarian minorities in the country. It concluded that the constitution of Slovenia effectively created a framework for the rule of law, human rights, and minority groups that would enable the country to fulfill its commitments under the EU Guidelines on Recognition. The Commission thus recommended that the EU grant recognition to Slovenia.<sup>214</sup>

On both theoretical and practical levels, the EU's recognition of new states in Eastern and Central Europe after the Cold War reveals that constitutional mechanisms have remained a key instrument for satisfying the contemporary criteria for recognition that the states granting recognition expect to be in place. For their part, state-like entities seeking recognition enact changes to their domestic legal system and design a democratic constitution "to secure recognition of their statehood."<sup>215</sup> As a result, a constitution – "a universal yardstick for civilized governance"<sup>216</sup> – and its internal constitutional functions help would-be states meet the criteria

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<sup>213</sup> Ibid., 1510-1511.

<sup>214</sup> Conference on Yugoslavia Arbitration Commission. *Opinion No. 7 on International Recognition of the Republic of Slovenia by the European Community and its Member States*. (January 11, 1992). 31 *International Legal Materials* 1992, 1512-17.

<sup>215</sup> Benedict Kingsbury, "Claims by Non-State Groups in International Law," *Cornell International Law Journal* 25, no. 3 (1992), 485.

<sup>216</sup> Preuss, 2006-2007, 490.

for recognition and ensure their admission to the system of sovereign states with “all the tangible and intangible benefits that accompany such membership.”<sup>217</sup>

The practice of recognizing new states in Central and Eastern Europe also evidences the importance of *external constitutional functions*. Some state-like entities, such as Macedonia, Slovakia, and Croatia, adopted constitutions<sup>218</sup> that assert both their presence in the international arena and their sovereignty, the latter being required for the fulfillment of domestic and international obligations.<sup>219</sup> For these countries, as well as for other recognized Central and Eastern European states, the constitutions have become symbolic opportunities to express popular aspirations for democratic, free, and sovereign statehood. Since most of them lacked a history of official statehood, “the adoption of constitutions with broad support was a way to manifest independent and mature self-rule.”<sup>220</sup>

The adoption of those constitutions also served another vital function for these newly independent countries by signaling their emergence as “internally and externally legitimate, recognized, and functioning state[s].”<sup>221</sup> In this way, constitutions became crucial to state-building, since constitutions in these countries “reinforced the modern principles of statehood in their endeavors to obtain recognition and integration within Western [...] structures.”<sup>222</sup> As a result, external constitutional functions assured states’ formal sovereignty, which was an important consideration for the international community as it debated admittance of a new member. Thus, a constitution has been seen as one of the key legal mechanisms to embody the

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<sup>217</sup> David S. Law and Mila Versteeg, “The Evolution and Ideology of Global Constitutionalism,” *California Law Review* 99, no. 5 (2011), 1182.

<sup>218</sup> *The Constitution of the Former Yugoslav Republic of Macedonia*. November 17, 1991; *The Constitution of the Republic of Slovenia*. December 23, 1991; *The Croatian Constitutional Act*. December 4, 1991.

<sup>219</sup> Robert Elgie and Jan Zielonka, “Constitutions and Constitution-Building: A Comparative Perspective,” ed. Jan Zielonka, 2 vols., vol. V.1: Institutional Engineering, *Democratic Consolidation in Eastern Europe* (Oxford Scholarship Online, 2003), 46.

<sup>220</sup> *Ibid.*, 46.

<sup>221</sup> Culic, 2003, 39.

<sup>222</sup> *Ibid.*, 42.

principles of democratic governance and the protection of human rights, to ensure further development of these standards by other domestic legal tools, and to provide a secure and reliable basis for the fulfillment of a state's international obligations.

*The constitutionality of a state.* As mentioned above, constitutionality implies both a specific internal mode of governance, as well as the nature of the emergence of a state-like entity. These aspects address the systemic interests of the world community in having members who respect international rules and obligations and who pursue the aims of international order and its stability. In the context of the EU Guidelines on Recognition, the requirement of establishing democratic structures in a state-like entity seeking recognition has contributed to various international practices protecting the international liberal order and promoting specific constitutional principles, such as democratic governance, the rule of law, and human/minority rights protection. The dissolution of two federal states, the SFRY and the USSR, highlights these questions of respect for constitutionality under international law.

First, some scholars have suggested that the recognition of a newly emerged state should be examined first and foremost through the constitutionality of dissolution<sup>223</sup> – in other words, whether an aspiring state-like entity emerged in accordance with the constitutional law of its parent state.<sup>224</sup> Firmly grounded in the belief of the supremacy of a constitution as the fundamental framework for governance and the defining symbol of a nation,<sup>225</sup> this argument holds that a seceding entity must respect the constitutional rules of its parent state to gain recognition. Complying with this obligation could tip the balance “in favour of international

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<sup>223</sup> The approach is found mainly among the American legal writers. See, e.g., Keith S. Rosen, “Federalism in the Americas in Comparative Perspectives” *University of Miami Intern-American Law Review* 26 (1994), 6.

<sup>224</sup> *Reference re Secession of Quebec* (1998), in Damrosch et al., 2009, 329-337; Amar, 1991.

<sup>225</sup> Grant, 1999, 100.

recognition,”<sup>226</sup> whereas aspiring state-like entities that ignore it invite challenges to the very foundations of their existence and the unity of their nation.<sup>227</sup> Discussions on the constitutional prerequisite for the process of dissolution and the legitimacy of secession<sup>228</sup> thus are part of the analysis of process of and criteria for recognition.

Another dimension of the constitutionality of dissolution concerns respect for international law. Existing states give much consideration to the “systemic implications of unconstitutional order” because disregard for the constitutional legal order of the parent state poses a danger to international society.<sup>229</sup> As the thinking goes, an aspiring state-like entity that ignores the constitutional law of a parent state may well behave similarly in its relations with other existing states and act outside of international law.

Both dimensions, however, embrace the variable complexities of secession, including the question of legitimate reasons to go against the constitution of a parent state, which requires a balanced and careful approach towards the relationship between constitutional legal order and international obligations. Still, constitutionality continues to matter in the analysis of a state’s claim to recognition. For example, in addressing the structure of its relations with the Soviet republics in 1991, the EU noted that it would consider options only after “developments in the constitutional structure of the Union” took place,<sup>230</sup> thereby emphasizing the relevance of constitutionality for the process of recognition.

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<sup>226</sup> *Reference re Secession of Quebec* (1998), para.143, in Damrosch et al., 2009, 336.

<sup>227</sup> Edward S. Corwin, “The Constitution as Instrument and as Symbol,” *American Political Science Review* 30 (1936).

<sup>228</sup> See, for example, Cass R. Sunstein, who suggests that secession lacks any constitutional justification. Cass Sunstein, “Constitutionalism and Secession,” *University of Chicago Law Review* 58 (1991); Akhil Amar argues that the secessions in post-Cold War Europe were illegal. Akhil Amar, “Some New World Lessons for the Old World,” *Ibid.*, 501-502; Quebec case, discussing the possibility of international recognition in case of a seceded entity if it respects domestic constitutional law. *Reference re Secession of Quebec* (1998), 329-337.

<sup>229</sup> Grant, 1999, 103-104.

<sup>230</sup> “Answer to the Question No H-925 by Mr. Cushman Concerning Relation with the Soviet Republics,” V.7 European Political Cooperation Documentation Bulletin, 644 (1991).



To summarize, the criteria for statehood, including contemporary elements such as democracy, the rule of law, and the protection of human rights, relate directly to the political and legal sphere of international order by both reflecting and enforcing the international law of the system of sovereign states. Therefore, unrecognized state-like entities seeking recognition use law and constitutions as instruments to win support and acceptance from existing states and international organizations and to signal their fulfillment of the criteria for recognition, as well as their conformity to the norms, standards, and goals of the international community.<sup>231</sup>

### **2.1.6. The Copenhagen Criteria**

As mentioned above, the process of recognition concerns not only states but also their acceptance as members into interstate organizations based on certain criteria. The European Union accession process and its Copenhagen criteria best demonstrate the interplay between recognition of a state's membership in an organization and constitutional norms. The Copenhagen criteria explicitly mention democracy, the protection of human rights, and the rule of law as essential requirements for a state to join the European Union and to *be recognized as a member of this community*.<sup>232</sup> These criteria imply that a democratic constitution is a necessary mechanism to fulfill these membership criteria: a constitution is generally regarded as the requisite framework for a democratic government because it ensures the protection of human rights and respect for the rule of law. As a result, accession is an interactive process. Aspiring states may gain political status within a particular organization by addressing the Copenhagen criteria in their constitutional design. At the same time, select members of the international community are able to assess the state's readiness to become a member so as to ensure stability, order, and peaceful co-existence among all the members.

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<sup>231</sup> Law and Versteeg, 2011, 1172.

<sup>232</sup> European Council. *Copenhagen Presidency Conclusions*, (June 21-22, 1993).

The most ambitious project of regional integration in the world, the EU played an important role in fostering national reconciliation, stable democracy, and economic development in Europe after the end of the Second World War. Although it was not until 1992 when the obligation to respect human rights, democracy, and the rule of law became mandatory under EU primary law,<sup>233</sup> these fundamental principles had been the main benchmark for evaluating candidate states since the mid-1970s.<sup>234</sup> Reviewing the candidacy of Spain, Portugal, and Greece, which at that time had only recently transitioned from authoritarian regimes to democracy, the European Council declared that respect for human rights and representative democracy were essential for acquiring membership.<sup>235</sup>

The elaboration of a more complex set of rules on accession became particularly urgent after the end of the Cold War, when a great number of states that had belonged to the Soviet bloc applied to join the EU.<sup>236</sup> The criteria adopted at the Copenhagen summit in 1993<sup>237</sup> became the formal, substantive requirements for accession to ensure that future members of the Union were reliable and committed to pursuing EU goals.<sup>238</sup> The Copenhagen criteria included political requirements, economic criteria, the *acquis communautaire* (the *acquis*),<sup>239</sup> and the less formal

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<sup>233</sup> Article F of the Treaty on European Union. *Treaty on European Union (Maastrich Treaty)*, 1992. Official Journal C 191.

<sup>234</sup> Karen E. Smith, "The Evolution and Application of European Union Membership Conditionality," in *The Enlargement of the European Union*, ed. M. Cremona (Oxford: Oxford University Press, 2003), 109-110.

<sup>235</sup> European Council. *The Declaration on Democracy*, in Conclusions of the European Council Session in Copenhagen, April 7, 1978. For the background of the Declaration on Democracy, see Roger J. Goebel, "The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden," *Fordham International Law Journal* 18 (1994-1995), 1145-47.

<sup>236</sup> Luisa Ficchi, "Candidate Countries Facing A Binding Charter of Fundamental Rights: What's New?," *IUS Gentium: Comparative Perspectives on Law and Justice* 8 (2011), 115.

<sup>237</sup> *Copenhagen Presidency Conclusions*, 1993.

<sup>238</sup> Milada Anna Vachudova, *Europe Undivided: Democracy, Leverage, and Integration After Communism*, (Oxford: University Press, 2005), 121.

<sup>239</sup> The *acquis* is very specific and organizes into a single body all of the laws, norms, and regulations that are in force among EU member states.

requirement of “good neighborliness,”<sup>240</sup> all of which reflected the broad consensus of EU members in favor of liberal democracy, market capitalism, and the peaceful resolution of disputes.<sup>241</sup> The Copenhagen political criteria note explicitly that, for membership, the candidate country must have “achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.”<sup>242</sup>

These criteria found firmer legal grounding in the 1997 Amsterdam Treaty, which was later amended by the Lisbon Treaty by inserting the provision that:

[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.<sup>243</sup>

In addition, Article 49 of Amsterdam treaty affirms that:

[any] European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. [...]. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State.<sup>244</sup>

Although these two Articles did not find further elaboration in EU primary law, they “have been clarified by the detailed assessment of each candidate in light of these criteria, first in the Opinions of 1997 and then subsequently in the Regular Reports published on the progress of each of the candidates every year.”<sup>245</sup> For example, in reviewing the applications of ten acceding

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<sup>240</sup> Suggested by Karen E. Smith. See Smith, 2003, 105–139. This requirement, along with the provision of ethnic and minority rights, was enforced first and most vigorously by EU governments in the early 1990s. Vachudova, 2005, 122.

<sup>241</sup> On the EU’s membership requirements, see Susan Senior Nello and Karen E. Smith, *The European Union and Central and Eastern Europe: The Implications of Enlargement in Stages* (Aldershot, UK; Brookfield, USA: Ashgate, 1998).

<sup>242</sup> *Copenhagen Presidency Conclusions*, 1993.

<sup>243</sup> European Union. *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, 2008. Official Journal C 115, 0001 – 0388.

<sup>244</sup> *Ibid.*

<sup>245</sup> Vachudova, 2005, 121.

Central European states,<sup>246</sup> the European Commission (the Commission) adopted an influential report titled “Agenda 2000 – For a Stronger and Wider Union.” This report not only summarized the Commission's opinions on each applicant's political qualifications, but also revealed the substantive meaning of these political criteria.<sup>247</sup>

First, since key democratic institutions in the Western sense include a constitution with particular provisions, a democratic form of governance, electoral law that renders efficient majorities, and plebiscitarian instruments,<sup>248</sup> the EU expected new applicants to do likewise. This meant drafting well-balanced, modern constitutions; developing political parties and responsible popular leadership; creating governmental structures with popularly elected and effective parliaments and executive branches; adopting essential legislation and administrative regulations appropriate for a functional democracy; and establishing an accountable judiciary.<sup>249</sup> Second, the criteria calling for respect for human rights implied that the applicants needed to formulate basic rights in their constitutions, and to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the protocol on permitting their citizens to take cases to the Strasbourg Court of Human Rights.<sup>250</sup> And to fulfill the third criterion, the protection of minority rights, the Commission pressed the applicant nations to take definitive legislative and administrative action. As the Commission noted, “[m]inority problems, if unresolved, could affect democratic stability or lead to disputes with neighboring countries.”<sup>251</sup>

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<sup>246</sup> Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia.

<sup>247</sup> European Union. *Agenda 2000*, 1997.

<sup>248</sup> Klaus von Beyme, “Institutional Engineering and Transition to Democracy,” ed. Jan Zielonka and Alex Pravda, 2 vols., vol. 1: *Institutional Engineering Democratic Consolidation in Eastern Europe* (Oxford Scholarship Online, 2003), 5.

<sup>249</sup> Roger J. Goebel, “Joining the European Union: The Accession Procedure for the Central European and Mediterranean States Featured Article,” *Loyola University Chicago International Law Review* 1, no. 1 (2003-2004), 27; For an overview of the democratization process, See Mary Kalder and Ivan Vejvoda, eds., *Democratization in Central and Eastern Europe* (London, New York: Printer, 1999).

<sup>250</sup> *Agenda 2000*, 41.

<sup>251</sup> *Ibid.*, 42.

Thus, the Commission's review of each applicant's political qualifications was notable for several reasons. To begin, it attempted to go beyond a mere formal description of political institutions and instead sought to assess how the letter of constitutional texts was applied in political practice.<sup>252</sup> The Commission's report also suggests that the criteria on democracy, the rule of law, and human rights are realized primarily through deploying internal constitutional mechanisms. Thus, states seeking EU membership would likely need to amend existing constitutional structures, provisions, and procedures, or establish new ones altogether. Lastly, the Commission's reviews demonstrate that the requirement of establishing democratic procedures on elections, the separation of powers, self-governance, and the protection of human and minority rights was intended to guarantee stability and order on the regional scale.

Another example that reveals the relevance of a constitution for the Copenhagen criteria and the recognition process is the EU's position on relations with the states of the former Yugoslavia. In 1997, the General Affairs Council agreed that, in evaluating compliance with democratic principles, the following conditions would be verified: the existence of a representative government and of an accountable executive; the presence of a government and public authorities that act in accordance with the constitution and the law; the separation of powers (government, administration, judiciary); and the holding of free and fair elections at reasonable intervals and by secret ballot.<sup>253</sup> Under the heading of human rights and the rule of law, the General Affairs Council included freedom of expression, including an independent media; the right of assembly and demonstration; the right of association; the existence of effective means of redress against administrative decisions; access to courts and the right to fair trial; and respect for the principle of equality before the law and equal protection under the law.

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<sup>252</sup> Goebel, 2003-2004, 27.

<sup>253</sup> See Annex, European Council. *Conclusions On the Principle of Conditionality Governing the Development of the European Union's Relations with Certain Countries of Southern Europe*, 1997.

The document also recognized the right of minority groups to establish and maintain their own educational, cultural, and religious institutions, organizations or associations; the need to guarantee adequate opportunities to use their respective language before courts and public authorities; and adequate protection of refugees and displaced persons returning to areas where they represent an ethnic minority.<sup>254</sup>

The Copenhagen criteria, however, are not without criticism, mostly with respect to a number of political and policy issues. First, the criteria set higher political standards for candidate countries<sup>255</sup> and required signing a greater number of international documents when compared to existing member-states.<sup>256</sup> Second, the lack of a clear definition and comprehensive clarification on how the standards of democratic values and inclusiveness should be met in policy and in practice lead to inconsistent, “broad[,] and disparate interpretations,” especially with respect to minority rights.<sup>257</sup> The ambiguity of these terms makes them problematic measures of the progress made by candidate states.<sup>258</sup> Finally, the progress and monitoring reports the Commission regularly issues clearly indicate that it has adopted a case-by-case approach for evaluating political criteria.<sup>259</sup>

Despite these shortcomings, the monitoring reports demonstrate that the states’ conditions are reviewed within a general constitutional framework.<sup>260</sup> For its part, to evaluate whether candidates have met the political criteria, the Commission explores their constitutional

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<sup>254</sup> Ibid.

<sup>255</sup> Geoffrey Pridham, “European Union Enlargement and Consolidating Democracy in Post-Communist States - Formality and Reality,” *Journal of Common Market Studies* 40, no. 5 (2002), 957.

<sup>256</sup> Open Society Institute, “Monitoring the EU Accession Process: Minority Protection,” 2002, 62 (which observes that many EU member states themselves lack the mechanisms for monitoring human rights performance).

<sup>257</sup> Ibid., 19.

<sup>258</sup> Dmitry Kochenov, “Behind the Copenhagen Facade. The Meaning and Structure of the Copenhagen Political Criteria of Democracy and the Rule of Law,” *European Integration On-Line Papers* 8, no. 10 (2004).

<sup>259</sup> M. Maresceau, “Pre-accession,” in *The Enlargement of the European Union*, ed. M. Cremona (Oxford: Oxford University Press, 2003), 9.

<sup>260</sup> Ibid., 9.

guarantees; provides a description of their various institutions, such as parliament, executive, and judiciary; and examines how the various rights and freedoms are exercised in practice. It analyzes the way in which the candidate countries respect and implement the provisions of the major human rights conventions and devotes particular attention to minority rights and the protection of minorities.<sup>261</sup> In this way, the EU has gradually shifted from its requirement to have in place only constitutional guarantees to a careful examination of the way democracy functions in practice.<sup>262</sup>

The steps that accession countries have undertaken include institutional changes and passing relevant legislation for which a constitutional background or constitutional amendments are likewise necessary. For example, to join the EU, Bulgaria had to change its constitution in order to better address the magistrate's immunity and the structure of judiciary.<sup>263</sup> Similarly, Slovakia had to hold municipal elections, adopt a charter on local self-government, establish direct election of the president, and ensure the involvement of opposition parties in parliamentary appointments,<sup>264</sup> all of which required the relevant constitutional context and strengthened the democratic principles in the state. Moreover, in response to the requirements of accession, all candidate states<sup>265</sup> have adopted programs to tackle discrimination or promote the re-integration of ethnic or national minorities in order to demonstrate their willingness to comply with the political criteria.<sup>266</sup> Thus, the EU made clear that it would not be "ready to start the negotiations

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<sup>261</sup> European Commission. *Towards the Enlarged Union: Strategy Paper and Report of the European Commission on the Progress Towards Accession by Each of the Candidate States*, 2002.

<sup>262</sup> Kochenov, 2004.

<sup>263</sup> Ibid.

<sup>264</sup> Pridham, 2002, 960.

<sup>265</sup> The term "candidate states" here refers to Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia, all of which started their accession to EU between 1994 and 1996, and attained membership in 2004 or 2007. See [www.ec.europa.eu/enlargement](http://www.ec.europa.eu/enlargement).

<sup>266</sup> Open Society Institute, *Monitoring the EU Accession Process: Minority Protection*, 2002, 22.

with a country if there are any doubts concerning the democratic conditions, the respect for human rights and the protection of minorities.”<sup>267</sup>

To summarize, the Copenhagen criteria established a set of political conditions for the recognition of states as members of a regional organization. The fulfillment of these political criteria is grounded in the establishment and implementation of democratic principles and norms through a constitution and constitutional development. By influencing the foreign policy of aspiring members through constitutional means,<sup>268</sup> the EU accession criteria seek to pursue the EU’s aims of stable democracy and economic development throughout the region. As a result, meeting the constitutional requirements for the rule of law, democracy, and the protection of human rights ensures a state’s membership in an influential regional organization.

The nature of the EU accession process demonstrates that there is a strong interplay between constitutional norms and a specific kind of recognition, namely, membership in an organization. This membership requires compliance with the criteria on admission and the introduction of necessary changes into the domestic constitutional framework, changes that do not, however, affect the recognition status of the state seeking admittance. Thus, if a state fails to satisfy the accession conditions to an organization, it would lack recognition as a member within that organization but would continue to hold recognition as a state.

The case of the relationship between constitutional norms and the formal recognition of unrecognized states is different. The above analysis of international legal doctrines and concepts has illustrated the strong linkages between the process of recognition and a constitution. This mutual interaction suggests that a constitution matters for the recognition of an unrecognized

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<sup>267</sup> Gunter Verheugen, "The Enlargement of the European Union," *European Foreign Affairs Review* 5, no. 4 (2000), 41.

<sup>268</sup> M. Cremona, "Enlargement: A Successful Instrument of EU Foreign Policy?," in *European Union Law for the Twenty-first Century: Rethinking the New Legal Order*, ed. T. Tridimas and P. Nebbia (Oxford: Oxford University Press, 2003), 268.



state on a theoretical level. More specifically, the analysis revealed that, in theory, constitutions or, broadly speaking, the constitutional developments of a state, may predispose the international community to grant recognition of a government, a state, or membership in an organization. In theory, recognized sovereign states expect the fulfillment of both the traditional and contemporary criteria for recognition, which are partially realized through constitutional mechanisms. This, however, raises the question of whether a relationship between a constitution and recognition exists not only in theory but also in practice and, if so, what evidence demonstrates it. The examples of Croatia and Kosovo in the next section provide some insight on this potentially positive correlation between a constitution and diplomatic recognition. But, at the same time, they also problematize the straightforward doctrinal expectations in practice, a point that is addressed in subsequent chapters of this dissertation.

## 2.2. Examples of Practices Consistent with the Doctrinal Framework

### 2.2.1. Croatia

The Croatian practice of gaining recognition during the dissolution of Yugoslavia illustrates the positive influence of a constitution on the prospects for state recognition. As mentioned above, the European community debated whether to grant the former Yugoslav republics recognition under the criteria in the EU Guidelines on Recognition and further elaborated by the opinions of the Arbitration Commission. In its work, the Arbitration Commission reviewed the constitutional norms, along with other considerations, of the Yugoslav entities in relation to their compliance with the requirements of the EU Guidelines on Recognition.

In analyzing the Croatian request for recognition, the Arbitration Commission acknowledged the constitutional measures Croatia had taken to meet the EU Guidelines but also pointed out some of the constitutional gaps the country still needed to address before being granted recognition.<sup>269</sup> It found that the Croatian Constitutional Act of December 4, 1991, did not fully incorporate all the provisions stipulated in the draft Convention of the Conference on Yugoslavia,<sup>270</sup> which conferred substantial autonomy to minorities with respect to local government, local law enforcement and the judiciary, educational systems, and other specific matters.<sup>271</sup> The Arbitration Commission suggested that the Croatian government supplement its Constitutional Act as necessary to take into account the provisions related to the special status of

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<sup>269</sup> Conference on Yugoslavia Arbitration Commission. *Opinion No. 5 on the Recognition of the Republic of Croatia by the European Community and its Member States*, January 11, 1992, 31 International Legal Materials, 1992.

<sup>270</sup> The EU Conference on Yugoslavia elaborated the draft Convention of the Conference on Yugoslavia, also known as the “Carrington Plan,” on November 4, 1991. The EU’s Declaration on Yugoslavia stipulates that any Yugoslav republic requesting official recognition must undertake to abide by Lord Carrington’s draft treaty. As such, the draft Convention is one of the key documents in the EU’s recognition policy for the former SFRY. European Community Conference on Yugoslavia.

<sup>271</sup> Chapter 2 of the draft Convention of the Conference on Yugoslavia concerns the observance of human rights.

minorities in order to satisfy the requirements of the EU Guidelines and to gain recognition. Following these recommendations, the President of Croatia issued a separate statement confirming Croatia's acceptance of those provisions in principle, thus securing recognition by EC members and other countries.<sup>272</sup>

This case demonstrates that the incorporation of the provisions stipulated in the EU Guidelines on Recognition into the Croatian constitution helped the country to gain recognition, suggesting that the case is consistent with theoretical expectation. However, it also raises some concerns on the causality of the relationship between the intent of recognition and constitutional provisions, a topic that the following chapters discuss further.

### **2.2.2. Kosovo**

Both Kosovo's adoption of its Declaration on Independence in 2008 and the earlier efforts of the international community to make Kosovo's final status conditional on its adoption of constitutional principles regarding democratization and the protection of human rights illustrate the effects that constitutional mechanisms had on the process of Kosovo's recognition. With the dissolution of Yugoslavia, the international community consistently linked Kosovo's status with its democratic governance. More specifically, the Organization for Security and Cooperation in Europe (OSCE) held that resolution of the situation must be based on Kosovo's establishment of democratic institutions, which would then help the international community broker dialogue on the future status of the territory.<sup>273</sup> The UN also supported Kosovo's democracy-building efforts and demanded that the Federal Republic of Yugoslavia (FRY) "establish genuine democratic institutions in Kosovo, including the parliament and the

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<sup>272</sup> Rich, 1993, 47-48.

<sup>273</sup> OSCE Document no. 28-CSO/Journal no. 3 (16 September 1994), cited in Gardner, 2008, 541.

judiciary.”<sup>274</sup> The UN further required that settlement of the conflict there should be based on “an enhanced status for Kosovo, a substantially greater degree of autonomy, and meaningful self-administration.”<sup>275</sup> The Council of Europe emphasized the need for the democratic reforms in the FRY that would include the direct participation of Kosovar representatives in federal institutions, as well as self-government and a new political status for Kosovo.<sup>276</sup> Some members of the Council of Europe explicitly noted that, “The international community gives enormous support [to Kosovo]. We should continue and be patient. But we must make it clear to the leaders that it must be *deserved* support and *deserved* progress – every day, every week.”<sup>277</sup>

This international support, largely from the OSCE, was linked to the establishment of democratic, functioning, multi-ethnic institutions, which would “prepare[] locals to take over institutions built with solid, sound ideas like human rights and democracy.”<sup>278</sup> The OSCE’s focus on creating a “climate of tolerance” among Kosovo’s various ethnic groups<sup>279</sup> sent a clear message to the Kosovar leaders: good treatment of minorities could mean crucial OSCE support in terms of the entity’s final status. While Kosovo “might be in a position to claim independence in the eyes of the international community,” the international community needed to “be 100% sure that the Kosovo government is competent to govern a real multi-ethnic society” before backing the entity’s ultimate status as an independent sovereign state.<sup>280</sup>

After NATO's military operation against the FRY during the Kosovo War in 1999, UN Security Council Resolution 1244 established the mandate for the UN Mission in Kosovo

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<sup>274</sup> A UN General Assembly Resolution condemned “the measures and practices of discrimination and the violations of human rights of ethnic Albanians of Kosovo.” UN General Assembly. *Resolution A/RES/51/111 (On Situation of Human Rights in Kosovo)*, (March 5, 1997).

<sup>275</sup> UN Security Council. *Resolution S/RES/1199*, (September 23, 1998).

<sup>276</sup> Council of Europe. *Parliamentary Assembly Recommendations*, (April 25, 2001).

<sup>277</sup> A statement to the OSCE Permanent Council, Ambassador Kai Eide of Norway OSCE Document no. PC.DEL/262/00 5 May 2000 (emphasis in original), cited in Gardner, 2008, 544.

<sup>278</sup> Interview with OSCE official 5 March 2002, *Ibid.*, 543.

<sup>279</sup> Interview with OSCE official 15 March 2002, *Ibid.*, 544.

<sup>280</sup> Interview with OSCE official 6 March 2002, *Ibid.*

(UNMIK). The UNMIK was an international transitional administration based on *de jure* continued Serbian sovereignty and maximum *de facto* self-government for Kosovo.<sup>281</sup> Its stated international goal was to construct a democratic, multi-ethnic society, and to empower the Kosovars, including non-Albanian minorities, to govern themselves.<sup>282</sup> In December 2003, the UNMIK elaborated what came to be known as the *Standards Before Status* policy, a strategy on the steps the Kosovar leadership needed to take to prove they were capable of governing effectively. The strategy comprised a set of benchmarks for the democratic development of Kosovo, implementation of which would lead to future talks on the entity's status. The benchmarks covered eight areas, including representation (functioning democratic institutions); tolerance (freedom of movement and property rights); the peaceful resolution of conflict (the rule of law and dialogue with Serbia); and economic issues.<sup>283</sup> According to the UNMIK, these benchmarks "describe a multi-ethnic society where there is democracy, tolerance, freedom of movement and equal access to justice for all people in Kosovo, regardless of their ethnic background."<sup>284</sup> Subsequent reports of the Secretary-General to the Security Council measured Kosovo's progress against those benchmarks as a precondition for convening future talks on its status.<sup>285</sup> Thus, the *Standards Before Status* policy reflects the constitutional principles of self-governance and the limitation of power through the establishment of mechanisms to guarantee democracy and human rights, and links those guarantees directly to the entity's international status.

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<sup>281</sup> UN Security Council. *Resolution no. S/RES/1244 (case of Kosovo)*, (June 10, 1999), Annex 2.

<sup>282</sup> Gardner, 2008, 543.

<sup>283</sup> UN Mission in Kosovo, the Standards for Kosovo document of December 2003, operationalized in the Kosovo Standards Implementation Plan (March 2004), and publicized under the slogan "Standards Before Status".

<sup>284</sup> UN Mission in Kosovo. *Standards for Kosovo*, 2003.

<sup>285</sup> Gardner, 2008, 545.

In 2007, a new international initiative known as the Ahtisaari Plan<sup>286</sup> linked a proposal for Kosovo's independence to its respect for democracy and human rights. Among its key principles, the Ahtisaari Plan put forward that Kosovo's multi-ethnic society should govern itself democratically and with full respect for the rule of law and human rights. The plan highlighted the necessity of protecting the rights of Kosovo's non-Albanian communities, establishing a framework for their active participation in public life, and proposing wide-ranging local municipal powers.<sup>287</sup> It also explicitly stated that Kosovo's future constitution should:

prescribe and guarantee the legal and institutional mechanisms necessary to ensure that Kosovo is governed by the highest democratic standards, and to promote the peaceful and prosperous existence of all its inhabitants.<sup>288</sup>

Discussions of Kosovo's sovereignty, therefore, hinged upon steps it took to foster representative institutions, a secure environment grounded in peaceful conflict resolution and tolerance for minorities.

Subsequent constitutional drafting, that is, the elaboration of Kosovo's Declaration of Independence in 2008, contained specific references to its future foundational law and thereby directly contributed to Kosovo's recognition. The Declaration reflected Kosovo's commitment to democracy, the rule of law, and the protection of human and minority rights, thus satisfying the criteria for state recognition.<sup>289</sup> As the document stated:

...We declare Kosovo to be a democratic, secular and multiethnic republic, guided by the principles of *non-discrimination and equal protection under the law*. We shall protect

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<sup>286</sup> Comprehensive Proposal for the Kosovo Status Settlement submitted to the UN Security Council by the UN Special Envoy Martti Ahtisaari in March 2007. See UN Security Council. *S/2007/168/Add.1 (Comprehensive Proposal for the Kosovo Status Settlement)*. (2007). The UN Security Council did not adopt this Plan due to Russia's opposition. However, it nonetheless paved the way for the alternative: the declaration of independence by Kosovar Albanians, which was backed by the US and the majority of the EU. See Denisa Kostovicova. "Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective." *International Peacekeeping* 15, no. 5 (2008), 631-47, 636.

<sup>287</sup> UN Security Council. *S/2007/168/Add.1 (Comprehensive Proposal for the Kosovo Status Settlement)*. (2007).

<sup>288</sup> *Ibid.*, Article 1, para. 1.3.

<sup>289</sup> *Declaration of Kosovo's Independence*, 2008.

and promote *the rights of all communities* in Kosovo and create the conditions necessary for their effective *participation in political and decision-making processes*.

[...]

We shall adopt as soon as possible *a Constitution* that enshrines our commitment to respect the *human rights and fundamental freedoms of all our citizens*, particularly as defined by the European Convention on Human Rights. The Constitution shall incorporate all relevant principles of the Ahtisaari Plan and *be adopted through a democratic and deliberative process*.<sup>290</sup>

Thus, Kosovo's claim for recognition both in its Declaration of Independence and later in the constitution itself followed the Ahtisaari Plan by incorporating its key provisions on the protection of human rights, democratic governance, and the rule of law. The Declaration of Independence served as a constitutional instrument to assert Kosovo's sovereignty and independence, as well as to ensure its commitment to the international obligations required of members in the system of sovereign states.

Overall, both the *Standards Before Status* policy and Kosovo's Declaration of Independence, including its explicit mention of the Ahtisaari Plan, emphasized the link between democratic governance and a future status of an entity. In this way, these documents established a precedent for state-like entities with a yet unsettled status for two reasons. First, the potential influence of democratization on the process of recognition has attracted increased attention from unrecognized states.<sup>291</sup> Although some in the international community have emphasized the uniqueness of Kosovo's case, others contend that the *Standards Before Status* policy implied that "recognition might be awarded to entities that succeed in building effective, democratic institutions."<sup>292</sup> This precedent has demonstrated to unrecognized states that the recognition of

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<sup>290</sup> Ibid.

<sup>291</sup> For a more detailed description of unrecognized or de facto states, including a review of existing literature on the topic, see Chapter 2. The general definition of a de facto state is a state-like entity that has proclaimed its independence but has received no recognition or limited recognition of this independence by international community.

<sup>292</sup> Nina Caspersen, "Separatism and Democracy in the Caucasus," *Survival: Global Politics and Strategy* 50, no. 4 (2008), 123.

autonomous units is possible if certain institutional standards are met,<sup>293</sup> and has therefore influenced their approach towards the use of law in organizing domestic governance.<sup>294</sup>

Second, given the predominance of the international liberal order, the world community has sought to consolidate and protect common values, in particular democracy, the rule of law, and human rights. Consequently, it expects that a particular group or an aspiring state-like entity will internalize the norms of liberal democratic governance. The existence of norms on democratic participation (representation), the rule of law (mechanisms for peaceful conflict resolution), and equality and non-discrimination for minorities (tolerance) inclines the international community to look favorably upon those groups or aspiring states that adopt these norms. In other words:

When a group exhibits the indicators [representation and participation, mechanisms for peaceful conflict resolution and toleration toward minorities], signifying that it is becoming socialised to international standards of democratic governance, the international community is more likely to respond positively to the claim. In other words, the higher the democratic capacity of the group, the more likely the international community will respond by empowering the group – acknowledging, supporting, or helping to create alternative structures that enable the group to exert more autonomy in political decision-making.<sup>295</sup>

Although a group cannot be guaranteed to accomplish its goals by merely possessing such constitutional structures, the international community is nonetheless predisposed to view a group more favorably when it is committed to democratic governance. The favor and support of the international community may manifest itself, for example, by endorsing increased self-governance for the group.<sup>296</sup>

To summarize, the *Standards Before Status* policy and Kosovo's Declaration on Independence reveal the importance of democratic and constitutional principles and mechanisms

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<sup>293</sup> Among the unrecognized states that have argued for broad application of this precedent are Abkhazia and South Ossetia. Kazbek Baseyev, "We're No Worse than Kosovo Say ex-Soviet Separatists," Reuters, February 18, 2008.

<sup>294</sup> See generally, Caspersen, 2008, 113-136.

<sup>295</sup> Gardner, 2008, 536, 538.

<sup>296</sup> *Ibid.*, 538.



for settling an entity's status and, in particular, for the process of granting recognition. They demonstrate that, by assuming the responsibilities of the establishing democratic governance, the rule of law, and the protection of human rights, a state-like entity can win broad support from the international community, and perhaps even obtain formal recognition. At the same time, given that Kosovo received only partial international support for its claim to recognition, the more specific role of constitutional principles in the process of granting state recognition has yet to be seen.

### **Conclusion**

In the international arena, states continue to remain the main actors in international relations, a situation that makes the issue of recognition of a state particularly important. International legal theory and practice suggest that states realize their sovereign right by granting or refusing recognition to other states and state-like entities at their own discretion. This recognition process, however, often rests on respect for the traditional and contemporary criteria for statehood, which are, as shown above, closely linked with constitutionalism. Existing international legal doctrines and recent political developments strongly suggest that a constitution should matter for the process of recognition for several reasons. First, a constitution defines the territory, population, and sovereignty of a state-like entity and asserts its presence in the international arena. In such a way, a constitution signals the entity's concept of itself as a separate unit and expresses its intention to be recognized as a participant in international relations. It also suggests that, as a sovereign entity, it meets the criteria for recognition as a state based on the existence of its government and on its capacity to enter into international relations with other sovereign states. Second, in contrast to ordinary laws, the foundational character of a constitution, its superiority over other legal documents, and its universal acceptance all make it

the mechanism best suited to realize the contemporary criteria for state recognition: democratic governance, the rule of law, and the protection of human rights. And third, a constitution is the instrument most appropriate to convey a state-like entity's commitment and capacity to respect its international obligations and to pursue shared global goals, thereby demonstrating the entity's potential to be a functioning member of the international community.

The existing doctrinal relationship between a constitution and the process of recognition suggests the need to look more closely at the role of a constitution in the practices of unrecognized state-like entities as well. Scholars have already observed that unrecognized states use their laws and legal institutions to project an image of themselves as having a government, laws, legitimacy, and effectiveness.<sup>297</sup> As a result, unrecognized states may strategically employ a constitution both to justify their claims to statehood and to establish democratic governance and order in society, with the aim of gaining formal recognition while also achieving domestic goals. The adoption of a democratic constitution is, therefore, at least partly intended for “*international consumption.*”<sup>298</sup> A constitution allows the state-like entity to show that it possesses one of the components of an effective, European-oriented legal system and that it meets the contemporary criteria for recognition through its adherence to principles of democracy and legality as laid out in its constitution.<sup>299</sup> In this way, an unrecognized state's elaboration of a constitution demonstrates its desire to be seen as fully sovereign, independent, and capable of conducting international relations.<sup>300</sup>

In the process of seeking recognition, a constitution thus becomes one venue through which a state-like entity may respond to the developments of international law and international

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<sup>297</sup> Christopher Waters, “Law in Places that Don't Exist,” *Denver Journal of International Law and Policy* 34 (2006), 146.

<sup>298</sup> *Ibid.*

<sup>299</sup> *Ibid.*

<sup>300</sup> *Ibid.*

relations, both of which increasingly center on democracy, the rule of law, and the protection of human rights. With this in mind, the following chapters analyze whether the constitution of an unrecognized state-like entity improves its prospects for recognition in practice.

## **CHAPTER TWO. CASE STUDY: UNRECOGNIZED STATES IN SEARCH OF RECOGNITION**

### **Introduction**

Traditionally, recognized sovereign states have been the basic units of the international system governed by international law. States' domination of the world political system and the importance of state recognition in international relations incentivize a political entity to formally organize itself into a state and to seek international acknowledgement. As the previous chapter has shown, the process of diplomatic state recognition includes a set of traditional and contemporary criteria that are interrelated with constitutionalism, and which a state-like entity seeking recognition as a sovereign state must satisfy. But, before looking at whether the internal constitutional practices of a particular state-like entity matter for gaining formal recognition in practice, it is first important to define the general features of an unrecognized state-like entity.

This chapter examines what are called unrecognized, de facto, or contested states (all terms used interchangeably in this work), or those entities whose aspirations for recognition are regarded unfavorably by the majority of states in the international community. They are the focus of this dissertation for two reasons. First, the very nature of these state-like entities makes them ideally suited for examining the recognition process. They exhibit the features of a state, and therefore exist along with recognized states, albeit on the latter's periphery. They lack international recognition due to the contested nature of their statehood, but continue to pursue it. Second, a close look at the internal dynamics of constitutional development in an unrecognized state provides better insight into the relationship between a constitution and recognition, and into the nature of the criteria for recognition. In an entity with contested statehood, a constitution may play a more prominent role than in a state with a widely supported claim for recognition. In the latter case, a constitution mainly functions to internally regulate a polity and externally proclaim

its unquestioned statehood. However, in the former case, along with its regulatory functions, a constitution should contribute to winning the international community's trust and acceptance of its statehood, and to gaining official recognition. Thus, this chapter reviews the existing literature on unrecognized states to identify the key features of this group. It then suggests Transdniestria as a case study of a constitution's role in an unrecognized state, describes the factors that shaped its emergence, and explains the relevance of Transdniestria for this research.

### **1. The Concept of an Unrecognized State**

The current international system is based on interactions among sovereign and internationally recognized states. However, a more detailed analysis of their territorial and political organization reveals the existence of entities that “speak like states and act like states,”<sup>1</sup> but lack international recognition as such. These state-like entities display political organization with a centralized government, exercise supreme independent authority over a defined territory and its population, and seek recognition as a sovereign state. As understood in the present work, the term “state-like entity” excludes any entity that lacks these three main criteria, for example, indigenous groups, liberation movements, guerrillas, or autonomous areas that share only some features with sovereign states and/or seek recognition of only certain rights or claims.

The twentieth century featured numerous efforts to create states that received limited or no international recognition: Manchukuo (1932-45), Croatia (1941-45), Katanga (1960-63), Rhodesia (1965-80), Biafra (1967-70), and Bantustans (1970-94).<sup>2</sup> Although their individual definitions, purposes, and methods of formation varied, they all experienced “the internationally

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<sup>1</sup> Deon Geldenhuys, *Contested States in World Politics* (UK: Palgrave Macmillan, 2009), 28.

<sup>2</sup> There are also cases that shared some of the features of unrecognized state, but experienced different outcomes. For example, East Timor was briefly independent in 1975 and received full international recognition only in 2002. In contrast, Bangladesh's unilateral declaration of its independence in 1971 laid the basis for its recognition later that year.

contested nature of their purported statehood”<sup>3</sup> that placed them on periphery of the world community of universally recognized states. These shared experiences signal the existence of a distinct class of state-like entities that today include self-declared independent entities that have been functioning like states for a number of years, such as Somaliland, Northern Cyprus, and Nagorno-Karabakh, among others.<sup>4</sup> The overview of the key features of these entities presented below seeks to further clarify the specific kind of state-like entities to which this case study refers, and suggests that their nature facilitates observation of the effects of constitutional development on the recognition process for a state-like entity.

Despite the continued presence of unrecognized states in the world, there has been only limited comprehensive and synthetic scholarly study of this phenomenon. Similarly, little attention has been paid to the actual goals and internal dynamics of these entities outside the paradigm of “parent – de facto state.”<sup>5</sup> There is also a significant gap in the scholarship on the legal development of unrecognized states, on the role of law in their emergence and viability, and on the relevance of the legal and constitutional systems in unrecognized states for their claims to recognition. This is partly due to the scholarly preoccupation with recognized members of international community, including sovereign states’ goal of maintaining the integrity of parent states in cases where this principle might be challenged.<sup>6</sup> Notwithstanding these gaps, current scholarship provides a good starting point through its exploration of the conceptual understanding of unrecognized states and their defining criteria, as well as particular aspects of

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<sup>3</sup> Geldenhuys, 2009, 3.

<sup>4</sup> A detailed list of unrecognized states that existed (and continue to exist) between 1991 and 2013 is provided below. It enumerates the state-like entities that fit the conceptual description of unrecognized (or de facto or contested) states.

<sup>5</sup> See generally, Nina Caspersen and Gareth Stansfield, eds., *Unrecognized States in the International System* (USA: Routledge, 2011); Nina Caspersen, *Unrecognized States: the Struggle for Sovereignty in the Modern International System* (Cambridge, UK; Malden, MA: Polity, 2012).

<sup>6</sup> Geldenhuys, 2009.

unrecognized states, such as their terminology, the conditions under which they appear and are most viable, their aims, and the causes of their non-recognition.<sup>7</sup>

*Terminology.* Conceptualization of the category of an *unrecognized state* varies in the literature, as does the terminology and designation used for this group. The literature refers to this category as state-like entities,<sup>8</sup> quasi-states,<sup>9</sup> pseudo-states,<sup>10</sup> de facto states (often also termed frozen conflicts),<sup>11</sup> phantom states,<sup>12</sup> nominal states,<sup>13</sup> states-within-states,<sup>14</sup> almost-states

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<sup>7</sup> See generally, Scott Pegg, *International Society and the De Facto State* (Brookfield: Ashgate, 1998); Tozun Bahcheli, Barry Bartmann, and Henry Srebrnik, eds., *De Facto States: the Quest for Sovereignty* (London, New York: Routledge, 2004); Dov Lynch, *Engaging Eurasia's Separatist States: Unresolved Conflicts and De Facto States* (Washington, DC: United States Institute of Peace Press, 2004).

<sup>8</sup> The term “state-like entity” refers to an entity that has a population and a government that exercise control over a defined territory, but lacks approval for international recognition. Charles King. “The Benefits of Ethnic War: Understanding Eurasia's Unrecognized States,” *World Politics* 53 (2001).

<sup>9</sup> The term “quasi-states” describes recognized states with deficient statehood. See Jackson, 1990. Sometimes this term is used in the context of unrecognized, de facto states. See, for example, Pål Kolstø. “The Sustainability and Future of Unrecognized Quasi-States,” *Journal of Peace Research* 43, no. 6 (2006). In addition, “quasi-state” is sometimes used together with the notions of para-states and black spots when referring to “governed territories.” See Bartosz H. Stanislawski (ed.). “Para-States, Quasi-States, and Black Spots: Perhaps Not States, But Not ‘Ungoverned Territories,’ Either,” *International Studies Review* 10, (2008), 366-396; Katarzyna Pelczynska-Nalecz, Strachota Krzysztof, and Maciej Falkowski. “Para-States in the Post-Soviet Area from 1991 to 2007,” *Ibid.* There are also terms such as non-state actors, and proto- and semi-states, which are either too broad or do not cover the idea of asserted statehood. See Geldenhuys, 2009.

<sup>10</sup> The term “pseudo-states” suggests that polities have “transitional” or “incomplete” statehood and differ in degree of recognition. See Vladimir Kolossov and John O'Loughlin. “Pseudo-states as Harbingers of a New Geopolitics: the Example of the Transnistria Republic (TMR),” in *Boundaries, Territory and Post-modernity*, ed. D. Newman (London: Frank Cass, 1999).

<sup>11</sup> The term “de facto states” describes entities that fulfill the four criteria of the Montevideo Convention, but lack the international personality of a state or quasi-states. Sometimes, entities with the trappings of state but lacking recognition are referred as “frozen conflicts,” given the frequently conflictual relationship between the entity and its parent state. See Pegg, 1998; Pegg, Bahcheli et al., 2004; Lynch, 2004.

<sup>12</sup> The term “phantom state” refers to a political – administrative entities that meets four criteria: (1) a functioning state apparatus that exercises control over territory with a population, and manages resources; (2) an expressed interest in independence as evidenced by a formal declaration of independence or similar statements; (3) the de facto government seeks and receives some degree of popular legitimacy, as shown through elections or referenda; and (4) the cause of the entity's contested statehood rests in rival governmental claims to sovereignty between a phantom state and its “base state,” coupled with the almost universal absence of formal recognition. Daniel Byman and Charles King. “The Mystery of Phantom States,” *The Washington Quarterly* 35, no. 3 (2012).

<sup>13</sup> The term “nominal state” is similar to Jackson's “quasi-state” in that it refers to the polities with a juridical statehood that lack government capacities. Geldenhuys, 2009.

<sup>14</sup> The broad concept of “state within states” refers to sub-state units, such as non-secessionist entities, movements, or autonomies that “exhibit key elements of a Weberian definition of statehood” but lack international recognition. See Paul Kingston and Ian S. Spears, eds., *States-within-states: Incipient Political Entities in the Post-Cold War Era* (New York: Palgrave Macmillan, 2004), 17.

as a category of para-states,<sup>15</sup> nations without states,<sup>16</sup> near-states,<sup>17</sup> and areas of special sovereignty.<sup>18</sup>

Given these varied approaches, in this work, the term *unrecognized states* refers to a state-like entity that 1) has proclaimed itself independent from a recognized state; 2) asserts its compliance with the criteria for statehood in the Montevideo Convention; and 3) seeks international recognition. Unilateral attempts at state formation usually cause armed conflict between the breakaway region and the central authorities, which creates and maintains a tense atmosphere between the opposing parties and across the region that may last for years or even decades.<sup>19</sup> While not required for inclusion in the category of an unrecognized state in the present work, armed conflict and regional tensions are nonetheless common features of these entities.

One of the key scholarly approaches towards this category of states is that they are “anomalous features of the international system and international society.”<sup>20</sup> This approach is rooted in several of the characteristics of unrecognized states. First, while they lack international legal sovereignty,<sup>21</sup> state-like entities nonetheless continue to exist alongside recognized,

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<sup>15</sup> The term “almost-states” represents para-state entities that have gained de facto independence from their parent country and aspire to the status of a full-fledged state, but lack the recognition of the international community. Stanislawski, 2008, 366–396; Pelczynska-Nalecz et al., 2008, 370-387.

<sup>16</sup> The term “nations without states” refers to cultural communities that argue for autonomy or secession and use calls for statehood to express self-determination. See Montserrat Guibernau, *Nation without States: Political Communities in a Global Age* (Cambridge: Polity Press, 2000), 1-2.

<sup>17</sup> The term “near states” denotes entities with many of the attributes of a sovereign state but lacking one of the Montevideo criteria for statehood. See Jacques DeLisle, “Law’s Special Answers to the Cross-Strait Sovereignty Question,” *Orbis* 46, no. 4 (2002), 741.

<sup>18</sup> The term “area of special sovereignty” refers to an entity that fails to display “stateness” (e.g. Somaliland). See Paul Robert Magocsi, *Historical Atlas of Central Europe*, rev. and expand. ed. (Seattle: University of Washington Press, 2002).

<sup>19</sup> See the table of unrecognized states presented at the end of this section.

<sup>20</sup> Harvey and Stansfield, 2011, 11.

<sup>21</sup> Krasner identifies four ways in which the concept of sovereignty is used: (1) international legal sovereignty suggests that a state is recognized by other states based on the conventional rule that the state is a “juridically independent territorial entity” that “can enter into treaties that will promote [its] interests as it[] define[s] them”; (2) Westphalian sovereignty refers to “the absence of authoritative external influences”; (3) interdependent sovereignty is a control over cross-border movements of capital, goods, ideas, and people; and (4) domestic sovereignty refers to



sovereign states in the international arena. Second, the processes by which unrecognized states exercise their sovereignty domestically are anomalous in myriad ways: these entities have questionable legitimacy, limited resources, are dependent on patronage structures, and are in conflict with their parent states. Third, due to their unrecognized status, state-like entities share certain characteristics with one another, such as their isolation in international relations, their experience of multiple internal and external problems, and, sometimes, their image as criminal states or “puppets of external states.”<sup>22</sup> Over time, though, scholarship has also observed the progress that a number of state-like entities have made in the spheres of democracy and human rights.<sup>23</sup> Finally, some scholars see the abnormality of this category of states simply as the fact that, contrary to their compliance with the general requirements of the Westphalian model, they lack recognition.<sup>24</sup>

To describe this phenomenon, scholars have sought the conceptual means to understand and to provide an adequate term for the emergence and existence of an entity that possesses the trappings of statehood and the internal capacity to function as a state,<sup>25</sup> but also experiences constant uncertainty and lack of international recognition.<sup>26</sup> Although *de facto state* has been

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domestic authority and state’s effectiveness. Stephen D. Krasner, “Problematic Sovereignty,” in *Problematic Sovereignty: Contested Rules and Political Possibilities*, ed. Stephen D. Krasner (New York: Columbia University Press, 2001).

<sup>22</sup> Lynch, 2002, 832.

<sup>23</sup> On the democratic development of unrecognized states, see Chapter 4 of this work. See generally, Laurence Broers, “The Politics of Non-Recognition and Democratization,” vol. 17, *The Limits of Leadership: Elites and Societies in the Nagorny Karabakh Peace Process* (London: Conciliation Resources, 2005); Nina Caspersen, “Playing the Recognition Game: External Actors and De Facto States,” *International Spectator* 44, no. 4 (2009); Caspersen, 2012; Nicu Popescu, “Democracy in Secessionism: Transnistria and Abkhazia’s Domestic Policies,” (Budapest: Open Society Institute, 2006).

<sup>24</sup> Timothy William Waters, personal communication, June, 2013.

<sup>25</sup> Geldenhuys, 2009, 27.

<sup>26</sup> In this context, scholars refer to conventional features of statehood, sovereignty, and decolonization. For example, for both Jackson and Pegg, the notions of *quasi* and *unrecognized states* have appeared as outcomes of the decolonization process, which is seen only as a struggle against foreign domination. See generally, Kingston and Spears, 2004; R.H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990); Pegg, 1998.

widely accepted,<sup>27</sup> the term suggests that these entities receive only de facto acknowledgment and are all denied formal recognition, an assumption that is not necessarily accurate.<sup>28</sup> The key definitional issue of these state-like entities is their desire for internationally recognized statehood that they are denied because of challenges to their right to statehood. Therefore, as an alternative term, *contested states* is also appropriate for this category of entities.<sup>29</sup>

Overall, the general *definition of the category of unrecognized states* includes the following elements:

An unrecognized state has achieved de facto independence covering at least two-thirds of the territory to which it lays claim and including its main city and key regions; its leadership is seeking to build further state institutions and demonstrate its own legitimacy; the entity has declared formal independence or demonstrated clear aspirations for independence, for example through an independence referendum, adoption of a separate currency or similar act that clearly signals separate statehood. The entity has not gained international recognition or has, at the most, been recognized by its patron state and a few other states of no great importance; it [has] existed for at least two years.<sup>30</sup>

According to these criteria, since 1991, there have been eighteen cases of unrecognized states, including some that no longer have claims to formal recognition.<sup>31</sup> The table below presents a simple classification of unrecognized states according to their present status: states that lack any recognition; states that are currently only partially recognized (by only one or few other states), and states that were previously unrecognized but have since renounced their claims to recognition.

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<sup>27</sup> Pegg, 1998; Bahcheli et al., 2004; Lynch, 2004; Caspersen, 2009.

<sup>28</sup> For example, the state-like entities of Abkhazia and South Ossetia (both of which are often referred to as de facto states) are recognized by the Russian Federation. See Geldenhuys, 2009, 26.

<sup>29</sup> Geldenhuys, suggests this term, which also refers to the widely recognized states of Palestine and Western Sahara. Geldenhuys, 2009. It seems that the designation of a term depends on many factors and criteria for its conceptualization. This, consequently, may cause difficulties when generalizing specific case studies. For the purposes of this work, the terms “unrecognized/de facto/contested state,” which have yet to find a clear and unanimous definition, matter less than their definition, namely an entity that seeks recognition, has control over its territory and population, and possesses the other trappings of statehood. Therefore, both the terms *de facto* and *contested* are used here along with the term *unrecognized states*.

<sup>30</sup> Caspersen, 2012, 11.

<sup>31</sup> *Ibid.*, 12.

TABLE 1. UNRECOGNIZED STATES SINCE 1991 THAT HAVE DECLARED INDEPENDENCE AND SOUGHT EXTERNAL RECOGNITION

Status	Currently unrecognized	Currently partially recognized	Formerly unrecognized, now have renounced their previous claims
Entity	Nagorno-Karabakh (1994-) Somaliland (1991-) <b>Transnistria (1991-)</b>	Abkhazia (1993-) Kosovo (2008-)* South Ossetia (1992-) Taiwan (1971-)** Turkish Republic of Northern Cyprus (1974-)	Bougainville (1975-97) Chechnya (1991-, 1996-1999) Eritrea (1991-1993) Gagauzia (1991-1994) Kurdish Autonomous Region (1991-2004) Montenegro (2000-2006) Republika Srpska (1992-1995) Republika Srpska Krajina (1991-1995) Tamil Eelam (1986-2009)

\* Kosovo was an unrecognized entity from 1999 to 2008, when it gained international recognition. Although this recognition has not been universal, the majority of sovereign states in the world now acknowledge Kosovo's independence.

\*\* Taiwan's position is ambiguous: in 2007, it applied for full membership in the UN and was rejected. Since 2008, after changes in its government, Taiwan no longer claims or supports its full formal independence and recognition. At the same time, it continues to be recognized by a number of other states.

As the table shows, two categories of unrecognized states have sought recognition for many years and continue to do so today. These categories encompass states not recognized by any sovereign state as well as partially recognized entities. As the table illustrates, the case of Transnistria belongs to the first group of contested states, those that have declared independence and seek recognition but remain unrecognized.<sup>32</sup>

*Conditions for emergence and viability.* Scholars have identified several conditions that underlie the appearance of unrecognized states. To begin, some mention the current framework of the international system of sovereign states with its fixed borders and the failures of such a system.<sup>33</sup> Others point to the existence of geopolitical forces promoting the state fragmentation, which may cause a “secessionist movement to secure territory and engage in the process of

<sup>32</sup> The term *recognition* here refers to formal recognition by confirmed, sovereign states. At the same time, both Transnistria and Nagorno-Karabakh have peer recognition. The status of Transnistrian recognition is discussed in greater detail in the next sections.

<sup>33</sup> See Timothy W. Waters. “Contemplating Failure and Creating Alternatives in The Balkans: Bosnia’s Peoples, Democracy, and The Shape of Self-Determination,” *Yale Journal of International Law* 29 (2004), 465, who argues that, under the current system of sovereign states with fixed borders and the factual separation of territories, the failure of a parent state conditions the appearance of a de facto state, whereas the rigid state system conditions its non-recognition.

separation.”<sup>34</sup> And still others highlight the weakness and instability of parent states and current configurations of sovereignty,<sup>35</sup> or the influence of other states pursuing their interests.<sup>36</sup>

These and other factors, such as political and economic incentives and globalization (or the shift in authority of the modern state), have contributed to disputes between the unrecognized and parent states. Myriad internal conditions, such as success in nation-building efforts and support from an external patron,<sup>37</sup> the needs of the market and global resources trade,<sup>38</sup> the general processes of globalization,<sup>39</sup> and the existence of the geo-economic paradigm of natural resources, which suggests that “[t]he ecology of unrecognized states in the international system is greatly influenced by...strategic importance, and...resource importance”<sup>40</sup> all determine the viability of an unrecognized state and influence its insistence on seeking recognition. At the same time, the use of different means to address these controversies may lead to the reabsorption of breakaway entities and the elimination of the conditions that necessitated their separate existence. Gagauzia, for example, received its autonomous status through negotiations with Moldova,<sup>41</sup> whereas Tamil Eelam was reintegrated into Sri Lanka by force.<sup>42</sup>

*The goal of unrecognized states.* Generally rooted in the principles of self-determination, a contested state’s search for recognition is perhaps its key foreign policy aim – albeit one that a de facto state possesses reduced capacity to implement – and the goal that distinguishes it most

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<sup>34</sup> Harvey and Stansfield, 2011, 18.

<sup>35</sup> Kolstø, 2006.

<sup>36</sup> Stanislawski, 2008.

<sup>37</sup> Kolstø, 2006, 730.

<sup>38</sup> King, 2001.

<sup>39</sup> Matan Chorev, “Complex Terrains: Unrecognized States and Globalization” in *Unrecognized States in the International System*, ed. Nina Caspersen and Gareth Stansfield (USA: Routledge, 2011), 27-40. Chorev argues that the logic of emergence of unrecognized states is a consequence of globalization, which has caused the crisis of authority that modern states have experienced. As a result, the development of intergovernmental institutions and sub-domestic spaces through fragmentation create a place for unrecognized states to co-exist.

<sup>40</sup> Harvey and Stansfield, 2011, 23.

<sup>41</sup> Law on the Special Legal Status of Gagauzia (Gagauz-Eri) [Lege Nr.344, 23.12.1994 privind Statutul Juridic Special al Găgăuziei (Gagauz-Yeri)], adopted by Moldovan Parliament in 1994.

<sup>42</sup> The Sri Lankan Army took control of the territory claimed by Tamils in 2009 after a long period of military clashes.

from the foreign policy of a recognized state. Existing research on the internal dynamics and features of unrecognized states suggests that they seek recognition through various channels, including legal ones,<sup>43</sup> to assure political and economic survival, to obtain aid and foreign investment, and to demonstrate the capacity of the state and its apparatus to function.<sup>44</sup>

*Reasons for the denial of recognition.* When compared against the standard requirements of statehood, de facto states are usually denied recognition based on reasons grounded in the Montevideo criteria. First is the issue of population, or, more specifically, the question of whether the inhabitants of an entity truly support its unilateral break from the parent state. Second, an issue may arise when the territorial boundaries of an entity are not accepted because the entity's right to independence is contested and the borders it claims are seen as an integral part of the parent state. Third, the government's potential effectiveness may be challenged due to widespread dispute over the right of the entity to govern, which could result if the state-like entity's claim to an independent existence is rejected. Fourth, recognized states may deny state-like entities the opportunities to engage in international relations by refusing to grant them recognition.<sup>45</sup> Recognition may also be denied due to violations of international norms when these entities were formed (e.g. aggression towards the parent state), their dependence on a foreign country (compromising the issue of independence), the commitment of the international community to the principle of territorial integrity, or the parent state's opposition to separation. Despite these circumstances, however, unrecognized states continue to seek recognition of their statehood and acceptance of their independent status.

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<sup>43</sup> Francis Owtram, "The Foreign Policies of Unrecognized States," in *Unrecognized States in the International System*, ed. Nina Caspersen and Gareth Stansfield (NY: Routledge, 2011); Klejda Mulaj, "International Actions and the Making and Unmaking of Unrecognized States," *Ibid.*; Nina Caspersen. "Separatism and Democracy in the Caucasus," *Survival: Global Politics and Strategy* 50, no. 4 (2008); Christopher Waters. "Law in Places that Don't Exist," *Denver Journal of International Law and Policy* 34 (2006).

<sup>44</sup> Owtram, 2011.

<sup>45</sup> Geldenhuys, 2009, 23-24.

To summarize, considering unrecognized states as a group shows that they possess a number of features that are important for understanding the nature of the criteria required for state recognition, as well as suggests the existence of a temporal correlation between a constitution and recognition. First, these entities *de facto* exist independently from their parent states, control territory and the population within it through their centralized government, possess other attributes of a state, and seek recognition of their statehood. Second, the sheer length of time during which these state-like entities push for but fail to achieve independence provides fertile ground for examining the role that constitutions and constitutional changes play in claims for external recognition.

Thus, the analysis of internal constitutional development and the responses of *de facto* states to the requirements for recognition may reveal whether doctrinal expectations on the effects of a constitution on recognition work in practice and, if so, in what ways. To that end, the following section introduces one such example of an unrecognized state, Transdniestria, describes the historical and political circumstances of its emergence, and identifies its key features as a *de facto* state and its relevance as a case study.

## 2. The Case of Transnistria

The Transnistrian Moldavian Republic (also referred here as Transnistria or the TMR)<sup>46</sup> proclaimed its separation from the Republic of Moldova<sup>47</sup> on September 2, 1990,<sup>48</sup> and became de facto independent in 1992. An interrelated set of historical, linguistic, political, geopolitical, and economic factors sparked Transnistria's declaration of independence and served as the backdrop for its claim to statehood, the development of its constitutional framework, and its decades-long search for recognition. In order to contextualize the relationship between Transnistria's quest for recognition and its constitution, a topic analyzed in the next chapters, the following sections provide an overview of these crucial factors.

### 2.1. Historical Background

A historical overview of the region through the early 1990s highlights important aspects of Transnistria's emergence and sets the background for understanding the TMR's subsequent independent development, including its constitutional framework.<sup>49</sup>

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<sup>46</sup> In English, the full official name of this state-like entity is the *Transnistrian Moldavian Republic*, (*Приднестровская Молдавская Республика* [Pridnestrovskaya Moldavskaya Respublika] in Russian, and *Republica Moldovenească Nistreană* in Moldovan). In Russian, the shortened Приднестровье [Pridnestroviye] or ПМР [PMR] is often used, and Transnistria in Moldovan/Romanian. In English, the name and its spelling vary throughout the literature as authors use Russian or Moldovan/Romanian versions, a hybrid, or varying translations (e.g. Moldavian Republic of Transnistria; Transnistrian Moldovan Republic, Dniestr Republic), and various abbreviations (MRT, TMR, or PM, respectively). Perhaps the most commonly used term in English, *Transnistria*, was introduced by the first report of the Organization of Security and Cooperation in Europe in 1993 (formerly the CSCE, now the OSCE). See Conference on Security and Cooperation in Europe, *Report No. 13 by the CSCE Mission to Moldova*, (1993). The present work uses the abbreviation TMR and Transnistria interchangeably, but preserves the term unchanged as it appears in citations.

<sup>47</sup> The Republic of Moldova declared its independence from the USSR on August 27, 1991. It was part of the USSR from 1940 to 1991.

<sup>48</sup> *Declaration of the Creation of the Transnistrian Moldovan Soviet Socialist Republic*, 1990. <http://mfapmr.org/index.php?newsid=230>.

<sup>49</sup> Scholars have no unanimous approach to the history of the Republic of Moldova and Transnistria. Presentation of the facts and their interpretation often varies and depends on the language, time of writing, and the research agenda of the scholar. A selected bibliography on the history of Moldova and Transnistria, including the origins of their tensions, comprises, **In English**: William E. Crowther, Fedor, Helen, "Moldova," in *Belarus and Moldova: Country Studies*, ed. Helen Fedor (Washington, D.C.: Library of Congress, 1995); Pål Kolstø, Andrei Edemsky, and Natalya Kalashnikova. "The Dniester Conflict: Between Irredentism and Separatism," *Europe-Asia Studies* 45, no. 6 (1993); J. Eyal, "Moldovians," in *The Nationalities Question in the Soviet Union*, ed. G. Smith (London: Longman,

Control over the territory of present-day Moldova has shifted from one state to another for centuries, which accounts for the great variety of ethnic groups and their “diverging attachments to the various states which historically have laid claim to it.”<sup>50</sup> During these territorial transfers, the river Dniester<sup>51</sup> often served as one of the main natural borders defining the political units that formed in what eventually became Moldova and Transdnestrria.

The Principality of Moldova, stretching from the Carpathian Mountains to the Dniester River, was created as an independent state under Stefan the Great in 1359.<sup>52</sup> In 1456, it was conquered by the Ottoman Empire and remained under Ottoman rule for several centuries (*see Maps A and B below*).<sup>53</sup>

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1990); Charles King, *The Moldovans: Romania, Russia, and the Politics of Culture* (Hoover Institution Press, 2000); *Post-Soviet Moldova* (Iasi: The Center for Romanian Studies, 1997); Van Wilhelmus Meurs, *The Bessarabian Question in Communist Historiography* (Utrecht University, 1994); Tony Vaux and Jan Barrett, *Conflicting Interests: Moldova and the Impact of Transdnestrria* (UK: Humanitarian Initiatives, 2003).

**In Moldovan/Romanian:** Oazu Nantoi, “Cu Privire la Situatia in Raioanele de Est ale Republicii Moldova,” in *Aspecte ale Conflictului Transnistrian (1992-2000)* (Chisinau: Institutul Politicilor Publice, 2001), 9-18; “Conflictul Transnistrian – Geneza, Evolutie, Perspective,” *Destin Romanesc. Revista de Istorie si Cultura*, no. 1 (2003), 47-70; Anton Moraru, Roman Alexandru, Mihai Cernencu, Ion Moiseev. *Istoria Romanilor. Besarabia si Transdnestrria (1812-1993)* (Chisinau, 1995); Ion Turcanu, *Republica Moldova Independent* (Chisinau: Stiinta, 2001); Iulian Fruntasu, *O Istorie Etнопolitica a Basarabiei: 1812-2002* (Chisinau: Cartier, 2002); Ioan Silviu Nistor, *Istoria Romanilor din Transdnestrria* (Galati, 1995).

**In Russian:** Assotsiatsia Uchenyh Moldovy im. N.Milesku-Spataru, eds. *Istoria Respubliki Moldova. s drevneishih vremen do nashih dnei* (Chisinau: 2002); *Ezhegodnyi istoricheskiy al'manah Pridnestrovia*. (Tiraspol: 1997); *Fenomen Pridnestrovia*. (Tiraspol: RIO PGU, 2000); V.Ya. Grosul i dr., eds., *Istoria Pridnestrovskoi Moldavskoi Respubliki*, t. 1 (Tiraspol: 2000); N.V. Babilunga, B.G. Bomesko, *Pridnestrovskiy konflikt: istoricheskie, demograficheskie, politicheskie aspekty* (Tiraspol: RIO PGU, 1998); Nikolai Babilunga, “Pridnestrovskaya Moldavskaya Respublika: Priznannaya istoriografia nepriznannogo gosudarstva,” vol. 18, *Istoriograficheskiy dialog vokrug nepriznannyh gosudarstv: Pridnestrovia, Nagornyi Karabakh, Armenia, Yujnaya Ossetia i Gruzia*, (2007).

<sup>50</sup> Judy Batt. “Federalism Versus Nationalism in Post-Communist State-Building: The Case of Moldova,” *Regional and Federal Studies* 7, no. 3 (1997), 27.

<sup>51</sup> The river flows from the Carpathian Mountains to the Black Sea and changes names several times: it is called Dniester at its beginning in Ukraine, Nistru in Moldova, and Dnester as it runs into the Black Sea. See Cooperation in the Transboundary Dniestr River Basin, <http://dniester.org>. The terms “right bank” and “left bank” of the Dniestr River refer to their orientation with respect to an observer looking downstream (south).

<sup>52</sup> Prior to 1359, the present-day territory of Moldova was part of Austro-Hungarian Empire.

<sup>53</sup> In 1711, Prince Dmitri Kantemir of Moldova and Peter the Great that Russia signed a secret agreement that allowed Moldova to preserve its autonomy by becoming a protectorate of Russia. *The Lutsk Treaty*, 1711. Although the Treaty is no longer in force, it indicates the longtime ties between Moldova and Russia.



**MAP A: THE PRINCIPALITY OF MOLDOVA (MOLDAVIA) UNDER STEFAN THE GREAT IN 1460**



**MAP B: MOLDOVA (MOLDAVIA) UNDER OTTOMAN RULE BETWEEN THE 15<sup>TH</sup> AND 17<sup>TH</sup> CENTURIES**



*Source: Historical Atlas of Central Europe, 2002.*

MAP C: BESSARABIA AS PART OF THE RUSSIAN EMPIRE (1812-1918), AND THE ROMANIAN PRINCIPALITIES OF THE OTTOMAN EMPIRE (1856-1859)



Source: Historical Atlas of Central Europe, 2002.

Following the Russo-Turkish war in 1812, the Ottoman Empire ceded Bessarabia, part of the Moldovan Principality located between the Prut and the Dniester, to Russia,<sup>54</sup> while the rest of the Principality of Moldova, to the west of the Prut River, remained in Turkish hands (*see Map C*). As a separate political entity west of the Prut, the Principality of Moldova formed an alliance with the Principality of Wallachia that led to the creation of the modern Romanian state in 1859. This new state then laid claim to all other Romanian lands that no longer remained under its rule, such as Bessarabia, Bukovina<sup>55</sup> and Transylvania.<sup>56</sup> Romania eventually acquired these lands after the collapse of the Austro-Hungarian and Russian Empires at the end of the First World War.<sup>57</sup>

The territory of Bessarabia itself remained part of the Russian Empire until 1918,<sup>58</sup> when Romania occupied the area and secured a vote from the local assembly in favor of joining the

<sup>54</sup> *The Treaty of Bucharest*, 1812.

<sup>55</sup> Bukovina was the northwestern tip of the Moldovan Principality, which was annexed in 1775 by the Hapsburg Empire and later became an Austrian province.

<sup>56</sup> Transylvania was a region with a distinct history that only later became attached to the Romanian state. The Hungarians conquered Transylvania in the 9<sup>th</sup> century, and the Hapsburg Empire annexed the region in the 17<sup>th</sup> century.

<sup>57</sup> K. Hitchens, *Romania 1866-1947* (Oxford: Clarendon Press, 1994), 279-91.

<sup>58</sup> Having lost the Crimean War (1854-56), Russia was obliged to cede the southern part of Bessarabia, which then became part of the Kingdom of Romania when it was created in 1859. In 1878, however, the Treaty of Berlin returned that part of Bessarabia, though not the Dniestr delta, to Russia.

Kingdom of Romania.<sup>59</sup> From 1918 to 1940, Bessarabia was part of Romania (*see Map D below*), although the USSR considered this move illegal and saw Bessarabia as part of its own territory.<sup>60</sup>

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<sup>59</sup> The creation of the Moldovan Democratic Republic within the Russian state in 1917, its declaration of independence in February 1918, and its vote for unification with Romania in December 1918, receive various interpretations from historians. Some consider these events as evidence of the democratic will of the Bessarabian people to reunite with Romania and restore unity among the Romanian people, which the Russian annexation of Bessarabia in 1812 disrupted. See e.g. Turcanu, 2001. Other historians question whether the practices of the Bessarabian Parliament (Sfatul Tarii) were truly democratic, noting that only a minority of Pro-Romanian members voted in favor of unification and used terror and violence to sway others. See e.g., Victor Stepaniuk, *Gosudarstvennost' moldavskogo naroda: istoricheskie, politicheskie i pravovye momenty* (Chisinau, 2006), 242; Serghei Nazaria, "Ob'edinenie" Bessarabii s Rumyniei v svete mejdunarodnogo prava i pozitsia bessarabtsev", *Moldovo-pridnestrovskii region*, no. 6 (2010), 63.

British scholar Judy Batt holds a similar position to that of Stepaniuk and Nazaria. She points out:

In fact, the 1918 union with Romania seems from the start to have been less a product of heartfelt identification with Romania than a practical necessity forced on the Moldovans. The national movement in Bessarabia had had little contact with Romania, and when Tsarist rule collapsed, an independent Moldovan Republic was set up. But later it found it had to turn to Romania to preserve itself from the successive assaults of Ukrainian-nationalist, Bolshevik and White Guard forces. [...] After the union, the Moldovans found themselves in the unfortunate position of, in Joseph Rothschild's words, Romania's "most misgoverned province."

As Rothschild describes, the Bessarabian province within Romania was

a particularly backward, refractory, and incendiary region...whose problems were then compounded by its use as a bureaucratic exile for incompetent, corrupt, sadistic, or politically out-of-favour administrators.

See Batt, 1997, 36; J. Rothschild, *East Central Europe between the Two World Wars* (Seattle and London: University of Washington Press, 1974), 286.

<sup>60</sup> Several arguments support the Russian side:

1) Romania did not sign a treaty with Russia on the new borders in 1917. Therefore, Romanian intervention into Bessarabia (which was still Russian territory) in the end of 1917 under pretext of protecting military depots was an illegal, unilateral act – in other words, annexation.

2) Romania signed an agreement with Russia on the Withdrawal of Romanian Forces from Bessarabia between March 5 and 9, 1918. Therefore, Romania violated this agreement by keeping its military in Bessarabia.

3) At the Paris Peace Conference in October 1920, Romania, France, Britain, Japan and Italy signed a special treaty on Bessarabia over Soviet protests. The Treaty stated that the region historically and ethnically belonged to Romania and guaranteed the protection of France, Britain, Japan and Italy of the border along the Dniester. However, because Japan did not ratify this treaty, it remained without legal force.

Thus, Soviet Russia broke off diplomatic relations with Romania in 1918, and ties were not restored until 1934. Despite several rounds of bilateral Romanian-Soviet negotiations on the 'Bessarabian question,' the Soviet Union refused to recognize Bessarabia as part of Romania from 1918 to 1940. See *Documenty vneshney politiki SSSR, 7 noieabrea 1917-31 dekabrea 1918*. T. 1 (Moskva, 1959), 210-211.

MAP D: BESSARABIA AS PART OF THE ROMANIAN STATE (1918-1940)



Source: Livezeanu, 2000.

Throughout this time, the territory of what is now called Transdnistria, on the left (east) bank of the Dniester River, followed a distinct historical path. From the ninth to the fourteenth centuries, the area was part of Kievan Rus’ and Galicia-Volhynia. From the fourteenth to eighteenth centuries, control over this borderland constantly changed between Poland, the Ottoman Empire, and Crimean Khanate (*see Maps A and B above for general reference*). After the Russo-Turkish war in 1791, the Ottoman Empire ceded control over the left (east) bank of the Dniester to Russia,<sup>61</sup> and the area became the part of Russian districts of Podolia and Kherson (*see Map C above*). As a result, prior to the Soviet period, Transdnistria “was, at an

<sup>61</sup> *The Treaty of Iasi*, 1791 (1792). This treaty mandated that the Ottoman Empire cede all its holdings in Transdnistria, where a high proportion of the population was Slavs, to the Russian Empire.

even deeper level than in Bessarabia, a classic borderland where ethnic identities were fluid and situational, and where Russian, Ukrainian, Romanian, Jewish, and German influences combined to create a mixed culture.”<sup>62</sup>

In 1918, the territory of Transdnistria became part of Ukraine,<sup>63</sup> and, in 1924, part of this area was transformed into the Moldavian Autonomous Soviet Socialist Republic (MASSR) within the Ukrainian Soviet Socialist Republic (*see Map E below*).<sup>64</sup> The 1925 and 1938 constitutions of the MASSR prescribed the autonomous region’s internal organization, namely its own central governing bodies and budget, its self-governance within Ukraine, and its right to secede from Ukraine or to demand greater autonomy.<sup>65</sup> Having never been a part of the Romanian state – unlike Bessarabia<sup>66</sup> – the left bank and its Moldovan settlements of internal migrants from the right bank was from the outset heavily exposed to Slavic culture.<sup>67</sup> Whether part of the Russian Empire or the USSR, the territory’s population consistently expressed loyalty to Russia.<sup>68</sup>

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<sup>62</sup> King, 2000, 181. The numbers King cites are revealing: 48% of the population was Ukrainian, 30% Moldavian, 9% Russian, and 8.5% Jewish.

<sup>63</sup> In 1919, Ukraine proclaimed its independence and became the Ukrainian Socialist Soviet Republic. In 1922, it became one of the founding republics of the USSR.

<sup>64</sup> Many scholars suggest that the establishment of MASSR was part of a long-term Soviet strategy to regain Bessarabia. Thus, despite the relatively small population of ethnic Moldovans (30.1%) in the area, a new autonomous region was designed with the intent to reclaim Bessarabia with the help of some left-wing Moldovan émigrés from inter-war Romania. See e.g., Mihai Bruhis, *Russia, Romania si Basarabia. 1812, 1918, 1924, 1940* (Chisinau: Universitas, 1992), 148-171; George Cioranescu, *Basarabia, Pamant Romanesc* (Bucuresti: Fundatia Culturala Romane, 2002), 177-178; 296-297; Batt, 1997, 28.

<sup>65</sup> Constitutions of the MASSR of 1925 and 1938. In V.M. Ivanov, *Konstitutsionnoe pravo Respubliki Moldova* (Chisinau, 2000).

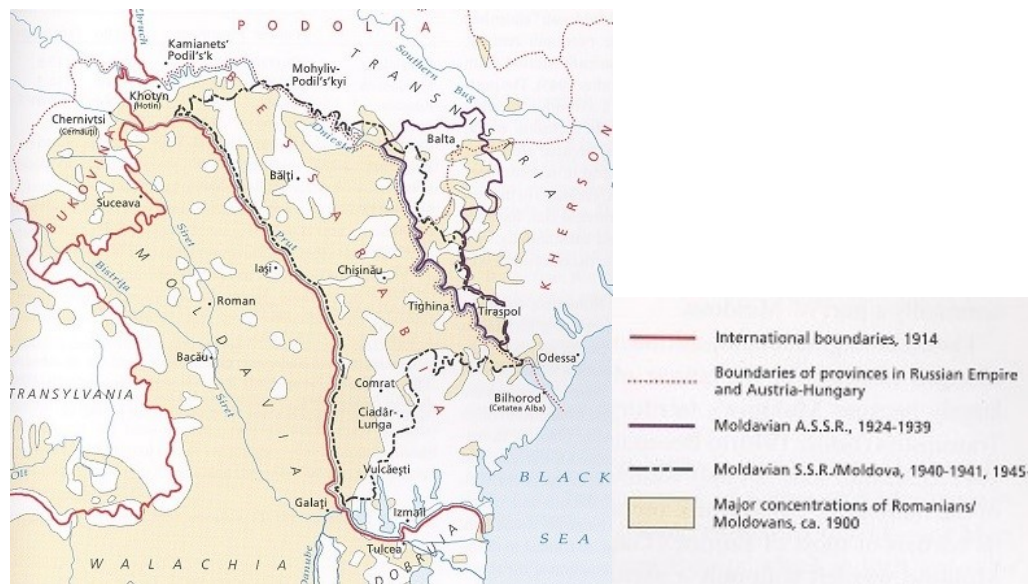
<sup>66</sup> Some Moldovan authors dispute the significance of this fact, insisting that, even though Transdnistria was not a Moldovan political territory, it was unquestionably part of a Romanian ethno-cultural space. See e.g., Oleg Serebrian, *Politosfera* (Chisinau: Cartier, 2001), 117-118.

<sup>67</sup> Pål Kolstø and Andrei Malgin. “The Transnistrian Republic: A Case of Politicized Regionalism,” *Nationalities Papers* 26, no. 1 (1998), 106.

<sup>68</sup> Bomeshko, 2000.

Following the Molotov-Ribbentrop Pact,<sup>69</sup> the USSR regained control over Bessarabia<sup>70</sup> and, in 1940, created the Moldavian Soviet Socialist Republic (MSSR), the predecessor state to today's Moldova. The MSSR included the territories of Bessarabia, or the territories between the Dniestr and Prut, as well as those of the MASSR, or the territories on the left bank of Dniestr (*see Map E below*).<sup>71</sup>

MAP E: CREATION OF THE MSSR (1940) THROUGH THE UNIFICATION OF BESSARABIA AND THE MASSR (1924-1939)



Source: Historical Atlas of Central Europe, 2002.

During the Second World War, Romania, with Axis support, occupied the territory of the MSSR,<sup>72</sup> including not only the territory of former MASSR but also areas far beyond it (*see Map F below*). After Romania withdrew from these territories at the end of the war, the MSSR

<sup>69</sup> Formally the Treaty of Non-Aggression between Germany and the Soviet Union, the Pact was signed in 1939. It stipulated non-aggression between the two countries, but also included a secret protocol that divided the territories of Romania, Poland, Lithuania, Latvia, Estonia and Finland into German and Soviet “spheres of influence.”

<sup>70</sup> Romania protested this, but did not have German support. See Andreas Johansson. “The Transnistrian Conflict after the 2005 Moldovan Parliamentary Elections,” *Journal of Communist Studies and Transition Politics* 22, no. 4 (2006), 508.

<sup>71</sup> The MSSR’s borders were defined by an act of the Presidium of the USSR Supreme Soviet of November 1940, which substantially reshaped the territory. Northern Bukovina and Southern Budjak were cut off from Bessarabia and transferred to the Ukrainian SSR. Thus, the MSSR consisted of the rump of Bessarabia and a strip of territory across the Dniestr, which had been part of the former MASSR. Upon its independence in 1991, the Republic of Moldova inherited the borders established in 1940.

<sup>72</sup> Upon occupying the territories of the MSSR in 1941, Romania claimed the areas as its own.

regained its status as one of the republics of the USSR,<sup>73</sup> which continued until 1991 (see Map G below).

MAP F: THE MSSR UNDER ROMANIAN OCCUPATION DURING WORLD WAR II (1941-1944)

MAP G: THE MSSR AS PART OF THE SOVIET UNION (1945-1991)



Source: Historical Atlas of Central Europe, 2002.

During the Soviet period, the “Bessarabian question”<sup>74</sup> remained alive in Romania: “the name of Moldova [...] continued to be loosely attached to the area west of the Prut up to the Carpathian mountains.”<sup>75</sup> Romanian leader Ceausescu coupled this lingering resentment with anti-Russian sentiment in his discourse to justify pursuing independence from Soviet control.<sup>76</sup>

Thus, the historic and political identity of the territory of present day Moldova accounts for the disputed legacies and differing interpretations of its past and future. In talking about Transdnistria as a part of Moldova, Moldovans point to their shared Soviet experience, whereas

<sup>73</sup> The 1947 *Peace Treaty of Paris* conferred international recognition on the Soviet annexation of Bessarabia in 1940 and confirmed the USSR’s right to Bessarabian territory. See *Peace Treaty of Paris*, 1947.

<sup>74</sup> The question of who can rightfully claim Bessarabia.

<sup>75</sup> Batt, 1997, 29.

<sup>76</sup> Evidence of this includes the periodic internal reports the Romanian foreign ministry issued on the situation in the MSSR and Ceausescu’s references to Bessarabia in his speeches. See Batt, 1997, 29.

Transdnistrians emphasize pre-Soviet history as justification for their separation from Moldova.<sup>77</sup> In addition to this, both banks adopt different views on the origins of the tensions between them that began in the 1980s, revealing the multiplicity of factors that have contributed to the creation of the de facto separate statehood of Transdnistria from Moldova today (*see Map H below*).

MAP H: THE SEPARATE REGION OF TRANSDNIESTRIA WITHIN MOLDOVA (1991-PRESENT)



<sup>77</sup> John Beyer. "Transnistria: In Search of a Settlement for Moldova's Breakaway Region," *St. Anthony's International Review* 6, no. 1 (2010), 168; Oazu Nantoi, *The East Zone Conflict in the Republic of Moldova: A New Approach* (Chisinau: Institute for Public Policy, 2002), 4; Serguei Markedonov, "Transnistrie: Le Credo Separatiste," *Politique Internationale*, no. 114 (2007), 249-70, 255, 257 (Interview by Serguei Markedonov with President Smirnov).



## 2.2. The Origins of Transdnistria's Separation

Scholars have no single approach to examining the causes of the tensions between the right and the left banks that eventually led to Transdnistrian separation.<sup>78</sup> Instead, in addition to historical differences, they point to ethnic/linguistic, political, geopolitical, economic, and power-sharing factors as contributing to the hostility and armed clashes in the region.

*The ethnic/linguistic component.* During the Soviet era, migration dynamics rooted in the region's industrialization<sup>79</sup> and border security policies had a profound effect on the area's ethnic composition.<sup>80</sup> What resulted was an amalgamation of different ethnic groups, with Moldovans as the majority. According to the 1989 census, the total population of the MSSR was 4,335,000, of which 64.5% were Moldovans, 14% Ukrainians, 13% Russians, 3.5% Gagauz, 2% Bulgarians, and 1.5% Jews.<sup>81</sup> However, the Transdnistrian region had a noticeably different ethnic makeup. Never considered part of Moldova proper, the area has always had a sizeable Moldovan population along with Ukrainians and Russians. Of Transdnistria's total 712,500 inhabitants in

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<sup>78</sup> A large body of scholarship has addressed the issue of Transdnistrian separation, particularly its causes. For a more detailed discussion on this topic, see: **In English:** Steven D. Roper, "Regionalism in Moldova-The Case of Transnistria and Gagauzia," in *Ethnicity and Territory in the Former Soviet Union: Regions in Conflict*, ed. James Sasse Hughes, Gwendolyn (London: Frank Cass, 2002); John O'Loughlin, Vladimir Kolossov, and Andrei Tchepalyga. "National Construction, Territorial Separatism, and Post-Soviet Geopolitics in the Transdnistrian Moldovan Republic," *Post-Soviet Geography and Economics* 39, no. 6 (1998); Trevor Waters, "Security Concerns in Post-Soviet Moldova." (Conflict Studies Research Centre, 2001); S. Kaufman. "Spiraling to Ethnic War: Elite, Masses and Moscow in Moldova's Civil War," *International Security* 21, no. 2 (1996) (highlighting a set of reasons: different histories, political-geopolitical interests, ethnic tensions).

**In Moldovan/Romanian:** Gheorghe Cojocaru, *Separatismul in Slujba Imperiului* (Chisinau: Civitas, 2000); "Cauzele Separatismului Politic si Teritorial al Republicii Moldova", *Destin Romanesc. Revista de Istorie si Cultura*, no. 2 (2001), 127-133 (pointing out the political and geopolitical character of the TMR's behavior).

**In Russian:** Babilunga, Bomesko, 1998; Oleg Galushenko, "Pridnestrovskiy konflikt: predystoria protivostoiania," *Anuarul Institutului de Cercetari Interetnice* 4 (2003) (pointing mainly to historical, demographic, and political reasons for the conflict); G.N. Perepelitsa, *Konflikt v Pridnestrov'e. Prichiny, problemy i prognoz razvitiya*, (Kiev, 2001) (indicating linguistic and geopolitical changes as the main reasons).

<sup>79</sup> During the 1960s and 1970s, over 500,000 Russian-speaking workers came to Moldova, which made Russian, for all intents and purposes, the *de facto* national language. See W. Alejandro Sanchez. "The "Frozen" Southeast: How the Moldova-Transnistria Question has Become a European Geo-Security Issue," *The Journal of Slavic Military Studies* 22, no. 2 (2009), 155.

<sup>80</sup> The Russian 14th Army was stationed in Transdnistria to protect the USSR's southeastern flank from NATO members Greece and Turkey. In 1992, the army was renamed as the Operational Group of Russian Forces (OGRF).

<sup>81</sup> *Vsesoiuznaya perepis' naselenia 1989 g. Natsional'nyi sostav naselenia po respublikam SSSR*, [http://demoscope.ru/weekly/ssp/sng\\_nac\\_89.php?reg=9](http://demoscope.ru/weekly/ssp/sng_nac_89.php?reg=9).

1989, 34.1% were Moldovans, 28% Ukrainians, 30.1% Russians, and 7.8% Bulgarians, Jews, and others.<sup>82</sup>

Soviet politics largely suppressed Moldavian nationalism<sup>83</sup> and pushed the official Moldovan language from public to private life. However, the policies of *glasnost* and *perestroika* created conditions for the open expression of national feelings and reforms in the Soviet republics. In 1988, political self-assertion spurred the formation of the Moldovan Popular Front,<sup>84</sup> which agitated for the adoption of the Latin, rather than Cyrillic, script for the official language of Moldovan/Romanian.<sup>85</sup> The law on the country's official language adopted soon thereafter proclaimed the Moldovan language in Latin script to be "the basic precondition for the existence of the Moldovan nation in its formation as a sovereign nation-state."<sup>86</sup>

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<sup>82</sup> B.G. Bomeshko, "Sravnitel'nyi analiz natsional'noi struktury naselenia MASSR i PMR" in *Nepriznannaya respublika. Ocherki. Dokumenty. Khronika*, ed. Gryzlov F.V. (Moskva: RAN, 1999), T.1, 37. Other data on the TMR's population reveals the following: total number of inhabitants: 750,000, of which 39% were Moldovans, 26% - Ukrainians, 23% - Russians, and 12% - others. See e.g., O'Loughlin et al., 1998, 339. However, this data is slightly less accurate as it includes the population from the right bank in accordance with the administrative-territorial division during the census in 1989. See Bomeshko, 1999, 34-37.

<sup>83</sup> The issue of national and ethnic identity has and continues to be a problematic one for Moldovans. Commenting on Moldovan/Romanian nationalism, one scholar noted:

By the 1990s the Moldovans were still a nation divided over their common 'national' identity. For some they were simply Romanians [. . .] for others, they were an independent historical nation, related to, but distinct, from the Romanians to the west. Still, for others, they were something in-between, part of a general Romanian cultural space, yet existing as a discrete and sovereign people with individual traditions.

Andrei Panici. "Romanian Nationalism in the Republic of Moldova" *The Global Review of Ethnopolitics* 2, no. 2 (2003), 40.

<sup>84</sup> The Moldovan Popular Front comprised an association of independent cultural and political groups.

<sup>85</sup> In the MSSR, the language was Moldovan and the script Cyrillic. According to the Law on Moldovan as the State Language, adopted on August 31, 1989 [Lege Nr. 3464 din 31.08.1989 cu privire la Statutul Limbii de Stat a RSS Moldovenești]; the Law on the Languages in the Territory of Moldovan SSR, from September 1, 1989 [Lege Nr. 3465 din 01.09.1989 cu privire la Funcționarea Limbilor Vorbite pe Teritoriul RSS Moldovenești]; and the Article 13 of the Constitution of the Republic of Moldova from July 29, 1994 [Constituția Republicii Moldova din 29.07.94), the state or official language of Moldova remains Moldovan, but is now written using the Latin alphabet. Linguistically, it is considered a dialect of Romanian. Mirroring the divisions on ethnic and national identity mentioned above, some people prefer to call the language Moldovan, whereas others refer to it as Romanian. There is no uniform position on the language's title among the population.

<sup>86</sup> Preamble, Law on Moldovan as the State Language, 1989.

Concurrently, another law adopted at the same time required everyone whose work involved communication with public to speak both Moldovan and Russian.<sup>87</sup> Such a provision was problematic for the overwhelming majority of non-Moldovans since few of them actually spoke Moldovan. Of the total non-titular population of 1,541,000, only 190,000 had a command of Moldovan.<sup>88</sup> Those that did displayed wide differences in proficiency: 6.5% professed a full command of Moldovan; 23.5% could understand and read it; and 52.5% could only pick out certain phrases. Fifteen and a half percent of the non-titular population admitted to total ignorance of the language.<sup>89</sup> Although the law contained a number of provisions on the rights of other linguistic groups,<sup>90</sup> it also had a number of gaps that invited arbitrary interpretations.<sup>91</sup> For example, Russian speakers often raised concerns that native Moldovan-speaking applicants or those with a very good command of the state language received priority in admission to higher education and in employment. For the left bank Moldovans in particular, a “return” to the Latin script was a far-fetched idea, since they could trace their usage of the Cyrillic alphabet from the fourteenth century, with the brief exception during the interwar period.<sup>92</sup>

These abrupt changes in the linguistic environment led to the exclusion of the majority of Russian speakers from the cultural and informational environment of Moldova, significantly contributed to the hostility between the populations on the two banks, and led to protests and

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<sup>87</sup> Article 7, Law on the Languages Spoken in the Territory of Moldovan SSR, 1989 (Law on the Languages).

<sup>88</sup> *Natsional'nyi sostav naselenia SSSR*, (Moscow, 1991).

<sup>89</sup> Pål Kolstø, *Russians in the Former Soviet Republics* (London: C.Hurst and Co, 1995), 145-6, citing a survey conducted in 1992.

<sup>90</sup> For example, the republic undertook to safeguard the development of the Gagauz language, and recognized Russian as “the language of interethnic communication” (Article 3, the Law on the Languages). The law stated explicitly that citizens were entitled to use the language of their choice at all public and private gatherings and in local administration (Articles 6-7, the Law on the Languages). Moldovan was mandated as the working language for government, state administrative bodies, and public organizations, but documents were to be translated into Russian whenever necessary (Article 9, the Law on the Languages). However, Russian speakers in Moldova regularly complained that these provisions were not respected. See Kolstø et al., 1993, 981.

<sup>91</sup> Kolstø et al, 1993. Both laws on languages led to strikes in all major cities in August 1989 and to demands to put a draft of the law to a popular referendum. These demands, however, were ignored.

<sup>92</sup> *Ibid.*, 981. More on the language issue in Moldova, see Kolstø, 1995; Jeff Chin and Steven D. Roper. “Ethnic Mobilization and Reactive Nationalism: The Case of Moldova,” *Nationalities Papers* 23, no. 2 (1995), 294-300.

mass strikes by the Transdniestrian population.<sup>93</sup> As the language policies of the central authorities in Chisinau remained unchanged, the Transdniestrian population continued to mobilize in order to protect their linguistic and cultural rights.

Overall, however, given the multiethnic composition on both banks, neither ethnic nor linguistic differences became a determining factor in driving the push for separation. Instead, it is more accurate to suggest that ethnic or linguistic divisions, which have played a large role in conflicts elsewhere in the former Soviet Union,<sup>94</sup> are not and have not been especially salient for the conflict over Transdniestrian claims to independence.<sup>95</sup> Rather, it was a combination of factors, including conflict over language, that exacerbated tensions between the banks and resulted in the TMR's separation.

*The political and geopolitical component.* In March 1990, the newly elected Moldovan Supreme Soviet consolidated the nationalist coalition that implemented a series of radical political and economic reforms to “renationalize” Moldova.<sup>96</sup> The adoption of the Declaration of Sovereignty<sup>97</sup> and a new citizenship law<sup>98</sup> challenged the position of non-Moldovans and forced

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<sup>93</sup> Workers of the industrial enterprises on the left bank of the Dniester elected strike committees in August 1989 that coalesced under the auspices of the United Council of Work Collectives (UCWC) to oppose the policies emanating from Chisinau and later to organize the referenda. For details, see O’Loughlin et al., 1998, 345.

<sup>94</sup> A number of ethnic conflicts occurred in the 1990s between Abkhaz and Georgians, South Ossetians and Georgians, and between Armenians and Azeris, leading to creation of the currently unrecognized states of Abkhazia, South Ossetia (except for Russia’s recognition of these entities in 2008), and Nagorno-Karabakh.

<sup>95</sup> The majority of the scholars share the positions discussed under footnote 78. One of the few authors who argues that the Moldovan-Transnistrian war was essentially an ethnic war is Kaufman, 1996, 108–138.

<sup>96</sup> These measures included, *inter alia*, the abolition of the leading role of the Communist Party; the acceleration of the implementation of the 1989 Language Law, the replacement of Russified and Soviet place names and Russified personal names with Moldovan ones; the introduction of national literature and “the history of the Romanians” into the core school curriculum; and the adoption of a new national flag, the Romanian red, yellow and blue tricolor that for Transdniestrians symbolized the Moldovan desire for unity with Romania. Further steps included the exclusion of the Russian language in Romanian-Russian mixed schools and of courses on Russian language and literature; the nationalization of the curriculums of all schools; and the decreased number of spots for the Russian speakers in universities.

<sup>97</sup> Declarația de Suveranitate a Republicii Sovietice Socialiste Moldova, Nr.148-XII, 23.06.1990 [Declaration of Sovereignty of the Soviet Socialist Republic of Moldova, June 23, 1990].

<sup>98</sup> Lege cu privire la Cetățenia Republicii Moldova, Nr. 596, 05.06.1991 [Law on Citizenship of the Republic of Moldova]. Unlike in the Baltic Republics, Moldovan citizenship was open to any resident on the territory as of June

them to decide their opinion on Moldovan statehood. Ethnic Russians in the republic faced a particular quandary:

...the Russians had to stake their future on the continued existence of the Soviet Union, or else renounce Soviet citizenship and thus by their own actions contribute to the downfall of the Soviet state.<sup>99</sup>

In addition, of all of the republics, Moldova adopted the most radical position towards the new Union Treaty Gorbachev proposed for referendum in an effort to preserve the USSR. Deputies of the Moldovan Supreme Soviet favored a loose, confederal “association of sovereign states” with no central institutions.<sup>100</sup> But, before holding a referendum, the deputies denounced the referendum<sup>101</sup> and voted to boycott it.<sup>102</sup> This move effectively denied the Transdnestrian population the right to express its opinion and enhanced their feelings of exclusion from the decision-making process on this and other important issues.<sup>103</sup> As a result, Transdnestria held its own referendum on the Union Treaty separately, and announced that more than 93% of voters supported the preservation of the USSR.<sup>104</sup> Although both Chisinau and Moscow ignored the

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23, 1990. However, applications for citizenship had to be made within one year of that date, and dual nationality was not permitted.

<sup>99</sup> Kolstø, 1995, 152. These developments also affected the Transdnestrian nomenclature (people who occupied the key administrative, industrial, agricultural positions) who, given Moldovan sovereignty, were deprived of support from Moscow, and risked losing power in Moldova and even in their own region. See Perepelitsa, 2001.

<sup>100</sup> Vladimir Socor, “Moldavian Parliament Endorses Confederation,” in *Radio Liberty Report on the USSR* (1991), 18-20.

<sup>101</sup> Moldovan deputies denounced the referendum as “our own death warrant, which we are being invited to sign,” and “a legalization of the consequences of the Molotov-Ribbentrop pact.” *Ibid.*, 19.

<sup>102</sup> *Ibid.*, 20.

<sup>103</sup> Firstly, the population of Transdnestria represented a society of “Soviet people” where the politics of Soviet denationalization had been successful. Therefore, the ethnopolitical processes in Moldova were seen as a threat to their lifestyle. The majority wanted to preserve the Soviet Union as guarantor of their protection and stability in the way of life. In addition, the Transdnestrian nomenclature were faithful to Communist ideology and believed in the integrity of the Soviet state. Secondly, the draft Union Treaty provided for an increase in the number of Union members (consisting of not only republics, but also of their autonomous regions), a provision that would have allowed Transdnestria a chance to gain a new political status. See Perepelitsa, 2001.

<sup>104</sup> Bomeshko, Babilunga, 1998, 30-31.

results,<sup>105</sup> the referendum in Transdniestria demonstrated Moldova's division on its external policy and further heightened the tensions between the banks.

Another set of controversial developments concerned the increased promotion of the nationalist agenda,<sup>106</sup> the drive for the "Moldovanization" or "de-Russification" of state structures,<sup>107</sup> and the competing calls for Moldova's independence and its unification with Romania. The idea of uniting with Romania, which the Moldovan Popular Front consistently championed, strongly disturbed Transdniestria as it included the unification not only of Romania and Bessarabia, which was based on historical and legal arguments,<sup>108</sup> but also the inclusion of the Transdniestrian region into Romania on the basis of demography.<sup>109</sup> Although the potential for unification was in practice quite limited,<sup>110</sup> the rhetoric of the Moldovan Popular Front, the

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<sup>105</sup> The Soviet government in Moscow limited itself to issuing a parliamentary act, "On the Ways to Achieve Agreement on Normalizing the Situation in the Moldovan SSR," in April 1991. The Act called for consensus between the left and right banks based on Transdniestria as an integral part of Moldova. Council of Nationalities of the Supreme Soviet of USSR, adopted on April 26, 1991. [Soviet natsional'nostei Verhovnogo Soveta SSSR "O putiah dostijenia soglasia po normalizatsii obstanovki v SSR Moldove"].

<sup>106</sup> Batt, 1997, 34.

<sup>107</sup> Claus Neukirch, "Transnistria and Moldova: Cold Peace at the Dniestr" *Helsinki Monitor*, no. 2 (2001), 123.

<sup>108</sup> The historical grounds for the unification of Romanian and Bessarabia are briefly discussed above. The legal arguments for this idea are discussed in the next session.

<sup>109</sup> Leaders of the Moldovan Popular Front pointed to the fact that Moldovans constituted a plurality, although not a majority, of the population in Transdniestria and should therefore be included into a united Romania. See Kolstø et al., 1993, 980, referring to the conversations with leaders of the Moldovan Popular Front in Chisinau, September 1992.

<sup>110</sup> In Moldova, this idea did not garner wide support. And in Romania, the new government remained very cautious, given its poor economic conditions, the significant differences between the political cultures of two states, and its fears of the possible Hungarian counter-claims towards Transylvania. As a result, Romania was reluctant to broach the topic of unification with Moldova. For more details on Moldovan and Romanian perceptions of unification. See Eyal, 1990; Hitchens, 1994, 277; Batt, 1997, 36; Tuomas Forsberg. "Explaining Territorial Disputes: From Power Politics to Normative Reasons," *Journal of Peace Research* 33, no. 4 (1996), 441.

Romanian intelligentsia<sup>111</sup> and mass rallies in Moldova<sup>112</sup> aggravated fear of this possibility among the Transdnestrian population.<sup>113</sup>

*The economic and power-sharing components.* Given the MSSR's position on the border and longstanding disagreements between the USSR and Romania over Bessarabia's history, the leadership of the Soviet Union considered the Transdnestrian part of the MSSR more trustworthy than the rest of the republic.<sup>114</sup> Consequently, the MSSR's political leadership came mainly from Transdnestria and the bulk of heavy industry, which was under Moscow's direct control,<sup>115</sup> was based on the left bank.<sup>116</sup> At the end of 1980s, the Moldovan government tried to bring left bank enterprises under its own control,<sup>117</sup> threatening the positions of their technocrats and factory directors<sup>118</sup> and going against the interests of the local administration and influential persons from Russia and Ukraine.<sup>119</sup> As a result, Transdnestrian leaders sought to preserve their

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<sup>111</sup> See the eyewitness account of the response of a group of Romanian liberals to this issue in K. Verdery, "Civil Society or Nation? 'Europe' in the Symbolism of Post-socialist Politics," in *What was Socialism, and What Comes Next?*, ed. K. Verdery (Princeton: Princeton University Press, 1996).

<sup>112</sup> During mass rallies and meetings, the issue of unification often appeared together with the exclusion of the Russian language from public life. The scale of the rallies was often massive. For example, one of them, held in Chisinau in August 1989 attracted about 500,000 people. See *Istoria Republicii Moldova*, 2002, 329; Panici, 2003, 39.

<sup>113</sup> The prospect of Romanian unification did not appeal to the majority of Transdnestria's population given the interwar period of Romanian occupation. One particularly unpopular legacy of Romanian occupation was the memory of ghettos and death camps on the Transdnestrian territory, where hundreds of thousands died. Therefore, any (even indirect) reference to Moldovan potential unity with Romania provoked fear in much of the TMR's population. See Alexandr Burian, "Pridnestrovskiy konflikt i perspektivy ego razresheniya: vzglead iz Kishineva," *AVA Portal*, July 19, 2011. See also Nikolai Babilunga, "Istoria Pridnestrovskoi Moldovskoi Respubliki," in *Pridnestrov'e v makroregional'nom kontexte chernomorskogo poberej'ya*, ed. Kimitaka Matsuzato (Hokkaido University, 2008), 54.

<sup>114</sup> Johansson, 2006, 509.

<sup>115</sup> In 1990, such enterprises accounted for about 95% of all heavy industry in Moldova. *Argumenty i fakty*, 24, 1992.

<sup>116</sup> Examples of the heavy industry in the TMR include the metallurgical plant in Rybnitsa and the hydroelectric plant in Dubasari, the latter of which provides 90% of the energy used on the right bank. See Johansson, 2006, 509.

<sup>117</sup> The Transdnestrian region produced 33% of all industrial goods and 56% of all consumer goods in the entire republic. *Nezavisimaya gazeta*, September 19, 1992.

<sup>118</sup> The left-bank nomenclature depended strongly on maintaining links to Moscow. Therefore, Moldovan sovereignty threatened the power and authority of those leaders. See Perepelitsa, 2001.

<sup>119</sup> Nantoi, 2003, 59, 64.

access to power first by requesting from Moldova special status as a free economic zone,<sup>120</sup> and later by pursuing the area's sovereignty.

In addition, the struggle for the control over these enterprises was related to the problem of center-periphery interactions within the USSR. The Soviet center in Moscow strove to preserve effective power over all republics,<sup>121</sup> sometimes provoking and using for its own purposes conflicts in certain "rebellious" territories and working against their aspirations toward sovereignty and national revival.<sup>122</sup>

*Hostility and the involvement of the 14<sup>th</sup> Army.* The complex interrelation of the above-mentioned factors and the inability of leaders on both banks to adequately address them brought mounting tensions from 1990 to 1992, including acts of provocation and armed conflict. Transdnistria's refusal to accept Chisinau's authority and Moldovan attempts to restore control over the territory led to a number of violent clashes between the newly formed Transdnistrian armed forces and Moldovan police, leading to a war in June 1992 that also involved Russian troops.<sup>123</sup>

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<sup>120</sup> Moldova regarded this request simply as a pretext for the Transdnistrian nomenklatura to preserve its power and denied Transdnistria status of free economic zone. See Ion Stavila, "Evoluția Reglementării Conflictului Transnistrean," in *Evoluția Politicii Externe a Republicii Moldova (1998-2008)*, ed. Igor Sarov (Chisinau: Cartdidact, 2009), 155.

<sup>121</sup> In part, this dominance was pursued through the military and industrial complexes located in the republics. See Nicolae Tau, *Politica externă a Republicii Moldova* (București 2000), 158; Nanoi, 2002.

<sup>122</sup> Stavila, 2009, 155.

<sup>123</sup> There is a vast literature dedicated to the details of the armed conflict as viewed from historical and geopolitical perspectives, and written in different languages. One detail that has been the source of great contention is the number of casualties caused by the conflict. The data vary among different sources, with figures ranging from a few hundred upwards to almost a thousand, and more than 100,000 internally displaced persons. See e.g., T. Waters, 2001, 5, and the CSCE Mission Moldova's Report No. 13, 1993, 2. Some of the literature that focuses on the details of the armed conflict include: Kieran O'Reilly and Noelle Higgins. "The Role of the Russian Federation in the Pridnestrovian Conflict: An International Humanitarian Law Perspective," *Irish Studies in International Affairs* 19 (2008), 57-72; Kaufman, 1996, 108-138 (one of the few works arguing that the Moldovan-Transnistrian war was essentially an ethnic war; others mainly support the political character of the conflict); Nikolai Babilunga, B.G. Bomesenko, *Kniga pamjati zaschitnikov Pridnestrov'a* (Tiraspol, 1995); Kolstø et al, 1993; Anatolie Ciubotaru, Nicolae Muntean, *Romanii de la Est: Razboiul de pe Nistru (1990-1992)* (București, 2004); T. Waters, 1998, Ivan Dnestrianskii, "Pravda i lozh o voine v Pridnestrov'e" [http://artofwar.ru/i/iwan\\_d/](http://artofwar.ru/i/iwan_d/).



After World War II, the Soviet 14<sup>th</sup> Army was stationed in the MSSR on the left bank (Transdnistria). Eventually, due to withdrawal of the Soviet troops from Eastern Europe and the redistribution of military personnel, a large number of 14<sup>th</sup> Army soldiers and officers were local inhabitants.<sup>124</sup> When provocations began on both sides in 1990, the Army remained neutral and intervened only in June 1992,<sup>125</sup> when Moldovan President Mircea Snegur issued the order to regain control over Transdnistria by force. The now Russian Army saw the order as a threat to the ordinary Transdnistrian population, which included the families of many of the military personnel. As a result, the Russian 14<sup>th</sup> Army intervened on behalf of the TMR to repel Moldovan forces over the Dniestr and to stop the civil war.<sup>126</sup>

A cease-fire agreement signed between the Russian and Moldovan presidents in 1992<sup>127</sup> ended the war and stipulated the presence of Russian peace-keeping forces in the region with the goal of separating the two sides using a Security Zone. The subsequent agreement between Moldova and Russia additionally provided for the synchronization of troop withdrawals once final resolution of the Transdnistrian conflict was achieved.<sup>128</sup> The ongoing presence of the 14<sup>th</sup> Army<sup>129</sup> in Transdnistria, however, has proved controversial. On the one hand, the Russian troops have helped to keep Transdnistria separated from the right bank and continue to stay on Moldovan territory in violation of the neutrality principle established by Article 11 of the

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<sup>124</sup> According to General Lebed's data, 50% of officers and 90% of warrant officers and soldiers came from Transdnistrian region. Cited in Andrei Devyatkov, *Pered vyzovom evropeizatsii: Politika Rossii v Pridnestrovskom uregulirovanii* (Tyumeni: Tyumeni State University, 2012), 20.

<sup>125</sup> Williams, 1999, 74.

<sup>126</sup> See the press-conference of the general of 14<sup>th</sup> army, Alexandr Lebed, in Tiraspol, in 1992, <http://www.youtube.com/watch?v=eOyjEzMd15s>

<sup>127</sup> Agreement on Principles of the Peaceful Settlement of the Armed Conflict of July 21, 1992, signed in Moscow.

<sup>128</sup> Agreement concerning the Legal Status of the Military Formations of the Russian Federation Temporarily Present in the Territory of the Republic of Moldova and the Arrangements and Time-limits for Their Withdrawal of October 21, 1994.

<sup>129</sup> The former 14<sup>th</sup> Soviet Army was transformed into the Operative Group of Russian Forces in 1992. Its size was reduced from about 9,600 troops in mid-1992 to 2,600 by 1999, including peacekeepers. William H. Hill. "Making Istanbul a Reality: Moldova, Russia and Withdrawal from Transdnistria," *Helsinki Monitor* 13, no. 2 (2002), 133, 135.

Moldovan Constitution of 1994. On the other hand, the Russian troops have provided a sense of security for the de facto state.<sup>130</sup> In addition, the majority of Transdniestrians see the Russian presence as a source of stability and as a protection of their rights.<sup>131</sup>

To summarize, the conflicting interpretations of history, disregard for linguistic differences, controversial internal policies, the Moldovan government's attempt to use force against Transdniestria to maintain the republic's integrity, and the ongoing polar positions on joint coexistence even after the end of armed conflict have all contributed to Transdniestria's assertion of its own interests, to the emergence of its de facto statehood, and to its continued de facto independence.<sup>132</sup>

### **2.3. Transdniestria as a De Facto State and as a Case Study**

Transdniestria represents an example of an unrecognized state and serves as a valuable case study on the role of a constitution in the search of recognition. The entity illustrates the characteristics inherent to the class of de facto states described above as well as the features of a case study.

#### **2.3.1. Transdniestria as a De Facto State**

Transdniestria proclaimed its independence from Moldova in 1990 and has remained beyond that country's control for two decades. The TMR has demonstrated its aspirations for statehood through its adoption of a set of self-constituting acts and has ensured its functioning as a state through a number of mechanisms.

In response to the changes in the political and linguistic conditions in the MSSR between 1989 and 1990, the representatives of Transdniestrian trade unions organized referenda across

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<sup>130</sup> King, 2001, 540.

<sup>131</sup> A March 1995 referendum the Transdniestrian administration organized indicated that 93% of voters favored a permanent Russian base in the region and were against withdrawal of the troops. This referendum is discussed in more detail in Chapter 4.

<sup>132</sup> See Grosul, 2001; Babilunga, Bomeshko, 1998.

localities in the TMR on the issue of the region's autonomous status.<sup>133</sup> The results of the referenda showed the overwhelming support of the population for the creation of an autonomous Transdnestrian republic.<sup>134</sup> Although Moldova recognized neither the legitimacy of the referenda nor their results and adopted a strong stance on putting “an end to separatist activities of the leaders of the so-called ... Dniestr Republics,”<sup>135</sup> the referenda's outcome nonetheless had particular significance for Transdnestria. Most importantly, the results formed the basis for promotion of the TMR's aspiration for statehood and its commitment to protect the interests of the region. First, based on the results of these referenda, in 1990 the TMR adopted a number of documents that asserted its statehood. These included the Decision on the Creation of the

<sup>133</sup> The referenda concerned the creation of an Autonomous Soviet Socialist Republic within the Moldovan Soviet Socialist Republic. This idea was based on the existence of the MASSR from 1924 to 1939 within the Ukrainian SSR and intended mainly to protect the political, economic, and linguistic rights of Transdnestria's population. After the Moldovan SSR adopted its Declaration of Sovereignty that did not mention Moldovan membership in the USSR, and the Parliamentary Approval of the Committee' Conclusions on Molotov-Ribbentrop Pact (see details in Chapter 3), the issue put to referenda shifted to the creation of the Transdnestrian Moldovan Republic within the USSR.

<sup>134</sup> As Table A suggests, Transdnestria's population largely supported the creation of a Transdnestrian republic (the TMSSR).

**Table A. Voter Turnout and Referenda Results in Transdnestria, 1989-1990**

City/Rayon	Total number of voters (pers.)	% of participation	% of votes for TMSSR	% of votes against TMSSR
Bendery	86,210	80	97.3	2.2
Tiraspol	136,004	93	95.9	2.3
Dubossary	21,334	77	97.0	1.3
Dubossar rayon	20,637	30	95.0	1.6
Rybnitsa	39,260	82	91.0	5.5
Rybnitsa rayon	24,877	94	95.7	3.0
Grigoriopol rayon	35,480	57.6	94.0	3.4
Kamenskiy rayon	25,187	88	98.0	1.4
Slobodzeiskiy rayon	80,871	70	96.0	1.4
<b>In total</b>	<b>471,907</b>	<b>79</b>	<b>95.8</b>	<b>2.4</b>

See “Rezyl'taty uchastia i golosovania Pridnestrov'tsev v referendumah v period 1989-1990 g.,” *Dnestrovskaya Pravda*, #299, December 12, 1990; A.Z. Volkova, “Referendумы v kontexte istorii stanovlenia i razvitiia demokraticheskikh institutov v Pridnestrov'e (konetz XX-nachalo XXI vv.),” *Diplomaticheskii Vestnik Pridnestrov'a* 5 (2011).

<sup>135</sup> “Moldova's President Demands Criminal Prosecution of the Leaders of Dniestr and Gagauz Republics,” *Official Kremlin Int'l News Broadcast*, September 19, 1990. During the meeting of the Presidential Council of the Moldovan SSR, Moldovan President Mircea Snegur demanded that the heads of the public prosecutor's office and the Republic's Ministry of the Interior use every available tool against separatists. The President also demanded that criminal proceedings be opened against the leaders of the self-proclaimed republic in the Dniestr Region as well as against anyone who abided by the decisions of “the unconstitutional authorities.” Snegur categorically ruled out “any talks with the separatists.” *Ibid.*

Transdnistrian Moldovan Soviet Socialist Republic (TMSSR) as an autonomous republic within the USSR, the Declaration of the TMSSR's Creation, the Decree of State Power, and the Declaration of TMSSR's Sovereignty. That same year, the TMR held its first parliamentary elections.<sup>136</sup> One year later, with the break-up of the Soviet Union, Transdnistria adopted its Declaration of Independence and held its first referendum on independence.<sup>137</sup> Second, the popular support for Transdnistria's autonomous status became the foundation for Transdnistrian leaders' claim to pursue separation from Moldova and to seek recognition of the TMR's statehood unceasingly during the following two decades. It became the main factor for both justifying and legitimizing the TMR's claims in the official discourse and the process of negotiation.

After proclaiming its separation from Moldova, Transdnistria sought to ensure its successful functioning as a state. Since the early 1990s, Transdnistria has controlled more than two-thirds of the territory it claims.<sup>138</sup> Its leadership has continued to highlight residents' support and allegiance and to strengthen state institutions through the establishment of several key state features: its constitution; its functional legislative body (the Supreme Council); its executive,

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<sup>136</sup> The turnout of the parliamentary elections was 81%. Although the Supreme Council of Moldova declared invalid the elections in "so-called PMSSR due to violation of the Constitutions of the SSRM [Soviet Social Republic of Moldova] and the USSR," the elections have strengthened the legitimacy of the TMR authorities and their independence policies. B.G. Bomeshko, *Verhovnyi Soviet Pridnestrovskoi Moldavskoi Respubliki, 1990-2010* (Bendery: Poligrafist, 2010), 26-27. For more details on these documents, see Chapter 3.

<sup>137</sup> Transdnistria adopted its Declaration of Independence on August 25, 1991. The referendum on independence was held on December 1, 1991, with a turnout of 78%. In answer to the question: "Do you support the independence of the Transdnistrian Moldovan Republic within the political and economic union of sovereign states?" 97.7% of voters cast their votes for the TMR's independence. Note, though, that the Moldovan authorities have dismissed the referendum and the elections as illegal and without any legal force, describing Moldovan territory as indivisible. See A.Z. Volkova, *Referendумы v Pridnestrovskoy Moldavskoi Respublike (1989-2006 g.)* (Tiraspol, 2006); E. Kondratov, "V Moldove mnozhatsea presydeny," *Izvestia*, #286, December 3, 1991; "Minorities in Moldova Opt for Independence," *Agence France Presse - English*, December 2, 1991; "Tuesday Moldavia's Minorities Vote to Quit," *The Independent*, December 3, 1991.

<sup>138</sup> The TMR initially established control over its territory between 1990 and 1992, and, since winning the war in 1992, has maintained its control over the area. According to the Law on the Administrative-Territorial Division of the TMR of 2002, which further specified the TMR's Constitution, this territory comprises 8 cities, 143 villages, 8 settlements and 4 railway stations. Out of them, 7 villages on the left bank and 1 village on the right bank are administrated by Moldova. *Zakon ob administrativno-territorial'nom ustroistve PMR, 2002*, <http://zakon-pmr.com/>

including a popularly elected president and a full set of ministries; and its judicial branches with a Supreme Court, an Arbitration Court, and a Constitutional Court. While possessing its own military, Transdniestria has relied on the presence of Russian forces as an important pillar of its sovereignty<sup>139</sup> and “as a shield and de facto guarantee of [its] independence.”<sup>140</sup> The republic has its own currency, flag, anthem, citizenship, and passport. Overall, the entity has the political, legal, financial, educational, and welfare systems that clearly signal separate statehood.<sup>141</sup>

While the entity *de jure* continues to be part of Moldova and has not been recognized by any other states<sup>142</sup> except for a few peer entities,<sup>143</sup> the TMR has continually sought recognition of its statehood over the last two decades. This claim, however, is distinct from the Transdniestrian claim to independence, which has undergone an important shift since the TMR’s de facto separation from Moldova. In its argument for separation and statehood recognition, the TMR has used the word “gosudarstvennost,” loosely translated in English as “statehoodness.”<sup>144</sup> The TMR believes that, due to the historical and political background discussed above and its right to self-determination (described below in Chapter 3), Transdniestria has a right to its own statehood as a separate republic that best ensures the interests of the TMR’s population.

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<sup>139</sup> Andrei Devyatkov, “Russian Relations with Moldova under a Paradigm of Ambiguity,” in *Moldova: Arena of International Influences*, ed. Marcin Kosienkowski, William Schreiber (UK: Lexington Books, 2012), 192.

<sup>140</sup> William H. Hill, *Russia, the Near Abroad, and the West: Lessons from the Moldova-Transdniestria Conflict* (Johns Hopkins University Press, 2012), 71.

<sup>141</sup> The relevant details on Transdniestrian state-building and constitutional framework are provided in the next chapter.

<sup>142</sup> The reasons for this lack of international recognition are discussed in the next chapter.

<sup>143</sup> The TMR is recognized by Abkhazia, South Ossetia, and Nagorno-Karabakh, who are themselves also unrecognized states (Abkhazia and South Ossetia are, however, officially recognized by Russia.) Abkhazia, Iuzhnaya Osetia i Pridnestrov’e priznali nezavisimost’ drug druga i prizvali vseh k etomu je. *NewsRu.com Portal*, November 17, 2006.

<sup>144</sup> The term “gosudarstvennost” in Russian may denote either a political system (one that has the features of the state) or the state of development of a nation or of another social group that has succeeded in creating its own state. In contrast, the term “gosudarstvo” explicitly means “a state” or “statehood” in English, both terms that imply independence and sovereignty from other states. See *Tolkovyi slovar’ russkogo yazyka*, pod red. S. Ozhegova, N. Shvekovi (Moskva, Azi), 1992 [The Explanatory Dictionary of the Russian Language].

While consistently insisting on recognition of its statehood, the TMR has been negotiating its particular political status. Its claim to independence and independent statehood only gradually became an explicit part of the TMR's discourse. First, while initially seeking recognition of its statehood between 1989 and 1992, the TMR was willing to accept autonomy within Moldova. After Moldova rejected this idea, the TMR continued to insist on recognition of its statehood, but from 1992 to 2003, it argued for autonomy in a larger sense. It believed that only a federal or, better, confederal relationship within Moldova could meet the TMR's expectations for its development. Finally, from 2003 onwards, the TMR has hardened its position even further and insisted on the recognition of its statehood outside of Moldova's borders. For the past ten years, Transdniestria has sought the status of a fully independent state that would bring the TMR closer to possible integration with Russia.<sup>145</sup>

Overall, the de facto separation of Transdniestria from Moldova for the last 20 years, its establishment of distinct state institutions, and its search for formal recognition as one of its key foreign policy goals make Transdniestria precisely one of the de facto states as suggested in the literature.

### **2.3.2. Transdniestria as a Case Study**

When analyzing the features of unrecognized states, scholars usually examine a group of Eurasian entities that include the republic of Nagorno-Karabakh (in Azerbaijan), the republics of Abkhazia and South Ossetia (in Georgia), and Transdniestria. These cases are often explored together because of their similarities. Having all emerged during the collapse of the Soviet Union, these unrecognized states have all since created strong independent state structures that

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<sup>145</sup> Chapter 4 contextualizes the Transdniestrian claims within the process of negotiation and provides details on the Transdniestrian approach towards its political status.

have posed serious challenges to potential reintegration with their parent states.<sup>146</sup> As a result, the characteristics Transdnistria shared with respect to its survival and subsequent development with the other post-Soviet de facto states makes the Transdnistrian case illustrative of other frozen conflicts<sup>147</sup> throughout post-Soviet territory and may be informative for de facto states outside of the Eurasian region.

At the same time, when compared to other de facto states, Transdnistria has a number of specific features that make the case particularly relevant to the study of the relationship between a constitution and recognition. First, Transdnistria stands out from other de facto states on various historical, politico-administrative and cultural grounds. The nature of its conflict, too, which is predominantly political/geo-political with cultural, rather than ethnic or religious, divisions, sets it apart.<sup>148</sup> Importantly, the non-ethnic basis of its conflict may influence Transdnistria's approach to seeking recognition. The TMR may pay less attention to the traditional criteria for statehood, a strategy characteristic of other de facto states.<sup>149</sup> Instead, the TMR may focus on the contemporary criteria for recognition and argue for the involvement of the entire population in state-building efforts, regardless of their ethnic differences, thereby respecting the principles of democracy and human rights.

Second, the conflict between Transdnistria and Moldova is the most "internationalized" of all de facto states, in large part because a higher number of outside parties are involved in its

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<sup>146</sup> See e.g., Caspersen, 2009; Lynch, 2002; King, 2001; Kolosov and O'Loughlin, 1999; Kolstø, 2006; Kimitaka Matsuzato. "From Belligerent to Multi-Ethnic Democracy," *Eurasian Review* 1 (2008).

<sup>147</sup> Although the term "frozen conflict" is often employed in the context of Eurasian entities, not everyone agrees that the term accurately describes the situation, and some parties suggest avoiding it altogether. Personal communication with the Moldovan representative in negotiations, August 2013.

<sup>148</sup> For example, Beyer, 2010, King, 2001, Kolstø, 2006; and Kolosov, 1998, point to the non-ethnic character of the Transdnistrian issue and the creation of its separate identity without ethnic cleansing.

<sup>149</sup> Abkhazia, for example, refers its long, almost uninterrupted history, of statehood with a particular ethnicity and language, thus meeting the criteria for people's self-determination. Vyacheslav Chirikba, "Gruzia i Abkhazia: Predlozhenia k konstitutsionnoi modeli," in *Praktika federalizma: Poiski al'ternativ dlea Gruzii i Abkhazii*, ed. Kopiters Bruno, David Darchiashvili, Natella Akaba (Moskva: Ves' Mir, 1999), 394-403.

settlement in comparison to other conflicts.<sup>150</sup> This is particularly important because the act of recognition is fundamentally an external act, and assessment of the effects of the constitution on the process of recognition are most clearly seen through international involvement.

Finally, Transdniestria was one of the first de facto states to emerge after 1991. Since that time, it has acquired, to the author's knowledge, more of its own state features (border control, currency, etc.) than any other state-like entity in Eurasia. The emergence of Transdniestria also coincided with the adoption of the EU Guidelines on Recognition. Therefore, the Transdniestrian case is well positioned to examine whether the formal acknowledgment of democracy, the rule of law, and human rights as criteria for recognition have influenced the de facto state's existence and constitutional development in its search for recognition.

### **3. Case Study Methodology**

To understand the relationship between the constitutional provisions and practices of Transdniestria and the process of its recognition, this study analyzes Transdniestrian constitutional acts, reviews official public statements made by Transdniestrian and foreign officials, and presents the results of a survey in the form of a questionnaire and semi-structured interviews of high-ranking officials involved in the negotiation process.

#### **3.1. Review of Constitutional Acts**

This legal review aims to establish whether the doctrinal link between a constitution and the criteria for recognition described earlier exists in this case study. It explores the occurrence of the criteria for recognition in the Transdniestrian constitutional documents that have conditioned

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<sup>150</sup> Kolossov, 1998, 20. The current format of Moldovan-Transdniestrian negotiations comprises seven participants: Moldova, and the TMR; the OSCE (mediator); Russia and Ukraine (mediators and guarantors); and the EU and USA (observers). For more details on the actors within the negotiation process, see the section below.



its creation and set up the basis for its independent existence and functioning. Table 2 lists the key Transdniestrian constitutional documents reviewed in this research.

TABLE 2. TRANSDNIESTRIAN KEY CONSTITUTIONAL ACTS

Act	Date; Issued by
Decision to create the Transdniestrian Moldavian Soviet Socialist Republic (TMSSR) as part of the USSR	September 2, 1990; adopted by the Second Congress of People’s Deputies of All Levels
Declaration of the Creation of the TMSSR	September 2, 1990
Decree of State Power of the TMSSR	September 2, 1990
Statement on the Political and Legal Grounds for the Creation of the TMSSR	September 2, 1990
Declaration of Sovereignty of the TMSSR	December 8, 1990, adopted at the first convocation of the Supreme Council of TMSSR
Decree of State Power of the TMSSR	December 8, 1990
Declaration of Independence of the TMSSR	August 25, 1991
Constitution of the TMSSR	September 2, 1991, adopted by the Fourth Congress of People’s Deputies of all levels of TMSSR
Constitution of the TMR	December 24, 1995; adopted at referendum, signed by a president in January 17, 1996

Except for the decrees of state power and the constitution of 1991, which both lost their effect when they were superseded by new legal acts, the rest of the constitutional documents are still in full force only in Transdnistria and are unrecognized beyond its borders.

### 3.2. Study of Official Public Statements

**Negotiations.** Both Transdnistria and foreign actors have made official public statements, mostly within the context of the negotiation process between Moldova and Transdnistria that started in 1992. Over two decades, the process has moved in fits and starts, but has nonetheless included a number of initiatives and key documents that frame the relationship between the sides, reflect its general development, and identify the actors

involved.<sup>151</sup> Table 3 lists the main stages of the negotiations between 1992 and 2012 that serve as the background and contextual basis for the research.

TABLE 3. KEY NEGOTIATIONS INITIATIVES

Date	Initiative
1992 (July 21)	Agreement on the Principles of the Peaceful Settlement of the Armed Conflict in the Transdnestrian region of the Republic of Moldova
1993 (November 13)	CSCE Report No. 13, which outlines a proposal for a special status for the left-bank Dniester areas within the Republic of Moldova as a basis for talks between both parties to the conflict
1997 (May 8)	Memorandum on the Principles of Normalizations of the Relations between the Republic of Moldova and Transdnestria (also called the Moscow or Primakov Memorandum)
1998 (March 20)	Agreement on Confidence Measures and the Development of Contacts between the Republic of Moldova and Transdnestria (Odessa Agreement)
1999 (July 16)	Joint Statement of the Participants in the Kiev Meeting on Issues of Normalization of Relations between the Republic of Moldova and Transdnestria (Kiev Statement)
2002 (February 20)	Initiative “On the Organization of the Negotiation Process Regarding Transdnestrian Conflict Settlement” and the creation of the Permanent Conference on Political Issues in the Framework of the Negotiation Process for the Transdnestrian Settlement (Bratislava format)
2003 (November)	Russian Draft Memorandum on the Basic Principles of the State Structure of a United State (Kozak Memorandum)
2004 (February 13)	Proposals and Recommendations of the Mediators from the OSCE, the Russian Federation, and Ukraine with regards to the Transdnestrian Settlement
2005 (May 20)	Ukrainian Initiative for the Transdnestrian Peaceful Settlement Plan (Yushchenko Plan)
2011 (September 22)	Statement of the Participants of the '5+2' Consultations on the Resumption of the Work of the "Permanent Conference on Political Issues in the Framework of the Negotiation Process for the Transdnestrian Settlement"
2012 (July 13)	Principles and Procedures of the Conduct of Negotiations within the “Permanent Conference on Political Issues in the Framework of the Negotiation Process for the Transdnestrian Settlement”; Agenda of the Official Negotiation Process (Vienna agreements)

**Actors.** This research looks at seven key participants in the Transdnestrian negotiations.

As Table 4 illustrates below, since 1992 the format of the negotiations has undergone a number

<sup>151</sup> On the negotiation process, see generally: **In English:** International Crisis Group, “Moldova: No Quick Fix,” (2003); “Moldova: Regional Tensions over Transdnestria,” (2004); “Moldova’s Uncertain Future,” (2006); Graeme P. Herd, *Moldova and the Dniestr Region: Contested Past, Frozen Present, Speculative Futures?* (Conflict Studies Research Center, 2005); Denis Matveev et al., eds., *Moldova–Transdnestria: Working Together for a Prosperous Future. Negotiation Process. [Also in Romanian and Russian]* (Chisinau: 2009).

**In Moldovan/Romanian:** Igor Boțan, *Reglementarea Transnistreană: O Soluție Europeană* (Chisinau: Arc, 2009).

of changes and currently includes representatives of six actors, seen as *outside* or *external actors* for Transnistria.

TABLE 4. LIST OF ACTORS INVOLVED IN THE NEGOTIATION PROCESS

Date of joining	1992, July	1993, April	1996, January	2005, September	Current “5+2” format <sup>152</sup> since 2005
Actors	Moldova Russia <sup>153</sup>	Moldova Russia OSCE <sup>154</sup>	Moldova Russia OSCE Ukraine <sup>155</sup>	Moldova Russia OSCE Ukraine EU USA <sup>156</sup>	- Transnistria, Moldova (parties); - Russia (guarantor, mediator); - OSCE (mediator); - Ukraine (guarantor, mediator) - EU, USA (observers)

Being directly involved in conflict resolution as parties, mediators, guarantors, or observers, these states or organizations have a more detailed picture of Transnistrian local developments, are aware of the internal negotiation processes, and, by virtue of their roles, react to any steps on the Transnistrian side that are related to and/or might affect the negotiations on its status.<sup>157</sup> The good position of these actors for observing and responding to the constitutional development of Transnistria when compared to other states that are less interested in the Transnistrian issue explains the focus of this research on the reactions of these six actors external to Transnistria. Henceforth, this group of six external actors (Moldova, Russia, Ukraine, the OSCE, the EU, and the US) is referred to as “the external actors.”

<sup>152</sup> After the EU and USA joined the negotiation process as observers, the new format for the negotiations became known as the “5+2” format.

<sup>153</sup> Moldova and Russia became official actors in the negotiations in 1992, with the signing of the Agreement on Principles of the Peaceful Settlement of the Armed Conflict, see Table 2.

<sup>154</sup> The OSCE joined the process after the establishment of the OSCE Mission to Moldova in 1993.

<sup>155</sup> Ukraine officially joined the negotiation process in 1996, when it signed the Joint Statement of the Russian Federation, Moldovan and Ukrainian Presidents on Political Settlement of the Transnistrian Conflict.

<sup>156</sup> The EU and the US joined the process according to the Annex “Rights and Obligations of Observers in Negotiation Process” to the Memorandum adopted at a Mediators’ Meeting of Ukraine, Russian Federation and OSCE with Representatives of the Republic of Moldova and Transnistria. (September 27, 2005).

<sup>157</sup> See more on the general description of the negotiation process and its participants in Boțan, The Negotiation Process, 2009.

The present work views the collective membership of the OSCE and the EU<sup>158</sup> as single entities and looks at their responses as single institutions. This does not mean, however, that this research does not take into consideration the heterogeneous and complex nature of these organizations. On the contrary, it acknowledges that the foreign policy position of some members of those organizations regarding Transnistria might be more influential than the institution's approach to general foreign policy. As a result, this work pays close attention to the internal dynamics of the foreign policies of the OSCE and EU where appropriate, and looks into the reactions of those international actors who are not directly involved in the negotiation process but who have a particular interest in the Transnistrian settlement. For example, given its historical and geopolitical ties to Moldova, Romania has taken a keen interest in the early resolution of the Transnistrian conflict that, in many ways, has contributed to the EU's approach towards Transnistria.

**Issues.** The study of the *official public statements*, defined below, aims to explore the constitutional provisions and practices of Transnistria in meeting the traditional and contemporary criteria for recognition, and the influence they have had on the external actors. As Table 5 shows below, the present research focuses only on the specific constitutional steps that Transnistria has undertaken that enable the researcher to observe and assess the reaction of the external actors, and to draw conclusions on the effects of the constitutional development in an unrecognized state.

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<sup>158</sup> Fifty-seven states are currently members of the OSCE, compared to 28 in the EU today. See [www.osce.org](http://www.osce.org); [www.europa.eu](http://www.europa.eu).

TABLE 5. SELECTED CONSTITUTIONAL PRACTICES OF TRANSNIESTRIA FROM 1990 TO 2013

<b>TMR constitutional developments</b>	<b>Analysis of the outside reactions to the events</b>
Adoption of acts proclaiming independence and constitutions	Declarations of the TMR's Creation, Sovereignty, and Independence: 1990-1991
	Adoption of the Constitutions: 1991, 1995
Holding elections and referenda	Presidential elections: 1991, 1996, 2001, 2006, 2011
	Parliamentary elections: 1990, 1995, 2000, 2005, 2010
	Referenda: 1989, 1990, 1991, 1995, 2003, 2006
Adoption of constitutional amendments	Amendments expanding presidential powers: 2000
	Amendments balancing executive and legislative powers: 2010
Protecting human rights	Setting up the Constitutional Court: 2002; establishing the Ombudsman office: 2006; cooperation with international monitoring missions: 2012

This research explores the relationship between the criteria for recognition and the constitutional provisions or practices in Transnistria's official public discourse by addressing the following questions: Do any constitutional provisions contain references to the criteria for recognition? Do public officials mention the adoption of the acts of independence, the constitution, and the provisions of the constitution in relation to the recognition process in their official public statements? Do public officials link other constitutional practices, such as holding elections and referenda, adopting constitutional amendments, and protecting human rights, to the process of recognition in their public discourse?

The present research also analyzes the reactions of the external actors to the existence of specific Transnistrian constitutional provisions and practices by exploring the following questions: Do the external actors make any references to the Transnistrian constitution and its provisions in their official public statements or during the negotiations? Do they mention Transnistrian elections, referenda, constitutional changes, or adherence to human rights documents in their public statements or during the negotiation process? If so, what is the attitude of the external actors toward Transnistrian developments?

**Documents (official public statements/discourse).** The review of official public statements includes documents available on official websites, in printed or online media, and issued by key public Transdnestrian and external officials, namely presidents, ministers or heads of foreign affairs, heads or members of the legislative body, as well as the heads or key representatives of the organizations involved in the settlement of the Transdnestrian issue.

**Time period.** The overall period of the documents reviewed ranged from August 1990 to May 2013. The time period of documents issued by the external actors depends on the time at which the actor joined the negotiation process. For example, the OSCE entered the process in 1993 so its documents are analyzed from that period, whereas the US entered the process in 2005, so its documents are analyzed starting from 2005.

### **3.3. Questionnaire Study**

The questionnaire study looks at similar, although more succinct, versions of the issues analyzed in official public statements and aims to understand the positions of the external actors regarding Transdnestria's constitutional development and the prospects for its recognition beyond public discourse. Such an approach provides a more comprehensive picture for the analysis of the effects of the constitution on the recognition of Transdnestria.

This study of officials' opinions was conducted between January and September 2013 and comprises both the written and/or oral responses from the questionnaire on Transdnestria's constitutional development and its status. In total, the questionnaire was sent to forty-three relevant public officials and experts in the negotiation process in the "5+2" format. Correspondence was maintained with twenty-seven of them. In the end, responses to the questionnaire were obtained from seventeen people, some of whom provided their answers on the condition of remaining anonymous. As a result, the present study included the views of

representatives from the TMR, Moldova, the OSCE, Ukraine, and the EU. Representatives from the Russian Federation as well as the United States did not provide their views for the study. Thus, this research analyzes the insights of five actors in the negotiation process obtained from public sources, the questionnaire, and semi-structured interviews, as well as two additional positions obtained only from the publicly available sources (*See Table 6*).

TABLE 6. PARTICIPANTS IN THE STUDY

<b>Actor</b>	<b>Number of pers.</b>	<b>Position</b>	<b>Period covered</b>
TMR	3	High-ranking public officials	1990-2013
Moldova	3	High- and low-ranking public officials	1994-2013
OSCE	6	High-ranking public officials	1993-2013
Ukraine	1	High-ranking public official	2007-2013
EU	2*	High- and low-ranking public officials	2007-2013
Experts	2	Independent scholars	2002-2013

\*Note: One respondent, a representative of the EU, is an independent expert whose knowledge on the issue is used in the work of the EU public officials.

To summarize, by examining Transdniestria’s constitutional acts, this research explores whether they demonstrate the criteria for recognition, and, if so, which criteria are used and how they are asserted. Additionally, by looking at the official statements of Transdniestrian political leaders, this study analyzes whether the entity’s claim to recognition is related to its constitutional acts or to specific stages in the TMR’s constitutional development. Finally, this research seeks to explore the reactions of the outside actors to the existence of Transdniestrian constitutional acts and/or to the steps of Transdniestria’s constitutional development, as well as to see whether such reactions have had any impact on Transdniestria’s status.

## **Conclusion**

The doctrinal framework on the international recognition of states suggests that constitutionalism is part of the recognition process and that a constitution matters for the purposes of an entity's recognition. Observing these doctrinal expectations in practice requires close examination of the experience of an unrecognized state in search of recognition. This chapter suggests focusing on a special category of state-like entities – unrecognized states – that possess all the attributes of statehood but lack international recognition due to the contested nature of their statehood. The lengthy efforts of these states in searching for recognition allows us to analyze the constitutional tools they use for the purposes of recognition and the reactions of outside actors toward these tools. Along with sharing similar features with other de facto states, Transdniestria stands out as a case study that facilitates observation of the doctrinal expectations in practice due to its highly internationalized, non-ethnic conflict and well-developed constitutional structures. Thus, analysis of the interactions between elements of Transdniestrian constitutional development and the positions of the external actors will demonstrate whether the existence of a constitution and constitutional mechanisms in an unrecognized state has any effects on its recognition.



### **CHAPTER THREE. THE EFFECTS OF ASSERTING THE TRADITIONAL AND CONTEMPORARY CRITERIA FOR RECOGNITION IN THE TRANSDNIESTRIAN CONSTITUTIONAL FRAMEWORK ON THE PROCESS OF TRASDNIESTRIA'S RECOGNITION**

#### **Introduction**

Unrecognized states experience and create a viable sense of statehood despite their lack of international recognition. One of the features that assists unrecognized states in consolidating their statehood is their constitutional framework: it provides the basis for their internal political development and establishes a sovereign presence for the purposes of external relations. As Chapter 1 has shown, the process of state recognition and a state's constitutional development are interrelated in several ways. First, a constitution asserts the traditional criteria for recognition such as a defined territory, population, and government, as well as the capacity of a state to conduct international relations. Second, a constitution enables the state to implement the contemporary criteria for recognition on democratic governance, the rule of law, and the protection of human rights. Third, a constitution ensures the state's commitment and capacity to respect its international obligations and to pursue international aims that demonstrate its potential to be a member of the world community.

In order to observe whether similar relations characterize the Transdniestrian case study and to assess the effects of the Transdniestrian constitution on the TMR's recognition, this research explores the ways in which Transdniestria has constitutionally embedded the criteria for international recognition and publicly linked its constitutional provisions and practices to its claim for recognition. It also analyzes the official responses of the key external actors on Transdniestrian constitutional development as observed through their public statements and personal communications. Here and in the next chapters, the term *the external actors* refers to a

specific group of actors in the Transdniestrian negotiation process, namely Moldova, Ukraine, Russia, the OSCE, the EU, and the US.

This framework for analysis suggests a variety of possible outcomes concerning the effects of the TMR's constitutional framework:

- the Transdniestrian constitution has an effect only on the recognition of this entity;
- the Transdniestrian constitution affects the recognition of this entity, and has other effects as well;
- the Transdniestrian constitution does not affect the recognition of this entity or anything else;
- the Transdniestrian constitution does not have an impact on the recognition of this entity, but does have other effects.

The case study shows that the Transdniestrian constitution did not impact the process of recognition of this de facto state, but that it did have other effects. On the one hand, the adoption of the TMR's constitution has not led the external actors to view the issue of Transdniestria's recognition more favorably or predisposed them to granting it recognition. This lack of recognition stands in contrast to the fact that the TMR's constitution asserts both the traditional and contemporary criteria for recognition and establishes a framework for the entity's democratic development.

On the other hand, the overall development of the Transdniestrian constitutional system has had an impact on Transdniestria itself and on the external actors. First, in Transdniestria, the constitutional framework has aided the consolidation of the TMR's statehood. The constitutional incorporation of both the traditional and contemporary criteria for recognition has ensured its

internal organization, the regulation of the TMR's polity, and the internal legitimation of the TMR's authority. Although the constitutional function of asserting the criteria for international recognition is applicable in the context of both recognized and unrecognized states, it has a particular relevance for unrecognized states that are seeking their independence. In the case of Transdnistria, its constitutional assertion that it meets the criteria for recognition and its constitutional practices have served as a basis for state building and for the entrenchment of its claims to statehood. Second, the existence of the Transdnistrian constitution has influenced the TMR's political path by keeping its focus on achieving its independence as a state. Domestically and internationally, Transdnistrian authorities have promoted policies that have reflected the will of the people as enshrined in the constitution. In particular, authorities in the TMR have made sure that the constitutional provisions stipulating the state's sovereign and independent character are followed and implemented.

Furthermore, the TMR's constitutional framework has influenced the entity's interactions with the external actors. First, during the negotiation process, the external actors have officially worked with Transdnistrian representatives who were elected or appointed in accordance with the TMR's constitution. As this shows, the external actors are willing to engage with the constitutionally elected (although officially unrecognized) leaders of Transdnistria for the purposes of negotiations.

Second, the TMR's long existence as a de facto state has prolonged and increasingly deepened its engagement with the external actors over the years. Gradually, these interactions have included a growing number of parties to the Transdnistrian issue and have covered an increasing number of issues connected to the process of conflict resolution. The causal link between the TMR's constitutional framework and its increased engagement with the external

actors, however, remains unclear. Although the constitutional organization and regulation of the TMR has contributed to its longevity, the available evidence suggests that the Transdniestrian constitution has not been the only or even primary factor in sustaining the entity's existence. Therefore, while the constitution has likely influenced the TMR's endurance, which, in turn, has enabled more meaningful interactions with the external actors, the constitution alone is not solely responsible for this international engagement.

Third, while the TMR's constitution has had no impact on its recognition, the very idea of constitutional, democratic development in the entity has shaped how the external actors approach negotiations with and over Transdniestria. The external actors have further injected the general principles of democratic development into the negotiation process by suggesting that the democratic development of Transdniestria in practice is an important factor for possible settlement of the conflict. Therefore, the external actors have paid close attention to the internal constitutional practices of Transdniestria in order to observe whether those practices favor or jeopardize resolution of the entity's status.

The analysis of the case study's findings is divided into two chapters. This chapter looks at the effects of the TMR's constitutional incorporation of the traditional and contemporary criteria for recognition on the decision-making processes of the external actors regarding possible recognition of the entity. The next chapter examines the specific example of democratic development as one contemporary criterion for recognition and explores the effects that the TMR's electoral practices have had on Transdniestria's quest for recognition.

This chapter demonstrates that, while the TMR's constitutional framework has not had any effect on the international recognition of Transdniestria, it has influenced the consolidation of Transdniestrian statehood. This chapter also explores the ways in which the external actors

have emphasized the idea of Transdniestrian democratic development for the purposes of the negotiation process. **Section 1** analyzes the use of the traditional criteria for recognition in constitutional documents and public discourse in Transdnistria and examines the responses of the external actors. The section demonstrates that the assertion of the traditional criteria in constitutional documents has created a strong basis for Transdnistrian state-building and the consolidation of its statehood. However, the lack of response from the external actors to Transdnistria's constitutional statehood implies its potentially negative effects on the entity's prospects for recognition. **Section 2** explores how both the Transdnistrian constitution and official public discourse reflect the contemporary criteria for recognition. It also reviews the reactions of the external actors to the TMR's constitutional provisions as they stand in text, and, most importantly, to their realization in specific practices that illustrate general aspects of its constitutional development. While the existence of TMR's democratic constitutional provisions and their implementation have not affected international recognition of the entity, they have consolidated and legitimized Transdnistrian state institutions. Also, despite the exclusion of recognition from possible solutions to the conflict, the external actors have taken the TMR's democratic development into account when approaching the broader process of conflict resolution.

### **1. The Traditional Criteria for Recognition**

One of the ways in which Transdnistria has framed its claim for recognition is through its assertion of the traditional criteria for recognition in its constitutional documents. Such framing has helped Transdnistria lay the groundwork for future state building and for projecting an image of the TMR as a state to the key external actors. Although in its official public discourse, Transdnistria largely bases its claim for recognition on the principle of self-

determination and does not mention the incorporation of the traditional criteria in its constitution, leaders still refer to the constitution as a characteristic of independence and the foundation for the state's internal organization. Thus, the constitution's assertion of the traditional criteria for recognition and their general public presence have influenced the internal development of Transdnestrian statehood, which, in turn, has consolidated the Transdnestrian claim to recognition.

For their part, the external actors make no mention of the existence of the Transdnestrian constitution in their official public discourse and disregard the incorporation of the traditional criteria for recognition in the TMR's constitutional documents. Based on the premise that Transdnestria is ineligible for statehood, outside actors avoid framing their discourse in any way that references the TMR's constitutional provisions, including those asserting the traditional criteria for recognition. Instead, they refer to a set of issues related specifically to negotiation and conflict resolution.

As a result, neither Transdnestrian nor foreign official public discourses serve as evidence that the traditional criteria asserted in the TMR's constitution has affected the prospects for the TMR's recognition. Yet the constitutional incorporation of the traditional criteria for recognition has strengthened Transdnestrian state-building because the provisions on population, territory, government, and interstate capacities create the background for the organization of the Transdnestrian state and its internal and external practices, which, in turn further entrench the TMR's claim to independent statehood.

For a better understanding of the Transdnestrian claim and the role of the TMR's constitution in pursuing that claim, this section looks at the traditional criteria for recognition as they are embodied in the TMR's constitutional acts, and how the external actors have reacted to

this embodiment. It then examines the traditional criteria for recognition in the Transdnestrian official discourse, and how the external actors have responded to this rhetoric. Although it is hard to separate the discourse of the external actors on these topics, such a division helps to clarify what exactly, if anything, the external actors have discussed, and how they have responded to the Transdnestrian arguments.

### **1.1. The Traditional Criteria for Recognition in the TMR's Constitutional Documents and the Responses of the External Actors**

In its adjustment to the break-up of the Soviet Union<sup>1</sup> and search for sovereignty, Transdnestria has adopted a number of foundational constitutional acts asserting its existence as a state. The constitution's endorsement of the traditional criteria for recognition, rather than their endorsement merely as statutes, suggests a greater degree of commitment to pursuing the independence and assertion of a common Transdnestrian identity. As Chapter 2 has shown, the political and linguistic changes in Moldova led Transdnestrians to mobilize to protect their rights through a number of initiatives. At its Second Congress of People's Deputies of All Levels held on September 2, 1990, the Deputies of Transdnestria adopted:

- The Decision on the Creation of the Transdnestrian Moldovan Soviet Socialist Republic (TMSSR), which would be part of the Union of Soviet Socialist Republics (USSR);
- The Declaration of the Creation of the TMSSR;

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<sup>1</sup> The break-up of the USSR contributed to creation of Transdnestrian statehood. As the ex-President of TMR, Igor Smirnov, underscored in his public statement on the 8th anniversary of the TMR's establishment, "The creation of our state became the legitimate consequence of the processes that began as the result of the break-up of the USSR." Transdnestrians considered the multi-ethnic state of the Soviet Union as a protector of their rights, in contrast to the newly sovereign Moldovan state, with a single dominant ethnic group. See "Doklad Prezidenta Smirnova na torzhestvennom zasedanii Vehovnogo Soveta, Pravitel'stva i obschestvennyh organizatsii, posvyaschennom vos'moi godovschine PMR" [Report of the President Smirnov I.N. at the Special Session of the Supreme Council, Government and Public Organizations, in honor of the 8th year of PMR existence], *Pridnestrovi'e*, #171, September 8, 1998; Perepelitsa, 2009.

- The Decree of State Power; and
- The Statement on the Political and Legal Grounds for the Creation of the TMSSR.

Between December 1990 and August 1991, the first convocation of the TMSSR's Supreme Council (parliament) adopted even more documents supporting its sovereignty:

- The Declaration of Sovereignty of the TMSSR (December 1990);
- The Decree of State Power of the TMSSR (December 1990); and
- The Declaration of Independence of the TMSSR (August 1991).

Subsequently, Transdniestria adopted:

- The Constitution of the TMSSR (September 1991), at the meeting of the Fourth Congress of the People's Deputies of All Levels of the TMSSR; and
- The Constitution of the Transdniestrian Moldovan Republic (December 1995), which was approved by a popular referendum.

Through these foundational legal documents, Transdniestria has asserted the traditional recognition for criteria – a permanent population, a defined territory, an efficient government, and the capacity to enter in international relations – and additionally emphasized the leading role of these documents for Transdniestrian state-building. As a result, the constitutional acts' embodiment of the Transdniestrian people's desire for separate statehood provides evidence of the TMR's commitment to build its own state.

### **1.1.1. Population**

International law does not require minimum standards on population size, a population's readiness for independence, or significant commonalities among the population in order to meet the criterion for population. It does, however, expect that an entity will have some number of



inhabitants, “some population linked to a specific piece of territory on a more or less permanent basis.”<sup>2</sup>

In its Declaration of the Creation of the Transdnestrian MSSR, Transdnestria stressed the common will of its multinational population to be sovereign,<sup>3</sup> as well as the state’s historical responsibility for the future of all peoples in Transdnestria along with their own history, culture, and traditions. In reaction to the suspected threats to the Moldovan nation in Moldova itself, the Declaration also stipulated the intention of Transdnestria to protect the existence of Moldovan ethnic groups within its territory as part of its multinational population.<sup>4</sup> Furthermore, the Declaration reflected the idea that the TMR’s people are its only source of power, the feature that most added to people’s sense of belonging to a new republic through their shared governing functions.<sup>5</sup>

Similarly, the Declarations of Sovereignty and Independence of the TMSSR established provisions on the multinational character of the Transdnestrian population and on the need to ensure its development. Likewise, the 1995 Constitution explicitly underscored the shared destiny of the multinational people living within the territory of Transdnestria.<sup>6</sup> Such an

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<sup>2</sup> Martin Dixon, *Textbook on International Law*, 4th ed. (London: Blackstone Press, 2000), 107-8.

<sup>3</sup> The will of the Transdnestrian people as expressed during referenda in 1989 and 1990.

<sup>4</sup> By introducing this provision, Transdnestrians highlighted one of their reasons for separation from Moldova, which at that time (1989-1992) was seeking rapprochement with Romania, introducing state symbols that strongly resembled their Romanian counterparts (e.g. flag, anthem), and mandating the use of the Latin script. Transdnestria also responded to the problematic issue of identity in Moldova, where some people think of themselves as Moldovans whereas others view themselves as Romanians. Therefore, Transdnestria emphasized that the Moldovan nation exists separately from the Romanian and continued to use the Moldovan language based on Cyrillic.

<sup>5</sup> *Declaration of the Creation of the Transdnestrian Moldovan Soviet Socialist Republic*, 1990 [*Declaratsia o Sozdanii Pridnestrovskoi Moldavskoi Sovetskoi Sotsialisticheskoi Respubliki*], <http://mfa-pmr.org/index.php?newsid=230>.

<sup>6</sup> Preamble, Constitution of TMR, 1995, amended and modified [*Konstitutsia PMR*], <http://mfa-pmr.org/index.php?newsid=644>.

inclusive approach towards its population in its constitutional acts aimed to ensure the basis for the creation of the Transdnestrian civic state.<sup>7</sup>

### 1.1.2. Territory

As with the requirement for a population, in international law, there are no strict standards on the size of a state's territory and the scope of its territorial control. However, an entity "must have some definite physical existence that marks it out clearly from its neighbors"<sup>8</sup> and must exercise government power over that territory.

With the announcement of the TMSSR's creation in the early 1990s, all of its constitutional acts paid special attention to the issue of Transdnestrian territory. The Decision of the Second Congress of Popular Deputies, the Declarations of Sovereignty and Independence, both the 1991 and 1995 constitutions, as well as the law on administrative-territorial divisions from 2002 all specify the TMR's borders and territorial division.<sup>9</sup> They stipulate that the main part of the territory lies on the left bank of the Dniestr River, with exception of the city of Bender and a part of the Slobodzea region, which are located on the right bank. Between 1989 and 1990, each region had a referendum on the question of the TMSSR's creation and whether to join it.<sup>10</sup> The borders of the republic were also defined by the 1992 Special Temporary Regulation on Protection of the TMR State Borders<sup>11</sup> and the 2013 Law on the TMR State Borders.<sup>12</sup> As such,

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<sup>7</sup> The TMR's Constitution does not focus on ethnic factors and attempts to build up the civic and multinational grounds of its state. See M.N. Guboglo, "Tyazhкое vreamеа konkuriruiuschih identichnostei. Opyt Pridnestrov'a," in *Nepriznannaya respublika. Oчерki. Dokumenty. Khronika*, ed. V.F. Gryzlov (Moskva: Rossiiskaya academia nauk, 1997).

<sup>8</sup> Dixon, 2000, 108.

<sup>9</sup> The TMR's territory includes the cities of Bender, Dubassary, Rybnitsa, and Tiraspol, and regions [rayons] of Grigoriopol, Dubassary, Kamenka, Slobodzea, and Rybnitsa. For general reference, see Map H in Chapter 2.

<sup>10</sup> Volkova, *Nepriznannaya respublika*. V.3, 1997; See also the details on 1990 referenda in Chapter 2.

<sup>11</sup> Postanovlenie Verhovnogo Soveta nr.243 Ob utverjdenii Vremennogo polojenia ob ohrane Gosydarstvennoi granitsy PMR, 15.10.1992. <http://zakon-pmr.com/>.

<sup>12</sup> Zakon nr. 109-3-V o Gosydarstvennoi granitse PMR, 10.06.2013.

Transnistria's constitutional acts clearly delineate the borders of its territory over which the TMR's government exercises its control.

### **1.1.3. Government**

Again, although international law specifies no requirements with respect to the degree or breadth of governmental power exercised over a territory, this criterion is nonetheless commonly interpreted to include "some degree of maintenance of law and order"<sup>13</sup> through governance structures.

The constitutional acts the TMR adopted were aimed at ensuring control over its territory and population and at establishing an efficient government. The Decision of the Creation of the TMSSR, the Declaration of Sovereignty and the Declaration of Independence, both Decrees of State Power, and both Constitutions included the following provisions: the power of the state belongs to the people; it is divided into legislative, executive, and judicial branches; and that power is realized through a range of governance structures such as local councils and the Supreme Council, heads of administration and the central government, the local courts and the Supreme Court.

Since the adoption of the new constitution in 1995, the TMR's system of governmental bodies has undergone a number of changes, yet has retained control over its territory and ensured the maintenance of both law and order. The details of the Transnistrian governmental structure, which are described in the next section on the contemporary criteria for recognition, also illustrate that the entity's constitutional provisions establish the democratic structures necessary to ensure sovereign governance in its own state.

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<sup>13</sup> Crawford, 1979, 45-46.

#### 1.1.4. The Capacity to Enter into Relations with Other States

Closely connected to the presence of a functioning government, this criterion requires that an entity express its independence to freely determine its international relations and to interact with other states. The Declaration of Sovereignty and the 1991 Constitution both explicitly mentioned international relations, stipulating that:

The Transdniestrian MSSR exercises its international links and relations independently as well as through the existing bodies of the Union of SSR. In its relations with the republics of the Union of SSR, the exclusive right to represent the TMSSR belongs to the Supreme Council of the republic and its designated bodies.<sup>14</sup>

Additionally, the Declaration of Independence provided that:

The relations of the Transdniestrian MSSR with other states are built on the basis of treaties signed on the principles of equality, mutual respect and non-interference in internal affairs of other states.<sup>15</sup>

The 1995 Constitution echoed this provision by grounding its foreign policy in the principles of the sovereign equality of states, non-use of force, peaceful dispute resolution, and non-interference in other states' internal affairs.<sup>16</sup> It stated that:

The universal principles and norms of international law, as well as the international treaties of the Transdniestrian Moldovan Republic, are the basis for relations with other states and the constituent part of its legal system.<sup>17</sup>

To summarize, the Transdniestrian constitutional acts have included provisions relating to all the traditional criteria for statehood. By employing fundamental constitutional documents such as the Declaration of Independence and two Constitutions to assert these key elements of its statehood, Transdnistria has demonstrated its commitment to seek sovereignty and independence internally and externally. Internally, the population of Transdnistria witnessed the realization of popular will through the provisions of these fundamental constitutional documents

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<sup>14</sup> Declaration of the TMR's Sovereignty, 1990; Article 29, the TMR's Constitution, 1991.

<sup>15</sup> Declaration of the TMR's Independence, 1991.

<sup>16</sup> Article 10 (1), the TMR's Constitution, 1995.

<sup>17</sup> Article 10 (2), Ibid.

after having expressed wide support for sovereignty in referenda.<sup>18</sup> Externally, Transdnistria has made clear its commitment to independence so that the external actors could see its intention and consider it while negotiating over TMR's status.

Notwithstanding Transdnistria's substantial efforts to advance its statehood and to assert the traditional criteria for recognition through constitutional acts, the external actors have made no mention of either these constitutional documents or the provisions they entail in their official public discourse. Instead, the external actors largely frame their public discourse around issues related to the negotiation and settlement processes. Major sections in the official statements of all of the external actors – Moldova, the OSCE, Russia, Ukraine, the EU, and the US – concern the need for conflict resolution and the importance of discussions and cooperation among all parties involved to achieve that goal. The external actors have emphasized Moldovan territorial integrity and their commitment to the conflict settlement process<sup>19</sup> and discussed the need for a viable resolution that includes a guaranteed status for the TMR.<sup>20</sup> With the goal of settling the dispute in sharp relief, the external actors also have paid considerable attention to the issues of international and regional stability and security. They have debated the peacekeeping mission, the withdrawal of Russian troops,<sup>21</sup> and the ways in which a solution to the conflict will

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<sup>18</sup> Details on the referenda held between 1990 and 1991 may be found in Chapter 2, while the 1995 Constitution is discussed in Chapter 4.

<sup>19</sup> Organization for Security and Cooperation in Europe, "Annual Reports," (1994-2012); Senate Foreign Relations Committee, "Testimony of Asif J. Chaudhry," (2008); U.S. White House, "Joe Biden's Speech at Opera House Square, Chisinau, Moldova," News Release, March 11, 2011; U.S. Department of State, Interview by Virginia Dumitras, December 12, 2011; European Union Council. *Council Conclusions on Moldova*, 2004 and 2008; Pravitel'stvo Rossiiskoi Federatsii, "Sovmestnaya press-konferentsia s Federal'nym kanslerom Germanii Angeloi Merkel po itogam rossiisko-germanskikh peregovorov" *News Release*, June 5, 2010; Sovet Federatsii Federal'nogo Sobranie Rossiiskoi Federatsii, "Sergei Mironov: Rossiya gotova sodeistvovat' resheniu Pridnestrovskoi problemy," News Release, May 18, 2008.

<sup>20</sup> Ministerstvo Inostrannykh del Rossiiskoi Federatsii, "Interviewu Sergheya Lavrova," News Release, November 10, 2005; OSCE Annual Reports, 1994-2012; OSCE Report #13, 1993; "Interv'u Erwan Fouere," *Novyi Region*, September 24, 2012; "Interv'u William Moser," *Novyi Region*, October 8, 2012.

<sup>21</sup> "Iulian Chifu: V Buchareste schitaiut, chto naznachenie Rogozina zablokirovalo pryamoi dialog mejdu Kishinevom i Tiraspolem," *Novyi Region*, January 29, 2013; (on the need to transition from Russian peace-keeping troops to an international force, and to push Russia to comply with Istanbul obligations on troops withdrawing);

contribute both to regional stability<sup>22</sup> and to the protection and furtherance of the basic security interests of all parties in the region.<sup>23</sup> Furthermore, individually, the external actors have discussed particular issues of relevance to their own external policies. For example, along with settling the conflict, the EU often mentions its goal of further developing its neighborhood policy,<sup>24</sup> while Ukraine, Russia, and the US concentrate on social and economic issues.<sup>25</sup>

The resulting context in which Transdniestrian status is debated rules out the possibility of recognition altogether, thus hinting that the issue has an important geopolitical component. Official public discourse merges the issue of Transdniestria into a larger discussion of how to create a comprehensive system for security and stability in the region and cares little about the internal dynamics of the de facto state itself or its constitutional structure.

Thus, the approach the external actors have adopted in their official public discourse frames the Transdniestrian issue in terms of conflict resolution (based on the territorial integrity of Moldova) and geopolitics. Their approach has not suggested that the Transdniestrian constitution and its provisions asserting traditional criteria for recognition have been particularly decisive for the prospects of Transdniestria's status.

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Moldova US Department of State and the Broadcasting Board of Governors. Office of Inspector General Report of Inspection. Embassy Chisinau. "Report Number ISP-I-05-12A," (2005), 5.

<sup>22</sup> During his visit to the TMR, the head of EU delegation on the external relations, Rene Nyberg, stated, "The aim of our visit is to underscore the importance of stability in this region of Europe. We support all efforts on final conflict resolution." "'Troika' Evrosoyza v Pridnestrov'e," *Dnestrovskaya Pravda*, #121, October 21, 1999.

<sup>23</sup> Hill, 2008.

<sup>24</sup> *EU Council Conclusions on Moldova*, 2004.

<sup>25</sup> "Leonid Kozhara: Seichas vremea prinitat' vernyie reshenia," *Kommersant*, January 20, 2013; Louis O'Neill. "Moldova's Recent Elections: Prospects for Change in Europe's Poorest Country," (Commission on Security & Cooperation in Europe: U.S. Helsinki Commission), 2009.

## **2.1. The Presence of the TMR's Constitutional Provisions Asserting the Traditional Criteria for Recognition in Official Transdniestrian Public Discourse, and the Approach of the External Actors towards Transdniestrian Claims**

In arguing for the recognition of its statehood, the TMR rarely refers to the traditional criteria or to the constitutional provisions that ground these criteria in its official public discourse. Instead, the TMR bases its claim to recognition on the restoration of its statehood and its right to self-determination. This suggests that the TMR largely views the issue of its recognition within the context of international law and consigns constitutional law to the domestic sphere.<sup>26</sup> For the external actors, however, the framing of Transdniestrian claims in terms of the restoration of its lost statehood and right to self-determination are not important. In their official public discourse, the external actors reject the TMR's claims<sup>27</sup> and largely ignore discussions of this topic in favor of upholding the international legal principle of territorial integrity.

Thus, along with defining the visible elements of Transdniestrian and foreign official public discourse, the view of and reactions to Transdniestrian claims to its statehood contextualize the grounds for the TMR's search of recognition, as well as the external actors' refusal to recognize the entity. In addition, review of Transdnestrria's claims to recognition strengthens the idea that the TMR's constitutional documents have not played a direct role in the recognition process and have not affected the prospects for a change in the entity's status.

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<sup>26</sup> The approach is supported by personal communications of the representatives of Transdniestrian authorities. August 2013.

<sup>27</sup> Scholars analyzing the compliance of the TMR's claims to statehood and self-determination with the traditional criteria for recognition under the framework of international law widely share this position. See the discussion below.

### 2.1.1. Restoration of the TMR's Statehood

In justifying its statehood, Transdnistrians invoke arguments highlighting the area's considerable experience of autonomy in the past and the Moldovan denunciation of the Molotov-Ribbentrop Pact, which was signed between Germany and the Soviet Union in 1939. First, as mentioned in the previous chapter, Transdnistrian territory served as the basis for the creation of the Moldovan Autonomous Soviet Socialist Republic (MASSR) within Ukraine in 1924. In comparison to Bessarabia, which was a part of Romania at that time, Transdnistria experienced its own statehood in the form of an autonomous republic from 1924 to 1940. As a result, in claiming restoration of its statehood after the break-up of the USSR, Transdnistria refers to its pre-MSSR history<sup>28</sup> and to the will of the Transdnistrian people who "decisively voted to return its statehood during the referenda [of 1990 and 1991]."<sup>29</sup>

Second, in December 1989, the Second Soviet Congress of People's Deputies in Moscow declared the Ribbentrop-Molotov Pact, which defined the modern boundaries of Moldova, illegal.<sup>30</sup> Some groups in Romania and Soviet Moldavia interpreted this pronouncement as annulling Bessarabia's annexation by the USSR in 1940.<sup>31</sup> Consequently, in 1990, the Moldovan republic declared its sovereignty<sup>32</sup> and likewise adopted a document denouncing the Ribbentrop-Molotov Pact as an act of aggression leading to the Soviet occupation of part of Romania.<sup>33</sup> The

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<sup>28</sup> *Statement on the Political and Legal Grounds for the Creation of the Transdnistrian Moldovan Soviet Socialist Republic* [Politicheskie i pravovye osnovy sozdania Pridnestrovskoi Moldavskoi Sotsialisticheskoi Respubliki], 1990.

<sup>29</sup> The Chairman of the Transdnistrian Supreme Council, Grigory Marakutsa, speaking in an interview. He also added that Transdnistrians need their statehood as a guarantee to prevent their absorption into another state. "G.Marakutsa: My budem vesti dialog..." [G.Marakutsa: We will continue a dialog...], *Dnestrovskaya Pravda*, #215, September 18, 1992.

<sup>30</sup> *Vtoroy s'ezd narodnykh deputatov SSSR, 12-24 December, 1989: Stenographicheskiy otchet*, [Second Meeting of the USSR Deputies. Records of the Proceedings], t. IV (Moskva: Verhovnyi Soviet SSSR), 1990.

<sup>31</sup> Kolstø et al., 1993, 982.

<sup>32</sup> Declaration of Moldova's Sovereignty, adopted on 23 June 1990.

<sup>33</sup> Decision of the Supreme Council of Moldovan SSR on the Conclusion of the Commission of the Supreme Council of MSSR regarding Political and Legal Assessment of the Molotov-Ribbentrop Pact, adopted on June 23, 1990. This act raised the question of possible unification with Romania. See Kolstø et al., 1993, 982.



document additionally declared illegal the decision of the USSR's Supreme Soviet to create a Moldavian Soviet Socialist Republic and that republic's immediate incorporation into the USSR.<sup>34</sup>

In response to these statements, Transnistria claimed that the Moldovan declaration on the illegality of the MSSR's creation entitled the TMR to be free from the MSSR.<sup>35</sup> It followed, then, that there would exist two successors to the MSSR: the Republic of Moldova (formerly Bessarabia), and the Transnistrian Moldovan Republic (the direct successor of the MASSR).<sup>36</sup> Given the fact that Ukraine refused to reabsorb the Transnistrian republic – which was formerly part of Ukraine<sup>37</sup> – based on Ukraine's support for Moldovan territorial integrity,<sup>38</sup> Transnistria believes this entitles it to claim its own statehood and realize its right to self-determination.<sup>39</sup>

In their available official public statements, international actors largely disregard these details based on their recognition of the Republic of Moldova and their view of Moldova as the

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<sup>34</sup> The Declaration on Moldovan Independence, adopted in August 1991, also underscored the forceful occupation of the Bessarabian territory in 1940 and the illegitimate creation of the Moldovan SSR.

<sup>35</sup> "Obraschenie Komissii Pridnestrovskoi Moldavskoi Sovetskoi Sotsialisticheskoi Respubliki k narodam SSSR [The Address of the Commission of TMSSR to the peoples of the USSR]," *Dnestrovskaya Pravda*, #217, September 14, 1990.

<sup>36</sup> "Istoriko-pravovye predposylki sozdanii Pridnestrovskoi gosudarstvennosti. Rol' i znachenie Pridnestrovskoi Moldavskoi Respubliki v mirovom politicheskom protsesse," *Diplomaticheskiy vestnik* 1 (2010). While not rejecting the existence of the TMR's statehood between 1924 and 1940, some authors highlight its fleeting character as a region expressly created for establishing the Moldovan SSR. See e.g., V. Ia. Grosul, T.S. Guzenkova, "Pridnestrov'e," in *Moldavia: sovremennye tendentsii razvitiia*, ed. E.M. Kozhokin (Moskva: ROSSPEN, 2004), 370.

<sup>37</sup> In 1991, the deputies of the Supreme Council adopted the Address on Entering Ukraine to which Ukraine never responded. See "Interv'u s Igorem Smirnovym," *Pridnestrov'e*, #213-214, November 10, 2001.

<sup>38</sup> *Joint Statement of the Russian Federation, Moldovan and Ukrainian Presidents on Political Settlement of the Transnistrian Conflict*, January 19, 1996. The statement emphasized the necessity of settling the question of Transnistria's status within the borders of the Republic of Moldova. Ukraine reiterated its position in documents it issued throughout the negotiation process (e.g. Moscow Memorandum, 1997; Russian-Ukrainian Odessa Statement, 1998; Kiev Declaration, 1999; Mediators Proposals and Recommendations, 2004).

<sup>39</sup> V.N. Yakovlev, "Kontstitutsia Moldovy i diplomatische aktzii - osnova nestabil'nosti v Pridnestrov'e," in *Nepriznannaya respublika*, ed. V.F. Gryzlov (Moskva: RAN, 1997), 73.

only legitimate successor of the MSSR.<sup>40</sup> In this context and with regard to the Moldovan denouncement of the Ribbentrop-Molotov Pact, scholars add that:

Simply denouncing a treaty does not revert the political system to the *status quo ante*; it merely means that the treaty will not be in force going forward. This is especially true in treaties that include boundary delimitation provisions.<sup>41</sup>

In a few of its public statements, Ukraine has reiterated the inadmissibility of any territorial changes in the region. It has emphasized that the MASSR's existence within Ukraine remains in the past and that Ukraine firmly respects the recognized borders of the former states of the Soviet Union.<sup>42</sup> Moldovan public officials additionally reject the TMR's position as unjustified. They argue that the current territory of the TMR includes only a part of the MASSR, whereas the rest of that territory is now part of Ukraine.<sup>43</sup> In this view, then, Transdniestria cannot appeal for restoration of its statehood.

Thus, Transdniestrian historical and legal arguments based on the restoration of its statehood and the external actors' rejection of these claims after their recognition of Moldova in 1991 suggest two points. First, these developments indicate that the constitution has not played a role in this process. And second, they confirm the external actors' strong stance on viewing

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<sup>40</sup> The EU, or the European Community at that time, recognized Moldova on December 31, 1991. In its Statement, the European Community announced, "The Community and its Member States welcome the assurances received from Armenia, Azerbaijan, Belarus, Kazakhstan, *Moldova*, Turkmenistan, Ukraine and Uzbekistan that they are prepared to fulfill the requirements contained in the 'Guidelines on the recognition of new States in Eastern Europe and the Soviet Union'. Consequently, they are ready to proceed with the recognition of these Republics." European Political Cooperation. "EPC 91/472. Statement Concerning the Recognition of Former Soviet Republics," V.7 European Political Cooperation Documentation Bulletin, 773 (1991), emphasis added. The US extended its recognition on December 25, 1991. See U.S. State Department. "President Bush Welcomes Commonwealth of Independent States, December 25, 1992," 2 Foreign Policy Bulletin 12 (Jan-Apr.1992).

<sup>41</sup> Special Committee on European Affairs of the New York City Bar, "Executive Summary: Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova," *ILSA Journal of International and Comparative Law* 14, no. 2 (2007-2008), 383.

<sup>42</sup> Interview of Yevgeny Levitsky, a representative of the Ukrainian president at the negotiations. He emphasized that, "Kyiv does not have territorial claims to anyone, and considers inadmissible such claims from anyone else." "Yevgeny Levitsky's Interv'u," *Dnestrovskaya Pravda*, #95, August 19, 1999.

<sup>43</sup> Private communication with Vasile Shova, former Moldovan Ministry of Reintegration (2001-2009), August 2013. See Map E in Chapter 2. This position is widely shared by Moldovan scholars. See e.g., Boțan, 2009; A. Smochină. "Federalizarea Republicii Moldova: Pro et Contra," in *Știința Universitară la începutul Mileniului Trei*, ed. Gh. Postică (Chisinau: Universitatea Liberă Internațională din Moldova, 2002); A. Smochină. "Considerațiuni Teoretice privind Statutul Special al Localităților din Stânga Nistrului," *Legea și Viața* 4 (1999).

Transnistria as a part of Moldova, thereby making the idea of the TMR's recognition as an independent state unfeasible.

### 2.1.2. Self-determination

International law does not specifically grant portions of a state the legal right to secede unilaterally, but it provides the right to self-determination as a venue for “a people” to pursue their own development.<sup>44</sup> Transnistria has framed its claim to statehood in terms of its right to self-determination based on a variety of provisions in international documents, and has grounded its search for recognition in that right. Despite the Transnistrian position, international actors have largely ignored this claim in their public discourse, and the expert community, with some exceptions, has rejected it.

International law contends that the arguments for external self-determination of any unrecognized state must, at minimum, prove that:

- a) the separatists are a “people”;
- b) the state from which they are seceding seriously violates their human rights; and
- c) there are no other effective remedies under either domestic or international law.<sup>45</sup>

The following sections briefly evaluate each of these conditions with respect to the Transnistrian case.

#### *a) The claim to be a “people”*

In the practice of states, the term “people” generally refers to the population of a state/territory, and/or to an ethnic group, or a “nation” in the ethnographic sense of the word.<sup>46</sup>

When speaking about the people of Transnistria, its officials stress the multinational

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<sup>44</sup> Damrosch et al., 2009, 330-333; *Reference re Secession of Quebec* (1998).

<sup>45</sup> *Ibid.*

<sup>46</sup> Special Committee on European Affairs of the New York City Bar, 2007.

composition of the TMR and their shared Transdnestrian identity. First, as mentioned earlier, in the beginning of the 1990s, the TMR consisted of three key ethnic groups: Moldovans (34.1%), Russians (30.1%), and Ukrainians (28%).<sup>47</sup> This multi-ethnic composition has provided the basis for the Transdnestrian authorities to proceed in building a civic state, as opposed to the Moldovan national state.<sup>48</sup> Second, Transdnestrian authorities have pursued the development of a separate Transdnestrian identity, briefly described below, based on the TMR's historical heritage and Transdnestrian self-identification as such.<sup>49</sup>

First, from a historical perspective, the area's experience of statehood from 1924 to 1940, limited as it was by Stalin's regime, nonetheless served to justify Transdnestrian regional identity.<sup>50</sup> In addition, during the MSSR's existence, both entities, Transdnestria and Moldova, "represented two largely disconnected cultures, which co-existed in a complementary way – each dominating in its own domain [...with] the Russian-speaking industrial sector and agricultural Moldovan one."<sup>51</sup> This experience added to the common Transdnestrian identity that became more apparent in the course of increasing resistance to Chisinau from 1989 to 1992.<sup>52</sup>

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<sup>47</sup> Bomeshko, 1999, 37. Despite a decrease in population from 712,500 to 555,500 by 2004, the ethnic division of three groups remained approximately the same: 31.9% constituted Moldovans, 30.3% - Russians, and 28.8% - Ukrainians. "Itogi Pridnestrovskoi perepisi naselenia" [Report on Transdnestrian census], *Olivia-Press*, 07.09.2005.

<sup>48</sup> Both the existence of three ethnic groups and their peaceful coexistence with other ethnicities is widely mentioned in official documents such as the Declaration of Independence, the 1991 and 1995 Constitutions, and public discourse. For instance, the 1995 Constitution no less but opens with the sentence "We, the multiethnic nation of Transdnestrian Moldovan Republic..." As for public discourse, one example can be found in ex-President Smirnov's annual statement on the creation of the TMR, which proclaimed that, "the people of Transdnestria managed to protect the genuine equality of nations and created their own state, in which there are no "titular" nations, but which ensures equal rights to all citizens and that has three state languages." "Pozdravitel'noe obraschenie Smirnova I.N.," *Pridnestrov'e*, #165-166, September 1, 2001.

<sup>49</sup> A number of regional and international scholars support the idea of a separate Transdnestrian identity. See e.g., O'Loughlin et al., 1998; Vladimir Kolossov and Dmitriy Zayats. "Moldova i Pridnestrov'e: natsional'noe stroitel'stvo, territorial'nye identichnosti, perspektivy razresheniya konflikta," *Vestnik Evrazii* 1 (2001); Patrick Bruno, Phillip Velmot, and Oleg Vernik, *Mezhdnarnodnoe pravo i nezavisimost' Pridnestrov'a* (Bendery: Poligrafist, 2007); Perepelitsa, 2001; V. Solonari, "Transdnestria: Old Problems, New Developments," in *Prospects and Risks Beyond EU Enlargement*, ed. Iris Kempe, Wim van Meurs (Vs Verlag Fur Sozialwissenschaften, 2003).

<sup>50</sup> Kolossov, Zayats, 2001, 94.

<sup>51</sup> Alexander Bogomolov et al., "Transnistria Assessment Mission Report. Transnistrian Crisis: Human Dimension. December 2008 – February 2009," (2009), 7.

<sup>52</sup> O'Loughlin et al., 1998, 351.

Second, regarding the question of self-identification, two surveys conducted at the end of the 1990s in the TMR<sup>53</sup> showed that about half of the residents there saw themselves as constituting a specific ethno-cultural entity distinct from their neighbors.<sup>54</sup> When the population was asked to which neighboring states the TMR is the most similar, 43.7% of residents answered that the population of Transdnistria is unique,<sup>55</sup> believing that their identity had been formed for centuries under Russian influence.<sup>56</sup>

The process of self-identification has itself influenced the preferences of the TMR's inhabitants concerning the place of Transdnistria in the region: 65.4% of those surveyed believed that Transdnistria has a right to sovereign statehood,<sup>57</sup> and only 15% supported unity with Moldova, even with a special status for the TMR.<sup>58</sup> Thus, these studies suggest evidence of "the visible signs of a new national construction"<sup>59</sup> and of an identity,<sup>60</sup> which both serve as grounds for Transdnistrian authorities to claim to have met the criteria of creating "a people."<sup>61</sup>

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<sup>53</sup> One study was conducted in 1998 by the Tiraspol' polling firm Strategia, under the sponsorship of the Carnegie Foundation. The results were reported by Nikolai Babilunga in the paper "Territorial Identity as a Factor in the Political Stability of Transdnistria," presented at the Conference on "National Identities and Territories," Institute of Geography, Russian Academy of Sciences, Moscow, May 14-16, 1998 (Conference paper), and cited in O'Loughlin et al., 1998. The second study "National processes, language relations and identity," was conducted under the framework of the project "Nationalism and Violence in Two Post Soviet republics: Azerbaijan and Moldova," authored by David Laitin, Professor of Political Science at Stanford University, and financed by Harry Frank Guggenheim Foundation (1997-1999). The coordinator of survey in Transdnistria was N.Babilunga; computer processing of data was completed by T. Guboglo. The study was presented in an article of M.N. Guboglo, "Tyazhkoie vreamea konkuriruiuschih identichnostei. Opyt Pridnestrov'a." [Heavy burden of competing identities] In Gryzlov, 1999, 43-96, with the Annex of the results of the project: 165-220.

<sup>54</sup> Babilunga, Conference paper, cited in O'Loughlin et al., 1998, 351; Guboglo, 1999, 197.

<sup>55</sup> The figure of 43.7% reflected the view of 39% of Moldovans, 47% of Russians, 40% of Ukrainians, and 71% of other ethnicities who responded that the Transdnistrian population is unique. Guboglo, 1999, at 197; Babilunga, conference paper, 1998, cited in O'Loughlin et al., 1998, 35.

<sup>56</sup> Babilunga, Conference paper, cited in O'Loughlin et al., 1998, 351.

<sup>57</sup> Among those 65.4% who support the statehood for the TMR were 47% of Moldovans, 77.2% of Russians, 71.4% of Ukrainians, and 76.2% of representatives of other ethnic groups. Guboglo, 1999, 198.

<sup>58</sup> Among the 15% who support this idea, were 23.1% of Moldovans, 12.3% of Russians, 11.2% of Ukrainians, and no representatives of other ethnic groups. Guboglo, 1999, 199; Babilunga, Conference paper, cited in O'Loughlin et al., 1998, 351. In addition, Babilunga in his survey reports that 83% of those interviewed desired consolidation of the TMR's statehood. Babilunga, Conference paper, cited in O'Loughlin et al., 1998, 352.

<sup>59</sup> O'Loughlin et al., 1998, 352.

<sup>60</sup> Ibid.

<sup>61</sup> Since no ethnic group dominates the entity, the identity has a political character that has been legitimized through the common history of the TMR's inhabitants. The TMR strengthens its political identity through the adoption of

Scholars of international law, however, believe that the criterion for “people” lacks applicability to the context of the TMR precisely because there are no such people as Transdnistrians, but rather three distinct ethnicities – Moldovans, Russians and Ukrainians<sup>62</sup> – whose members often, along with Transdnistrian citizenship, hold the citizenship of neighboring states.<sup>63</sup> As a result, they contend that the population of this region cannot be called a “people” in the sense of belonging to a single ethnic group. In addition, scholars argue that, even if such a group were to exist, the simple declaration of its desire to secede, on its own, does not actually constitute a right to do so.<sup>64</sup>

The external actors have largely been silent on the issue of Transdnistrian identity in their official public discourse. One exception is the OSCE Mission to Moldova, which, in 1993, pointed out the existence of a distinct Transdnistrian perception of identity that is shared by both Slavs and Moldovans and is nourished by common geography, “a keen sense of a different history,” and demographic development during the Soviet Union.<sup>65</sup> At the same time, the OSCE

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state symbols and holidays; the establishment of statewide TV, radio, newspapers; the elaboration of history textbooks; the creation of museums, etc. Kolossov, *Zayats*, 2001, 102. In addition, the TMR’s authorities base their identity construction efforts “on a fundamentalist Slavophile presentation of local history and countless denunciations of Moldova’s ‘Romanisers,’ [and] ‘Unificationists.’” Solonari, 2003, 4-5.

<sup>62</sup> Special Committee on European Affairs of the New York City Bar, 2007.

<sup>63</sup> Since the entity does not prohibit citizens from holding multiple passports – not least because of its unrecognized status – nearly half of the Transdnistrian population has Moldovan citizenship; more than 170,000 residents have Russian citizenship; and about 90,000 Transdnistrians have Ukrainian passports. To compare, about 200,000 Moldovans have Romanian citizenship, with approximately 700,000-800,000 more applying for Romanian citizenship. See Octavian Milevschi, “Romania: From Brotherly Affection with Moldova to Disillusionment and Pragmatism,” in *Moldova: Arena of International Influences*, ed. Marcin Kosienkowski and William Schreiber (UK: Lexington Books), 2012, 176-177. On Moldovan citizenship data, see State Register of Residents. Statistical data from the State Register of Residents about people residing in the Republic of Moldova, by territorial administrative units, as of April 1, 2011, Online resource, *Registru Center for State Informational Resources*. [http://www.registru.md/stat1\\_ru/](http://www.registru.md/stat1_ru/); Figures on Russian citizenship were provided by the Russian Ambassador in Moldova during the opening of a new venue for the visiting of the consular service of the Russian Embassy. See “V Tiraspole otkrylsia novyi korpus vyezdnogo konsul’skogo obsluzhivania Rossiiskogo posol’sstva.” *Novyi region News Portal*, April 16, 2013, <http://nr2.ru/pmr/434530.html>; On Ukrainian citizenship data, see “Daiesh’ Pridnestrov’e!” *Segodnya*, Online resource, May 20, 2010, <http://www.segodnya.ua/news/14137900.html>

<sup>64</sup> Special Committee on European Affairs of the New York City Bar, 2007, referring to a note from the International Committee of Lawyers, who were commissioned by the Council of the League of Nations with the task of providing a consultative opinion on the legal aspects and issues around Finland’s Aland Islands.

<sup>65</sup> The OSCE Mission to Moldova Report No. 13, 1993, 3.

made it very clear that such feeling of identity is enough only for claiming autonomous status within Moldova – not independence. As a result, the OSCE explicitly rejected the TMR’s constitutionally incorporated claim for its own statehood.<sup>66</sup>

In their private communications, Moldovan officials argue that the term “Transdniestrian” connotes a person belonging to that territory/locality, analogous to how one would claim to be from a certain city or town. Given that the dual citizenship in the TMR varies mainly according to a person’s ethnicity (for example, ethnic Moldovans tend to hold Moldovan passports), Moldovan officials have put forward that people in Transdnistria primarily have an ethnic identify rather than a Transdnistrian one.<sup>67</sup> As a result of this approach, Moldova and international experts have rejected any of the TMR’s claims to a Transdnistrian people or identity as well as any of its legal provisions on the subject.

*b) the claim to have experienced serious violations of human rights*

Transdnistria frames its official discourse on human rights violations with reference to three primary topics:

- violations of linguistic, cultural, and political rights;
- the events of the 1992 civil war; and
- the denial of economic rights.

Regarding the first claim, the TMR argues that, due to violations of the rights of its people from 1989 to 1992, the TMR’s separate statehood had been and continues to remain the key instrument required to protect the public interest and civil liberties.<sup>68</sup> The adoption of the

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<sup>66</sup> Ibid.

<sup>67</sup> Private communication with Vasile Shova, former Moldovan Ministry of Reintegration (2001-2009), August 2013.

<sup>68</sup> *Istoriko-pravovye predposylki sozdania Pridnestrovskoi gosudarstvennosti*, 2010. In one of his interviews, Smirnov noted, “It has been ten years that we are building and consolidating our statehood, which people see as the

laws on language in 1989, which required that Moldovan/Romanian to be written in Latin script and declared Moldovan/Romanian the only official language, ignored the ethnic realities on the left bank of the Dniester River. As both Moldova and the central bodies of the Soviet Union disregarded the TMR's demands for a plebiscite on these issues,<sup>69</sup> the TMR pushed for protection of its rights through conducting its own referenda, which proved the support of the people for its sovereignty and statehood.<sup>70</sup>

Regarding the second and third claims, Transdnestrian public discourse recalls the violations of the rights of its population who suffered armed conflict and Moldovan brutalities between 1989 and 1992.<sup>71</sup> It also points to the Moldovan denial of the Transdnestrian right to ownership and their rights to economic activity throughout the years. Moldova does not recognize Transdnestria's privatization program and requires businesses to register with Moldovan agencies, a situation which, the TMR argues, significantly limits the economic rights of its population.

Furthermore, in arguing for its right to self-determination, the TMR references key international texts. In particular, leaders point to the provisions of Article 5 of the Declaration on the Right to Development, which stipulate that:

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from [...] [forms of illegal activity] and refusal to recognize the fundamental right of peoples to self-determination.<sup>72</sup>

Transdnestrian leaders also point to Article 6 (2) of the same document, which states that:

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solid guarantee of their civil rights and freedoms." V. Murav'ev, "OGRV-Faktor sderjivania vozmojnyh agressorov," *Pridnestrov'e*, #189, September 28, 1999.

<sup>69</sup> Grosul, 2000, 149.

<sup>70</sup> On the details of the referenda held between 1989 and 1991, see Chapter 2.

<sup>71</sup> In addition to the accounts of war as seen from the Transdnestrian side (which are mentioned in the sources in Chapter 2), see also the press conference of the General of 14<sup>th</sup> Army, Alexandr Lebed, in Tiraspol, 1992, <http://www.youtube.com/watch?v=eOyjEzMd15s>.

<sup>72</sup> Article 5, *Declaration on the Right to Development*, A/RES/41/128, December 4, 1986.



All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.<sup>73</sup>

As a result, the TMR suggests that the protection of only the cultural and linguistic rights of its people through specific guarantees granted within Moldova violates their right to development.<sup>74</sup> Instead, it insists that, by grounding its claim in the fundamental principles of international law, the TMR has created its own state and confirmed the legal right of its people to self-determination.<sup>75</sup>

The external actors are silent on this issue as well and, in their official public discourse, ignore Transdnestrian claims about the violation of its rights and the subsequent need for self-determination. In private communications, Moldovan officials emphasize that, since the end of 1992, Moldova has bolstered its respect for minority rights by meeting relevant international standards and point to the country's lack of systematic human rights violations.<sup>76</sup> The majority of researchers also reject the TMR's position, suggesting that the rights of Transdnestrians are more often violated by the unrecognized regime itself due to the absence of internationally recognized justice.<sup>77</sup> The events of a war in themselves do not automatically grant the legal right to secession. Finally, Transdnestrian officials' complaint that Moldova has refused to recognize Transdnestria's privatization plan and that registration of the TMR's businesses with Moldovan agencies makes products more expensive and less competitive on European markets for trade

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<sup>73</sup> Ibid.

<sup>74</sup> Yakovlev, 1997, 74.

<sup>75</sup> "Smirnov: Pridnestrovtsy-narod sil'nyi i mujestvennyi" [Smirnov: Transdnestrians are Powerful People of Spirit and Courage], *Pridnestrov'e*, #171, September 8, 1998.

<sup>76</sup> Private communication with the representative of the Moldovan delegation to the negotiations (1994-1999), August 2013.

<sup>77</sup> A. Bohomolov, I. Semyvolos, and D. Pushkar, "The Transnistrian Crisis: The Human Dimension," (Kyiv: Center for Near Eastern Studies), 2010.

represent economic policies of the state and thus cannot be considered a violation of human rights.<sup>78</sup>

*c) the claim to have no other effective remedies under either domestic or international law*

Transdnistria insists that its conflict with Moldova is intractable and argues that the TMR will achieve effective sovereignty only through independence.<sup>79</sup> The TMR reminds the international community that it sought to protect the interests of its people through attempting to gain the status of a free economic zone, autonomous region,<sup>80</sup> or federal republic within Moldova between 1989 and 1991,<sup>81</sup> all options that the Moldovan authorities rejected. Throughout subsequent years, starting in 1992, discussion on the issue of granting a special legal status to the TMR as part of Moldova has not achieved a consensus among all the relevant actors<sup>82</sup> and Transdnistria insists that its own political entity would better protect the rights and freedoms of the multinational people living on its territory.<sup>83</sup>

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<sup>78</sup> Alyona Getmanchuk et al., “Scenarios for the Development of the Transnistria Conflict. Challenges to European Security,” (Kiyv: Institute of World Policy, 2011), 112.

<sup>79</sup> *Statement on the Political and Legal Grounds for the Creation of the TMSSR*, September 2, 1990; *The Address of the Committee of the Transdnistrian Moldovan Soviet Socialist Republic towards the Peoples of the USSR*, Dnestrovskaya Pravda, #217, September 14, 1990. As mentioned in Chapter 2, although the TMR’s discourse often included the claims to independence, it was not until 2006 that it implied the search for actual independence.

<sup>80</sup> In 1989, the TMR’s authorities approached the Ministry Council of MSSR with the suggestion to grant the region political and economic autonomy. See “Obraschenie k MSSR s predlozheniem o sozdanii politicheskoi i ekonomicheskoi avtonomii” [The Address to MSSR Offering the Creation of the Political and Economic Autonomy], *Pridnestrovskaya Pravda*, October 3, 1989.

<sup>81</sup> In 1990, the Chairman of the Supreme Council of the TMSSR, I. N. Smirnov, stated in an interview that, “Federation is the most appropriate way to overcome the conflict... Yes, we support federation within Moldova’s borders, and, of course, within the Union [USSR].” A. Platitsin, “Pravoe delo Pridnestrovia,” *Dniestrovskaya Pravda*, #291, December 12, 1990.

<sup>82</sup> In April 1992, the Ministers of Foreign Affairs from Moldova, Russia, Romania and Ukraine discussed the issue of granting special status to the TMR. After that, the format of negotiations has been changed several times, but has not yet yielded any results. Grosul, Guzenkova, 2004, 381.

<sup>83</sup> For instance, in 1999, the ex-President of the TMR, Smirnov, stated in an interview that, “It has been nine years that we are building up our statehood, which is seen by the people as a real guarantee of their civil rights and freedoms.” Muraviev, 1999.

In making its case, the TMR also refers to the provisions of the International Covenants on Civil and Political Rights, as well as on Economic, Social and Cultural Rights, which stipulate that all peoples have the right of self-determination and that “[b]y virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>84</sup> The TMR insists that, according to the Declaration on Principles of International Law, the mechanisms for implementing the right of self-determination are freely determined by a people and include the establishment of a sovereign and independent state, the free association or integration with an independent state, or the transformation into any other political status.<sup>85</sup> Therefore, Transnistria argues that the appropriate process to implement its right to self-determination should not be imposed by any outside state.<sup>86</sup>

The external actors, however, disregard these claims. In their official public discourse, they emphasize the need to find a resolution that would provide the TMR with some form of autonomy while preserving the territorial integrity of Moldova.<sup>87</sup> The majority of experts believe that the Transnistrian position on the unsuitability of other instruments for resolving the conflict is insufficient, since the instruments that might bring “viable settlement” should have been tried first before being rejected.<sup>88</sup>

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<sup>84</sup> Article 1 (1), *International Covenant on Economic, Social and Cultural Rights*. GA Resolution 2200A (XXI) of December 16, 1966.

<sup>85</sup> Article 1 (The principles of equal rights and self-determination of peoples), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*. GA Resolution 2625 (XXXV) of October 24, 1970.

<sup>86</sup> Yakovlev, 1997, 74.

<sup>87</sup> As US Vice President Joe Biden noted in his speech, “America has supported and will continue to support a settlement - not any settlement, but a settlement that preserves Moldova’s sovereignty and territorial integrity.” White House Press Release, March 11, 2011. Another example is the statement of Asif J. Chaudhry, Ambassador-Designate to the Republic of Moldova (2008-2011): “The US is committed to a resolution of the Transnistria conflict that guarantees Moldova’s sovereignty and territorial integrity.” Testimony at the Senate Foreign Relations Committee, June 19, 2008.

<sup>88</sup> Gertmanchuk et al., 2011, 112. Also, US scholars believe that the TMR is attempting to exacerbate ethnic tensions in order to claim that separation is necessary to avoid ethnic conflict, whereas Moldova has sought to decrease them as much as possible. See Special Committee on European Affairs of the New York City Bar, 385.

Overall, in claiming its right to recognition, Transnistria has framed its official public discourse in terms of its historical statehood and its right to self-determination, whereas the constitutionally incorporated traditional criteria for recognition remain invisible. Over the years, Transnistrian public figures have kept their focus on these two categories and reiterated the reasons for tense relations with Moldova and the TMR's right to its own statehood, relegating the constitution to the domestic sphere. Although the particular forms of such reiteration vary, the example of the official statement provided below illustrates the underlying theme of the TMR's general official discourse on the issue of its statehood.

In one of his interviews, then Chairman of the Supreme Council of Transnistria, Grigory Marakutsa, provided the following explanation for the tense situation between Moldova and Transnistria:

The conflict stems from the present [1990-1991] policy of the Moldovan leadership. I am referring to its decision not to sign the Federal Treaty of Sovereign States, and also its desire to forcibly Romanize the republic, which means discrimination against a considerable part of the working people of the Dniestr area for their political views, nationality and language. We have exerted efforts for quite a time to settle these and other problems, have moved to form a federation within the framework of Moldova, but have always run up against the Moldovan leadership's refusal to understand us. All this has compelled the people of the [Transnistrian] area to adopt on August 25, 1991, a Declaration on the Independence of the [Transnistrian] Republic.<sup>89</sup>

On the question of legitimacy of the Transnistrian Republic, he noted:

Our Republic was formed as a result of its populations' freely expressed will during the recent referenda in urban areas and meetings in agricultural regions. On September 2, 1990, a Congress of People's Deputies of All Levels from the [Transnistrian] area proclaimed the establishment of this republic as a part of our renovated Federation. This is the will expressed by the multinational population of the [Transnistria's] area. It was confirmed by elections to the Supreme Soviet of the newly-formed republic on November 25, 1990.

Several scientific institutions of the USSR Academy of Sciences concluded that the foundation of our republic was in keeping with the historical, cultural and economic unity

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<sup>89</sup> "Interview with the Chairman of the Supreme Soviet of the Dniestr Republic, Grigory Marakutsa," *Official Kremlin International News Broadcast*. September 19, 1991.

of the population and specific character of the region's development. Practical experience proves the expediency of the [Transdnistria] area's statehood.

From the legal point of view, it is important to stress that the USSR Constitution recognizes the right of nations to self-determination, and we have turned this provision into a political reality on the basis of the [Transdnistrian] population's expressed will. A specific feature of our republic is that Bessarabia, a former Russian province, got its statehood when the Moldavian Soviet Socialist Republic was formed in 1940 through its unification with the [Transdnistrian] Autonomous Republic.<sup>90</sup>

Thus, in claiming the TMR's independence and seeking recognition, the leadership of Transdnistria has mainly relied on a set of historical and legal factors combined with the political realities of the time. They make those reasons central in both official public and private discourses and believe that such an approach better accommodates the international legal requirements for achieving recognition.<sup>91</sup>

External actors, in their turn, disregard the TMR's claims for the restoration of its statehood and the right to self-determination, instead forcefully and constantly reiterating the need for a resolution to the conflict based on respect for the territorial integrity of Moldova with a special status for the TMR.<sup>92</sup> They also ignore the TMR's constitution as a whole, as well as its specific provisions asserting the traditional criteria for statehood.

As a result, the Transdnistrian framing of its claim to recognition and the responses of the external actors suggest that the constitutional system in the TMR plays an important internal role, but has not influenced the process of the TMR's recognition. As an internal mechanism, however, the Transdnistrian constitution organizes society and promotes the sovereign development of the TMR, which, as the next section illustrates, have grown stronger over time.

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<sup>90</sup> Ibid.

<sup>91</sup> Personal communications of the former TMR ministers of foreign affairs, Valery Litskay (period of service: 1990-2008), Vladimir Yastrebchak (period of service: 2008-2011), and a representative of the TMR government (period of service: 2011-present).

<sup>92</sup> While visiting the TMR, the head of EU delegation on external relations, Rene Nyberg stated, "We believe that Transdnistria is part of Moldova and recognize [Moldovan] territorial integrity." "'Troika' Evrosoyza v Pridnestrov'e," *Dnestrovskaya Pravda*, #121, October 21, 1999.

## **2. The Contemporary Criteria for Recognition**

Along with asserting the traditional criteria of recognition, the TMR has also set up constitutional mechanisms to address the contemporary criteria for recognition: democracy, the rule of law, and the protection of human rights. Similar to traditional criteria for recognition, no evidence suggests a link between the TMR's constitutional democratic framework and the entity's recognition. At the same time, there are a number of ways in which this framework has had other important effects.

First, the existence of the TMR's constitutional democratic framework has consolidated its claim to statehood. The entity's constitutional provisions on democracy, the rule of law, and the protection of human rights establish the basis for the internal organization of the TMR's polity and its future development. In this way, the elaboration and further implementation of these provisions demonstrate both to the people of Transdnistria and to the external actors the TMR's capacity for sovereign governance. Constitutional practices, such as procedures to amend the constitution and the protection of human rights, add to the TMR's claims of democratic development. These practices also allow the TMR, particularly in the field of human rights, to interact more closely with the external actors and to use this interaction as an additional forum in which to make its case for statehood.

Second, the external actors expect Transdnistria to embrace the principles of democracy, the rule of law, and human rights, not least for the purposes of becoming a more reliable partner in the negotiations – a partner who will contribute to resolving the conflict while respecting Moldova's integrity. Although the external actors disregard the TMR's constitutional provisions related to democracy, the rule of law, and human rights in their official public discourse, they still consider the realization of the principle of democratic development in the TMR to be essential for settling the dispute. Consequently, the external actors often raise the issue of the

need for democratic development in Transdniestria in their discourse and also closely observe Transdniestrian constitutional practices, such as constitutional amendments and the protection of human rights. As private communications with the external actors suggest, its constitutional democratic framework has become an instrument for the external actors to prompt Transdniestria to finding consensus on the settlement and agreeing to reintegration with Moldova. Although a number of other factors may matter for the external actors in seeing the positive role of democracy, the rule of law, and human rights in the settlement process, the available data indicates that they emphasize the TMR's democratic development mainly for the purposes of advancing conflict resolution, which the external actors hope would be achieved with the support of more flexible and compromise-oriented leaders from the TMR.

To analyze the relationship between the constitutional process that includes the contemporary criteria and recognition, this section explores the presence of the contemporary criteria in the Transdniestrian constitution and their use by the Transdniestrian authorities in the claims for recognition. The section then looks at some Transdniestrian constitutional practices related to the contemporary criteria for recognition, such as constitutional amendments and the protection of human rights, and the discourses that Transdniestria and the external actors invoke around these practices.

## **2.1. Constitutional Provisions on Democracy and the Rule of Law, and Their Use in Transdniestrian Official Discourse**

The adoption of the Transdniestrian constitution in 1995 aimed to further develop the state institutions established in 1990 and 1991 and strengthen the TMR's statehood. The 1995 constitution followed the general path of democratization in Eastern Europe in the 1990s by addressing the key principles of democracy, the rule of law, and protection of human rights in its text. As a result, the TMR's foundational legal act satisfied the requirements of a contemporary constitution and became the basis for asserting and developing Transdniestrian statehood.<sup>93</sup>

### **2.1.1. Transdniestrian Constitutional Provisions on Democracy and the Rule of Law**

The TMR's constitution contains general and specific provisions on the nature of the entity's governance and on the structure of its government. It proclaims the establishment and supremacy of the rule of law in the TMR.<sup>94</sup> The constitution declares the TMR a democratic state and specifies that power in this state rests solely with the people who exercise it through local and state institutions (indirectly) as well as through referenda and free elections (directly).<sup>95</sup> It establishes three official languages: Moldovan, Russian, and Ukrainian, all with equal status.<sup>96</sup> The constitution specifically provides that "the state, its institutions, and officials act in the conditions of the democratic pluralism of political institutions and opinions."<sup>97</sup> This pluralism, however, is not without limitations. As the constitution explicitly stipulates, "public associations,

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<sup>93</sup> According to First Deputy Chairman of the Supreme Council, Vladimir Atamaniuk, the TMR's constitution was drafted to take into considerations international norms, the requirements of the Universal Declarations of Human Rights, and the geopolitical, economic, and social changes wrought after the break-up of the Soviet Union. "24 dekabrea v Pridnestrov'e otmechaiut Den' Konstitutsii" [24<sup>th</sup> of December is the Constitution Day in Transdniestria], *Olvia-Press*, December 24, 1999; Personal communication of the former Ministers of Foreign Affairs, Valery Litskay (years of service: 1990-2008), and Vladimir Yastrebchak (years of service: 2008-2012), August 2013.

<sup>94</sup> Preamble, the TMR Constitution, 1995.

<sup>95</sup> Article 1.

<sup>96</sup> Article 12.

<sup>97</sup> Article 8 (1).



their bodies, or representatives, which act against the sovereignty of the Republic, call for violent changes to the constitutional order that disrupt the state's security, create unlawful armed units, and incite racial, ethnic and religious hatred are prohibited.”<sup>98</sup>

The constitution lays out the separation of powers and expressly prohibits the centralization of power in the hands of one person or institution.<sup>99</sup> It establishes a presidential system with the president, who is elected by universal suffrage for five years, is the head of state and the executive branch, and acts as a guarantor of the constitution, the republic's sovereignty, independence, and territorial integrity. The president defines the main thrusts of the state's internal and external policies, including on issues of defense and security, determination of the state's political status, and the protection of the TMR's borders.<sup>100</sup>

The government also includes a parliament, the Supreme Council, which is the only representative and legislative body of the republic and is elected for a five-year term<sup>101</sup> by majoritarian voting. Local governance includes the representative bodies at various levels (cities, *rayons*,<sup>102</sup> and villages), which consist of people's deputies elected by the population of the corresponding territorial units; and executive bodies, such as the state administrations of cities and *rayons*, who are appointed by the president.<sup>103</sup>

The judiciary in the TMR includes the Constitutional Court, courts of civil, administrative, and criminal proceedings, and the Arbitration Court,<sup>104</sup> all of which are based on

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<sup>98</sup> Article 8 (3).

<sup>99</sup> Article 55 (2).

<sup>100</sup> Article 55 (1); 56 (1); 59 (1-3); 60 (2,3).

<sup>101</sup> Article 67 (1-2).

<sup>102</sup> A unit of territorial division that represents a larger geographic area containing cities and villages. In English sources, the term “rayon” usually remains untranslated in the context of territorial divisions in Moldova or Transdnistria.

<sup>103</sup> Article 77 (1,2); 78 (1,2).

<sup>104</sup> Article 80 (2).

the principles of independence and non-interference.<sup>105</sup> The president appoints judges on the recommendation of the Supreme and Arbitration Courts.<sup>106</sup> Trials are based on adversarial principles and on the equality of the parties and, as a rule, are open to the public.<sup>107</sup> The Constitutional Court exercises control through interpreting and protecting the constitution; assures the supremacy of the constitution; ensures the separation of powers; and guarantees the state's responsibility before citizens and citizens' responsibilities to the state.<sup>108</sup> The judges of the Constitutional Court are appointed by the president, the Supreme Court and the Republican Assembly of Judges for a period of seven years.<sup>109</sup>

The constitution also stipulates that several sections, "The Basis of Constitutional Order," "The Rights, Freedoms and Responsibilities of a Human Being and a Citizen," and "The Amendments to the Constitution," can be changed only through referendum.<sup>110</sup>

Thus, the provisions of the TMR's constitution demonstrate their correspondence to the contemporary standards for democracy and the rule of law. They also show Transdniestria's commitment to developing its statehood in line with the principles of self-government and sovereignty. As a result, Transdniestria's state-building efforts through the establishment of state institutions and governing norms have strengthened the legal and institutional basis of the de facto state. More broadly, it has defined the legal space for existence of the Transdniestrian people.

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<sup>105</sup> Article 81 (1,2).

<sup>106</sup> Article 83 (1, para. 1). Justices of the Peace are elected. Article 83 (1, para. 2).

<sup>107</sup> Article 85 (1, 2).

<sup>108</sup> Article 86 (1).

<sup>109</sup> Article 86 (2). Each of the institutions appoints two judges to the Constitutional Court.

<sup>110</sup> Article 102.

### 2.1.2. The Transdniestrian Constitution in Official Transdniestrian Discourse

Although the Transdniestrian leadership believes that the TMR's constitution meets the requirements for democracy,<sup>111</sup> they rarely link this fact to the entity's claim to recognition in official discourse or within the context of negotiations. As shown in Section 1, Transnistria instead bases its claim to recognition mainly on the restoration of its statehood and its right to self-determination.

At the same time, the TMR's constitution and the document's democratic provisions are both part of the larger framework of asserting Transdniestrian statehood and claiming sovereignty. In official speeches and congratulatory messages celebrating Republic Day<sup>112</sup> or Constitution Day,<sup>113</sup> Transdniestrian authorities refer to the constitution as an important instrument for establishing and preserving a distinct Transdniestrian entity. In particular, they see the adoption of the TMR's constitution as "a crucial event in the history of [the TMR as a] state that, to a large extent decided its future as sovereign, democratic, and [respectful of] the rule of law."<sup>114</sup> The constitution is a document that ensures the TMR's sovereign right to self-determination and its future as a state despite the numerous challenges that the entity has experienced. The mere fact that Transnistria has had its own constitution for many years carries weight. It is viewed as "the result of the common struggle of the whole nation for the

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<sup>111</sup> In support of their belief, Transdniestrian authorities refer to the views of the representatives of unspecified recognized states that the Transdniestrian constitution is a balanced and a democratic foundational legal document. I. Letyga, "V Pridnestrov'e otmetili Den' Konstitutsii," *Olvia-Press*, December 24, 2002.

<sup>112</sup> Republic Day is celebrated annually on September 2.

<sup>113</sup> Constitution Day occurs annually on December 24.

<sup>114</sup> "Smirnov: Konstitutsia-Glavnyi Zakon strany" [Smirnov: Constitution is the Fundamental Law of the Country], *Dnestrovskaya Pravda*, #150, December 24, 1998.

TMR's statehood"<sup>115</sup> and as an inherent part of all of the current trappings of the entity's independence.<sup>116</sup>

On Republic Day or Constitution Day, Transdniestrian leaders emphasize the close interrelation between the constitution and the TMR's statehood. In their view, the constitution is (1) the foundational document for the Transdniestrian state and its efforts to build democracy;<sup>117</sup> (2) a basic act that addresses economic and social problems; and (3) the key normative framework through which to consolidate society, protect its civil accord, peace, and stability,<sup>118</sup> and to ensure equality of all ethnicities.<sup>119</sup> In this way, official statements frame the TMR's development as democratic, united, and sovereign, all of which have contributed to the internal consolidation of Transdniestrian statehood.

In addition, in the context of the TMR's unrecognized status, both the very idea of observing a Constitution Day and the official discourse surrounding the importance of the

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<sup>115</sup> Letyga, 2002.

<sup>116</sup> "Ocherednaya godovschina Pridnestrovskoi Konstitutsii," *Olvia-Press*, December 22, 1999.

<sup>117</sup> Personal communications with representatives of the Ministry of Foreign Affairs of Transdniestria, August 2013; "President pozdravil pridnestrovtsev s Dnem Konstitutsii," *Olvia-Press*, December 24, 2003; "President PMR: Nasha s vami oschaya zadacha-sberek provozglashennye tsennosti," *Olvia-Press*, December 23, 2004; "V Tiraspole proshlo torjestvennoe sobranie, posvyaschennoe Dniu Konstitutsii," *Olvia-Press*, December 23, 2005; "Smirnov: Stabil'nost' Konstitutsii opredelyaet stabil'nuiu raboty institutov gosudarstvennoi vlasti," *Olvia-Press*, December 23, 2006; "Osnovnomu Zakonu strany – Konstitutsii – 13 let," *Olvia-Press*, December 24, 2008; "24 dekabrya – Deni Konstitutsii Pridnestrovskoi Moldavskoi Respubliki," *Olvia-Press*, December 24, 2010; "24 dekabrya v Pridnestrovskoi Moldavskoi Respublike otmechaetsya kak Deni Konstitutsii," *Olvia-Press*, December 24, 2012.

<sup>118</sup> "Smirnov, Stabil'nost' Konstitutsii," 2006; "Igor Smirnov: Nasha Konstitutsia ukrepila prioritet demokraticeskikh prav i svobod, mir i sotrudnichestvo v nashem obschestve i gosudarstve" [Igor Smirnov: Our Constitution Has Strengthened the Leading Role of Democratic Rights and Freedoms, Peace and Cooperation in Our Society and State], *Olvia-Press*, December 25, 2007; "Osnovnomu Zakonu strany – Konstitutsii – 13 let," 2008; Smirnov emphasized that, "For the residents of our country, the constitution has been and remains the main legal norm, the law for the protection of civil peace and accord." "Smirnov: Dlea zhiteleei nashei strany Konstitutsia byla i ostaetsya glavnoi pravovoi normoi, Zakonom sohranenia grajdanskogo mira i solglasia," *Olvia-Press*, December 24, 2009. The new President of the TMR, Yevgeny Shevchuk, also emphasized these ideas. He noted in his greetings that, "I am convinced that joint constructive efforts will allow us to [...] achieve our goals of strengthening our statehood, developing the economy, increasing people's well-being, and consolidating peace and stability in our society." "24 dekabrya v Pridnestrovskoi Moldavskoi Respublike otmechaetsya kak Deni Konstitutsii," *Olvia-Press*, December 24, 2012.

<sup>119</sup> Smirnov made the point that the TMR Constitution is a guarantee of further development and prosperity for the Transdniestrian republic since it provides for equality of all ethnicities and languages. "Igor Smirnov: Konstitutsia PMR – garant ravnopravna pridnestrovtsev," *Olvia-Press*, December 24, 2003.

constitution for Transdniestria point to the symbolic function of this document in shaping the domestic perceptions of Transdniestrians of their national identity. Transdniestrians appear to view their constitution as a unifying concept useful for pursuing statehood; in this regard, the designation of a special day contributes to the performance of their statehood. At the same time, the extent to which Transdniestrians have internalized their constitution for the purposes of the development of the TMR's identity is unclear due to the lack of data. Transdniestrians have continued the tradition of observing a Constitution Day from the Soviet period, during which the celebration of the Constitution of the USSR was an integral part of the Soviet life.<sup>120</sup> Constitution Day is also one of several official holidays in the TMR, along with Defenders' Day, International Women's Day, Victory Day, and Republic Day, which were established to consolidate the Transdniestrian people through the celebration of shared values and ideals.<sup>121</sup> As a result, although Constitution Day contributes to the formation of a national identity in the TMR, its particular role for shaping citizens' perceptions of identity remains to be studied further.

Along with public discourse, Transdniestrian officials also have invoked the entity's constitutional framework during the negotiation process to determine their status and recognition. Sometimes, TMR officials refer to the Transdniestrian constitution to bolster the legitimacy of their representatives during negotiations<sup>122</sup> or, as the external actors see it, to avoid discussions on substantive issues.<sup>123</sup> As a result, Transdniestrian authorities have used the existence of their constitution and its democratic nature as part of their general public discourse

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<sup>120</sup> The date of adoption of the 1936 Constitution of the USSR was celebrated as December 5 from 1936 until 1977. The date of adoption of the 1977 Constitution of the USSR was celebrated as October 7 between 1977 until 1991. Both days were holidays for workers.

<sup>121</sup> In contrast to the other holidays listed, though, a Constitution Day is not a day off work. See Article 112, *Trudovoi Kodeks*, N161-3-III (CA3 02-29) 19.07.2002 [Labor Code of July 19, 2002].

<sup>122</sup> Personal communications of the former Ministers of Foreign Affairs, Valery Litskay (years of service: 1990-2008), and Vladimir Yastrebnchak (years of service: 2008-2012), August 2013.

<sup>123</sup> Personal communication of the representative from the OSCE Mission to Moldova, July 2013.

and negotiations to assert Transdniestrian sovereignty, thereby consolidating their position on the TMR's statehood.

## **2.2. Constitutional Amendments as Part of the Democratic Process: Transdniestrian Practices and the Responses of the External Actors**

Transdniestria has pursued the process of amending its constitution in order to follow its goals for sovereignty and to perform state-building tasks. Although there is no evidence that this process has impacted the TMR's recognition, it has had a several other noticeable effects. First, the process of constitutional amendment and the constitutional amendments themselves (henceforth this work refers to both as constitutional amendments) have contributed to the development of statehood in Transdniestria, which in turn has consolidated the entity's claim to independence. Second, constitutional amendments have influenced the approach of the external actors toward the Transdniestrian issue. While publicly disregarding the TMR's constitutional system and its provisions, some of the external actors have seen the general idea of amending the constitution within the framework of the principle of democratic development and, as explained above, have viewed democratic development in Transdniestria as one of the key conditions for final settlement of the dispute.<sup>124</sup>

The overview of the TMR's constitutional development suggests that three efforts to amend the constitution (two successful and one unsuccessful) were designed to balance internal powers within the general constitutional framework without jeopardizing the grounds or goals of the TMR's claim to statehood. These efforts were aimed at consolidating the entity's internal power and providing the basis for entrenchment of the TMR's statehood. In this regard, the first constitution of 1991, which was based on the Soviet constitution, laid the groundwork for setting up Transdniestrian state institutions that were compatible with the solution of a federal state

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<sup>124</sup> Personal communications of representatives of Moldova, the OSCE, and the EU, May-August 2013.

within Moldova. Transnistrian authorities regarded that constitution as a normative element in state development, as the basis for internal policy, and a non-negotiable issue.<sup>125</sup> After the civil war, Transnistria took steps towards further independence and the development of its own state institutions, both of which were elaborated in the new constitution. The 1995 constitution thus became a uniting and legitimizing factor for the development of the entire state system and again was not an issue open for negotiation.<sup>126</sup> The 1995 constitution continued the mixed form of governance established in 1991, a presidential and parliamentary republic. The governance system included a government as a collective body with a number of decision-making powers and a bicameral parliament.

The first set of constitutional amendments in 2000, widely discussed in the TMR's media,<sup>127</sup> introduced a presidential republic. More specifically, the amendments conferred large powers on the president; transformed the government into a cabinet of ministers, henceforth a consultative body; and reduced the parliament to one chamber.<sup>128</sup> The constitutional reform attempted to address problematic areas in the legislative branch of the TMR's government, especially the inefficiency and inexpediency of a bicameral parliament in a small republic and the excessive complexities of constitutional interpretation that caused imbalance between the chambers. The constitutional reform also reflected the desire of then-president Smirnov to

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<sup>125</sup> Personal communication with Vladimir Yastrebnchak, former Minister of Foreign Affairs of Transnistria (period of service: 2001-2012), August 2013.

<sup>126</sup> Ibid.

<sup>127</sup> See "Osnovnoi vopros-konstitutsionnyi kontrol" [The Key Question is the Question of Constitutional Review], *Dnestrovskaya Pravda*, #4, January 12, 1999; A. Yavorsky, "Obsujdaem proiect popravok v konstitutsiu [The Draft Amendments to the Constitution Are Under Discussions], Ibid., #114, October 5, 1999; A. Shablienکو, "Obsujdaem proekt popravok k konstitutsii, a ne domysly [Lets Discuss the Draft Amendments to the Constitution, Not Suppositions]," Ibid., #123, October 26, 1999.

<sup>128</sup> Verhovnyi Sovet PMR. *Konstitutsionnyi zakon o vnesenii izmenenii i dopolnenii v Konstitutsiu PMR N310-K3ИД*, 30.06.2000 [Constitutional Law on Amendments and Additions to the TMR Constitution].

increase the presidential term of office, thus allowing him to stand for a third term, and to have mechanisms to control the entity's increasingly centralized power.<sup>129</sup>

Later, in 2003, a constitutional amendment was proposed on the introduction of private ownership on land to develop agriculture in the republic. As an important constitutional issue, this initiative was subject to a referendum but failed to garner public support and was not adopted.<sup>130</sup>

Finally, in 2009, Transdniestria saw robust debates on the issue of powers between the presidential and legislative branches that led to a constitutional crisis.<sup>131</sup> A new generation of deputies introduced amendments to limit the presidential powers implemented in 2000 and sought to strengthen the role of the parliament and parliamentary control.<sup>132</sup> In response, the president put forward the idea of a new constitution, hoping to revise and enhance executive powers, for example, the power to independently call for a referendum. The discussions ended in 2011 when, during joint consultations between legislative and executive powers, both branches agreed to return to a mixed form of governance.<sup>133</sup>

Therefore, the process of constitutional amendment in Transdniestria demonstrates the entity's intensive state-building and consolidation of government institutions. It reveals that the active internal interactions between the branches of the government and the government and the public have not challenged the basis for the TMR's statehood. Rather, Transdniestria has

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<sup>129</sup> Ilya Mil'man, "Pervaya Konstitutsia Pridnestrov'a zadala strategicheskii vector razvitiia nashego obschestva" [The TMR's First Constitution Defined a Strategic Vector for the Development of Our Society], *Diplomaticheskii Vestnik Pridnestrov'a* 5 (2011).

<sup>130</sup> Only 153,140 of voters, or 38,92% of those registered, took part in the referendum. As a result, the turnout was less than 50% needed and the referendum was declared invalid. "Po predvaritel'nyim itogam, konstitutsionnyi referendum po voprosy vvedeniia chastnoi sobstvennosti na zemliu priznan nesostoyavshimsea" [According to Preliminary Results, the Constitutional Referendum on the Issue of Introducing Private Ownership on Land Is Considered Invalid], *Olvia-Press*, April 7, 2003.

<sup>131</sup> See e.g., Serghei Markedonov, "Pridnestrov'e: kak vyiti iz konstitutsionnykh tupikov?" [Transdniestria: How to Break Constitutional Deadlocks?], *Politcom*, November 19, 2009.

<sup>132</sup> Mil'man, 2011; Personal communication with Vladimir Yastrebnchak, former Minister of Foreign Affairs in Transdniestria (period of service: 2008-2012), August 2013.

<sup>133</sup> Konstitutsionnyi zakon o vnesenii izmenenii i dopolnenii v Konstitutsiu PMR, N94-KZID-V, 2011.



followed the path of constitutional development to strengthen its statehood and use it in support of the TMR's claim to recognition.

Externally, despite their official public ignorance of the constitutional amendments in Transnistria, some external actors in the negotiation process followed the TMR's constitutional debates, informally discussed them with the other parities in the negotiations, and viewed these constitutional developments as relevant to negotiations.<sup>134</sup> In particular, one high-ranking representative of the OSCE Mission to Moldova commented that:

The Transnistrian constitution has been in the focus of attention of the OSCE Mission to Moldova whenever the substantial constitutional changes were discussed in internal Transnistrian politics that would have had an effect on the powers of the president or Supreme Soviet. Thus, the Mission closely followed discussions on constitutional changes...<sup>135</sup>

Although the particular responses of the external actors to each of the TMR's constitutional reform are unknown, there is a general sense that their approach to the 2000 amendments was critical, while they were more favorable, but still cautious, regarding the 2011 amendments. The external actors saw a return to the mixed government as a more promising step toward democratic development in the TMR, which could assist in negotiations.<sup>136</sup> Therefore, the close, albeit unofficial, monitoring of the amendments in the TMR indicates that the external actors viewed this process as important for the purposes of the negotiation process and that the TMR's constitutional practices mattered for achieving those goals. As personal communications with the external actors also reveal, the participants in negotiations have assumed that democracy in the TMR would encourage the accession to power of leaders more willing to negotiate and compromise on the TMR's position. Based on this, the external actors have regarded the TMR's

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<sup>134</sup> Personal communications of the representatives of the OSCE and the EU, May-August 2013.

<sup>135</sup> Personal communication of the OSCE representative, March 2013.

<sup>136</sup> Personal communications of the OSCE representatives, March-August 2013.

internal constitutional development as part of democratic development that could enable the TMR to compromise on its position for the purposes of final settlement of the conflict.<sup>137</sup>

### **2.3. The Protection of Human Rights as Part of the Democratic Process: the 1995 Constitutional Provisions and Practices in Transdniestria and the Responses of the External actors**

#### **2.3.1. Constitutional Provisions on Human Rights**

Similar to many of the post-1990s constitutions in the former Soviet Union and Eastern Bloc, the Transdniestrian constitution has a separate section on human rights and freedoms that proclaims a human being and his/her rights and freedoms as the supreme value of a society and of a state and places them under the state's protection.<sup>138</sup> The section "The Rights, Freedoms, Responsibilities and Guarantees of a Human Being and a Citizen" enumerates key principles such as equality, non-discrimination, and the inalienability of basic rights.<sup>139</sup> It provides civil and political rights and freedoms (the right to life and privacy; freedom from arbitrary arrest and inhuman treatment; freedom of movement, speech, association, and religion; the right to elect and be elected; and so on),<sup>140</sup> as well as social and economic rights and freedoms (the right to work, to rest, and leisure; ownership rights; the protection of motherhood, childhood, and the family; the right to social security, medical care, education, a healthy environment; and so on).<sup>141</sup>

Given the initial circumstances that encouraged the creation of the Transdniestrian state (namely, nationalistic movements in Moldova and the use of force against the left bank in the 1990s), the constitution includes special provisions on ethnic identity. It provides the right to keep one's own ethnic identity and the right to use one's native language and choose the language of communication. It contains a provision that no one can be forced to define and

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<sup>137</sup> Personal communications of representatives of the OSCE, and the EU, May-August 2013.

<sup>138</sup> Section II, Article 16 (1), the TMR Constitution.

<sup>139</sup> Article 16 (2), Article 17 (1).

<sup>140</sup> Articles 19-25, 27, 30-32.

<sup>141</sup> Articles 26, 35, 37-41.

indicate ethnic identity and prohibits insulting ethnic dignity.<sup>142</sup> Finally, the constitution stipulates the right for judicial remedy and appeal in case of a rights violation. It also emphasizes that the rights and freedoms listed should not be interpreted as negation or depreciation of other generally recognized rights and freedoms.<sup>143</sup>

As a result, the structure and provisions of the Transdniestrian constitution generally satisfy contemporary standards on democracy and human rights and follow the general democratic path of post-socialist states.

### **2.3.2. The Provision of Human Rights as an International Obligation**

To emphasize its commitment to maintaining international relations, Transdniestria set up constitutional provisions that showed respect for international obligations, particularly in the field of human rights. Although the external actors have ignored the TMR's constitutional commitments as well as the TMR's official public claims on its compliance with international human rights documents, the explicit provisions regarding the TMR's international obligations have shaped the course of Transdniestrian internal democratic development and consolidation.

Proceeding from the premise that respect for human rights is essential for a state built on the principle of the rule of law,<sup>144</sup> Transdniestria has undertaken the obligation to respect human rights through its constitutional provisions as listed above. In addition, in its aspiration to contribute to international cooperation and to respect international *jus cogens* norms, as early as 1992 Transdniestria adopted a parliamentary act that notified the United Nations and other international organizations about its pledge to respect:

- The Convention on the Prevention and Punishment of the Crime of Genocide,

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<sup>142</sup> Article 43.

<sup>143</sup> Articles 45-46.

<sup>144</sup> A statement that is reflected in the preamble of the Parliamentary Act on International Treaties. [Postanovlenie Ob otnoshenii Pridnestrovskoi Moldavskoi Respubliki k mezhdunarodnym dogovoram i druhim aktam po pravam cheloveka, №226 22.09.1992].

- The International Covenant on Civil and Political Rights and its Protocols,
- The International Covenant on Economic, Social and Cultural Rights, and
- The European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>145</sup>

Transdnistria declared that its legislation should correspond to the Universal Declaration on Human Rights and the above-mentioned international treaties. Later, the TMR's Supreme Council also announced that the Convention on Rights of the Child had become the legal framework for the protection of children in the entity's territory.<sup>146</sup>

Having observed the increased role that the respect for human rights plays in international relations, including in relationships with future members of the international community, Transdnistria has taken steps to follow contemporary developments in that sphere and to link them to its own statehood. For example, the former president of the TMR stated:

Our republic does not stand above international norms. We have adopted the constitution and set up legislative and executive power that work for the benefit of our people. [Contrary to Moldova, which signed international human rights documents but continues to exclude non-titular ethnic groups from public life], we exist within the legal framework of the civilized community of nations. From the very beginning of the creation of our republic, we have followed all international documents on human rights and minority rights...We do not employ the notion of "minority" as all people are equal in the TMR. [...] Our people have an international right to self-determination and have freely, legally, and democratically created their own state...<sup>147</sup>

Thus, Transdnistria's commitment to comply with international requirements on human rights and their incorporation into domestic laws suggest that Transdnistria has sought ways to

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<sup>145</sup> Verhovnyi Sovet PMR. *Postanovlenie Ob otnoshenii Pridnestrovskoi Moldavskoi Respubliki k mezhdunarodnym dogovoram i druhim aktam po pravam cheloveka*, №226 22.09.1992.

<sup>146</sup> Postanovlenie O priznanii ryada mezhdunarodnyh dokumentov ramochnymi normami prava na territorii PMR №579, 23.05.2002 [Resolution on the Recognition of a Set of International Acts as a Legal Framework on the Territory of the TMR].

<sup>147</sup> "Doklad I.N. Smirnova: Pridnestrovskaya Moldavskaya Respublika sostoyalas!" [Smirnov's Report on the Occasion of Republic Day: Transdnistrian Moldovan Republic Has Established Itself], *Olvia-Press*, September 1, 2000.

internalize international norms to improve its image, which also has advanced the TMR's internal development (a topic further discussed below).

### **2.3.3. Public Official Discourse on the Protection of Human Rights**

Transdniestrian efforts to ensure the protection of human rights and the attention given by the external actors to monitor these human rights practices suggest that the protection of human rights as a part of the constitutional framework has influenced the Transdniestrian negotiation process. First, the development of the mechanisms for the protection of human rights have contributed to the strengthening of the TMR's statehood and, the TMR believes, served as proof that the entity meets the requirement on democracy. Second, similar to the constitutional amendments, the idea of the protection of human rights has influenced the external actors' approach to the Transdniestrian issue. For their part, the external actors have viewed the practices protecting human rights in Transnistria as an additional tool to ensure the TMR's democratic development that they hope will assist in agreeing on a final settlement to the conflict within Moldovan borders.

To ensure the protection of human rights, Transnistria has set up three mechanisms in accordance with its constitution: the courts of general jurisdiction, the Constitutional Court (which reviews direct complaints from the citizens on violations of their constitutional rights), and the Ombudsman for Human Rights. Each of these institutions exercises its own powers and has a large number of cases under its consideration. Although not denying the violation of human rights in the republic, Transnistrian authorities have pointed to these existing institutions as appropriate responses to such violations.<sup>148</sup> They have also referred to the link between the issue

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<sup>148</sup> For instance, as the Chairman of the Constitutional Court mentioned by reference to the nature of the Constitutional Court, "The state of the rule of law is not a state, where violations of the rights of citizens do not happen. It is the state where the opportunities exist to restore the rights that have been infringed." "Konstitutsia-

of human rights violations and the unrecognized status of the TMR. The entity's leaders have advanced the idea that the TMR's non-recognition has meant only limited government resources are available, which, in turn, has directly influenced the entity's efficiency in protecting human rights.<sup>149</sup>

Finally, Transnistria has taken steps to improve its system of human rights protection by examining the democratization initiatives the external actors have suggested. In particular, the institution of ombudsman was introduced in Transnistria as a response to the 2005 Ukrainian Plan, which is discussed in detail in the next chapter.<sup>150</sup> Thus, following the general path for the legal protection of human rights, Transnistria has strengthened its statehood and demonstrated to the external actors its commitment to democratic principles.

Although in their official public discourse the external actors have ignored the existence of the institutions protecting human rights in Transnistria and have rejected any claim by the TMR to recognition,<sup>151</sup> their focus on the practices of human rights violations suggests the importance of human rights protection for the negotiation process. In particular, the external actors have regarded the cases<sup>152</sup> or reports<sup>153</sup> concerning human rights violations in

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Osnovnoi Zakon gosudarstva,” *Olvia-Press*, December 11, 2007; “10 dekabrya- Deni Prav Cheloveka [December 10<sup>th</sup> is Human Rights Day], *Olvia-Press*, December 11, 2007.

<sup>149</sup> “Vstrecha parlamentariev s Tomasom Hammarbergom,” Verhovnyi Sovet PMR, Press-Release, November 6, 2012. At his meeting, Tomas Hammarberg stated that, “I believe that the rights of a human being should be respected regardless the political status of a state-like entity.”

<sup>150</sup> Personal communication of the former Minister of Foreign Affairs, Vladimir Yastrebchak, August 2013.

<sup>151</sup> Even though the TMR sometimes claims its recognition on the grounds of meeting the institutional standards of human rights protection, these claims remain largely ignored. Personal communications of the representatives of the OSCE Mission to Moldova, June-August 2013.

<sup>152</sup> The European Court of Human Rights issued two judgments on human rights violations that occurred on the TMR's territory: 1) *Case of Ilascu and others v. Moldova and Russia* (Application no. 48787/99), that found violations of Article 3 on the prohibition of torture (the treatment and conditions of detention in prisons of the TMR), Article 5 on the right to liberty and security (detention of applicants runs “counter the law”), and Article 34 on the right to petition; and 2) *Case of Catan and others v. Moldova and Russia* (Applications nos. 43370/04, 8252/05 and 18454/06), that found a violation of Article 2 of Protocol No.1 to the Convention, on the prohibition of denial of the right to education.

<sup>153</sup> The US Bureau of Democracy, Human Rights, and Labor issued Country Reports on Human Rights Practices in Moldova from 1996 to 2011. Its section on Transnistria criticize the human rights' situation in the TMR (e.g. government control of mass media, restricted freedom of association, and limited freedom of the press).

Transnistria as evidence of the entity's undemocratic nature and often have used this fact as an argument against the legitimacy of Transnistria as an independent entity.<sup>154</sup>

The external actors have linked a final settlement to the conflict with the democratic development in the TMR. They believe that this will facilitate Transnistrian agreement on consensus and its special status within Moldova. Therefore, they have seen the lack of respect for human rights in Transnistria as an obstacle to a final settlement. As one high-ranking official from the OSCE Mission to Moldova noted:

[T]he democratization of both Transnistria and Moldova, their respect for human rights and the rule of law needs to be pursued to reach a final settlement. Neither the Moldovan nor the Transnistrian side can be ensured that their legitimate interests and the legitimate interests of the population on both sides will be respected if there is no assurance of the observation of international standards of democracy, human rights and the rule of law.<sup>155</sup>

Thus, the external actors have expected Transnistrian authorities to ensure the entity's own democratic development and view the respect for human rights by the TMR as part of this process. In this way, the development of human rights protection in the TMR serves the interests of the external actors in promoting conflict settlement. While not regarding its progress on human rights as a step to granting the TMR's independence, the external actors view it as a factor that contributes to conflict resolution.<sup>156</sup>

Furthermore, the external actors have assigned a role to the international community in the TMR's democratic development, suggesting that its involvement could partly contribute to the improvement of the human rights situation in Transnistria that would positively influence the negotiation process. While partly linking the improvement of human rights' protection in Transnistria with the more active involvement of the international community, the external

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<sup>154</sup> Personal communication of the representative of the OSCE Mission to Moldova, August 2013.

<sup>155</sup> Personal communication of the representative of the OSCE Mission to Moldova, April 2013.

<sup>156</sup> Personal communication of the representatives of Moldova, the OSCE Mission to Moldova, the EU, April-August 2013.

actors have emphasized the inadmissibility of compromising the international position on non-recognition that such an involvement might appear to cause.<sup>157</sup>

This concern evidences the need for international actors to make judgments on whether they should engage in relations with Transdniestria, and, if so, what the nature of that engagement should be. For example, the United Nations Senior Expert on Human Rights, Thomas Hammarberg, prepared a report on human rights in Transdniestria in which he indicates a number of issues relevant in the context of the relationship between the constitution of an unrecognized state and the negotiation process. First, Hammarberg explicitly states that the use of such terms as “Constitution,” “Law,” “President,” “Minister” does not indicate any *de jure* recognition of these acts or of the TMR’s authorities and institutions.<sup>158</sup> Second, as he acknowledges “the fact that Transnistria is not recognized as an independent state but is run by *de facto* authorities is a factor that cannot be ignored.”<sup>159</sup> Third, he expressly notes the existing relationship between the search for a solution for Transdniestria’s status and human rights protection.<sup>160</sup>

Hammarberg’s points also reflect the position of the external actors on Transdniestria and the interrelationship between the TMR’s constitutional development and negotiations. On the one hand, his report demonstrates the external actors’ engagement with the Transdniestrian authorities for the purposes of assessing the human rights situation. On the other hand, along with this process, some external actors interpret the direct contact the TMR’s authorities have established with the UN as possibly harmful for the negotiation process. They suggest that, by cooperating fully with the UN representative and providing him with access to all relevant

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<sup>157</sup> Personal communication of the representative of the OSCE Mission to Moldova, May 2013.

<sup>158</sup> Thomas Hammarberg, "UN Report on Human Rights in the Transnistrian Region of the Republic of Moldova," (2013), 1.

<sup>159</sup> *Ibid.*, 43.

<sup>160</sup> *Ibid.*



institutions,<sup>161</sup> Transnistrian authorities can take an additional step in the direction towards gaining international legitimacy and recognition.<sup>162</sup>

As a result, the protection of human rights as part of a constitutional democratic framework has influenced the negotiation process. Transnistrian authorities have used the development of the mechanisms to protect human rights to strengthen the entity's statehood and legitimacy. The external actors have considered the protection of human rights an important element of the TMR's overall democratic development that should assist in finding a solution to the conflict. The responses of the external actors to the practices of protecting human rights in Transnistria demonstrate their focus on the need for human rights improvement in the TMR and interest in the democratic development of Transnistria for the purposes of re-integrating the entity with Moldova.<sup>163</sup>

## **Conclusion**

The assertion of the traditional and contemporary criteria for recognition in the TMR's constitutional provisions has shown no effect on the process of Transnistrian recognition, but instead has influenced Transnistrian state-building and the process of interaction between Transnistria and the external actors. As illustrated above, Transnistria has asserted the traditional criteria for recognition in its constitutional acts through a set of provisions on population, territory, government, and the capacity to enter into international relations. It has also constitutionally asserted the contemporary criteria for recognition: democracy, the rule of law,

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<sup>161</sup> Thomas Hammarberg acknowledges that, "The Transnistrian leadership cooperated fully with the Expert and ensured that he could meet those he requested to see and visit institutions of relevance for his task." UN Report on Human Rights, 2013, 4.

<sup>162</sup> Personal communication of the representative of the OSCE, August 2013.

<sup>163</sup> Reintegration, however, does not mean the loss of a particular status for the TMR. As one representative of the external actors noted, "it is possible that a genuine development of human rights protection in the [TMR] region would create a more favorable attitude among some observers towards some form of independence [for the TMR]. Personal communication, August 2013.

and the protection of human rights. However, Transdniestria has based its claim for recognition on international legal arguments concerning restoration of its statehood and the right to self-determination, leaving out altogether its constitutional assertion of the criteria for recognition. Such a framing suggests that the unrecognized state views the role of its constitutional acts primarily as internal in the context of the recognition process.

This view on the internal focus of the TMR's constitution is somewhat supported by the attitude of the external actors. The external actors have welcomed the possibility of the existence of the Transdniestrian constitution in principle. They have found it important for the TMR to have a constitution, as it provides for the organization of Transdniestria with "clear, transparent, predictable, and just rules."<sup>164</sup> However, as long as the Transdniestrian constitutional acts remain the documents of the unrecognized state, the external actors ignore their existence. In addition, the external actors have completely disregarded and sometimes explicitly rejected the Transdniestrian claims to statehood and recognition. By framing their discourse in terms of conflict resolution, the external actors have emphasized the need for negotiation and cooperation among all parties in order to achieve a final settlement that excludes recognition. As a result, this approach shows the lack of effect of the TMR constitutional system on the recognition of Transdniestria.

At the same time, the constitutional embedding of the criteria for recognition as well as wide public invocation of the constitution in Transdniestria suggests the commitment of the TMR to statehood and sovereignty. The assertion of the criteria for recognition in the Transdniestrian constitutional acts and their realization in practice have strengthened the grounds for Transdniestrian state-building by uniting its people; providing a sense of belonging to an entity that has a right to restoration of its statehood and to self-determination; and ensuring a

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<sup>164</sup> Personal communication of the representative of the OSCE Mission to Moldova, July 2013.

legal framework for its further development. In addition, the existence and realization of constitutional provisions on democracy, the rule of law, and the protection of human rights has allowed Transdniestria to invoke that fact during negotiations and make a claim that these positive democratic steps should lead to recognition.<sup>165</sup> In this way, the development of the legal and institutional grounds for Transdniestrian state building has consolidated its claim to statehood.

The focus of the external actors on the geopolitical aspects of the Transdniestrian issue has supported their commitment to promoting international and regional security, as well as the key principle of respecting territorial integrity. However, Transdniestria's decades-long existence also has directed the external actors' attention to the TMR's internal development and its impact on conflict resolution. More specifically, the close attention they have paid to the practice of constitutional amendment and the protection of human rights suggests that the external actors view the general principle of the democratic development of an entity as an important condition for the purposes of negotiations. In this context, the TMR's constitution plays an important, albeit invisible, role for the external actors, since a particular constitutional development in Transdniestria could help or hinder the process of negotiating the search for a resolution to the conflict.

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<sup>165</sup> Personal communication of the representative of the OSCE Mission to Moldova, May 2013.

## **CHAPTER FOUR. THE EFFECTS OF TRANSDNIESTRIAN ELECTORAL PRACTICES AS A COMPONENT OF THE CONTEMPORARY CRITERIA FOR RECOGNITION AND THE CLAIM TO DEMOCRATIC GOVERNANCE ON THE PROCESS OF TRANSDNIESTRIA'S RECOGNITION**

### **Introduction**

As Chapter 3 showed, Transdniestria has asserted the traditional and contemporary criteria for recognition through its constitutional provisions and practices. Although Transdniestrian efforts have not resulted in the TMR's recognition, they have contributed to state-building and consolidated its claim to statehood. In addition to its express formulation in the Transdniestrian constitution, the requirement for democracy – one of the contemporary criteria for recognition – has also evolved in the TMR through its electoral practices. The high number of elections and referenda conducted during the two decades of the TMR's existence demonstrates that the TMR clearly has followed its constitution and asserted its sovereignty.

Between 1990 and 2013, Transdniestria held five parliamentary elections (in 1990, 1995, 2000, 2005, and 2010) and five presidential elections (in 1991, 1996, 2001, 2006, and 2011). It also held fifteen referenda between 1989 and 2006 on different issues, including the creation of the Transdniestrian republic and its independence (1989-1991), the adoption of the Transdniestrian constitution (1995), the amending of the constitution (2003), and Transdniestrian independence (2006).

Detailed review of the TMR's electoral practices after its self-proclaimed independence in 1991 and the responses of the external actors towards such practices shows the following. The electoral events the TMR has conducted in accordance with its constitution and as part of its democratic development have not affected the Transdniestria's recognition process. The external actors have reacted to these constitutional events by publicly repudiating both the electoral

practices and their outcomes, reactions that are based on the external actors' refusal to view Transnistria as an entity separate from Moldova. Whether by totally ignoring or openly rejecting the Transnistrian elections and referenda, the external actors have largely framed them as illegitimate and illegal.

Despite the fact that Transnistrian constitutional electoral practices have conspicuously failed to bring about the TMR's recognition, these practices still have had other effects. First, holding elections and referenda in Transnistria has consolidated Transnistrian statehood and its claim to recognition. Transnistrian electoral activities have underscored the legitimacy of Transnistrian statehood for the TMR's people. Bringing changes in power and holding public consultations through constitutional mechanisms have demonstrated to the TMR's population that Transnistria can function as an ordinary state and have created additional forums for the entity's authorities to assert their claims to statehood for internal and external audiences. These practices have also contributed to ensuring that elected authorities in Transnistria protect the constitutional provisions on its sovereign status. In the official public discourse and during the negotiation process, Transnistrian authorities have claimed that, as elected representatives, they represent the will of people on Transnistrian sovereign statehood enshrined in the constitution.

Second, the TMR's constitutional electoral practices have affected its interactions with the external actors. The election or appointment of the Transnistrian leadership in accordance with the constitution has legitimized its status in the eyes of the external actors for the purposes of the negotiation process. Despite publicly refusing to recognize elections in the TMR and branding them "illegitimate," the external actors have nonetheless engaged with the

constitutionally elected representatives from the TMR in negotiations to find a settlement to a conflict.

Notwithstanding their reluctance to view Transdniestria's own electoral practices as part of democratic development, the external actors have employed it as part of the general concept of democracy development for the purposes of negotiations. The majority of the external actors have insisted that pursuit of democratic development in Transdniestria is one of the essential conditions for the settlement of the conflict and have sought the ways to use elections as a tool to achieve that aim. They also have unofficially followed the TMR's elections and referenda to observe whether those practices favor or jeopardize settlement of the conflict based on Moldovan territorial integrity.

Transdniestrian presidential and parliamentary elections and referenda have occurred in an unrecognized state within the framework of the negotiation process that has focused on finding a resolution to the Transdniestrian issue. As a result, the character of negotiations has influenced the context in which the electoral practices took place, the grounds for holding some referenda, and the internal and external official public discourses around these events. Therefore, this chapter analyzes the effects of the TMR's electoral practices on the TMR's recognition and, more broadly, on the TMR's political status in the context of two extended periods of negotiations from the point of view of the two main parties to the process, Moldova and Transdniestria:

- 1) The search for common ground: 1992-2003;
- 2) Increasingly different views: 2004-2013.

**Section 1**, "The search for common ground," explores the reactions of the external actors to the TMR's parliamentary and presidential elections, as well as to referenda held between 1992

and 2003, when Moldova and Transdniestria discussed options to resolve the conflict. In this period, Transdniestria insisted on recognition of its statehood, but was open to a settlement in which this goal would be achieved within the borders of Moldova. As a result, while the electoral practices did not have an effect on the TMR's recognition, they consolidated the Transdniestrian experience of having sovereignty.

**Section 2**, "Increasingly different views," analyzes the responses of the external actors to the TMR's referendum and the parliamentary and presidential elections held from 2004 to 2013, when Moldova and Transdniestria lacked any common ground on how to resolve the conflict. While Moldova has been willing to make the TMR an autonomous region, Transdniestria has insisted on the recognition of its statehood outside of the Moldovan borders and maintained this stance through its electoral practices. During this period, the TMR's electoral practices have contributed to the hardening of its claims to statehood. Although the external actors have not changed their position on non-recognition of the TMR, they have engaged with a changing roster of elected leaders from the entity. In addition, the external actors have explored the options of using the general concept of democratic development for the purposes of negotiations and linked the TMR's democratic development with conflict settlement.

### **1. The Search for Common Ground: 1992-2003**

The 1992 Agreement on the Principles of the Peaceful Settlement of the Armed Conflict set up the process of negotiations between Moldova and Transdniestria.<sup>1</sup> The document provided for the peaceful resolution of the political status of Transdniestria within Moldova and laid down key settlement principles: the termination of armed hostilities, the formation of a Joint Control

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<sup>1</sup> Agreement on the Principles of the Peaceful Settlement of the Armed Conflict, signed between Moldova and Russia. July 21, 1992 (the Moscow Agreement).

Commission to ensure the implementation of security measures, and the withdrawal of units of the Russian 14th Army in accordance with bilateral agreements.

Although Transdniestria agreed to discuss its relationship with Moldova within the established framework for negotiation, it stood firm on the position of preservation of its state attributes. The TMR insisted on exercising control over its territory and population and ensuring its own governance. By holding referenda and elections, Transdniestria consolidated its statehood, legitimized its government, and ensured that the external actors continued to interact with the TMR's constitutionally elected leaders. The TMR's electoral practices did not shake the external actors' resolve not to recognize Transdniestria, but did condition their engagement with the TMR's elected and constitutionally appointed leaders.

### **1.1. The 1995 Referendum on the Presence of Russian Troops in the TMR**

In an attempt to retain control over its territory and ensure the protection of its population, the TMR opposed Moldovan calls to withdraw Russian troops<sup>2</sup> and held a referendum on this issue in March 1995. The very high number of voters who backed the presence of the Russian army in the TMR (94% of nearly 453,000 of voters) showed that the TMR's population largely supported the independence Transdniestria had won in 1992<sup>3</sup> and believed Russian forces were necessary for its existence and protection. In this regard, Transdniestria considered unacceptable any steps the guarantors might take that could jeopardize

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<sup>2</sup> As mentioned in Chapter 2, the Russian 14<sup>th</sup> Army intervened in the civil war on the Transdniestrian side. The 1992 Moscow Agreement stipulated the presence of Russian peace-keeping forces in the region, with the aim of separating the two sides into a Security Zone. According to the 1994 Moldovan Constitution, Moldova is a neutral state and, therefore, Moldova called on Russia to withdraw troops from its territory and to reduce the threat to Moldovan national security. Transdniestria, on the contrary, saw the 14<sup>th</sup> Army as a guarantor of its peace and security. In addition, it has some claims to the Army's assets. In 1994, Moldova and Russia signed the Agreement Concerning the Legal Status of the Military Formations of the Russian Federation Temporarily Present in the Territory of the Republic of Moldova and the Arrangements and Time-Limits for Their Withdrawal. According to this Agreement, the troops' withdrawal had to be synchronized with the achievement of the final resolution of Transdniestrian conflict. See Perepelitsa, 2001.

<sup>3</sup> "Time for Independence May Have Passed," *Financial Times*, March 27, 1995.



the entity's security.<sup>4</sup> However, the external actors either officially ignored or repudiated the TMR's referendum. The OSCE and Russia disregarded the referendum,<sup>5</sup> whereas Moldova explicitly rejected it, stating, "[t]his referendum is unlawful and will have no legal consequences."<sup>6</sup> As a result, the first referendum held after the 1992 war revealed the TMR's potential to function as a sovereign entity through the mobilization of the Transdnistriean people to address issues essential to the TMR's existence. It also allowed the TMR's leaders to enlist public support for guarantees of the TMR's security and to use the evidence from the referendum on the people's preferences in their discussions with the external actors.<sup>7</sup>

## **1.2. The 1995 Parliamentary Elections and Referenda on the Adoption of the New Constitution and Joining the Commonwealth of Independent States**

Transdnistria continued its state-building efforts by holding its parliamentary elections and a referendum on the adoption of the new constitution, which provided for independent foreign and domestic policies on December 25, 1995. The TMR also signaled its commitment to a separate statehood by following the initiative of many of the former Soviet republics, which had created a new union, the Commonwealth of Independent States (CIS). Hence, in addition to holding parliamentary elections and a referendum on adopting a new constitution, the TMR held a referendum on the issue of joining the CIS.<sup>8</sup>

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<sup>4</sup> As Igor Smirnov, the TMR president, explicitly stated, "The Russian leadership won't pull out the army against the wishes of the local population." "Slavic Enclave in Moldova Backs Presence of Russian Troops," *Deutsche Presse-Agentur*, March 27, 1995.

<sup>5</sup> At the same time, it is possible that the referendum influenced the May 1995 decision of the State Duma to postpone the ratification of the agreement on the withdrawal of the 14<sup>th</sup> Army signed by Moldova and Russia until final settlement of the issues between Moldova and Transdnistria.

<sup>6</sup> Statement of Moldova's Deputy Foreign Minister Alexandru Burian. Paola Messana, "Russians in a Breakaway Region of Moldova Voted Massively to Keep Russian Troops," *Agence France-Presse*, March 27, 1995.

<sup>7</sup> Igor Smirnov, footnote 4 above.

<sup>8</sup> The Commonwealth of Independent States was created on December 8, 1991, as a regional organization to regulate relations between the former members of the Soviet Union. See [www.cis.minsk.by](http://www.cis.minsk.by).

While the TMR's population took an active part in all three political events,<sup>9</sup> voting in favor of a new constitution (82% of votes) as well as for joining the CIS (90% of votes),<sup>10</sup> their participation did not affect the position of the external actors, whose reactions remained few in number and negative in nature. The leadership of Moldova saw these referenda and the parliamentary elections not only as invalid, but also as complicating the search for an agreement to peace talks that respected Moldovan territorial integrity. According to the speaker of the Moldovan Parliament, it was illogical to conduct a referendum on joining the CIS because "Moldova already is a CIS member," and "the Transdnistrian region is part of Moldova."<sup>11</sup> Moldova did not envision any other concessions to Transdnistria except its autonomous status, "because the problem can only be solved by maintaining territorial unity."<sup>12</sup> Similarly, the Russian Foreign Ministry spokesman emphasized the Russian position that the Transdnistrian region was part of Moldova and expressed his doubts that the CIS could accept the Transdnistrian application.<sup>13</sup>

Thus, the approach of the external actors showed no evidence of the effect of the TMR's elections or referenda on their position regarding the Transdnistria's political status. Regardless of the external actors' awareness of the results of the parliamentary elections and the agenda of parties running,<sup>14</sup> as well as their observation of public approval for a new sovereign

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<sup>9</sup> The turnout was 58%. The total electorate for the elections and referenda included 489,000 voters out of a population of 780,000. Konstantin Kirochko, "Self-proclaimed Russian-speaking Moldavian Republic Votes on Sunday," *Agence France-Presse*, December 23, 1995.

<sup>10</sup> Smirnov has declared that the referendum is the first step in the efforts to restore the USSR. Natalya Roslova, "Tiraspol Has Conducted Two Referendums And Parliamentary Elections," *Russian Press Digest*, December 26, 1995.

<sup>11</sup> Statement by Piotr Luchinsky. Ibid.

<sup>12</sup> Statement of an adviser to Mircea Snegur, Moldovan President. "Moldova Refuses Concessions to Dniestr Republic," *Deutsche Presse-Agentur-Moscow*, December 25, 1995.

<sup>13</sup> Ibid. The TMR declared its intent to join CIS multiple times. The TMR's Parliament applied in December 1991, May 1992, and January 1993, and the TMR president applied again in January 1994 and May 2006. "Litsom k litsu. Predsedatel Komiteta Soveta Federatsii po delam SNG Vadim Gustov." *Radio Svoboda*. October 26, 2008.

<sup>14</sup> For example, all three parties running for election supported the statehood of Transdnistria. However, their views varied regarding the specific form the TMR's statehood should take: complete independence with the close ties with

constitution, they either disregarded or rejected those events. Instead, the external actors stood firm in their search for a settlement that would provide a status for Transdniestria within Moldova and without recognizing the TMR's statehood.

In Transdniestria, however, the adoption of a new constitution at the referendum established the grounds for "a sovereign, independent, and democratic state based on the rule of law"<sup>15</sup> and ensured its public legitimacy. It also asserted the TMR's commitment to pursue its sovereign development based on wide public support. In addition, holding the referendum on joining the CIS created an additional avenue for Transdniestria to claim its sovereignty and eligibility for membership in the community of states.

### **1.3. The 1996 Presidential Elections**

While it actively pursued negotiations with Moldova, Transdniestria continued to take steps to build an independent state, attaching a great importance to the issue of the TMR's economic independence. In particular, in 1996, Transdniestria signed a Customs Services Protocol with Moldova<sup>16</sup> and agreed to remove customs posts at the entrance to the region on the Moldovan side to receive, in return, the right to process cargos with a customs stamp issued by the Republic of Moldova. This provision not only legalized Transdniestrian foreign trade, but also ensured in part the TMR's economic independence and viability. As a result, the 1996 Protocol became the legal basis for one of the TMR's key statehood claims: to have a secured right to conduct an independent foreign economic policy. Therefore, whenever the TMR has seen a threat to this right (as shown below throughout the chapter), it has used this right to

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Russia, statehood within Moldova, or a republic within Russia. "Self-proclaimed Russian-speaking Moldavian Republic Votes on Sunday," *Agence France-Presse*, 1995.

<sup>15</sup> "Dnestr Constitution Signed," *BBC Monitoring Service: Former USSR*, January 19, 1996.

<sup>16</sup> Full name: Protocol Decision on Resolution of Problems that Appeared in the Field of Functioning of Customs Services of the Republic of Moldova and of Transdniestria, signed in February 7, 1996, in the presence of representatives of Russia, Ukraine, and the OSCE [Protokol'noe reshenie po razresheniu voznikshih problem v ovlasti deiatel'nosti tamozhennyh sluzhb Respubliki Moldova i Pridnestrov'a].

harden its position and argued for more independence. The TMR also referenced the imposition of limitations on its economic sovereignty (whenever it occurred) during its electoral discourse in order to consolidate its claim to statehood. In this way, these economic considerations became an important backdrop for the TMR's electoral practices and a powerful force behind TMR's claim to recognition of its statehood.

Besides signing the Customs Services Protocol in 1996, Transdniestria continued to work closely with Moldova to define the TMR's status during the process of drafting of the Memorandum on Determination of the Political Status of Transdniestria (later adopted as the Memorandum on the Bases for the Normalization of Relations between the Republic of Moldova and Transdniestria). At the same time, the TMR followed its own constitutional provisions and held presidential elections. In the 1996 presidential campaign, neither of two candidates for the presidency questioned the TMR's independence as their main foreign policy goal, thereby confirming the TMR's position on its search for recognition.<sup>17</sup> In addition, candidate and then-president Igor Smirnov placed special emphasis on nation-building in the TMR centered on the concept of creating inter-ethnic consent in society that would ensure the respect of human rights and democracy and avoid prioritizing certain ethnicities at the expense of others.<sup>18</sup> In his 1996 election platform, Smirnov pointed out that national policy should be built on the principles of "the national parity of ethnic groups, including equality in using one's own language in official relations, public and cultural life; the right to ethnic culture...[and] state support of programs focused on regeneration and the development of national cultures."<sup>19</sup>

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<sup>17</sup> The two candidates for presidency were then-president Igor Smirnov and Vladimir Malakhov. Malakhov's separatist discourse was similar Smirnov's. After casting his vote, Malakhov acknowledged that, "In that regard, my political program did not differ much from Smirnov's." "Scrutin Présidentiel en Transnistrie," *Reuters*, December 22, 1996.

<sup>18</sup> Guboglo, 1999, 58-59.

<sup>19</sup> Election agenda of the candidate for the post of TMR President, Smirnov, December 17, 1996. In Gryzlov, 1997.

Winning reelection with 71.94% of votes,<sup>20</sup> Smirnov used this electoral event as a medium to assert Transdniestrian claims to statehood and to call on the international community to recognize the republic. He stated that:

...The election demonstrated the people's wish for independence and would be another step towards legal recognition for our republic. We have existed for seven years. Our state exists de facto even though it had not been recognized in the "euphoria of the struggle against communism."<sup>21</sup>

While he accepted in principle the need for negotiations with Moldova, Smirnov was careful to define the TMR's approach towards negotiations as one of a meeting of equals. He emphasized that "We will go for talks with Moldova on defining the status of the republic only if Moldova puts us on an equal footing. We will not accept any status imposed from above."<sup>22</sup>

Although Transnistria clearly demonstrated its decisive position on sovereignty, it did not succeed in convincing the external actors to reconsider their approach to the conflict. While Moldova rejected any legal consequences of these elections and insisted on finding a solution "within the constitutional framework of Moldova" that included the right to broad autonomy,<sup>23</sup> the Moldovan Mission of OSCE viewed the elections only as internal in nature and emphasized its steadfast position on Moldovan sovereignty and indivisibility under international law.<sup>24</sup> Two other external actors, Ukraine and Russia disregarded both the elections and the claims of the re-elected president<sup>25</sup> and focused, together with the OSCE, on finding an acceptable formula for a final settlement.

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<sup>20</sup> The electorate for the 1996 presidential elections consisted of 428,000 people with a turnout 57.1%. The second candidate, Vladimir Malakhov, captured 19.89% of votes. "Scrutin Présidentiel en Transnistrie," *Reuters*, 1996.

<sup>21</sup> "Turnout in Dniestr Elections Reported over 50 per cent," *Deutsche Presse-Agentur*, December 22, 1996.

<sup>22</sup> "Dniestr Vote will Have no Legal Consequences, Says Lucinschi," *Deutsche Presse-Agentur*, December 23, 1996.

<sup>23</sup> *Ibid.*

<sup>24</sup> "Hard-liner Smirnov Re-elected in Breakaway Dniestr Region," *Deutsche Presse-Agentur*, December 23, 1996.

<sup>25</sup> Although observers from Belarus, Abkhazia, and a delegation of the Russian Duma (comprised mostly of nationalist deputies) were unofficially present at the elections, media coverage did not report their reactions. "Observers to Monitor Elections in Dniestr Republic of Moldova," *Deutsche Presse-Agentur*, December 18, 1996.

As a result, the experience of the 1996 presidential elections contributes to the general argument about the effects of the TMR's constitution on Transdnistrian recognition. On the one hand, the Transdnistrian rhetoric and the results of the electoral period reflected the TMR's devotion to the provisions of its own constitutional framework. First, the TMR showed its commitment to protect the identity of its statehood based on the parity of ethnic groups and to pursue the state's aspirations of recognition. Second, the TMR's leaders used electoral venues to assert the claim to the TMR's statehood, a message that they targeted especially at external audiences. On the other hand, the scant attention paid by the external actors to the TMR's elections and their explicit rejection of the elections' outcomes suggest the elections had little impact on the positions of the external actors regarding the TMR's status. However, the following interactions of the external actors with the constitutionally elected leader of the TMR indicated that the external actors have viewed such a leader as a legitimate partner with whom to negotiate the conflict settlement.

In particular, Smirnov's participation in negotiations, his agreement with Moldovan counterparts and the efforts of the external actors led to a second distinct stage in the negotiations and the signing of the Memorandum on the Bases for the Normalization of Relations between the Republic of Moldova and Transdnistria in 1997 (or the Moscow Memorandum).<sup>26</sup> This agreement defined Moldova and Transdnistria as equal parties in the process of establishing a common state within the borders of Moldovan SSR as they stood in January 1990. Both parties agreed to continue working on the foundational document of their relations based on the

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<sup>26</sup> Memorandum on the Bases for the Normalization of Relations between the Republic of Moldova and Transdnistria. May 7, 1997, signed in Moscow, between Moldovan President Petru Lucinschi and Transdnistrian President Igor Smirnov in the presence of the Presidents of Russia and Ukraine (the guarantor countries), and a representative of the OSCE (a mediator). The Russian and Ukrainian presidents also signed a joint statement in which they welcomed the signing of the Memorandum as an important step towards a fair, comprehensive settlement of the Transdnistrian problem and emphasized that the provisions of the Memorandum should not be interpreted and applied in contradiction to existing international treaties. See Boțan, *The Negotiation Process*, 2009, 120.

principles of mutual decision-making, delimitation and delegation of powers, guarantees of mutual security, and the right of the TMR to independent foreign economic activity. However, the document also introduced a controversy by leaving undefined the concept of a “common state.” It allowed Transdniestria to advance its claim to statehood and a possible confederal status between the entities, while it simultaneously gave Moldova grounds to insist on the TMR’s autonomous status within a unitary state.

#### **1.4. The 2000 Parliamentary Elections**

While the negotiation efforts continued after the signing of the Moscow Memorandum,<sup>27</sup> by 2000, Moldova had largely shifted its focus to domestic problems due to its own constitutional crisis. As before, Transdniestria pushed forward with its own internal constitutional development by holding its parliamentary elections.

As in previous years, the turnout for the third parliamentary elections in Transdniestria remained high - 45%.<sup>28</sup> But, in contrast to those earlier elections, this one received a more mixed reception from the external actors. For the first time, the delegation of the State Duma of the Russian Federation, which consisted of representatives from all factions, officially observed the elections<sup>29</sup> and noted their good organization and quiet atmosphere.<sup>30</sup> During a press conference, a representative of the Russian State Duma and the head of the delegation sidestepped the issue of recognition of Transdniestria, pointing instead to the framework of the 1997 Moscow

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<sup>27</sup> From 1998 to 2000, Moldova and Transdniestria held numerous meetings, exchanged a number of drafts on the framework for the common state, and also signed several documents, for example, the Agreement on Confidence Measures and the Development of Contacts between the Republic of Moldova and Transdniestria, signed by Moldova, Transdniestria, Russia and Ukraine in the presence of the OSCE on March 20, 1998 (Odessa Agreement).

<sup>28</sup> According to the TMR’s Central Election Commission, 183,381 people (or 45.1%) voted in the elections for the Supreme Council, out of 406,570 voters listed on electoral registers. “G.Marakutsa v tretii raz stal Predsedatelem Verhovnogo Soveta PMR,” *Olvia-Press*, December 27, 2000. The legislature consisted of the representatives of three parties plus several independent politicians. See Bomeshko, 2010, 104-105.

<sup>29</sup> “Deputaty Gosudarstvennoi Dumy RF nabludaiut za vyborami v Berhovnyi Sovet PMR” [The deputies of the RF State Duma monitor the elections to the TMR’s Supreme Council], *Olvia-Press*, December 10, 2000.

<sup>30</sup> Svetlana Antonova and Georgy Stoilik, “Elections of the Supreme Council Underway in Trans-Dniestria,” *RIA Novosti*, December 10, 2000.

Memorandum.<sup>31</sup> Yet, he noted that, on the ground, Transdniestria had complete control over its territory, a fact that confirmed its sovereignty and independence.<sup>32</sup> The reasons behind the Russian State Duma's new status observing the election were unclear based on available data. However, such a move fit the pattern of the State Duma's increasing support for Transdniestria.<sup>33</sup>

Regardless of the actual reasons, the presence of the Russian observers at the Transdniestrian parliamentary polls raised serious concern for the Moldovan Foreign Ministry, which delivered a note of protest to the Russian Embassy. It stated:

the presence of Russian lawmakers as observers in the polls of the unrecognized Dniestr republic is a new attempt to defy the efforts laid by the Organization for Security and Cooperation in Europe (OSCE) and the states mediating the settlement of the conflict in the region.<sup>34</sup>

To Moldova, the actions of the Russian legislators cast “doubt on the credibility of the Russian Federation, which is a mediator in the settlement negotiation” between Chisinau and Tiraspol.<sup>35</sup>

The Transdniestrian elections also received attention from the Ministry of Foreign Affairs of the United Kingdom, which was already indirectly involved in negotiations through its membership in the OSCE. Interested in the results of the elections and the prospects of a Moldovan-Transdniestrian settlement, the Ministry's delegation had met with the speaker of the

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<sup>31</sup> Georgy Tikhonov, then Chairman of the Russian State Duma Commission for Assistance to the Economic and Political Settlement of the Transdniestrian Conflict, stated that the task of the State Duma was to adopt legislation that ensured the economic development of the region within the provisions stipulated by the Moscow Memorandum, while the issue of recognition was beyond that framework. “Press-konferentsia nabliudatelei sledivshih za hodom v Verhovnyi Sovet PMR” [Press-conference of International Observers at the Elections to the TMR's Supreme Council], *Olvia-Press*, December 10, 2000.

<sup>32</sup> “Press-konferentsia nabliudatelei sledivshih za hodom v Verhovnyi Sovet PMR,” *Olvia-Press*, 2000. Similar position was expressed by the observers from Abkhazia, South Ossetia and Nagorno-Karabakh, who stated that ten years of independence is a fact that must be taken into consideration. *Ibid.*

<sup>33</sup> For example, on May 24, 1995, at hearings in the State Duma on the agreement between Moldova and Russia on the withdrawal of the 14th Army, ratification of the agreement was postponed until a final settlement of issues between Moldova and Transdniestria could be reached. See Boțan, *The Negotiation Process*, 2009, 118.

<sup>34</sup> “Moldova Protests at Presence of Russian Observers at Dnestr Region Polls,” *BBC Monitoring Service: Former Soviet Union*, December 13, 2000.

<sup>35</sup> *Ibid.*



Transdnestrian parliament, yet kept private its comments on this visit.<sup>36</sup> The Transdnestrian side, on the contrary, reported on the results of the meeting and outlined the position of its parliamentary speaker, Grigory Marakutsa. His position suggests that the TMR used the British delegation's visit as an opportunity to pursue the TMR's agenda for independence with an outside actor. Marakutsa emphasized the Supreme Council's stance on the TMR's sovereign foreign policy and shared the Supreme Council's view that the relationship between Moldova and Transdnestria most resembled those between two independent states.

Thus, the TMR's electoral practice has had an impact on the consolidation of the TMR's statehood and the external actors' engagement with it. Domestically, the elections proved the TMR's capacities to function as an ordinary state, going through the usual practices of their organization, management, and monitoring. Also, the parliamentary elections created an additional forum for the TMR's authorities to show to the external actors the entity's determination to build a sovereign and independent state beyond the Moldovan borders.<sup>37</sup> By pushing forward this agenda, the elected leaders demonstrated their commitment to protect the TMR's constitutional provisions on its sovereign status. Overall, Transdnestria was able to gradually gain international notice for its elections, receive post-election international publicity,<sup>38</sup> and move forward with consolidating its statehood.

Externally, the elections have not changed the approach of the external actors on the Transdnestria's status as an integral part of Moldova: they either explicitly rejected the

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<sup>36</sup> Research for sources within the British Embassy in Moldova and English mass-media did not return any relevant information.

<sup>37</sup> "Vstrecha Britanskikh diplomatov s Predsedatelem Verhovnogo Soveta Pridnestrov'a" [The Meeting of British diplomats with the Chairman of the TMR's Supreme Council], *Olvia-Press*, December 13, 2000.

<sup>38</sup> The official observers from the State Duma were joined by British NGO's and officials from the unrecognized republics of Abkhazia, South Ossetia and Nagorno-Karabakh. They found that the parliamentary elections complied with international norms on democratic elections and reported only minor violations. "Zayavlenie gruppy mejdunarodnyh nabludatelei o resultatah vyborov v Verhovnyi Sovet PMR; Zayavlenie gruppy nabludatelei Britanskoi Helskinkoi Gruppy po pravam cheloveka," *Olvia-Press*, December 10, 2000.

elections, as Moldova did; largely ignored them, as Ukraine and the OSCE did; or acknowledged that the elections took place without endorsing the TMR's claims, as Russia did. However, Transdnistriean electoral practices have affected the engagement of the external actors with the TMR, as seen in the increasing international attention on elections in the form of monitoring and in the external actors' subsequent interactions with the elected leaders of the TMR.

### 1.5. The 2001 Presidential Elections

The relationship between Moldova and the TMR noticeably deteriorated after the former introduced new customs stamps in 2001. These new stamps invalidated the stamps Transdnistria had been using since 1996, making it impossible for Transdnistriean enterprises to legally export goods while circumventing Moldovan customs. Although Moldova justified this step as part of its adoption of World Trade Organization standards, the TMR viewed it as an economic blockade;<sup>39</sup> a blatant violation of its right to sovereign social and economic development that it sought to protect;<sup>40</sup> and an argument to claim further recognition of its statehood during the Transdnistriean 2001 presidential elections.

During the elections, which saw high turnout (63%),<sup>41</sup> the TMR's voters re-elected then-president, Igor Smirnov with 81.85% support.<sup>42</sup> As suggested above, the newly imposed Moldovan economic limitations on the TMR only strengthened Transdnistria's calls for statehood. At his inauguration ceremony, Smirnov declared:

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<sup>39</sup> International Crisis Group, "Moldova: No Quick Fix," 2003.

<sup>40</sup> "Zayvlenie Ministerstva inostrannyh del PMR k Rossii, Ukraine i OBSE s pros'boi vosstanovit' pravo Pridnestrova na samostoyatel'noe reshenie voprosov sotsial'no-ekonomicheskogo razvitiya respubliki" [The Statement of the TMR's Ministry of Foreign Affairs asking Russia, Ukraine and the OSCE to Restore the TMR's Right to Independent Social and Economic Development of the Republic], *Olvia-Press*, September 17, 2001.

<sup>41</sup> The turnout for the third presidential elections, which was held on December 9, 2001, consisted of 254,863 people or 62.89% of 405,248 registered voters. "Okonchanetl'nye itogi vyborov presidenta i vise-presidenta PMR. Soobschenie Tsentral'noi Izbiratel'noi Komissii PMR," *Olvia-Press*, December 14, 2001.

<sup>42</sup> Igor Smirnov received 208,617 (or 81.85%) of the votes. The two other candidates, Tom Zenovich and Alexandr Radchenko received 17,018 (or 6.68%), and 11,853 votes (4.65%), respectively. *Ibid.*

The path of independent development and the strengthening of the Transdnistrian Moldovan Republic will be followed...Present-day Transdnistria is a self-sufficient and democratic state, a fact proven by the recent presidential poll...We are not asking anybody for anything, and are capable of ensuring our security ourselves.<sup>43</sup>

Transdnistria particularly welcomed the observers from Moldova, Romania, Belarus, the Russian State Duma, Ukrainian Rada, Poland, and others who did not refuse, as opposed to the OSCE, for example,<sup>44</sup> to monitor the elections, despite the Moldovan government's appeal.<sup>45</sup> Regardless of the official or personal capacities in which the observers came, their presence provided the TMR with an opportunity to showcase its concern over Moldova's unilateral actions that the TMR believed had led to an economic blockade and gave another reason to the TMR to harden its line on statehood.

The external actors closely scrutinized this election, but they either explicitly rejected its legitimacy or refused to comment publicly on it. The Moldovan government declared the Transdnistrian elections illegal and unconstitutional<sup>46</sup> because the Central Electoral Commission of Moldova, the only body authorized to hold elections within the territory of Moldova, did not oversee it.<sup>47</sup> The Moldovan government also urged the Transdnistrian people, diplomatic missions, foreigners, and nongovernmental organizations to refrain from participating in the election and emphasized its negative impact on the sovereignty of Moldova<sup>48</sup> and on possible resolution of the Transdnistrian conflict.<sup>49</sup>

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<sup>43</sup> "Transdnistrian President to Follow Republican Independence Line," *RIA Novosti*, December 24, 2001.

<sup>44</sup> "Strongman Smirnov Re-elected to Run Renegade Region Trans-Dniestr," *Deutsche Presse-Agentur*, December 10, 2001.

<sup>45</sup> *Ibid.*

<sup>46</sup> Moldovan president Vladimir Voronin publicly stated that the presidential elections in Transdnistria would not be declared valid. Alexandra Bor, "Smirnov Prevailed in Trans-Dniestr," *Russian Press Digest (Izvestia)*, December 10, 2001.

<sup>47</sup> Lyudmila Rybkina, "Moldova Declares Upcoming Election in Transdnistria Illegal," *RIA Novosti*, December 5, 2001.

<sup>48</sup> *Ibid.*

<sup>49</sup> "Moldova Urges not to Send International Observers to Transdnistria's Presidential Election," *RIA Novosti*, December 1, 2001.

Along with Moldova, Romania, which has not been an official participant in the negotiations, also publicly rejected the presidential elections. The Romanian Foreign Ministry released a statement on its non-recognition of Transdniestria's actions, which it viewed as a violation of democracy and human rights. It stated:

In connection with the holding of elections in Transnistria on December 9, 2001, Romania reasserts its non-recognition of the separatist actions of the regime in Tiraspol and voices full support [for] maintaining the territorial integrity and sovereignty of Moldova within its borders of 1991. The electoral initiative of the separatist group in Tiraspol is in violation [of] the elementary rules of democracy, human rights and international law, and is aimed at imposing illegitimate statehood, with a negative impact on stability and security in the neighbouring region. Romania also reasserts its support [for] a sustainable solution to the Transnistrian issue that will entail[] both sides meeting their pledges made within the OSCE and in keeping with international standards and maintaining the integrity and sovereignty of the Republic of Moldova.<sup>50</sup>

The government of the United States, not yet an official party to the negotiation process, explained its refusal to send observers to the election in order “to avoid validating Transnistria’s claim of statehood.”<sup>51</sup> In contrast, the representatives of the Russian State Duma delegation differentiated between monitoring the elections and validating the TMR’s claim to statehood and, together with other observers, issued a report that found the elections in compliance with international electoral standards and norms. No mention was made of the TMR’s status claims.<sup>52</sup>

Transdniestria saw the statements of the external actors regarding the illegal or undemocratic character of the elections as unfairly biased against the entity. Newly re-elected president Smirnov rejected any suggestions that the elections were illegitimate<sup>53</sup> and reaffirmed

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<sup>50</sup> “Romania Reasserts Non-recognition of Separatist Actions in Tiraspol,” *Rompres*, December 10, 2001.

<sup>51</sup> Human Rights U.S. Bureau of Democracy, and Labor, “The 2001 Country Report on Human Rights Practices: Moldova,” (2002). The lack of official monitoring did not prevent the US government, however, from listing violations related to electoral process in its report. Some of the violations listed included the shutting down of a youth group, the closing a leftist party newspaper, and the seizure of a press run.

<sup>52</sup> “Protokol raboty gruppy mezhdunarodnyh nabliudatelei na vyborah Prezidenta PMR” [The Protocol of the Working group of International Observers at the TMR’s Presidential Elections],” *Olvia-Press*, December 12, 2001.

<sup>53</sup> In response to Moldovan statements that Transdniestria, its governing bodies, and their decisions are illegitimate because they are not specified by the Moldovan Constitution, the Transdniestrian authorities argued that the Moldovan Constitution was adopted without regard for the Transdniestrian position. See N. Prihodko, “Ev.Levitskiy: Kompromis doljen byt’ oboiudnym. Interv’u Spetsial'nogo predstavitelea Ukrainy v peregovorah

his rigid position on the TMR's foreign policy. As he explained, "the high participation [of voters] in elections...suggests that Transdniestria has its statehood, because there are real, not virtual people who are living here."<sup>54</sup> Speaking on the legitimacy of the TMR's elections, chairperson of the Supreme Council Marakutsa added:

[I]n accordance with the TMR's Constitution, which is the legislation in force for the people of Transdniestria, and for our state as a whole, these elections are more than legitimate. They showed that there has been no serious violations that could have called into question the voting results, and consequently, have served as a basis to consider them illegal. This fact was confirmed by more than 40 international observers...Therefore, we consider the elections [...] to be a solid and firm brick in the foundation of statehood [of our republic].<sup>55</sup>

As a result, the presidential elections confirmed the TMR's functionality as a separate state and provided an additional venue for the TMR's leaders to further assert the claim to statehood and their commitment to implementing the constitutional provisions on the TMR's sovereignty. While it did not have an impact on the external actors' approach to the TMR's recognition, the public election of the TMR's representatives nonetheless ensured further interactions between the external actors and the entity's elected leaders for the purposes of negotiations.

Overall, during the first stage of its negotiations with Moldova, Transdniestria used constitutional means to assert its sovereignty by holding a number of elections and referenda<sup>56</sup> and explicitly linking them to the recognition of the TMR's statehood. Although the external actors confirmed their non-recognition of Transdniestrian statehood by publicly disregarding or rejecting the TMR's electoral practices and any claims based on them, they also paid close

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[Ev. Levitsky: Compromise Must Be Mutual. An Interview of the Special Representative of Ukraine in Negotiations], *Dnestrovskaya Pravda*, #95, August 19, 1999.

<sup>54</sup> "Igor Smirnov: K Pridnestrov'iu ne primenim termin separatism" [Igor Smirnov: The Term Separatism is not Applicable to Transdniestria], *Olvia-Press*, December 11, 2001.

<sup>55</sup> L. Chebotarenko, "Po nelegkomu i ternistomy puti priznania" [Along the Difficult and Thorny Path to Gain Recognition], *Pridnestrov'e*, #244, December 12, 2001.

<sup>56</sup> In addition to the 1995 referenda, Transdniestria also hold a constitutional referendum in 2003, as described in previous chapter.

attention to domestic developments in Transdniestria and engaged with the TMR in different ways.

At this stage, no evidence suggests that it was the TMR's constitutional development that prompted the external actors to interact with the TMR. Rather, they simply could have engaged with the TMR simply due to the purposes and constraints of the negotiations. But even so, such engagement influenced the Transdniestrian leaders' perception of their legitimacy. The activities of the external actors – the OSCE's presence at all of the TMR's elections and referenda (even if in an unofficial capacity); the lack of the Russian opposition to the elections;<sup>57</sup> the Russian State Duma's gradual official monitoring of elections; the meeting between the British official delegation and the speaker of the TMR's parliament; the attendance of deputies of the Russian State Duma, Ukrainian Rada; and officials from the Russian and Ukrainian embassies in Chisinau at the presidential inauguration ceremonies<sup>58</sup> – all suggest that the external actors accepted the results of the elections and the authority of elected leaders and were willing to engage with them in settling the conflict. On this basis, Transdniestrian leaders came to believe that they had legitimacy and de facto recognition by the external actors.<sup>59</sup>

During this first stage of negotiations, notwithstanding the tense relations between Moldova and Transdniestria after the former introduced new custom stamps, both parties continued to discuss the principles of a federal settlement. This occurred in the context of two important initiatives. First, at the beginning of 2003, officials from the OSCE, Moldova, and Transdniestria started developing a model of asymmetrical federation.<sup>60</sup> Second, later in the year,

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<sup>57</sup> For example, in his meeting with the electorate, candidate Smirnov noted that one piece of evidence of de facto recognition of the republic was a statement by Igor Ivanov, the Russian Minister of Foreign Affairs, that there would not be any Russian opposition regarding the upcoming presidential elections in Transdniestria. *Ibid.*

<sup>58</sup> "Transdniestrian President to Follow Republican Independence Line." *RIA Novosti*, December 24, 2001.

<sup>59</sup> All Transdniestrian respondents pointed to de facto recognition of Transdniestrian institutions by the external actors. August 2013.

<sup>60</sup> Hill, 2012.

Russian experts under the leadership of Dmitry Kozak began working with the Moldovan and Transdnestrian sides on an alternative document, “On the Basic Principles of the State Structure of a Common State.”

After the second document, known as the “Kozak Memorandum”, received the approval of both sides, it was presented to the negotiating parties on November 17, 2003.<sup>61</sup> Despite public promises from both Moldovan president Voronin and Transdnestrian president Smirnov to sign the document, at the last minute, Voronin reneged on his pledge under pressure from international partners and organizations, notably the OSCE, EU, and USA.<sup>62</sup> Their main objections to the Memorandum included the lack of coordination between the two initiatives mentioned above and the nature of the division of powers that could undermine the federal government’s authority. In addition, they were concerned with the exclusion of the external actors from negotiation on the Memorandum, since they had a stake in “some of the issues to be resolved by the provisions of the comprehensive political settlement.”<sup>63</sup> Many Moldovan political figures and experts also strongly opposed the Memorandum and its federal basis, claiming it would recognize the illegal Transdnestrian regime. However, the representatives of the OSCE saw this criticism as counterproductive to the final aims of negotiations, noting that:

Whatever questions there may be about the legitimacy of its origins, the Transdnestrian regime has been in place now for...decades; political settlement negotiations with it have been ongoing since 1993. Any question of de facto acceptance (not de jure recognition)

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<sup>61</sup> Ibid.

<sup>62</sup> The OSCE Mission to Moldova provided an in-depth analysis of the weaknesses of the memorandum. On this basis, the OSCE Dutch Chairman met with leading member states, specifically other EU member states and the U.S. The U.S. Ambassador to Moldova informed Voronin of Washington's reservations. The Secretary General of the Council of the EU, Javier Solana, told Voronin that, “signing the memorandum would not advance Moldova's European aspirations.” International Crisis Group, “Moldova: Regional Tensions over Transdnestria,” (2004), 24-25.

<sup>63</sup> William Hill, former head of OSCE Mission to Moldova, in *Russia, the Near Abroad, and the West: Lessons from the Moldova-Transdnestria Conflict*, 2012, 141, 157-158. One such issue that was at stake was the withdrawal of the Russian troops. In light of this, the Western parties opposed the Memorandum’s provision on keeping a Russian-led peacekeeping operation in the area until 2020, with the possible participation of Ukrainian troops and international observers. International Crisis Group, 2004, 25.

has long since become moot. Negotiating with the Transdnistrians over a federal arrangement is in this sense no different from negotiating over broad autonomy within a unitary state.<sup>64</sup>

The Transdnistriian side regarded the Moldovan failure to sign the Kozak Memorandum against the backdrop of disagreements over the structure of federal governance between Moldova and the TMR in the beginning of the 1990s. It interpreted this move as one more sign of Moldovan unwillingness to settle the conflict within the framework of a common state and as a roadblock in the negotiations. As a result, Transdnistria opposed the continued search for common ground and distanced itself from the negotiation process. Instead, having gained experience functioning as a state, in part through holding elections and referenda, Transdnistria sought to further entrench its claims to statehood.<sup>65</sup>

## **2. Increasingly Different Views: 2004-2013**

### **2.1. The 2005 Democratization Initiative and Parliamentary Elections**

After 2003, negotiations between Moldova and Transdnistria entered a new phase. First, the distance between the positions of two sides widened, a development that forced the external actors to seek new approaches to the negotiations. Second, political changes in the post-Soviet region, including the Orange Revolution in Ukraine in 2004,<sup>66</sup> highlighted the importance of democratic legitimacy and political pluralism. This drew attention to the question of the democratic legitimacy of the Transdnistriian authorities.<sup>67</sup> Finally, low support for new Moldovan proposals,<sup>68</sup> the lack of any other settlement plans, and the EU's enlargement in close

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<sup>64</sup> Hill, 2012, at 158.

<sup>65</sup> "Zayavlenie Prezidenta Pridnestrovskoi Moldavskoi Respubliki" [Statement of the TMR's President], *Olvia-Press*, November 25, 2003.

<sup>66</sup> Political developments in that period also included the Rose Revolution in Georgia in 2003, and Tulip Revolution in Kyrgyzstan in 2005.

<sup>67</sup> Oleg Protsyk, "Moldova's Dilemmas in Democratizing and Reintegrating Transnistria," *Problems of Post-Communism* 53, no. 4 (2006), 30.

<sup>68</sup> On February 17, 2004, Moldova presented its new settlement plan, called the Declaration on the Basis Principles of State Structure, to the mediators. Additionally, on June 1, 2004, Moldovan president Voronin suggested that his



proximity to the conflict zone<sup>69</sup> prompted the external actors not only to pay closer attention to the general principle of democratic development, but also to support the 2005 Ukrainian plan that linked democratization in the TMR with negotiations.

After Viktor Yushchenko took power in Ukraine, that country started to play a more active role in the negotiation process.<sup>70</sup> In particular, Ukrainian President Yushchenko proposed a new plan for the peaceful resolution of the Transdnestrrian issue in May 2005<sup>71</sup> based on democratization in the TMR. The plan called for holding parliamentary elections in Transdnestrria under an international monitoring mission in order to establish a legitimate government in the TMR that would contribute to effective negotiations. After the elections, Chisinau and Tiraspol, with Russia, Ukraine and the OSCE as intermediaries, were to agree on a law stipulating the TMR's status and the separation of powers between the Transdnestrrian and Moldovan authorities. Under this plan, the elections were to be preceded by demilitarization of

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country should sign the Stability and Security Pact for the Republic of Moldova (SSPRM). According to the Moldovan side, implementing this initiative would have led to compromise between Russia, the US, Romania, Ukraine, and the EU on a range of key issues for Moldova and would bring long-term stability to the region. They included the territorial integrity of Moldova; cultural, ethnic and language diversity as a fundamental value of the multiethnic Moldovan state; and guarantees for strategic neutrality. See Boțan, *The Negotiation Process*, 2009, 123.

<sup>69</sup> Beginning in 2003, the EU has paid closer attention to Moldova and its "frozen" conflict. The EU saw the conflict as a security threat to its border because of several developments. First, the OSCE placed the resolution of frozen conflicts high on its agenda and hoped that at least the Transdnestrrian issue could be solved. Second, the EU became increasingly interested in the stability of its neighbors in light of the EU's enlargement and Romania's new membership. As a result, the Council of the European Union appointed an EU Special Representative for the Republic of Moldova on March 23, 2005. It was planned to focus his mandate on coordinating the EU's role in the resolution of the Transdnestrrian conflict. Third, the Moldovan government did not receive the support it expected from Russia in settling the conflict and, therefore, prioritized its contacts with the EU and US. Jos Boonstra, "Moldova, Transnistria and European Democracy Policies," (FRIDE), 2007, 3.

<sup>70</sup> Although some authors regard Ukrainian involvement as positive or neutral, others believe that, through this initiative Ukraine simply sought to further its own interests. See Protsyk, 2006 (on positive/neutral approach of Ukraine); Nantoi, 2005 (on approach to Ukraine as an interested actor).

<sup>71</sup> The Initiative was discussed on May 16 and 17, 2005, in Vinnitsa, Ukraine, during a round of negotiations between the parties in conflict and with the mediators in the settlement process of Transdnestrrian issue. The Ukrainian Plan on settlement of the Transdnestrrian issue was made public on May 20, 2005. See generally, Boțan, *Reglementarea*, 2009, 36-47.

the breakaway republic, disbandment of its security structures, and creation of “favorable conditions” for free elections.<sup>72</sup>

Yushchenko’s plan received wide support from the external actors and was accepted in principle by Transnistria. The Moldovan parliament adopted a special decision that welcomed the plan and urged the TMR to pursue democratization and demilitarization.<sup>73</sup> Both sides reached an agreement on the international assessment mission to evaluate conditions for free and fair elections in Transnistria.<sup>74</sup> The EU and the US – which had only just joined the negotiations as observers that year – also extended their support. The EU viewed democratization in Transnistria and the creation of democratic conditions there as mechanisms that could help to settle the Transnistrian conflict.<sup>75</sup> Without any specific plan of its own, the EU was prepared to support a proposal for settling the Transnistrian issue that would ready the grounds for further solutions for the separation of powers between the center and the periphery.<sup>76</sup> In addition, the EU favored the initiative because of its geopolitical interests, namely, a resolution to the conflict on its borders.<sup>77</sup> The United States also supported the assessment mission initiative and expected to

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<sup>72</sup> Ibid.

<sup>73</sup> Parlamentul Republicii Moldova. Hotărîre cu Privire la Inițiativa Ucrainei în Problema Reglementării Conflictului Transnistrean și la Măsurile pentru Democratizarea și Demilitarizarea Zonei Transnistrene, Nr.117 din 10 iunie, 2005. [Moldovan Parliament Statute on the Ukraine’s Initiative Regarding the Settlement of the Transnistrian Conflict and the Measures Aimed at Democratization and Demilitarization of Transnistrian Zone].

<sup>74</sup> An agreement was reached during a round of negotiations that took place in Chisinau and Tiraspol on October 27 and 28, 2005, and for the first time included the representatives of the EU and the US as observers. Boțan, *The Negotiation Process*, 2009, 116-134.

<sup>75</sup> Mykola Siruk, “Interview of Adriaan Jacobovits de Szeged, the EU Special Representative for the Republic of Moldova: Tiraspol’s Current Policy is a Dead End for Transnistria,” *The Day*, #37, November 21, 2006.

<sup>76</sup> Statement of Adriaan Jacobovits de Szeged, the EU Special Representative for the Republic of Moldova, during his visit to Chisinau on April 11-12, 2005. “Adriaan Jacobovits de Szeged: Plan deistvii est’. Plana uregulirovania net,” *Logos-Press*, #14, April 15, 2005.

<sup>77</sup> Some Moldovan experts believe that the EU supported the Ukrainian initiative due to the fact that the TMR was a source of significant contraband, and, therefore, was hoping to solve this problem and have more stable neighbors. Burian, 2011.

review the OSCE Mission's plan and to evaluate the prospects for free and fair democratic elections in Transdniestria.<sup>78</sup>

However, despite the overall support for the initiative, its realization became problematic. While agreeing in principle to the Ukrainian plan,<sup>79</sup> Transdniestria insisted on holding parliamentary elections in December 2005,<sup>80</sup> as provided by its own constitution and electoral laws. The timing of these elections did not allow the OSCE adequate time to organize its international mission.<sup>81</sup> Also, even though Transdniestria submitted its electoral laws to Russia and the OSCE for inspection, the TMR refused to alter them prior to the elections. With respect to that move, Ukraine was of the opinion that it was less about the law *per se* and more about general democratic conditions, suggesting that, “[i]t is necessary to create conditions to make the media really free and independent, to let civil society develop, and to take due account of all elements of democracy.”<sup>82</sup>

Transdniestria justified its refusal to postpone the election and to modify existing laws by its commitment to following the TMR's constitutional provisions.<sup>83</sup> In addition, Transdniestria pointed to numerous unilateral actions by Moldova during the negotiation process, such as the

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<sup>78</sup> Ambassador Julie Finley, the US permanent representative to the OSCE in US State Department, “United States Disappointed by Latest Transnistria Conflict Talks - Attributes Lack of Progress to Transnistrian Side's 'Obstructive Attitude',” News Release, December 22, 2005.

<sup>79</sup> In one of his interviews, Smirnov welcomed the initiative of the Ukrainian mediators to settle the conflict, mainly seeing it as a way of preventing further pressure from Moldova. He stated, “Ukrainian President Viktor Yushchenko has come up with a kind of a roadmap and I did not at all expect that Moldova would unilaterally spoil the plan. I mean constant pressure by Moldova and its blockade.” “Transdniestrian Settlement Must Have Support of Local Population – Leader,” *Interfax News Service*, December 11, 2005.

<sup>80</sup> Personal communication of the OSCE representative, May 2013.

<sup>81</sup> The OSCE was ready to send a group of experts to the TMR; however, according to OSCE estimates, the preparation for free elections were to take several months. “No Proper Conditions for Democratic Elections Exist in Transnistria, Ukraine Says,” *Unian*, December 1, 2005; Vasiliy Kashin, “Unrecognized Elections Took Place in Time,” *Russian Press Digest (Izvestia)*, December 12, 2005.

<sup>82</sup> The position of the Ukrainian President's Representative at the Transdniestrian conflict negotiations, Ambassador-at-Large Dmitry Tkach. “No Proper Conditions for Democratic Elections Exist in Transnistria, Ukraine Says,” *Unian*, December 1, 2005.

<sup>83</sup> The speaker of the TMR's Supreme Council, Grigoriy Marakuta, emphasized that the elections would be held in accordance with the republic's laws, on the dates stipulated by its constitution, and that, “no other laws will be taken into account during the elections.” “Transdniestrian Parliamentary Vote to Follow Republic's Law – Speaker,” *Interfax News Agency*, June 21, 2005.

introduction of the new custom stamps in 2001, the failure of Moldova to sign the Kozak Memorandum in 2003,<sup>84</sup> and the country's adoption of the Law on the Special Legal Status of Transdnistria in 2005. This last law mandated the autonomous status of the TMR within the unitary state of Moldova.<sup>85</sup> Showing its consent to the Ukrainian plan, the TMR invited the mediators in the Transdnistrian settlement to observe the voting and its media coverage, pointing out that, "What counts most for the international community is that the elections here be transparent and fair, and we fully support this desire."<sup>86</sup>

In sum, the Yushchenko initiative underscores the importance of democratization for conflict resolution and contributes to scholarly understanding of the interactions between the constitutional framework and the recognition process. First, the external actors' almost complete disregard for extant Transdnistrian constitutional institutions suggests that these institutions have had little influence on the TMR's search for recognition. As this work demonstrates, the external actors have been reluctant to openly accept and engage with the TMR's constitutional framework, seeking to avoid accusations of legitimizing the TMR's statehood. Second, electoral practices as part of the entity's democratic development have mattered for the external actors. In particular, the external actors have employed the general principle of democracy and linked the idea of Transdnistria's democratic development with the negotiation process. As their private communications suggest, the external actors partly saw the success of the negotiation process as tied to the democratic development of the region, which could only be accomplished through the

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<sup>84</sup> Transdnistria regarded these unilateral actions as hampering the negotiation process. See Matveev et al., 2009.

<sup>85</sup> In 2005, despite mutual agreement to refrain from unilateral actions during the negotiation process, the Moldovan Parliament adopted Law #173 on the Basic Provisions of the Special Legal Status of Localities from the Left Bank of Nistru (Transdnistria) on 22.07.2005. The Law established part of Transdnistria, which included the territory of Transdnistrian Moldavian Republic without Bender (an area that is under the TMR's control), and without territories that are under the control of Moldova (but that are part of Transdnistria), as an autonomous territorial unit within the Republic of Moldova. The adoption of this law without any prior consultation with Transdnistrian authorities, who called it a provocation, contributed to the Transdnistrian insistence on holding parliamentary elections.

<sup>86</sup> "Transdnistrian Parliamentary Vote to Follow Republic's Law – Speaker," *Interfax News Agency*, June 21, 2005.

guarantee of free and fair elections under an international assessment mission. Through this process, the external actors hoped to find leaders capable of compromise and mutually acceptable solutions on the Transdniestrian status with due respect to Moldovan territorial integrity and sovereignty.<sup>87</sup>

At the same time, the external actors' assumptions on the role of democratic development in Transdniestria as promoting a pro-integration agenda lacked support in practice. Instead, electoral practices and the introduction of reforms in Transdniestria have only hardened the TMR's position on its sovereignty. In particular, Transdniestria used the 2005 parliamentary elections to advance state building and to interact more closely with the external actors. With traditionally high voter turnout (over 50%),<sup>88</sup> the TMR elected 43 members of the legislature, all of whose positions on the TMR's foreign policy fell increasingly in line with one another. Either as independent candidates or representatives of one of the entity's four political parties, the newly elected legislators shared a common stance on the TMR's independence from Moldova and disagreed mainly on economic issues.<sup>89</sup> Therefore, then-president Smirnov expressed confidence that the new parliament would continue efforts to win international recognition for Transdniestria.<sup>90</sup>

In casting his vote at the elections, Smirnov referenced the TMR's 1995 Constitution as an act that asserts Transdniestrian statehood and demonstrates true democratic features:

First of all, there is an understanding in Transdniestria that the people themselves decide their future and that is what has been happening for the past 15 years. After the disintegration of the great nation, all our laws have relied on a very respectful attitude to human rights. The constitution of Transdniestria very clearly states that it guarantees all

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<sup>87</sup> Personal communications of the representatives of Moldova, the OSCE and EU, March-August 2013.

<sup>88</sup> A total of 202,775 voters, participated in this election. Vasilii Kashin, "Unrecognized Elections Took Place in Time," *Russian Press Digest (Izvestia)*, December 12, 2005.

<sup>89</sup> *Ibid.*

<sup>90</sup> "Transdniestrian Settlement Must Have Support of Local Population - Leader." *Interfax News Service*, December 11, 2005.

rights and obligations. Questions of personal freedom can be changed only by a referendum, not by parliament or even the president.<sup>91</sup>

Smirnov also expressed his strong objections to the Law on Transdniestrian Status that Moldova had adopted unilaterally. He emphasized that the opinion of the local population should instead be the basis for any resolution to the conflict:

Under the constitution, Transdnistria is an independent state, and the fact that the Republic of Moldova and the OSCE mission are trying to establish a confederation goes against the will of the people of Transdnistria in one way or other. Moldova cannot be a single-nation state as Transdnistria has never been a part of Bessarabia. Therefore, the adoption of the Law on the Status of Transdnistria by the Moldovan parliament that disregards the opinion of our people aggravates the situation.<sup>92</sup>

However, despite the TMR authorities' public statements and official reports by local and foreign observers<sup>93</sup> that the voting was calm and well organized,<sup>94</sup> the views of the external actors on the TMR's election and its results remained similar to those on previous elections. In the opinion of Moldova and the OSCE, the polls were not free and fair. The Moldovan government still regarded the election in Transdnistria as "illegal" and invalid, whereas the OSCE refused to recognize it or send its observers.<sup>95</sup> Although Transdnistrian leaders referenced the electoral practices in other countries, pointing out that no international rule mandates recognition of elections in the first place,<sup>96</sup> the external actors ignored that argument.

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> It was reported that the total number of observers was about 150 people. In particular, the representatives of NGOs from Moldova, the CIS states, the United Kingdom, Palestine, Jordan, and several other countries arrived to monitor the elections. "Elections to the Parliament of the Self-proclaimed Republic of Transdnistria Have Been Declared Valid." *Interfax News Service*, December 11, 2005. See also "Otvét ofitsial'nogo predstavitelea MID Rossii M.L.Kamynina na vopros SMI ob otsenke vyborov v Pridnestrov'e" [The Response of an Official Representative of the Russian MFA, M.L. Kalmynina to the Assessment of the TMR's Elections], *Olvia-Press*, December 14, 2005.

<sup>94</sup> Statement of the Chairman of the Transdnistrian Central Elections Commission, Pyotr Denisenko. "Elections to the Parliament of the Self-proclaimed Republic of Transdnistria Have Been Declared Valid," *Interfax News Service*, December 11, 2005.

<sup>95</sup> Vasilij Kashin, "Unrecognized Elections Took Place in Time," *Russian Press Digest (Izvestia)*, 2005.

<sup>96</sup> The TMR's Foreign Ministry, Valery Litskay, in his press conference criticized the statements of the OSCE representatives on non-recognition of the 2005 parliamentary elections and emphasized that, "There is no such concept as the "recognition of elections" in the international law. For countries such as Germany, the United Kingdom or Spain, for example, it has never occurred to asks for someone's recognition of their elections." "Valery

Instead, the Ukrainian side repeated its previous position on the ongoing lack of proper conditions for holding democratic elections in the region.<sup>97</sup> It presented a view in line with those of the mediators in the Transdnestrian settlement and representatives of the European Union and the United States on illegitimacy of the 2005 parliamentary elections:

Neither we nor the international community consider these elections to be legitimate and we believe it was necessary to create and send an international evaluation commission under the auspices of the Organization for Security and Cooperation in Europe to Tiraspol. This commission would give recommendations on what must be done to create the conditions necessary for free and democratic elections to the parliament.<sup>98</sup>

While acknowledging the absence of its own observers to monitor the elections, a US report on human rights practices still concluded that, “Transnistrian authorities interfered with residents’ ability to participate in elections [...], and the elections were not considered free and fair.”<sup>99</sup>

Thus, all the external actors involved in the negotiations, except Russia, described the elections as illegitimate (illegal) and/or unfree (unfair). The external actors did not clearly distinguish between these categories or apply them consistently in their rhetoric; however, the different nature of the categories suggests that they were used for different purposes. Since Transdnestria is a breakaway region seeking its recognition, the description of elections as *illegitimate* indicates that, in the eyes of the external actors, the TMR is not legally able to hold elections. The usage of the term *free* or *unfree* elections, however, is possible in the context of any state-like entity, regardless of whether it is recognized. Calling the elections/referenda free and fair, then, suggests the approval of the legitimacy of internal leadership or of referenda

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Litskay: Takogo poneatya kak ‘priznanie’ ili ‘nepriznanie’ vyborov v mejdunarodnoi praktike voobsche ne suchestvuet,” *Olvia-Press*, November 2, 2005.

<sup>97</sup> Statement of the Ukrainian President’s Representative at the Transdnestrian conflict negotiations, Ambassador-at-Large Dmitry Tkach. “No Proper Conditions for Democratic Elections Exist in Transnistria, Ukraine Says,” *Unian*, December 1, 2005.

<sup>98</sup> Statement of the Ukrainian Foreign Ministry, spokesman Vasyl Filipchuk. “Ukraine Refuses to Acknowledge Transdnestrian Elections.” *Interfax*, December 13, 2005

<sup>99</sup> Human Rights U.S. Bureau of Democracy, and Labor, “The 2005 Country Report on Human Rights Practices: Moldova,” (2006).

outcomes, whereas calling them unfree and unfair implies the undermining of the leadership's legitimacy or disapproval of referenda results.

Therefore, by describing the TMR's elections or referenda as *illegitimate*, the external actors voiced their attitude towards the electoral practices based on the TMR's international non-recognition. In this way, they confirmed their position on the TMR's status, which they continued to view as an integral part of Moldova. The external actors' description of the TMR's elections as *unfree* and *unfair* likely served different purposes. First, the external actors called both the 2005 and previous Transdnistrian elections unfree and unfair without actually monitoring them. When asked by the TMR's leaders to share examples of electoral violations, the external actors kept silent or referred to isolated instances of violations that should not necessarily have led to a negative conclusion on the general character of the elections.<sup>100</sup> Such descriptions, therefore, allowed the external actors to refuse to acknowledge the elections and to avoid considering them free and fair. The latter would have forced the external actors to reexamine their position on the outcomes of elections and referenda, which might have then required them to reconsider their position on the TMR's non-recognition.

Second, the TMR has established a semi-authoritarian regime, in part for the purposes of consolidating and preserving Transdnistria as a separate entity.<sup>101</sup> As mentioned in Chapter 1, constitutions in authoritarian regimes fulfill a set of meaningful functions, such as the power to coordinate and constrain. In Transdnistria, these functions have had similar effects on the TMR's leaders and have assisted in strengthening Transdnistrian statehood. Yet externally, the establishment of a semi-authoritarian regime has contributed to the overall negative image of the

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<sup>100</sup> Personal communication of the representatives of the TMR's government. August 2013.

<sup>101</sup> Protsyk, 2006.



TMR. As a result, the external actors might have called the TMR's elections unfree and unfair in response to this image.

Contrary to the reactions of the rest of the external actors to the TMR's elections, the Russian side sought to view them and, in particular, the 2005 parliamentary elections, in a larger context. The representative of the Russian Ministry of Foreign Affairs emphasized the lack of international recognition of the TMR and the need to search for a settlement to the conflict that would be based on the respect for the territorial integrity of Moldova. Together with this, he also suggested assessing the extent to which the elections conformed to international norms, which he saw as a key part of the settlement. In this regard, the Russian side viewed the elections as competitive, well organized, lacking serious violations,<sup>102</sup> and as resulting in the victory of young politicians. The Russian side suggested that, without changing Russia's position, the election still "will have a positive effect on the democratic development of that region."<sup>103</sup>

As a result, the introduction of the criteria on democratization into the negotiations, the parliamentary elections, and the reactions of the external actors to these developments in 2005 all confirm the underlying argument of the present work. The TMR's electoral practices do not provide evidence that the constitution has influenced the prospects for the TMR's recognition. However, the TMR's elections have had other important effects, such as consolidating the TMR's statehood and influencing the external actors' engagement with the TMR. For its part, the Transdnestrian side, first, has used its elections as an additional forum in which to advance its statehood and recognition. Second, the TMR has viewed the presence of a large number of foreign international reporters at the parliamentary elections as yet more evidence of, as Smirnov

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<sup>102</sup> Otvét ofitsial'nogo predstavitelea MID Rossii, 2005.

<sup>103</sup> Statement by the head of the CIS observers and a senior member of the State Duma, Akhmed Bilalov, on the results of the parliamentary elections. "Duma Member: Transdnestria Election Results 'Predictable'," *Interfax News Service*, December 12, 2005.

called it, “a form of Transdnistria’s recognition.”<sup>104</sup> The external actors have used the general concept of democratization as a mechanism to facilitate final settlement to the conflict. Although the Ukrainian initiative did not produce its intended outcomes, it nonetheless emphasized the importance of the TMR’s democratic development for the purposes of its political status. In addition, the parliamentary elections held in Transdnistria defined the key leaders in the legislative authority with whom the external actors have continued to interact. This indicates that the TMR’s constitutionally elected authority has mattered for the external actors in the context of negotiations.

## **2.2. The 2006 Independence Referendum and Presidential Elections**

Challenging political and economic relations between Moldova and Transdnistria, new regional realities, and internal electoral tensions allowed the TMR to use its September 2006 referendum on independence as a mechanism to harden its stance on recognition. The referendum, the second of its kind, drew significant reactions from all the external actors, who remained firm on non-recognition of the TMR but also feared its potential negative effects on the negotiation process.

First, Moldovan-Transdnistrian tensions in the economic sphere, which had emerged earlier<sup>105</sup> but continued unabated in 2006, led to more disagreements between the sides and increasingly decisive steps on the Transdnistrian part. An agreement signed between Moldova and Ukraine in March 2006 that required all Transdnistrian goods to receive customs clearance

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<sup>104</sup> “Transdnistrian Settlement Must Have Support of Local Population – Leader.” *Interfax News Service*, 2005.

<sup>105</sup> The main tensions lay in the sphere of custom services. As mentioned earlier, from 1996 to 2001, the TMR used Moldovan custom stamps, a practice based on the Protocol Decision on the Settlement of Issues that Arose in the Practices of the Custom Service of Moldova and Transdnistria, signed on February 7, 1996. After Moldova introduced new customs stamps in 2001, the stamps Transdnistria had been using since 1996 were invalidated. The new stamps became the means of implementing a Moldovan policy of economic pressure. It effectively prohibited Transdnistrian enterprises from exporting goods legally while circumventing Moldovan customs, creating what Transdnistria viewed as an economic blockade. See *Protokol’noe reshenie po razresheniu voznikshih problem v oblasti deiatel’nosti tamozhennyh slyzhh Moldovy i Pridnestrov’ya*; International Crisis Group, 2003.

in Moldova<sup>106</sup> hampered Transdniestrian efforts to pursue an independent foreign economic policy, which the 1997 Moscow Memorandum and the 1996 Protocol had provided. Although Moldova justified this measure on the grounds of combating widespread smuggling<sup>107</sup> and the loss of revenue from taxes and duties, it created what Transnistria viewed as an economic blockade for the second time. Transnistrian officials were also alarmed by the joint military exercises between Moldova and North Atlantic Treaty Organization (NATO) forces and viewed them as an act of intimidation.<sup>108</sup> As a result, Transnistrian deputies, independent politicians and the president raised the issue of having a referendum that led to widespread public discussions.<sup>109</sup>

Second, the Transnistrian leadership used to its advantage the changing realities of the European map. Immediately after Montenegro held a referendum on its independence from the Federal Republic of Yugoslavia in May 2006, it was fully recognized by Serbia and the international community.<sup>110</sup> Transnistrian leaders hailed the referendum and called its positive outcome a cause for celebration.<sup>111</sup> Transnistrian activists additionally declared that the Montenegrin referendum made “inadmissible any discussions and arguments that Transnistria cannot be sovereign and independent” and that “the fact of separation of Serbia and Montenegro

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<sup>106</sup> Kabinet Ministrov Ukrainy. Postanovlenie, napravlennoe na vypolnenie moldavsko-ukrainskogo soglashenia N112-P, 2006 [The Ukrainian Cabinet of Ministers Act aimed at the Implementation of the Moldovan-Ukrainian Agreement].

<sup>107</sup> Later, however, the European Union Border Monitoring Mission concluded that Moldovan officials had inflated the extent of cross-border criminal activity. “Breakaway Transnistria Wants New Life with Russia,” *Inter Press Service*, October 16, 2006.

<sup>108</sup> For Transnistria, such an act by a neutral state like Moldova was not acceptable. *Ibid.*

<sup>109</sup> The Russian side also supported the idea of the importance of holding a referendum for determining the people’s will on significant issues. The Ambassador at large of the Ministry of Foreign Affairs of the Russian Federation, V. Nesterushkin said in one of his interview that the referendum itself has a special significance in international relations and plays an important role in determining the position of the population, on the basis of which the leadership has to make its decisions. See Ministerstvo Inostrannyh del Rossiiskoi Federatsii, “Interview posla po osobym porucheniam MID Rossii V.M.Nesterushkina o situatsii v Pridnestrov’e agenstvu RIA Novosti,” June 2, 2006.

<sup>110</sup> The referendum was conducted in accordance with the Constitutional Charter of Serbia and Montenegro of 2003.

<sup>111</sup> “Moldovan, Georgian Separatists Hail New Montenegro,” *RFE/RL*, May 23, 2006.

shows the prospects for Transdniestria to gain independence.”<sup>112</sup> As a result, Montenegro’s independence through referendum demonstrated “the perceived utility and legitimacy of referendums”<sup>113</sup> and contributed to the potential power of a referendum in unrecognized states. More specifically, along with providing “legitimacy to the outcomes of previous referendums in post-Soviet de facto states,” the Montenegrin referendum spurred the TMR’s leaders to hold a new referendum in Transdniestria.<sup>114</sup>

Third, then-president Smirnov made a decisive electoral move. As 2006 was the year of the presidential elections, he sought to use the political and economic situation to his advantage to secure popular support by holding a referendum.<sup>115</sup>

As a result of these interrelated factors, the TMR’s Supreme Council adopted a decision supporting the president’s initiative and set September 17, 2006, as the date for the referendum.<sup>116</sup> The TMR’s legislature defined two questions to be asked at referendum: whether Transdnistrians (1) support the independence of the Transdnistriian Moldovan Republic and its future free accession to the Russian Federation; and (2) consider it possible for the Transdnistriian Moldovan Republic to give up its independence and then join the Republic of Moldova.<sup>117</sup>

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<sup>112</sup> Dmitrii Soin, Director of the Transdniestria section of Russia’s National Strategy Council. “Pridnestrovskii politolog: chernogorskii pretsedent uvelichivaet shansy na priznanie nezavisimosti Pridnestrov’ia” [Transdnistriian Political Scientist: Montenegrin Precedent Increases the Chances of Recognition of Transdnistriia’s Independence], *Regnum*, May 23, 2006. At the same time, there was an understanding in Transdnistriia that, despite allowing Montenegro to gain independence through a referendum, “the international community will not allow... Transdnistriia the same right.” See “Kosovo Example Spurs Hopes for Transdnistriia, Nagorno-Karabakh,” *Tiraspol Times*, July 18, 2007.

<sup>113</sup> Rick Fawn. “The Kosovo – and Montenegro – Effects,” *International Affairs* 84, no. 2 (2008), 275.

<sup>114</sup> *Ibid.*, 279.

<sup>115</sup> Personal communication with a high-ranking official from the Smirnov administration, August 2013.

<sup>116</sup> Decision of the TMR Supreme Council on Supporting the Initiative of the President Regarding Holding the Referendum on the Question of the TMR’s relationship with Moldova and Russia, of July 12, 2006. “Vsenarodnyi referendum v Pridnestrov’e sostoitsea 17 sentyabrea. V chisle ego voprosov- vosmoznost’ prisoedinienia PMR k Rossii,” *Olvia-Press*, July 12, 2006.

<sup>117</sup> In Russian, the questions were: 1. Поддерживаете ли Вы курс на независимость Приднестровской Молдавской Республики и последующее свободное присоединение Приднестровья к Российской

The external actors responded swiftly to this move. As the available data suggest, they viewed the issue of referendum in the context of the negotiation process and, therefore, dismissed any thoughts on recognition of its results if it took place. In particular, in his confidential correspondence with the Embassy of the United States in Moscow, then-Russian negotiator on Transdniestria V. Nesterushkin backed the TMR's decision to hold a referendum, explaining it as Transdniestria's response to the injustices of Moldova's new custom rules and a way to resist this pressure.<sup>118</sup> But he was also convinced that:

the referendum would have no political effects -- except on the December "presidential" elections in Transnistria; rather, it just indicated a "vector" that the leadership was already following and for which it wanted to show the backing of the people.<sup>119</sup>

Similarly to Russia, the EU members adopted a position on non-recognition of the referendum, making it clear in their statements well before the event itself. EU members expressed their support for Moldova as well as for the general position of the EU and OSCE on non-recognition of the referendum and refusal to send observers to the referendum. For example, Spain "agreed with the US position that the referendum is poorly worded and a bad idea in general."<sup>120</sup> The chairperson of the European Parliament from Estonia stated that, "[t]he region has no international recognition and the referendum is therefore illegal."<sup>121</sup> And the Secretary General of the Council of Europe commented that, "the referendum announced by the secessionist authorities of the Transnistrian Region of Moldova has no legal validity."<sup>122</sup>

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Федерации? 2. Считаете ли Вы возможным отказ от независимости Приднестровской Молдавской Республики с последующим вхождением Приднестровья в состав Республики Молдова? Ibid.

<sup>118</sup> *US Embassy in Moscow (Russia)*. "State Classified Document: Transnistria. Independence Referendum," 2006.

<sup>119</sup> Ibid.

<sup>120</sup> *US Embassy in Madrid (Spain)*. "State classified document: Spain On Transnistria's Proposed Independence Referendum," 2006.

<sup>121</sup> Statement of the Chairperson of the European Parliament from Estonia, Marianne Mikko. "EU/ EP/Transnistria: Concern about Referendum on Independence," *Agence Europe (Brussels)*, September 7, 2006.

<sup>122</sup> Statement of the Secretary General of the Council of Europe, Terry Davis. He also added that, "The Council of Europe supports the territorial integrity of the Republic of Moldova and calls for the renewal of the negotiating process." Ibid.

At the same time, the external actors were divided over the issue of the democratic character of the process of the TMR's referendum. Moldova, Ukraine, the OSCE, the EU, and the US regarded it *a priori* undemocratic and shared the view that democratic conditions were lacking in the TMR.<sup>123</sup> Russia, in contrast, advised that no conclusions be drawn until the monitoring of the referendum was complete. In particular, Russia invited the US to use this referendum as means to contribute to democratization in Transdniestria. It said:

a referendum represents the will of the people, and the U.S. should engage with the Transnistrians about how to make it as democratic as possible; the time to criticize and call it non-democratic would only come after an objective monitoring of the conduct of the referendum.<sup>124</sup>

The United States, as well as other external actors, however, ignored the Russian suggestions and continued to view the referendum as lacking any legal validity.

Regardless of the public and private statements by the external actors warning the TMR that the vote would not be recognized, Transdniestria held its referendum on independence. The TMR used this mechanism to assert the legitimacy of the will of its people on independence and to advance its claim in the presence of 174 observers registered to monitor the referendum.<sup>125</sup> The very high turnout to the referendum (78.6% of the total of 389,000 registered voters) suggested the wide concern the TMR's population shared over Transdniestrian political status. The results of referendum revealed a clear preference for independence and eventual union with Russia, with 97.1% support. Only 3.4% favored integration with Moldova instead.<sup>126</sup>

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<sup>123</sup> The actors shared the view of the Secretary General of the Council of Europe, Terry Davis, that, "Before you can have a valid referendum you need a political agreement on settlement. You also need to put in place the minimal Council of Europe democratic standards." Ibid.

<sup>124</sup> *US Embassy in Moscow (Russia)*. "State Classified Document: Transnistria. Independence Referendum," 2006.

<sup>125</sup> After issuing a large number of invitations for foreigners to observe the referendum, the TMR registered observers from Moldova, Russia, Ukraine, Germany, France, Italy, Serbia, and a number of international organizations. "Monitoring referendum v Pridnestrov'e vedut 174 mejdunarodnyh nabliudatelya," *Olvia-Press*, September 17, 2006.

<sup>126</sup> "Pridnestrov'e progolosovalo za prisoedinenie k Rossii. Za eto vyskazalis' bole 97% grajdan respubliky, uchastvovavshih v referendum," *Olvia-Press*, September 18, 2006.

These results allowed Smirnov not only to reiterate the vision of the Transdnestrian people for close interrelations with Moscow in the future,<sup>127</sup> but also to announce plans to bring social, customs, financial, and education policies in line with Russian ones to facilitate an eventual merger<sup>128</sup> and to begin molding the TMR's legislation and the government structures to the Russian ones.<sup>129</sup> Most importantly, the outcome hardened the TMR's stance on its statehood, gave the TMR a greater confidence in negotiations, helped to bolster the administration's authority, and maintained the status quo in anticipation of the presidential elections in December 2006.<sup>130</sup>

The referendum also confirmed the external actors' rejection of Transdnestrian claims and their position on ignoring the TMR's constitutional structures as seen earlier. The external actors judged both the organization of the referendum and its outcomes against the backdrop of the TMR's unrecognized status and its relationship with Moldova. In this way, all external actors except Russia ignored the TMR's internal constitutional structures and the actual practices of voting, calling the referendum unfree and unfair even in the absence of monitoring missions. Seeking to preserve their position on the territorial integrity of Moldova, the external actors avoided any references to legal developments in the TMR that could even implicitly legitimize the entity. While Russia supported the view of its colleagues in the negotiations on non-

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<sup>127</sup> Smirnov stated, "The Dniester people are pinning their hopes for the future firmly on the Russian Federation." Michael Mainville, "Breakaway Vote Boosts Russia's Hand over 'Frozen Conflicts': Province Chooses to Stay Independent of Moldova Kremlin Hopes Raised in Battle of Soviet Alliances," *The Guardian*, September 19, 2006.

<sup>128</sup> "Breakaway Transnistria Wants New Life with Russia." *Inter Press Service*, October 16, 2006.

<sup>129</sup> Gennady Savchenko and Alexander Sargin, "Transdnestria Voted for Independence and an Alliance with Russia," *Russian Press Digest (Izvestia)*, September 19, 2006. A few years later, after the TMR set the course towards harmonization of its legislation with Russian legislation, the State Duma backed this position and expressed its "firm support for the actions [...] of deputies of the Supreme Council of the TMR that are directed to harmonize the legislation of the republic with the legislation of the Russian Federation." Gusudarstvennaya Duma Rossiiskoi Federatsii, "Predsedatel' Komiteta po delam SNG i svyaziam s sootchestvennikami, A.Ostrovskiy, vstretilsea s deputatami parlamenta Pridnestrov'a." [RF State Duma. Press-release on the Meeting of the Chairman of the Committee on CIS and Relations with Fellow Nationals, A.Ostrovskiy with MPs of Pridnestrov'a], 2010.

<sup>130</sup> Statement of Valery Litskay, the TMR's Foreign Minister at the time. Ben Wetherall, "Moldovan Separatist Region Overwhelmingly Votes to Unite With Russia," *Global Insight Daily*, September 18, 2006.

recognition of the referendum's results, it regarded the process of public consultations as an important element in building a civil society that required the respect of the external actors. However, this position did not find any support and the approach of the rest of the external actors remained unchanged.

The Moldovan government in particular reacted in a strongly negative way both to the act of holding a referendum and to its results. Before the referendum, the Ministry of Foreign Affairs of Moldova adopted a declaration condemning "th[e] pseudo-referendum, which flagrantly violates the principle of territorial integrity of the Republic of Moldova [, and the] anti-constitutional action [that] defies democratic values and standards."<sup>131</sup> The declaration appealed "to the international community to firmly condemn this illegal initiative of the separatist regime" and reiterated "that neither the idea of the 'referendum' nor its results can be recognized in any way [and that the] Moldovan authorities will consider as interference in internal affairs any attempts to legitimize the 'referendum' by monitoring it or by other actions."<sup>132</sup> After the referendum was held, the Moldovan government viewed this event as a breakdown of talks on Moldovan unification; labeled it a "political farce,"<sup>133</sup> the outcomes of which would not be accepted;<sup>134</sup> and called on other countries not to acknowledge the vote.<sup>135</sup>

Following its previous foreign policy, Ukraine aligned itself with the EU Declaration on the Referendum, which reiterated the EU's position on non-recognition of both the referendum

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<sup>131</sup> Ministry of Foreign Affairs and European Integration of The Republic of Moldova. *The Declaration on the Issue of Pseudo-Referendum Organized by The Separatist Transnistrian Regime, made at 625th Meeting of the OSCE Permanent Council*, 2006.

<sup>132</sup> Ibid.

<sup>133</sup> Statement of the Moldovan Foreign Minister, Andrei Stratan. Michael Mainville, "Breakaway Vote Boosts Russia's Hand over 'Frozen Conflicts': Province Chooses to Stay Independent of Moldova Kremlin Hopes Raised in Battle of Soviet Alliances." *The Guardian*, September 19, 2006.

<sup>134</sup> Statement of a spokeswoman for Moldovan President Vladimir Voronin Natalya Vishanu. "Transnistria Voted for Independence and an Alliance with Russia," *Russian Press Digest (Izvestia)*, September 19, 2006.

<sup>135</sup> Ibid.



or its outcome.<sup>136</sup> At the same time, Ukrainian politicians considered a broader set of issues raised by the referendum. They pointed to the need for convening an all-European conference on security to establish a common approach to this kind of referenda<sup>137</sup> and expressed concern that holding such a referendum negatively affected the settlement of the conflict, which could only occur within the framework of Moldovan territorial integrity.<sup>138</sup> Ukrainian leaders also received public criticism from some Ukrainian observers at the TMR referendum for refusing to recognize its results. Based on their monitoring, the observers emphasized the democratic character of the free and fair referendum. As one stated, “we finally saw a civilized referendum...Transdnistria had every right to hold such a referendum because the most important thing is the expression of the will of the people.”<sup>139</sup>

The OSCE Mission in Moldova refused to recognize the vote, claiming it was neither free nor fair,<sup>140</sup> calling the referendum meaningless,<sup>141</sup> and finding it suspicious that 97% of citizens would have the same position on this important issue.<sup>142</sup> It faulted the referendum for being unilateral and conducted in undemocratic conditions.<sup>143</sup> However, Transdnistrian officials refuted the OSCE’s statements and accused the organization of making unsubstantiated claims

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<sup>136</sup> Olha Volkovetska, “Ukraine and EU Do Not Recognize Transdnistria Referendum,” *Ukrainian News Agency*, September 18, 2006.

<sup>137</sup> “Rada Speaker Oleksandr Moroz Once Again Suggests to Convene European Security Conference in View of Transdnistrian Referendum,” *Ukrainian National News Agency*, September 19, 2006.

<sup>138</sup> Statement of the Deputy Foreign Minister, Ukraine's representative for Transdnistrian regulation, Andriy Veselovsky. “Referendum in Transdnistria Won't Promote Soon Conflict Regulation,” *Ukrainian National News Agency*, September 19, 2006.

<sup>139</sup> Statement of the leader of the Progressive Socialist Party of Ukraine, N. Vitrenko, made with the reference to the monitoring of eight observers who visited 37 polling stations in various population centers in Transdnistria. Oksana Torop, “PSPU Criticizes Ukrainian Authorities for Refusing to Recognize Results of Transdnistria's Referendum,” *Ukrainian News Agency*, September 19, 2006. The media similarly reported on the absence of serious violations, but referred to the Western observers’ comments on the lack of democratic mechanisms to ensure a fair public debate of opinions. “Breakaway Transnistria Wants New Life with Russia,” *Inter Press Service*, October 16, 2006.

<sup>140</sup> The OSCE also mentioned its plan to visit Transdnistria to reassess its capacity to hold democratic elections. “Breakaway Transnistria Wants New Life with Russia,” *Inter Press Service*, October 16, 2006.

<sup>141</sup> *Ibid.*

<sup>142</sup> Statement of the head of the OSCE Mission in Moldova, Louis O'Neill. “OSCE Rejects Transdnistria Referendum, Calls for Resumption of Talks,” *Russia & CIS Diplomatic Panorama*, September 22, 2006.

<sup>143</sup> *Ibid.*

given that it turned down the TMR's invitation to monitor the elections.<sup>144</sup> The TMR's leaders emphasized that the referendum showed precisely the unity of people on the issue and called for respect of the people's will.<sup>145</sup>

Furthermore, the EU and the US, both observers in the negotiation process, stressed their non-recognition of the results of the referendum.<sup>146</sup> The European Union regarded the TMR's referendum as running contrary to internationally recognized principles of the territorial integrity and sovereignty of Moldova and declared its non-recognition of the referendum and its outcomes.<sup>147</sup> The EU stood firm on its position that the conditions in the TMR did not allow for the free expression of popular will<sup>148</sup> and strongly denounced the Transdnistriean region's attempt "to establish its independence in a unilateral way by organising a so-called referendum."<sup>149</sup> Along with sharing the international position on the TMR's non-recognition, the United States emphasized the negative influence that the referendum had on Moldova, stating, "As the international community has made clear, Transnistria is a part of Moldova, and efforts by the Transnistrian regime should not be recognized as anything other than an attempt to

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<sup>144</sup> "Breakaway Transnistria Wants New Life with Russia," *Inter Press Service*, October 16, 2006.

<sup>145</sup> In the words of Transdnistria's Deputy Information Minister Svetlana Antonova, "The referendum demonstrated that our society is united in its desire to become part of Russia." Savchenko and Sargin, "Transdnistria Voted for Independence and an Alliance with Russia." Some scholars share a similar position and believe that the referendum indeed reflected public opinion. See Beyer, 2010, 169.

<sup>146</sup> European Union Council, 12925/1/06 REV 1. *Declaration by the Presidency on behalf of the European Union on the "Referendum" in the Transdnistriean Region of the Republic of Moldova 17 September, 2006*; US State Department. "Tom Casey, Deputy Spokesman: USA Rejecting the Independence Referendum in Moldova's Transdnistria Region," News Release, September 18, 2006; "The United States on Monday Rejected Independence for Moldova's Transdnistriean Region," *Deutsche Press-Agentur (Washington)*, September 18, 2006.

<sup>147</sup> *Declaration by the Presidency on behalf of the European Union on the "Referendum" in the Transdnistriean Region of the Republic of Moldova, 2006.*

<sup>148</sup> Ibid. Other EU members issued similar statements. For example, Romania, which did not recognize the referendum and its results, stated that, "the so-called 'referendum' on the independence of the Transdnistria region [...] ignored international law and the constitutional law of the Republic of Moldova, in the absence of all the conditions for admitting legitimacy." Premier Calin Popescu-Tariceanu cited by Romania Libera in Press Review from September 19, 2006, *Rompres*. The dailies wrote on Tuesday about the declaration of the Romanian Government saying Romania does not recognize the referendum organized in Transdnistria by the separatists in Tiraspol.

<sup>149</sup> European Parliament. *Resolution on Moldova (Transdnistria)*, October 25, 2006.

destabilize Moldova."<sup>150</sup> The US Mission to the OSCE issued a statement further elaborating this point:

... As we stated emphatically in July here at the Permanent Council and since then in other venues, we do not recognize the referendum in any way. It cannot be taken seriously or treated as a legitimate vote. No one recognizes the so-called Transnistrian authorities as a legitimate government. As the international community has made clear, Transnistria is a part of Moldova and the referendum should not be recognized as anything other than an attempt to destabilize Moldova.

As President Bush noted [earlier], the Transnistrian conflict must be resolved in a way that guarantees Moldova's sovereignty and territorial integrity. [...] We again urge the Russian government to inform the Transnistrian authorities immediately, and to state publicly, that it will not recognize any claims to independence or support any move to annex Transnistria to the Russian Federation...<sup>151</sup>

Finally, the Russian side called for a more balanced approach to address the TMR's referendum and regarded the declarations of Chisinau and some other European capitals on the "illegitimate" and "provocative" character of the vote as rash. First, the Russian Ministry of Foreign Affairs (MFA) suggested that the decision of Transdniestria's leaders to hold a referendum must be viewed in the larger context of the political and economic leverage employed by Chisinau and Kyiv in breach of the earlier agreements reached during negotiations. In the Russian MFA's opinion, the new customs regime led to serious economic and social problems, inevitably provoking a frustrated reaction from Transdniestrians.<sup>152</sup> As a result, the TMR's national poll became "a reaction to the factual blockade" that had negatively affected the economy, and the people of the region.<sup>153</sup>

Second, the Russian MFA saw public consultations on key political issues as the realization of an important democratic principle, a requirement for building civil society, and as

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<sup>150</sup> US State Department, 2006; "The United States on Monday Rejected Independence for Moldova's Transnistrian Region," *Deutsche Press-Agentur (Washington)*, September 18, 2006.

<sup>151</sup> "Ambassador Finley Issues Statement Regarding Transnistrian Referendum," *US Fed News (Hindustan Times)*, September 21, 2006.

<sup>152</sup> Russian Ministry of Foreign Affairs, SEC.DEL/213/06. *Russian MFA Information and Press Department Commentary Regarding Referendum in Transdniestria*. September 14, 2006.

<sup>153</sup> Interview of the Minister of Foreign Affairs, Serghei Lavrov. "Transdniestrian Referendum Met Democratic Standards – Lavrov," *Russia & CIS Diplomatic Panorama*, September 19, 2006.

the expression of the will of the Transdnestrian people.<sup>154</sup> The Russian executive and legislative branches agreed that, “[the referendum] was supervised by a hundred observers from the CIS and Europe [who] could see for themselves what Transdnestrians want.”<sup>155</sup> Having been conducted “in conditions of political instability and economic blockade, [the referendum] expresses the public will and reflects the desire of the population to live in stability and predictability.”<sup>156</sup> On these grounds, the Russian legislature suggested that the international community take notice of the population’s choice and stop “ignoring such a strong political reality as the sentiments of the people of Transdnestria.”<sup>157</sup>

Third, the Russian MFA emphasized that, although unrecognized by international law, Transdnestria was nonetheless an equal party to the negotiation process and, therefore, its decision to hold a national poll should be respected by the international community. For the Russian MFA, the referendum’s results were yet further proof that a solution should be built on the basis of all existing agreements:<sup>158</sup>

The various statements about the negative consequences of the plebiscite for the prospective solution to the Transdnestrian conflict distract from what matters most - the need for the quickest normalization of conditions for the foreign economic activity of Transdnestria, for which the Russian side has been urgently calling, and restoration of the negotiation process with the participation of Chisinau and Tiraspol to develop a comprehensive and sustainable political settlement model.<sup>159</sup>

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<sup>154</sup> *Russian MFA Information and Press Department Commentary Regarding Referendum in Transdnestria*, 2006.

<sup>155</sup> Interview of the Minister of Foreign Affairs, Serghei Lavrov. “Transdnestrian Referendum Met Democratic Standards,” *Russia & CIS Diplomatic Panorama*, September 19, 2006.

<sup>156</sup> Statement of the speaker of Russia’s upper house of parliament, Sergei Mironov. “Russia Adheres to Territorial Integrity Principle in Transdnestria – Putin,” *Ukraine General Newswire*, September 23, 2006.

<sup>157</sup> Statement of the Chairman of the State Duma Committee for CIS Affairs, Andrei Kokoshin, supported by the State Duma. “World Community Must Take Note of Transdnestria Poll – Duma,” *Ukraine General Newswire*, September 18, 2006.

<sup>158</sup> “Transdnestrian Referendum Met Democratic Standards,” *Russia & CIS Diplomatic Panorama*, September 19, 2006.

<sup>159</sup> *Russian MFA Information and Commentary Regarding Referendum in Transdnestria*, 2006.

Russian President Vladimir Putin summarized his country's position as one concerned with developing a comprehensive view of the Transdniestrian issue and elaborating a shared, consistent approach:

Our position is that we should adhere to principles of international law, one of which is the principle of territorial integrity. As for the referendum that was held there, we should find where we stand together with our partners, including Europe, as to what we value most in international affairs - the principle of territorial integrity or so-called political expediency. We should look for solutions that would satisfy all people living in this or that territory, especially in Europe."<sup>160</sup>

Thus, the 2006 referendum did not affect the central position of the external actors on non-recognition, but brought their closer scrutiny to the negotiation process. In particular, American representatives were optimistic about the prospects of a settlement, despite the referendum's results in favor of secession. To them, the increased attention high-level officials in the United States and elsewhere paid to the Transdniestrian issue and a customs agreement between Ukraine and Moldova, which "lent strength to Moldova's sovereignty,"<sup>161</sup> suggested that a solution might be near.<sup>162</sup> The OSCE also announced a new negotiation initiative right after the referendum, in September 2006. The reunification plan it proposed to Transdniestria's government marked a significant concession in the negotiations. The OSCE plan, which was sponsored by the Belgian Foreign Minister and drew on that country's successful experience with a multi-ethnic government, advanced semi-independent status for Transdniestria in a Moldovan federation.<sup>163</sup>

The 2006 referendum also evidenced the importance that the external actors have attached to the general concept of democratic development for the purposes of negotiations. All

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<sup>160</sup> "Russia Adheres to Territorial Integrity Principle in Transdniestria – Putin," *Ukraine General Newswire*, September 23, 2006.

<sup>161</sup> David Kramer, Deputy Assistant Secretary of State for European and Eurasian Affairs (USA). "State Department Official Hopeful for Resolution in Transnistria," *US Fed News (Hindustan Times)*, September 29, 2006.

<sup>162</sup> *Ibid.*

<sup>163</sup> "OSCE Proposing the Reunification Plan to Transnistria," *Deutsche Press-Agentur*, October 10, 2006. Karel De Gucht sponsored the proposal.

the external actors except Russia saw the creation of democratic conditions in the TMR as necessary for any public consultations to take place and emphasized the need for a coordinated approach towards such an event in the case of its potential realization. To them, the development of democracy in the TMR represented a way of steering the negotiation process in the direction of conflict settlement within a re-integrated Moldova. Russia's position differed not so much regarding the settlement outcomes as concerning the role of the TMR's referendum itself. Russia saw public consultations as already contributing to democratic development in the TMR and, as such, deserving of the respect of the external actors. As a result, while not having any effects on Transnistria's recognition, the TMR's referendum has increased the importance of democracy for the external actors in the context of negotiations.

Contrary to the assumption of some of the external actors that increased attention to the TMR because of its referendum has brought a settlement within reach, Transnistria has decisively hardened its position. The practice of holding the referendum has instead contributed to the consolidation of the TMR's statehood in several ways. First, the TMR's population witnessed that the TMR can implement the ordinary functions of a sovereign entity by organizing and holding the referendum. Second, the referendum represented an additional venue for the TMR's leaders to make the TMR's claims to statehood to an international audience: to the observers at elections, the international media, and the parties to the negotiations. Third, it showed the commitment of the TMR's elected authorities to protect the TMR's constitutional provisions. They insisted that the results of the referendum confirmed the vision for statehood laid out in the Transnistrian constitution and solidified their claims. As the TMR's former foreign minister, Valery Litskay, noted:

We have set our course towards independence and Russia, and no talks can change that...The Transdniestrian people have spoken clearly on this matter, and it is up to us politicians to respect their opinion.<sup>164</sup>

The consistent approach of Transdniestrian leaders toward the TMR's foreign policy, including in negotiations, suggests their commitment to respect the will of people enshrined in the constitution and referenda. Not excluding other factors that could guide their decisions on foreign policy, the available evidence suggests that the shared interests of the TMR's people and their elected leaders on the issue of the statehood serve as the basis for Transdniestrian leaders to exercise their powers in compliance with the constitution. As a result, while the 2006 referendum has not actually affected the TMR's potential to receive international recognition, it has contributed to strengthening of the TMR's statehood and hardening of its claim to recognition.

After the referendum on independence, Transdniestria continued to distance itself from Moldova and reiterated its claim for independence in the context of its 2006 presidential election. As in previous elections, no candidate questioned the issue of independence for Transdniestria, and the differences among the candidates mainly concerned domestic policies.<sup>165</sup> In particular, candidate and then-president Smirnov repeatedly stated his intention to harmonize Transdniestrian legislation with that of the Russian Federation. This goal was partially realized through the cooperation protocol signed between Moscow and Tiraspol in the diverse areas of industry, financial markets, and social protection.<sup>166</sup> Before securing his re-election with 82.4% of votes,<sup>167</sup> Smirnov declared that:

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<sup>164</sup> Statement of Valery Litskay, the TMR's Foreign Minister (period of service: 1990-2008). Ibid.

<sup>165</sup> A.V. Mospanov, "V Pridnestrov'e zavershaetsea predvybornaya kampania," *Olvia-Press*, December 18, 2006.

<sup>166</sup> "Protokol po itogam rabochei vstrechi Zamestitelea Predsedatelya Pravitel'stva Rossiiskoi Federatsii A.D. Zhukova s Prezidentom Pridnestrov'a I.N.Smirnovym" [Protocol on the Results of the Working Meeting of the Deputy Chairman of the Government of the Russian Federation, A.D.Zhukov, with the President of Transdniestria, I.N.Smirnov], 2006.

<sup>167</sup> Voter turnout was 257,810, or 66.1%. Compared to previous presidential elections, the number of candidates increased to include four candidates in 2006: Andrey Safonov, editor of the main opposition paper "Novaya Gazeta," who won 3.9% of votes; Petr Tomayly, a businessman, who gained 2.1% of votes; and Nadezhda Bondarenko, leader of the Party of Communists, supported by 8.1% of voters; and the-president Smirnov, who was

Moldova has made its choice to move towards NATO and Europe without asking its people. We have also made our choice, but on the basis of the people's will. The [Transdnistrian] region will develop jointly with great Russia.<sup>168</sup>

While the elections were widely monitored by representatives from Russia,<sup>169</sup> Moldova, France, Italy, Poland,<sup>170</sup> international electoral NGOs,<sup>171</sup> and others,<sup>172</sup> most international organizations followed Moldova's appeal and ignored the election to de-legitimize the Transdnistrian claim to sovereignty.<sup>173</sup> The specific responses of the external actors toward the TMR's presidential elections arose from their staunch position on non-recognition of the entity. As such, they remained negative and confirmed the lack of evidence on the elections' effects on the Transdnistrian recognition. Moldova called on the international community to consider the results of the vote illegitimate<sup>174</sup> and did not recognize the vote itself,<sup>175</sup> labeling it a "provocation."<sup>176</sup> Ukraine and the European Union supported Moldova by calling the vote

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reelected. "Tsentrizbirkom Pridnestrov'a utverdil okonchatel'nye itogi presidentskih vyborov," *Olvia-Press*, December 13, 2006.

<sup>168</sup> Zoltán Dujisin, "Breakaway Republic Re-Elects Pro-Russian President," *Inter Press Service*, December 12, 2006.

<sup>169</sup> The observers from Russia declared the election free and fair. Olena Horodetska, "Moldova Rebel Region Re-elects Pro-Moscow Leader," *Reuters*, December 11, 2006.

<sup>170</sup> Mandy Kirby, "Breakaway Moldovan Region Holds Unrecognised Presidential Vote," *Global Insight Daily Analysis*, December 11, 2006.

<sup>171</sup> The views of these organizations on the procedures and the results of the elections were split. For example, the Helsinki Committee for Human Rights in Moldova believed Transdnistrians were forced to vote for Smirnov under threats of job losses and insisted the campaign was biased towards the election winner. The British Helsinki Human Rights Group noted that campaign conditions had been unequal, but argued the vote itself had been flawless. "Breakaway Republic Re-Elects Pro-Russian President," *Inter Press Service*, December 12, 2006.

<sup>172</sup> For example, representatives from the separatist regions of Nagorno-Karabakh, Abkhazia, and South Ossetia. "Separatist Wins Fourth Term as President in Transnistria," *Deutsche Press-Agentur*, December 10, 2006.

<sup>173</sup> "Breakaway Region Prepares to Reelect a Dictator," *Inter Press Service*, December 6, 2006.

<sup>174</sup> "Smirnov Re-elected Leader of Renegade Moldova Province," *Deutsche Press-Agentur*, December 11, 2006.

<sup>175</sup> Note that the Moldovan parliament failed to issue a special statement regarding the presidential election in Transdnistria similar to the one it issued earlier on the referendum. Not all opposition parliamentarians supported the proposal to draw up a statement regarding the presidential election in the self-proclaimed republic of Transdnistria. The Communists did not explain their decision to oppose issuing a statement, a move that was unexpected for the opposition because earlier the parliament made a similar statement regarding the referendum that took place in Transdnistria on September 17. "Moldovan Parliament Fails to Issue Statement on Transdnistria Elections," *Russia & CIS General Newswire*, December 15, 2006.

<sup>176</sup> "Ukraine Views Presidential Election in Transdnistria as Illegitimate," *Ukrainian National News Agency*, December 11, 2006.



illegitimate, declining to send its official observers,<sup>177</sup> and publicly refusing to recognize the presidential election.<sup>178</sup> Ukraine also viewed the presidential elections as inconsistent with international rules and regulations, as well as with UN and OSCE principles.<sup>179</sup> To Ukraine, such elections only prevented a settlement of the Transdnistriian conflict based on the principles of Moldova's sovereignty and territorial integrity.<sup>180</sup> Similarly, the United States viewed the elections in Transdnistria as a potential source of destabilization in the region and noted:

[The] international community and the US consider Transnistria a part of Moldova. The so-called elections conducted by the Transnistrian regime are an attempt to destabilize Moldova. No state has recognized "presidential" elections of a separatist regime. The US, EU and OSCE have repeatedly called for the negotiations on the settlement of the Transnistrian issue that would respect sovereignty and territorial integrity of Moldova.<sup>181</sup>

As a result, both the 2006 referendum and presidential elections led to increased attention from the external actors on the Transdnistriian issue. Although the external actors continued to regard the electoral practices as unrelated to Transdnistriian status and confirmed their non-recognition of the TMR, they continued to engage with the TMR's elected leaders. This electorally eventful year in the TMR also contributed to the consolidation of Transdnistriian statehood. Transdnistria continued on the path of hardening its claims on recognition. And it

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<sup>177</sup> Ukraine emphasized that the Ukrainian politicians seen in Transdnistria that day were private visitors. "Ukraine Describes Transnistrian Elections as Illegitimate," *Unian*, December 12, 2006.

<sup>178</sup> Ibid. EU Commissioner for External Relations and European Neighborhood Policy Benita Ferrero-Waldner made this statement before opening a ministerial meeting of the EU Council on December 11, 2006. See Denis Dubrovin, "EU Not to Recognize Transdnistria's Election," *ITAR-TASS World Service*, December 11, 2006; "Ukraine Not to Recognize Transdnistria's Election," *ITAR-TASS World Service*, December 11, 2006.

<sup>179</sup> Georgia shared this position based on the similar challenges it has experienced on its territory. The Georgian Foreign Minister stated that presidential elections in this region, as well as the referendum held in September, were of a provocative character and essentially contradicted the fundamental principles and norms of international law, established provisions of the UN and the OSCE, and were directed against the conflict's peaceful resolution process in the region. "Georgia Not to Recognize Presidential Election in Transdnistria," *Black Sea Press (Georgia)*, December 14, 2006.

<sup>180</sup> "Ukraine Describes Transnistrian Elections as Illegitimate," *Unian*, December 12, 2006.

<sup>181</sup> Interview with the spokesman for the US State Department Terry Davidson to the RIA Novosti News Agency. Arkadii Orlov. "Administratsia Georga Busha schitaet vybory v Pridnestrovie popytкои 'destabilizatsii Moldovy.'" *RIA Novosti (Washington)*, December 12, 2006.

viewed its independence referendum and its constitutionally elected authorities as potential leverage to achieve that claim within the negotiation process.

### 2.3. The 2011 Presidential Elections

With growing political and economic tensions between Transdniestria and Moldova, the two parties suspended their negotiations and ceased official interactions from 2006 to 2011. While a number of initiatives<sup>182</sup> and unofficial meetings between the leaders of Moldova and the TMR occurred during this period,<sup>183</sup> they did not lead to any significant outcomes and the parties maintained their opposing positions. With the support and facilitation of mediators and observers,<sup>184</sup> Moldova and Transdniestria resumed the negotiation process in late 2011.<sup>185</sup> However, the new working agenda included only social, economic, and humanitarian issues:<sup>186</sup> both parties saw the issue of settlement as a potential final goal of the negotiations, but limited the resumed negotiation process to the small steps necessary to build trust and confidence. Although such an approach appeared the most appropriate after the stalemate, it also evinced the significant gap that had persisted between the two parties: Moldova, which continued to insist on

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<sup>182</sup> For example, in 2007, then-president of Moldova Voronin proposed a settlement to the Transdniestrian conflict, which, however, did not differ much from previous proposals. It focused on the demilitarization of the TMR, provisions in social and humanitarian spheres, the withdrawal of the Russian troops, and upholding the adoption of the 2005 Law on the Transdniestrian Status. Transdniestria refuted this proposal and referred to it as “unfeasible and untimely.” See Boțan, *The Negotiation Process*, 2009, 129-131.

<sup>183</sup> “Peregovornye mehanizmy moldo-pridnestrovskih otnoshenii” [The Negotiation Mechanisms of the Settlement of the Moldova-Transdniestrian Relations], *Diplomaticheskii Vestnik Pridnestrov’ia* 1 (2010).

<sup>184</sup> For example, the Russian side initiated a meeting between the leadership of Moldova and the TMR in Russia on March 18, 2009. After the meeting, Moldova, Transdniestria, and Russia signed a Joint Statement on the Results of the Meeting in Moscow, which provided that the parties would continue contacts and discussions to resume the negotiations. Also, on June 4 and 5, 2010, Russia and Germany signed a Memorandum on the Meeting of the Russian President Medvedev and German Chancellor Merkel, which stipulated the intention of Russian and the EU to cooperate on the settlement of the Transdniestrian issue.

<sup>185</sup> Official negotiations resumed on September 22, 2011. Statement of the Participants of the “5+2” Consultations on the Resumption of the Work of the “Permanent Conference on Political Issues in the Framework of the Negotiating Process for Transdniestrian Settlement,” signed in Moscow. September 22, 2011.

<sup>186</sup> Principles and Procedures of the Negotiation Process within “Permanent Consultations in the Framework of Negotiation Process on the Transdniestrian Conflict Settlement,” signed in Vienna, 2013; Agenda of the Official Negotiation Process, adopted in Vienna on July 13, 2012.

the TMR's autonomous status, and Transdniestria, which remained firm on advancing recognition of its statehood.

In this context, the external actors continued watching the domestic electoral developments in Transdniestria, including the 2010 parliamentary and the 2011 presidential elections. Although the 2010 parliamentary elections<sup>187</sup> confirmed Transdniestrian aims for independence<sup>188</sup> and attracted a large number of observers,<sup>189</sup> who noted their democratic nature,<sup>190</sup> the elections had relatively little effect on the reactions of the external actors when compared to the impact of the 2011 presidential elections.

The 2011 elections drew considerable domestic and international attention due to the unexpected change in Transdniestrian leadership. They also proved that, public non-recognition of the elections' legitimacy notwithstanding, during negotiations, the external actors have worked with the officials elected through internal constitutional processes. After two rounds of balloting<sup>191</sup> and high voter turnout (58.9% in the first round and 51.7% in the second),<sup>192</sup>

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<sup>187</sup> Transdniestria held its parliamentary elections to the Supreme Council on December 12, 2010. 175,643 voters, or 42.56% of the electorate, took part in the elections. In comparison with the 2005 parliamentary elections, the turnout decreased by 9% and, in comparison with the 2000 elections, the turnout was down by 12%. See *Rezultaty vyborov Tsentral'noi izbiratel'noi komissii PMR* [Elections results of the TMR's Central Election Commission]: <http://cikpmr.idknet.com/arhiv-2010.html>

<sup>188</sup> President of Transdniestria Smirnov stressed that, “[o]ur goals remain the same - independence and further joint development with Russia, as well as the development of good-neighbourly and collaborative relations with our friends and neighbours.” “The Parliamentary Elections will be Held in Transnistria,” *ITAR-TASS*, December 12, 2010.

<sup>189</sup> The head of the Central Election Commission (CEC), Pyotr Denisenko reported the registration of a large number of local and international observers from Russia, Ukraine, Moldova, Belarus, France, the Czech Republic, Lithuania, Abkhazia, South Ossetia, and Nagorno-Karabakh. “Piotr Denisenko: Vybory v Verhovnyi Sovet PMR provedeny v sootvetstvii s Konstitutsiei PMR, zakonami, reguliruiuschimi izbiratel'noe pravo na territorii gosydarstva i mejdunarodnymi standartami,” *Olvia-Press*, December 21, 2010.

<sup>190</sup> The representatives from the State Duma (Russia) and Rada (Ukraine) noted the elections' compliance with international electoral standards and the Transdniestrian constitution, as well as the lack of serious violations during the elections. “Mezhnudarodnyh nabliudatelei, predstavleaiuschih GosDumu Rossii i Verhovnuiu Radu Ukraini porazil spokojnyi hod vyborov v Verhovnyi Sovet PMR,” *Olvia-Press*, December 13, 2010.

<sup>191</sup> In comparison with the previous presidential elections, six candidates stood in the 2011 election. After the first round, the results of the voting were as follows: A. Kaminsky-26.48%; A. Safonov-0.53%; I. Smirnov-24.82%; D. Soin-0.58%; O. Khorjan-5.13%; Y. Shevchyuk-38.53%. Kaminsky and Shevchyuk proceeded to the second round.

<sup>192</sup> The total number of eligible voters consisted of 418,000 people. “Protokol Tsentral'noi Izbiratel'noi komissii PMR 'O rezul'tatah vyborov Prezidenta PMR,” *Olvia-Press*, December 26, 2011.

Yevgeny Shevchuk, a former parliamentary speaker, was elected the president of the entity with 73.88% of the vote.<sup>193</sup> His rival in the second round, incumbent parliamentary speaker Anatoly Kaminsky, received only 19.6% of the votes<sup>194</sup> despite alleged Russian support.<sup>195</sup>

In his presidential campaign statements, Shevchuk's rhetoric differed somewhat from that of Smirnov's, as Shevchuk referred to the need for Transdniestria to modernize and integrate into the regional economy, a position that implied the potential for improved relations with Moldova.<sup>196</sup> However, he strongly emphasized that he "is determined to continue the policy of independence for Transdniestria and closer relations with Russia that is consistent with the will expressed by the people of Transdniestria in the referendum of 2006."<sup>197</sup> In his inaugural speech, Shevchuk also reiterated his intention to seek international recognition for the republic and strengthen strategic relations with Russia and neighborly relations with Ukraine and Moldova. To him, the TMR's presidential election – both how the election was conducted and the fact that it was held at all – "strengthened the image of Transdniestria on the world stage."<sup>198</sup>

Elections observers<sup>199</sup> judged the second round of the Transdniestrian presidential election to be fair, generally well governed, and democratic, with only minor violations.<sup>200</sup> One of the observers from the Russian delegation emphasized the peaceful and democratic handover of power in the TMR:

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<sup>193</sup> Ibid.

<sup>194</sup> In addition, 4.45% voted "against all." Ibid.

<sup>195</sup> Lyudmila Alexandrova, "New Dniester Leader Beats Moscow-backed Rival, but Vows to Be Pro-Russian," *ITAR-TASS World Service*, December 27, 2011.

<sup>196</sup> Stefan Korshak, "Renegade Moldovan Province Transnistria Elects New President," *Deutsche Press-Agentur*, December 26, 2011.

<sup>197</sup> "Moldova Hopes for Invigorated Talks on Transdniestria Settlement," *ITAR-TASS*, December 26, 2011.

<sup>198</sup> "Inauguratsia prezidenta PMR Evgenia Shevchuka 30.12.2011" [The Inauguration Ceremony of the TMR's President Yevgeny Shevchuk], <http://www.youtube.com/watch?v=mktmdKguT0k>; "Transdniestrian President Elect Inaugurated," *ITAR-TASS*, December 30, 2011.

<sup>199</sup> The elections were monitored by the observers from Moldova, Russia, and several other states. "Transdniestrian Presidential Election Well Governed, Democratic - Observers," *ITAR-TASS World Service*, December 25, 2011.

<sup>200</sup> Statement of the Russian State Duma delegation of observers. Ibid.

the elections went on in a well organized manner and without any major violations that could have affected the electoral outcomes... The most important thing is that Transdnistria passed the exam for democracy with excellence. The opposition candidate beat the incumbent president at the elections, and the republic keeps developing calmly on the basis of democratic European values.<sup>201</sup>

The difference in the responses of the external actors to the 2011 presidential elections in comparison to all previous elections lay in their favorable approach towards the results. Although none of their statements explicitly recognized the elections or the Transdnistrian state, they largely lacked previous references to their “illegitimate and illegal” character, except for the Moldovan statements. The Moldovan Prime Minister at the time stated that, regardless of the outcome of the presidential elections, Chisinau would continue its efforts to settle the conflict:

These elections are illegitimate, as well as the proclamation of the Transdnistrian republic. Therefore, I do not care about the results of these elections. At the same time, a settlement of the Transdnistria conflict is a priority for our country. We will work toward this with the person elected by the people on the left bank of the Dniester River.<sup>202</sup>

In addition, the Moldovan government expressed hope that the change in power would lead to invigorated talks on the conflict and give impetus to settlement of the Transdnistrian issue. The Moldovan government further noted that, “The policy was the same with Smirnov for many years. Now we are ready to look for new approaches in order to resolve disagreements between Chisinau and Tiraspol.”<sup>203</sup>

The Ministry of Foreign Affairs of the Russian Federation released a statement that also noted the democratic nature of the elections:

...International experts attested that the vote was democratic and election procedures were organized at the level of accepted international standards. [...] The candidate’s

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<sup>201</sup> Statement of Serghei Baburin, Russian politician, former Deputy Chairman of the State Duma, and observer at the TMR’s presidential elections. “Shevchuk Leading in Transdnistrian Elections, after 84% Counted,” *ITAR-TASS*, December 26, 2011.

<sup>202</sup> Statement of the Moldovan Prime-Minister, Vlad Filat. “Chisinau Won’t Recognize Transdnistrian Elections but Will Work with Winning Candidate - Moldovan PM,” *Interfax: Russia & CIS General Newswire*, December 13, 2011.

<sup>203</sup> Statement of the Moldovan Deputy Prime Minister for Reintegration, Yevgeny Carpov. “Moldova Hopes for Invigorated Talks on Transdnistria Settlement.” *ITAR-TASS*, December 26, 2011.

stated desire to implement systemic changes in the socioeconomic sphere and seek a viable compromise in relations with Chisinau now as president will be tested in practice...The Russian Federation looks forward to continuing its traditionally close contacts with the representatives of Transnistria aimed at assisting its development and maintaining stability in the region.<sup>204</sup>

The rest of the participants in the negotiation process similarly viewed the outcomes of the elections positively. The Ukrainian side saw in the elections results the opportunity to restart the negotiation process, noting that, “[t]he recent elections in Transdniestria will create good prospects for accelerating the negotiating process and simplifying the search for solutions acceptable for both sides.”<sup>205</sup> The United States reported the landslide victory of Yevgeny Shevchuk without invoking the terms it has used in the past, “illegal” or “not free/unfair.”<sup>206</sup> In its reference to the presidential elections in Transdniestria, the European Commission reported that, “a new generation has come to power, giving rise to hopes of a closer dialogue between Tiraspol and Chisinau.”<sup>207</sup> Finally, the former Head of the OSCE Mission to Moldova, William Hill, commented that, “Transnistria may not have free and fair elections but they certainly have had competitive elections in the past. And this one was certainly competitive.”<sup>208</sup>

As a result, the experience of the 2011 presidential elections, part of the TMR’s two-decades-long electoral development, strengthened the TMR’s statehood. The newly elected leader, who came to power through an election typical of the democratic processes in recognized states, confirmed his commitment to protect the TMR’s constitutional provisions on its sovereign status for internal and external audiences. While lacking any evidence of the effects on the

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<sup>204</sup> “Russian MFA Press and Information Comments on Transnistria Election,” *States News Service (Moscow)*, December 27, 2011.

<sup>205</sup> Statement of the Foreign Ukrainian Minister, Kostyantyn Hryshchenko. “Kyiv Hopes Transdniestrian Election Will Help Resolve Conflict,” *Interfax News Agency (Moscow)*, December 30, 2011.

<sup>206</sup> US Bureau of Democracy, Human Rights and Labor. “The 2011 Country Reports on Human Rights Practices: Moldova,” (2012).

<sup>207</sup> European Commission, COM/405. “The 2011 Annual Report on the Instrument for Stability to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions,” (2012).

<sup>208</sup> Commission on Security & Cooperation in Europe: US. Helsinki Commission. “Moldova: The Growing Pains of Democracy,” (Federal News Service), 2012.

potential for the TMR's recognition, the 2011 elections revealed two ways in which the TMR's electoral practices has influenced the external actors. First, it showed that, for the purposes of negotiations, the external actors have interacted with Transdnestrian officials elected in accordance with the TMR's constitutional framework, regardless of their public claim that the elections were illegitimate, illegal, not free, and unfair. Second, by closely monitoring the TMR's electoral practices, the external actors have also reacted favorably to those elections in which they viewed the outcomes as beneficial for the negotiation process. This approach has proven that the external actors consider the principle of democratic development in Transdnestria as an important step for the purposes of negotiations, despite their public disregard for the TMR's existing constitutional framework.

### **Conclusion**

The development of electoral practices in Transdnestria and the reactions of the external actors towards them demonstrate that the TMR's constitutional practices and their democratic nature have not affected the TMR's recognition, but have had other important effects both domestically and internationally. Domestically, first, the high voter turnout in Transdnestrian elections and referenda points to the concern of the people for building their own state and their involvement in the entity's constitutional practices. Second, through elections and referenda, Transdnestria has legitimized the entity's authority and the policies that elected leaders have put into practice, including those on the Transdnestrian sovereignty and independence. Third, Transdnestria has used electoral events and plebiscites as additional forums to claim recognition and to state the TMR's position on its independence for an international audience. Fourth, Transdnestria has demonstrated its commitment to democratic principles, the rule of law, and the protection of human rights, seen partly through the TMR's respect for electoral norms and

the peaceful, transparent handover of power. Finally, Transdniestria has interpreted the responses of the external actors to its electoral practices, such as engagement in the negotiation process<sup>209</sup> and lack of sanctions,<sup>210</sup> as implicitly legitimizing the TMR's government. All of these factors have strengthened Transdniestria's own sense of statehood and provided additional leverage in its claim to recognition during the negotiation process.

Internationally, Transdniestrian constitutional practices have had a few noticeable and important effects as well. First, the TMR's electoral practices have influenced the process of the external actors' engagement with the TMR. For the purposes of negotiations, the external actors have interacted with those Transdniestrian representatives who were elected in accordance with the TMR's constitutional framework. Second, the external actors have linked democratic practices in the entity with an efficient negotiation process that could resolve the issue while respecting the territorial integrity of Moldova. The majority of the external actors have explicitly repudiated the TMR's constitutional framework and denied recognition of its elections, referenda and their outcomes, but they have admitted in principle the importance of democracy in the TMR for the purposes of settlement. The representatives of Moldova, the OSCE, Ukraine, the EU, and the US have tied the democratic process in Transdniestria to the entity's status and have viewed Transdniestrian democratic development as an important factor contributing to rapprochement with Moldova and other parties in the negotiation process.<sup>211</sup> For them, the democratic

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<sup>209</sup> The negotiation process that started in 1992 has proceeded in fits and start until now. During this period, Smirnov, who was re-elected president three times, his successor, Yevgeny Shevchuk, the elected MPs to the Supreme Council and their chairmen (G. Marakutsa, Y. Shevchuk, A. Kaminsky, M. Burla), and the appointed Ministers of Foreign Affairs (V. Litskay, V. Yastrebnchak, N. Shtanski) were all involved in different capacities on behalf of the TMR in the negotiation process.

<sup>210</sup> Representatives of the Transdniestrian authorities consider the absence of sanctions from the external actors as an important indicator that Transdniestria has undertaken lawful actions and received de facto recognition of its institutions. Personal communication with the former Ministers of Foreign Affairs in Transdniestria Valery Litskay (period of service: 1990-2008) and Vladimir Yastrebnchak, (period of service in the MFA: 2001-2012), August 2013.

<sup>211</sup> Personal communication of the representatives of Moldova, August 2013; the OSCE Mission to Moldova, April-August 2013; the EU, July 2013.



development of Transdniestria could lead to more interaction between the TMR and Moldova, as well as between the TMR and other parties in the negotiation that would open the way for a more flexible, inclusive consensus on the settlement. As one high-ranking representative of the OSCE Mission to Moldova put it, “the development of real democracy on the left bank would facilitate resolution of the conflict.”<sup>212</sup> At the same time, these external actors have emphasized that Transdniestrian democratic development is not related to its recognition<sup>213</sup> and that settlement could only occur within the framework of a reintegrated Moldova.<sup>214</sup> They have expressed the belief that democracy would also contribute to the stability of a reintegrated Moldovan state that recognizes some degree of autonomy for Transdniestria.<sup>215</sup> Only one external actor, Russia, has accepted the importance of the principle of democratic development, but has not linked it directly to settlement of the conflict and has instead urged other external actors to respect the TMR’s existing domestic electoral practices and the will of the people as expressed through those practices.

All of the external actors have also officially or unofficially followed Transdniestrian electoral events to stay abreast of the TMR’s internal constitutional practices and react promptly if they favor or threaten the negotiation process. In particular, the OSCE Mission to Moldova has stayed current on both the general and specific provisions of the Transdniestrian constitution and has regularly monitored elections and referenda through the observation of “public order” in Transdniestria and through submitting the reports on violations, if identified, to the OSCE head

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<sup>212</sup> Personal communication of the representative of the OSCE Mission to Moldova, July 2013.

<sup>213</sup> Personal communication of the representatives of the OSCE Mission to Moldova, July 2013 and May 2013.

<sup>214</sup> Personal communication of the representatives of the OSCE Mission to Moldova, April 2013, May 2013, July 2013, one of whom noted that, “no one is contemplating recognition” for Transdniestria.

<sup>215</sup> Roper, 2004, 529.

office.<sup>216</sup> This observation adds to the suggestion of the importance of Transdniestrian constitutional development for the purposes of negotiations.

Overall, the explicit and implicit responses of the external actors to Transdniestrian constitutional provisions and practices suggest that the Transdniestrian practice of holding elections and referenda have had some effects on the negotiation process. This practice has consolidated the desire for statehood among the Transdniestrian population, legitimized its government, and bolstered its claim to sovereignty. It has also engaged the external actors, whose behavior in negotiations have been in some measure responsive to the shifts in personnel and power in Transdniestria that are themselves functions of TMR's internal constitutional order.

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<sup>216</sup> Personal communication of the former Minister of Foreign Affairs of the TMR, Valery Litskay (period of service: 1990-2008), August 2013.

## **CHAPTER FIVE. RESEARCH IMPLICATIONS FOR FUTURE SCHOLARSHIP**

### **1. Summary of the Doctrinal Framework and the Case Study of Transdnistria**

#### **1.1. A Constitution's Potential for the Recognition Process: Implications from the Existing Literature**

The existing literature in international and constitutional law does not discuss the interactions between constitutional functions and the process of diplomatic recognition. However, the vast scholarship on each of these discrete subjects has laid the theoretical groundwork for carrying out an interdisciplinary analysis of this relationship. The result of just such an analysis on the idea and functions of a constitution and international legal doctrines, which was presented in Chapter 1, reveals a close link between the criteria for recognition and the constitutional development of a state-like entity. Although a state's recognition remains largely a political process, both the literature's claims regarding the criteria for recognition and some states' practices lead to the expectation that a constitution matters during a state-like entity's search for recognition.

In particular, the fact that the constitutional affirmation of territory, statehood, and sovereignty speaks directly to the traditional criteria for recognition – which require the existence of a defined territory, a permanent population, a government, and the capacity to enter into relations with other states - confirms the relationship between a constitution and the recognition process. The constitutional organization and institutionalization of a polity, as well as constitutional legitimization and limitation of governmental authority, also correspond to the contemporary criteria for recognition. In this regard, a democratic constitution becomes a mechanism for organizing governance in accordance with the principles of democratic participation, the separation of powers, the protection of human rights, and for respecting

international *jus cogens* norms, all of which help ensure the fulfillment of the contemporary criteria for recognition.

Political and legal doctrines and practices regarding the recognition of states, governments, and the admission of states to international organizations demonstrate two main ways in which a constitution plays a part in the recognition process. First, the entity seeking recognition as a state employs a constitution as a tool to establish a convincing sovereign presence for other nations and assert the criteria for statehood recognition. In addition, to pursue its recognition or to gain membership in an international organization, a state employs a constitution as a mechanism to assert the entity's conformity to international expectations about its reliability as a participant in international relations. Second, the constitutional assertion of statehood and democratic principles predisposes states that are considering granting recognition to favorably view the entity's claim for recognition.

A number of international legal and constitutional developments confirm the importance of a constitution during the recognition process and bolster the expectation that it matters in dealing with claims for and decisions on an entity's recognition. First, the requirement of a government's constitutionality during its ascension to power, the need for the existence of a constitutional mechanism to fulfill the traditional criteria for statehood, and the explicit reference to the constitutional character of a state in its search for recognition and acceptance into the community of sovereign states all make a constitution an important element in the recognition process. It also appears that the world community uses a constitution as part of a broader effort to ensure a global membership that is peaceful and compliant with international obligations.

Second, membership norms in an international organization have explicitly and frequently evaluated an aspiring state's constitutional regime for its respect for the principles of

democracy and protection of human rights. Many international documents have enshrined a vision of international society that promotes a system of democratic states whose internal governance is based on constitutional principles. In this regard, such principles have become the key requirements for a state's accession to an international organization and for it to gain recognition as its member. As this dissertation has argued, the adoption of a democratic constitution has become one of the essential tools to meet these criteria.

Finally, the experience of some states has demonstrated that a constitution and its provisions could become important and influential in the decision-making of external actors regarding the decision to grant recognition. As a result, the existing literature and examples of some states have shown that the constitutional system of a state-like entity should typically matter for the process of its international recognition.

## **1.2. The Limited Effects of a Constitution on the Recognition Process in the Case Study of the TMR**

In contrast to the expectations raised by the analysis of existing literature and recent practices, Transnistria's constitutional assertion of the traditional and contemporary criteria for recognition and its establishment of a democratic framework have not favored the recognition of this state-like entity. Chapters 3 and 4 have shown that the external actors have continued to deny recognition to Transnistria, despite its constitutional respect for all the criteria for recognition and its state-like behavior. However, the overall development of the Transnistrian constitutional system has had other effects, examination of which provide a more nuanced picture of the role that a constitution plays in an unrecognized state.

First, the TMR's constitutional framework has consolidated the entity's statehood by ensuring its internal organization, the regulation of the TMR's polity, and the internal legitimation of the TMR's authority. Transnistria's constitutional electoral practices, for

example, have clearly demonstrated Transnistria's ability to function as an ordinary state. They have also constituted additional venues for the TMR's leaders to assert their claims for recognition to internal and external audiences. Related to this consolidation effect is the constitution's contribution to the sustainability of the TMR's existence, which has led to extended interactions with external actors.

Second, the existence of the Transnistrian constitution has served as the basis for the Transnistrian authorities to promote the policies on independence enshrined in that document. This factor seems to have contributed to the hardening of the TMR's position and its statehood claims during the negotiation process. Seeking to respect the provisions of the constitution adopted during the entity-wide referendum, Transnistrian leaders have increasingly insisted on pushing for separation from Moldova and for the TMR's independent statehood.

Third, the constitutional framework has created a procedural justification for the external actors' engagement with representatives of the TMR. For the purposes of negotiations, the external actors have interacted with officially unrecognized, but constitutionally elected or appointed, leaders. Despite the external actors' refusal to publicly recognize the TMR's state activities, such as elections, they have nonetheless engaged with the constitutionally elected representatives from the TMR to find a settlement to the conflict.

Finally, although they have not acknowledged the Transnistrian constitution itself, the very idea of the entity's constitutional democratic development has shaped the external actors' approach towards the Transnistrian negotiations. Those actors have viewed the democratic development of Transnistria as an important contributing factor to the settlement of the conflict, albeit one that would restore Moldovan territorial integrity. Therefore, the external

actors have closely followed the internal constitutional practices of Transdniestria in order to observe whether those practices favor or jeopardize a final settlement.

## **2. Research Implications for Future Scholarship**

The findings of the present research on the Transdniestrian case have largely opposed the literature's suggestions that the constitutionality of a state-like entity generally affects its prospects for recognition. Regardless of the constitutional system elaborated in the TMR, which asserts both the traditional and contemporary criteria for recognition, the entity has kept its status as a breakaway, separatist, and unrecognized state. At the same time, the present research has revealed a few effects, unobserved and unstudied earlier, about the role that a constitution plays in an unrecognized state. Most notably, the existence of the constitution and constitutional mechanisms has consolidated Transdniestrian statehood, procedurally affecting and increasing the external actors' engagement with the TMR.

Following these outcomes, the research has identified three main directions for future scholarship. The first concerns the reasons for the limited effects of a constitution on recognition. Why is it the case that, despite the typical pattern scholars espouse, the constitutional development in this de facto state has not favored its diplomatic recognition and has had only limited effects? The second direction centers on the general applicability of the outcomes of the Transdniestrian case for other unrecognized states. Are the limited effects of a constitution seen in this case commonly shared among unrecognized states? Finally, the third direction explores the influence that the constitution of an unrecognized state has on the process of conflict settlement. Does it contribute to conflict resolution? Does it have an impact on the particular design of conflict resolution? Further analysis of these issues could provide better insight into the

interrelation between the internal developments of de facto states and the external responses towards them for the purposes of conflict settlement.

### **2.1. Analysis of the Causes of the Differences between the Case Study and the Literature**

The study of Transdniestria has shown that its constitutional development has not facilitated the TMR's diplomatic recognition and had only limited effects on negotiations over its status. This case thus provides insight into the possible factors that could have influenced such an outcome and frames the issue for further discussion. In the Transdniestrian case, the constitution's lack of impact on the recognition process could have been shaped by two main factors: the firm position of Moldova, Russia, Ukraine, the OSCE, the EU, and the US that the TMR could only be a part of Moldova, on the one hand; and, on the other, the belief of these actors that not all available options for conflict resolution have yet been pursued.

First, from the very beginning and throughout the negotiations, all of the external actors have proceeded from the premise that the principle of territorial integrity should be respected; therefore, they have never viewed granting recognition to Transdniestria as possible.<sup>1</sup> The external actors have viewed the TMR only within the Republic of Moldova, the borders of which have existed since the twentieth century and which the external actors have seen no reason to change.<sup>2</sup> The external actors argued that, since Transdniestrian independence resulted from a conflict and lacked Moldovan consent, they have not even considered the idea of the TMR's

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<sup>1</sup> Personal communication of the representatives of Moldova, Ukraine, the OSCE, and the EU, March-August 2013.

<sup>2</sup> Michael Kirby, former US Ambassador to Moldova, "Interview to Kommersant Plus." US Department of State: reviewed on April 15, 2008, released on November 12, 2009. In his interview, Kirby stated, "I fail to understand why it would be in the interest of a "big state" to want the breakup of Moldova. The borders of what is now the Republic of Moldova were established long before the breakup of the Soviet Union and there is no reason for those borders to change. [...] [T]he United States is optimistic about an eventual resolution to the Transnistrian conflict based on the independence, sovereignty and territorial integrity of Moldova. It's hard to imagine that in the 21st century people would support, even tacitly, the prolongation of these frozen conflicts."



separation.<sup>3</sup> While referencing the need to uphold international stability, security and order, the external actors have consistently underlined the need to preserve the territorial integrity of already-recognized states. As the former Head of the OSCE Mission to Moldova, William Hill, noted, “in principle all the countries of the world recognize the Transnistrian region as a part of the Republic of Moldova...[a]nd... there is no one that is attempting or contemplating a change to that principled stand.”<sup>4</sup>

Second, the external actors believe that Transdnistriean steps towards its independence, including the 2006 referendum, have contravened both general international law and agreements signed between Moldova and Transdnistria that provide the basis for conflict resolution within Moldova. General international law notably favors the exhaustion of all possible options for a conflict settlement that respect territorial integrity before the pursuance of other options. Specific to the Transdnistriean case, the 1997 Moscow Memorandum stipulated the building of the relationship between Moldova and Transdnistria “in the framework of a common state within the borders of the Moldavian SSR as of January 1990.” Along with this Memorandum, the Common Declaration of the Presidents of the Russian Federation and Ukraine also specified that:

...the provisions of the Memorandum cannot contradict the generally accepted norms of international law, and also will not be interpreted or acted upon in contradiction with the existing international agreements, decisions of the OSCE, and the Joint Declaration of 19 January 1996 of the Presidents of the Russian Federation, Ukraine and the Republic of Moldova.<sup>5</sup>

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<sup>3</sup> Personal communication with the representative of the TMR’s government, August 2013.

<sup>4</sup> Commission on Security and Cooperation in Europe: U.S. Helsinki Commission. “Moldova: The Growing Pains of Democracy.” (Federal News Service), 2012.

<sup>5</sup> Joint Statement of the Presidents of the Russian Federation and Ukraine in Connection with the Signing of the Memorandum on the Bases for Normalization of Relations between the Republic of Moldova and Transdnistria. Moscow, May 8, 1997.

These and subsequent documents have underlined the significance of international legal principles and reinforced the idea that a settlement between Transdniestria and Moldova must be found within the framework of a common state.

In addition, Transdniestria and Moldova have never had a mutual agreement on the admissibility of the TMR's independence from Moldova that could have served as a potential form of conflict resolution. This contrasts, for example, to the former union of Serbia and Montenegro, which, while distinct from the case of Moldova-Transdniestria on other grounds,<sup>6</sup> suggests that recognition of an entity might become an option for external actors when there is an explicit agreement between the parent state and succeeding entity. In particular, the possibility of Montenegro's referendum on independence was grounded in the Belgrade Agreement that established the political State Union of Serbia and Montenegro.<sup>7</sup> According to that agreement, the Serbian central authorities formally consented to the terms by which Montenegro could seek independence, and later recognized Montenegro's independence in 2006.<sup>8</sup> Since Transdniestria has neither experienced a settled status within Moldova nor reached a similar agreement with the national government in Chisinau, the external actors have viewed the TMR's state-building actions and its 2006 independence referendum as taking place outside of the agreed-upon framework of a common state and, consequently, as illegal and illegitimate. The external actors consider the options for re-integration still possible; therefore, they have dismissed any thoughts of Transdniestria's recognition.<sup>9</sup>

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<sup>6</sup> One of the key difference concerns their status. Before the break-up of Yugoslavia, Montenegro enjoyed the status of a federal republic within the SFRY and later the FRY, whereas Transdniestria lacked any particular status in Moldova as part of the USSR.

<sup>7</sup> Agreement on Principles of Relations between Serbia and Montenegro within the State Union, signed on March 14, 2002.

<sup>8</sup> Fawn, 2008, 276.

<sup>9</sup> Personal communication with the representatives of the OSCE and the EU, July-August 2013.

As a result, the external actors have viewed the domestic constitutional process in Transdniestria (as well as the TMR's economic, social, and other processes) within the general framework of Moldovan developments, and, by virtue of that, as issues of internal Transdniestrian concern, distinct from any admissible final resolution. In this context, the external actors' adherence to the principle of territorial integrity has shaped their approach in disregarding the internal constitutional development of Transdniestria. The nature of the conflict,<sup>10</sup> which created the illusion that it might be quickly resolved within the boundaries of Moldova, also came into play and added to the external actors' determination to reject the TMR's claim for recognition.<sup>11</sup>

The peculiarities of the Transdniestrian case, however, do not fully account for the role of the principle of territorial integrity and the unexplored possibilities for conflict resolution in defining the behavior of the external actors and explaining the limited effects of the Transdniestrian constitution on the recognition of the TMR. The analysis of the isolated case of Transdniestria indeed reveals the strong influence of these factors on the external actors. Following the principles of territorial integrity and exhaustion of all options for settlement, their decision to view Transdniestria as an integral part of Moldova has conditioned the nature of their interactions with the TMR. Seeking to avoid any steps that would jeopardize their position on non-recognition, the external actors have limited their engagement with Transdniestria.

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<sup>10</sup> As Chapter 2 showed, the Transdniestrian conflict has a number of causes, but it lacks a strongly pronounced animosity or hostility between the people living on two banks of the river Dniester. People enjoy relatively free movement between Moldova and the TMR, have close familial ties on both banks, and tend to avoid conflicts. This situation differs from the cases of, for example, Abkhazia or Nagorno-Karabakh, where the ethnic controversies are much stronger and differences are much sharper.

<sup>11</sup> Philip Remler, "Negotiation Gone Bad: Russia, Germany, and Crossed Communications." *Carnegie Europe*, August 21, 2013. The author points out that, "[s]ince there are few ethnic or religious differences separating the two sides, neophytes often believe this is the easiest of all frozen conflicts to resolve – the 'low-hanging fruit' that might provide a mediator with a quick and easy accomplishment."; Matthew Rojansky. "'Frozen' Transnistria Conflict Begins to Thaw." *World Politics Review*, April 17, 2012. Rojansky mentions that, "the perception that this is a 'solvable' conflict" has inspired some European leaders to declare Transdniestria as "a 'test case' for a new, inclusive model of European security" and contributed to their cooperation in seeking the ways to settle the conflict without compromising Moldovan territorial integrity.

Nonetheless, the available evidence does not clearly show that the intention to respect the principle of territorial integrity or to exhaust all options for conflict resolution have been the true causes or motives of Western actors' behavior, as opposed to merely reflecting the consequences of their decision to follow a pre-determined strategic path. To understand the general causes that explain the limited effects of a constitution on the process of recognition, it is important to explore how the guiding principles the external actors expressed in this case have operated in other cases of unrecognized or partly recognized states.

For example, the conflict settlement in Kosovo evidenced the prevalence of the right of people's self-determination, rather than the principle of territorial integrity, in the approach of external actors. The case of Kosovo demonstrates the possibility that the principle of territorial integrity is not always strictly followed and created a model to which other unrecognized states, including Transdnistria, may appeal. At the same time, the external actors have dismissed all the Transdnistrian claims that the right to self-determination should similarly prevail in the case of the TMR.<sup>12</sup> Instead, the external actors have insisted that the two cases are significantly different and stressed the uniqueness of Kosovo's situation. They have emphasized that, contrary to Kosovo, Transdnistria did not experience, first, ethnic cleansing and the scale of the Kosovo's human rights violations, and second, the direct involvement of the United Nations.<sup>13</sup>

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<sup>12</sup> In particular, the Transdnistrian Foreign Ministry issued a statement emphasizing that, "...[D]eclaration and further recognition of Kosovo are essential, since they create a new model of conflict resolution that is based on the prevalence of the right of people's self-determination. Transdnistria believes that this model should be consistently applied to all conflicts that have similar political, legal, and economic basis." Ministerstvo intostrannyh del PMR. *Zayavlenie*. 19.02.2008 [Statement of the TMR's Ministry of Foreign Affairs].

<sup>13</sup> Adrian Jakobovits de Szeged, former EU representative to Moldova noted, "We believe that the problems of Kosovo and Transdnistria cannot be compared. [Transdnistria] does not have ethnic and religious problems. Also, the Kosovo problem is being resolved by the Security Council where Russia has a vote. Therefore, comparing these situations would be totally incorrect because this would lead to wrong conclusions." Mykola Siruk, "Adrian Jakobovits de Szeged: Tiraspol's current policy is a dead end for Transdnistria", *The Day*, №37, November 21, 2006. Also, Michael Kirby, former US Ambassador to Moldova, stated that, "Kosovo is a special case for several reasons. [It experienced crimes condemned by the international community, ethnic cleansing, displacement of large sections of the population, and direct involvement by the United Nations]. Circumstances in Transnistria are not at all like Kosovo's, and therefore we reject these arguments given by special interest groups in Transnistria and in

The external actors, therefore, appear to contextualize the application of the principles of international law and their own behavior as dependent on a variety of factors and conditioned by the specifics of a case. As Kosovo's experience suggests the principle of territorial integrity does not explain the behavior of the external actors all of the time and that certain factors may take precedence in their decisions on whether to recognize an entity.

As a result, the external actors' focus on the principle of territorial integrity and the potential for conflict resolution in the case of Transdniestria does not reveal the full picture of the driving forces for their non-recognition of this entity. The minor role that similar principles played in the case of Kosovo, for instance, suggests that the external actors' behavior regarding the recognition process has been driven either by their preferences or by other hidden forces. This question requires further research and a closer focus on the factors shaping the approach of external actors in considering the political status of other unrecognized or partly recognized states. Such work may provide answers to what forces condition the behavior of external actors and why constitutional development may matter for the purposes of recognition in some instances but not in others.

## **2.2. Assessing the Effects of a Constitution in Other Unrecognized States**

The Transdniestrian case demonstrates the limited effects of a constitution on the recognition process of a de facto state. Such an outcome raises the question of its generalizability among unrecognized or partly recognized states and requires closer analysis of the constitutional and international practices of those entities. The available evidence suggests that the experience of other de facto states, such as the Turkish Republic of Northern Cyprus, Abkhazia, South Ossetia, Nagorno-Karabakh, and Somaliland, likewise show that a constitution has only limited

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other countries for tearing away Transnistria from Moldova. Michael Kirby, "Interview to Kommersant Plus." US Department of State, 2008.

effects.<sup>14</sup> These entities have claimed international recognition and have employed a number of institutional and legal tools, including constitutions,<sup>15</sup> to achieve that aim. The limited evidence available appears to suggest that, similar to the Transdniestrian case, the constitutions of these de facto states do not favor the entities' recognition but instead have other effects, for example, the consolidation of their statehood.

First, several cases of partially recognized states, such as the Turkish Republic of Northern Cyprus, Abkhazia, and South Ossetia, have shown that geopolitical factors rather than the constitutional mechanisms of those de facto states have played the decisive role in the recognition process. There are no reasons to believe that either Turkey, which extended recognition to the Turkish Cypriot republic,<sup>16</sup> or Russia, which granted recognition to Abkhazia and South Ossetia,<sup>17</sup> did so because of their focus on the constitutional structures of those state-like entities. The very fact that the overwhelming majority of international actors does not recognize such de facto states at all also shows the lack of a possible "constitutional recognition effect."

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<sup>14</sup> De facto states are defined according to the typology presented in Chapter 2.

<sup>15</sup> The details on the constitutions of de facto states are as follows: The Constitution of the Republic of Abkhazia was adopted by the Supreme Council on November 26, 1994, and approved in a referendum on October 3, 1999. The first Constitution of the Republic of South Ossetia was adopted by the referendum on November 3, 1993, and the second (current) Constitution of the Republic of South Ossetia was adopted by the referendum on April, 8, 2001. The Constitution of the Republic of Nagorno-Karabakh was adopted by referendum on December 10, 2006. Prior to that, a number of constitutional laws defined the issues of sovereign statehood and governance. The Constitution of the Turkish Republic of the Northern Cyprus was passed by the Constituent Assembly of Northern Cyprus after its declaration of independence on November 15, 1983, and was approved in a referendum May 5, 1985. The Constitution of Somaliland was adopted by the Houses of the Parliament of Somaliland on April 30, 2000, and was approved in a referendum on May 31, 2001.

<sup>16</sup> The Turkish Government appeared to grant recognition for the purposes of finding a peaceful settlement. It considered the declaration of independence by the Turkish Cypriot republic to have been inevitable. Turkish Foreign Minister İler Turkmen declared that, "We must now turn our attention to the search for a peaceful settlement. We hope that all concerned governments will contribute to efforts in that direction. The adoption of a negative attitude toward the newly established republic will only serve to eliminate the possibilities of agreement." "Turks Recognize the New Nation," *New York Times*, November 16, 1983.

<sup>17</sup> Russia claimed that it extended its recognition in response to Georgian aggression. In an interview, former Russian President Medvedev noted that there was a widespread understanding among his interlocutors in conversations and meetings that diplomatic recognition was granted to Abkhazia and South Ossetia for this reason. *Pravitel'stvo Rossiiskoi Federatsii. Vstrecha s predstavitel'yami regional'nyh sredstv massovoi informatsii*. [Meeting with the Representatives of the Regional Mass-media], RF Government News Release, November 18, 2008.

Second, external actors' acknowledgement of the much-improved conditions for democracy in Nagorno-Karabakh<sup>18</sup> and the "significant strides on the road to democracy"<sup>19</sup> in Somaliland (unlike in its parent state Somalia) evidently has been insufficient for the purposes of official recognition. In all these cases, the external actors have insisted on making territorial integrity a precondition for resolution of the conflict and accepted only the legitimacy of *de jure* boundaries.<sup>20</sup>

Third, despite the lack of effect of a constitution on the recognition process, research on the nature and evolution of the Caucasian *de facto* states<sup>21</sup> in the context of international affairs shows that their legal institutions have contributed to state building processes and strengthened state apparatuses in ways somewhat similar to what this research has found for the TMR.<sup>22</sup> This study has further advanced the idea that an entity's legal framework affects the dynamics of the development of statehood leading to the consolidation of states' institutions.

These observations suggest that the limited effects of a constitution seen in the case of Transnistria could also be a feature shared by other *de facto* states. This assumption is based on the fact that, throughout the last several decades, the international community has largely continued to disregard both *de facto* states' claims to democratic legitimacy as part of their right to statehood, as well as their appeal to the world's commitment to democracy. Instead, the international community has mainly insisted on respect for international policies on territorial

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<sup>18</sup> Laurence Broers. "The Politics of Non-Recognition and Democratization." In *The Limits of Leadership: Elites and Societies in the Nagorny Karabakh Peace Process*, 17, (London: Conciliation Resources), 2005, 71.

<sup>19</sup> Oisin Tansey. "Does Democracy Need Sovereignty?" *Review of International Studies* 37, no. 4 (2011): 1515-36, 1527.

<sup>20</sup> Broers, 2005, 71.

<sup>21</sup> Namely, Abkhazia and South Ossetia in Georgia and Nagorno-Karabakh in Azerbaijan.

<sup>22</sup> Ara Ghazarians, "From Frozen Conflicts to Unrecognized Republics: The *de facto* States in the Emergent Region of the Post-Soviet States of the South Caucasus." PhD, Fletcher School of Law and Diplomacy, 2007, 309.

integrity, except for a very few cases.<sup>23</sup> Therefore, establishing a constitution and promoting democratic progress in other de facto states may not impact their chances of international recognition.<sup>24</sup> At the same time, there is some evidence that legal instruments have strengthened statehood in a number of de facto states, which suggests that, as in Transdniestria, constitutional frameworks in other unrecognized states may have some limited effects. As a result, further case studies of the relationship between constitutional development and the criteria for recognition in other unrecognized or partially recognized states are necessary to discern the contours of the limited effects of a constitution as a common feature of unrecognized states. Alternatively, these studies could identify and explain the distinct, case-dependent nature of the outcomes for each unrecognized state.

### **2.3. Analysis of the Impact of an Unrecognized Constitution on Conflict Resolution**

The case of Transdniestria has also raised specific questions about the relationship between the constitutional system of an unrecognized state and the prospects for a settlement of its political status. First, does the constitutional framework of an unrecognized state create an environment that facilitates conflict resolution? And second, does the constitutional framework of an unrecognized state influence the particular design of the political settlement? A close examination of these issues could provide a better understanding of the nature of unrecognized states and, possibly, encourage a reconsideration of the approach international actors employ toward such entities in the process of conflict settlement.

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<sup>23</sup> Tansey, 2011, 1516. Kosovo is one such exceptional case. Some scholars favor these non-recognition strategies by international actors and only call for the revision of the general aspects of international engagement with de facto states. For example, some scholars have discussed the problematic issue of Abkhazia's absorption into Russia. They have urged Western diplomats to continue to refuse recognition of Abkhazia's independence and instead to develop a new approach toward the entity in order to prevent its complete dependence on Russia. Alexander Cooley and Lincoln Mitchell. "Abkhazia on Three Wheels." *World Policy Journal* (2010): 73-81, 80.

<sup>24</sup> Nina Caspersen. "Separatism and Democracy in the Caucasus," *Survival: Global Politics and Strategy* 50, no. 4 (2008): 113-36.



### 2.3.1. The Constitutional Framework and Democratization in an Unrecognized State: A Help or Hindrance to Conflict Resolution?

The literature suggests that democratic regimes favor the resolution of conflict over armed engagement. Democratization, which is partly achieved through constitutional tools, is said to contribute to leaders' willingness to terminate rivalries<sup>25</sup> and to seek out peaceful settlements.<sup>26</sup> Democracy opens the way for resolution an entity's problems through dialogue and allows ordinary people to influence the government's decision-making to find better solutions.<sup>27</sup> The Transnistrian case, however, has revealed the ambiguities this framework encounters when dealing with the constitutional and democratic development in an unrecognized state involved in conflict resolution. While the TMR's democratization has contributed to peace on the ground, it has actually made the settlement of the conflict more difficult.

On the one hand, Transnistrian constitutional structures are intended to organize the polity, provide legitimacy for and limitations on the government, and create the basis for an internally legitimate leadership to interact with the external actors to reach a settlement. These implications indeed have proven beneficial for negotiations, as they have contributed to peaceful dialog, order, stability, and the TMR's gradual democratic development. On these grounds, the

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<sup>25</sup> Sara McLaughlin Mitchell, and Paul F. Diehl. "Caution in What You Wish for: The Consequences of a Right to Democracy." *Stanford Journal of International Law* 48 (2012), 314.

<sup>26</sup> William J. Dixon. "Democracy and the Peaceful Settlement of International Conflict." *The American Political Science Review* 88, no. 1 (1994): 14-32; Russell J. Leng, and Patrick M. Regan. "Social and Political Cultural Effects on the Outcomes of Mediation in Militarized Interstate Disputes." *International Studies Quarterly* 47 (2003): 431-47; Paul K. Huth, and Todd L. Allee, *The Democratic Peace and Territorial Conflict in the Twentieth Century*, (UK: Cambridge University Press, 2003), 277-97, 282.

<sup>27</sup> Molly Beutz. "Functional Democracy: Responding to Failures of Accountability." *Harvard International Law Journal* 44 (2003), 405. The dominant approach toward democracy and the peaceful settlement of conflicts in the existing literature is based on research on inter-state, not intrastate conflicts. Although some scholars point out that, in intrastate conflicts, the correlation between the democratization of authoritarian regimes and level of conflicts might be different because they lack the systemic factors that account for peace or peaceful settlement between liberal democracies, the prevailing idea of "democratic peace" influences the conceptualization of the relationship between democracy and settlement in intrastate conflicts. See Anne-Marie Slaughter. "Pushing the Limits of the Liberal Peace: Ethnic Conflict and the "Ideal Polity"." In *International Law and Ethnic Conflict*, edited by David Wippman. (Ithaca: Cornell University Press, 1998), 128-144.

external actors have supported a separate constitution for Transdniestria; they also have considered the TMR's democratization an important precondition for conflict settlement.<sup>28</sup> To them and, consistent with what the literature suggests about the role of democracy in peaceful settlements, the democratic development of the TMR should have led to a more accountable and flexible leadership, which was willing to compromise and ready to pursue a settlement based on international norms.

On the other hand, contrary to both existing literature on the topic and the external actors' expectations, the TMR's democratization has not led to progress in resolving the conflict. The entrenchment of a constitutional and democratic system in Transdniestria has consolidated its statehood, hardened its claims to independence, and contributed to the stabilization of the situation, which has led both sides of the conflict to stand firm in their positions. The reluctance of both sides to change the status quo has also added to difficulties for the mediators and observers to the negotiations. Attempts by the external actors to avoid the tensions and to watch for an opportunity to pursue the reintegration agenda have spurred dialog, but have not resulted in a settlement.

Therefore, although the TMR's democratization has partly ensured the stability and the maintenance of peace between the two sides, it has not actually solved the conflict. Rather, along with the quiet, peaceful situation and the lack of common ground for the settlement between Moldova and Transdniestria, democratization has actually further frozen the conflict. This suggests that the democratic development of a de facto state, which is based on its constitution, may not necessarily promote a conflict settlement and pro-reintegration agenda as the external actors envision. By consolidating the unrecognized state internally, it may also harden that state's negotiating position and prevent resolution of the conflict.

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<sup>28</sup> Personal communication with the representatives of the OSCE and the EU, May-August 2013.

The 2011 elections of Transdniestrian president Yevgeny Shevchuk demonstrate precisely that point. The external actors widely welcomed Shevchuk's victory due to his open-minded and pragmatic approach to a number of issues. The external actors expressed hope that a new, democratically elected leader who represented a younger generation of politicians could compromise on the TMR's position and bring reintegration closer. However, some of Shevchuk's decisions have not met the external actors' expectations of renewed progress in the negotiations. Instead of encouraging a dialog on reintegration with Moldova, Shevchuk has continued his predecessor's policy of promoting independence and seeking recognition. Not only did he explicitly declare his respect for the will of the people provided in the TMR's constitution regarding Transdniestrian independence,<sup>29</sup> but also he announced two initiatives that sought to distance the TMR even further from Moldova.

First, during the conference on confidence-building measures organized by the OSCE Mission to Moldova for the participants of the "5+2" negotiations on the Transdniestrian issue, Shevchuk stated that the key to the conflict settlement lies in the "civilized...divorce" between Moldova and Transdniestria, similar to the cases of Czech Republic and Slovakia or Serbia and Montenegro.<sup>30</sup> In his speech, he emphasized that international recognition of Transdniestria would yield only positive outcomes, such as stability in the region and the strengthening of peaceful partnerships with neighboring states.<sup>31</sup>

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<sup>29</sup> "Moldova Hopes for Invigorated Talks on Transdniestria Settlement." *ITAR-TASS*, December 26, 2011; Lyudmila Alexandrova. "New Dniester Leader Beats Moscow-backed Rival, but Vows to Be Pro-Russian," *ITAR-TASS World Service*, December 27, 2011.

<sup>30</sup> "Yevgeny Shevchuk obratilsya s rech'iu k uchastnikam Konferentsii, posvyashennoi meram po ukrepleniui doveria" [ "Yevgeny Shevchuk Gave a Speech at the Conference on Confidence-Building Measures," Press Service of the TMR's President], *Press-služba Prezidenta PMR*, October 30, 2013.

<sup>31</sup> *Ibid.*

Second, based on the results of the 2006 referendum, Shevchuk submitted to the TMR's Supreme Council an initiative on adding a new article to the TMR's constitution.<sup>32</sup> In it, he proposed the introduction of the federal legislation of the Russian Federation on the territory of Transnistria and its incorporation into the Transnistrian legal system, alongside the TMR's own legislation, the general principles and norms of international law, and international treaties.<sup>33</sup> The Transnistrian president explained his initiative as meeting the aspirations of the Transnistrian people to integrate into the Russian space<sup>34</sup> and tackling new regional challenges.<sup>35</sup>

Thus, the developments in Transnistria suggest that the constitutional framework of an unrecognized state has the potential to contribute to the stability and peaceful coexistence of people in the region as well as to harden the positions of parties and even freeze the negotiations. In literature on the subject, the idea that the role of democracy is not entirely positive in the context of conflict settlement is not completely new. Scholars point out that the implications of democratic development depend on the "cultural depth and institutional strength" of a political community.<sup>36</sup> They argue that the democratization of autocracies opens the ways for increased

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<sup>32</sup> "President PMR vnes na rassmotrenie Verhovnogo Soveta PMR proekt konstitutsionnogo zakona "O vnesenii dopolnenia v Konstitutsiu Pridnestrovskoi Moldavskoi Respubliki. [ "The TMR's President Submitted to the TMR's Supreme Council a Draft of Constitutional Law 'On addition to the Constitution of the TMR'", Press Service of the TMR's President], *Press-sluzhba Prezidenta PMR*, December 4, 2013.

<sup>33</sup> Draft of the proposed Art. 58-1 to the TMR's constitution. Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> In part, Shevchuk's steps were conditioned by the increasingly close interactions between Moldova and the EU, and the initiation of the Association Agreement between the EU and Moldova on November 29, 2013. This Agreement aims, *inter alia*, to promote political association and economic integration between the EU and Moldova and to establish conditions for enhanced economic and trade relations. The latter entails the gradual integration of the Republic of Moldova into the EU Internal Market, including the establishment of a Deep and Comprehensive Free Trade Area, which would provide for far-reaching regulatory approximation and market access liberalization. See Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, version of 26/11/2013. "Moldova a Parafat Acordul de Asociere cu Uniunea Europeană," *Serviciul de Presa al Guvernului RM*, November 29, 2013.

<sup>36</sup> Diane F. Orentlicher. "Separation Anxiety: International Responses to Ethno-Separatist Claims." *Yale Journal of International Law* 23 (1998), 62. See also, Carol Skalnik Leff. "Democratization and Disintegration in Multinational States: The Breakup of the Communist Federations." *World Politics* 51, no. 2 (1999): 205-235 (suggesting that the political context for transition in multinational states offers multiple arenas of political contestation that could have

ethnic mobilization,<sup>37</sup> and that weak institutional structures and resource scarcity may result in a conflictive outcome.<sup>38</sup> An illustrative example of the negative impact of democratization is the introduction of free elections in Yugoslavia in the beginning of the 1990s. Voters largely elected nationalist candidates who, instead of smoothing out the differences among the federal entities, promoted policies that exacerbated them.<sup>39</sup>

The limited evidence from the Transdniestrian case does not conclusively support the argument that a direct negative correlation exists between democratization and conflict settlement. However, the present research has identified the problem of the TMR's increasingly firm position on independence, which runs contrary to the external actors' expectations that its democratic development would lead to reintegration with Moldova. Similarly, other de facto states have used democratization to strengthen their own claims to independence.<sup>40</sup> Such outcomes as these suggest the need to look more closely at the effects of democratization in unrecognized states on the process of conflict settlement. Further work should take into account both the positive and negative effects of democratic reforms on conflict resolution. Additional research may yield more information about the factors that condition the stability and peace ensured by constitutional structures, as well as their effects on the positions adopted by de facto states regarding recognition during negotiations.

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mixed implications for the state's stability); Dawn Brancati. "Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?" *International Organization* 60, no. 3 (2006): 651-685 (arguing that decentralization may either decrease ethnic conflict and secessionism or increase them through indirect encouragement of the growth of regional parties that consequently reinforces ethnic and regional identities and mobilize them for secessionism).

<sup>37</sup> Fareed Zakaria. "The Rise of Illiberal Democracy," *Foreign Affairs* (1997): 22-43, 38.

<sup>38</sup> Ted Robert Gurr. "Minorities at Risk: A Global View of Ethnopolitical Conflicts" (Washington D.C.: United States Institute of Peace Press, 1993), 137-138.

<sup>39</sup> Paul C. Szasz. "The Bosnian Constitution: The Road to Dayton and Beyond." In Amy J. Berks and Zivin Kara (eds) "Yugoslavia." *American Society of International Law Proceedings* 90 (1996): 471-86, 486.

<sup>40</sup> Broers, 2005, 68-71 (discussing the example of Nagorno-Karabakh, which projects its "democratic statehood to the outside world in support of Karabakh's claim to sovereignty"), 70.

### **2.3.2. The Political Settlement of a Conflict: Does the Constitutional Framework of an Unrecognized State Influence the Settlement's Design?**

As mentioned in Chapter 2, the literature is largely silent on the constitutional systems of de facto states, as well as on their legal systems more generally. In the context of conflict resolution, scholarship mainly focuses on the attempts of conflicting parties to use a constitution as a peacemaking tool and analyzes different variables pertaining to drafting a constitution that ensure peacemaking.<sup>41</sup> The experience of Transdniestria and other unrecognized states underscores the value of exploring the relationship between a constitution and conflict resolution from a different perspective. First, the lack of common ground for a settlement makes discussions of a peace deal and the drafting of a common constitution problematic. There exists, therefore, a need to understand all internal factors affecting both parties to the conflict, including their constitutional structures, in an attempt to draw these parties closer. Second, the lengthy existence of de facto states offers a new and nuanced perspective on the impact of the entities' own legal mechanisms on the process of conflict resolution. The study of Transdniestria in particular has raised intriguing questions about the relationship between the democratic nature of an unrecognized constitution and political settlement. Does it matter for the design of the settlement that a constitution is democratic? Does a positive correlation exist between the constitutional system and the particular status that the de facto state is likely to receive?

First, the evidence from the Transdniestrian case is insufficient to demonstrate the potential significance of a democratic constitution for the purposes of pursuing a particular

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<sup>41</sup> See e.g., Donald L. Horowitz. "Conciliatory Institutions and Constitutional Processes in Post-Conflict States," *William and Mary Law Review* 49 (2008), 1231-32 (arguing that avoiding exclusion from the constitution-making process might help achieve peace and contribute to the success of a constitution); Vivien Hart. "Democratic Constitution Making," *United States Institute of Peace*, 2003 (suggesting that participation in the constitution-making process is critical to creating and maintaining a peaceful society); Kim Lane Scheppele. "A Constitution Between Past and Future," *William and Mary Law Review* 49 (2008) (discussing the relationship between a country's pre-constitutional history and post-conflict constitution-making).

political status. The TMR has sought to meet contemporary standards for democracy by adopting a constitution compliant with the required criteria. However, it is unclear whether this factor has played any role in the external actors' approach towards Transdniestria and the conflict settlement. It might have been the case that, had Transdniestria adopted a largely undemocratic constitution, the external actors would not have interacted with the TMR at all, or would have employed other methods or alternative options for settlement. Although plausible, this hypothesis requires its further exploration.

Second, the research on Transdniestria shows that, while there is no direct positive correlation between the TMR's constitution and its political status, it is possible that the TMR's constitution indirectly affects the proposals for the settlement. The present study has shown that the positions of the external actors on the settlement of the TMR's status have undergone no essential change in response to constitutional development in the TMR and the entity's compliance with democratic principles. Rather, their positions have varied with respect to the particular proposals for conflict settlement put forward in the course of negotiations.

For example, the OSCE's position on the status of Transdniestria in 1993 contains a provision for "a special status for the left-bank Dniester area ... within the Republic of Moldova as a basis for talks between both parties to the conflict."<sup>42</sup> The OSCE ruled out such options as (a) a unitary centralized state of Moldova, in which Transdniestria is governed from the center; (b) the division of Moldova and granting recognition to the TMR; and (c) the coexistence of two separate states within a "confederation" of Moldova.<sup>43</sup> Instead, the OSCE suggested setting up a special region of Transdniestria that would enjoy considerable self-rule with its own regional

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<sup>42</sup> The CSCE (OSCE) Mission to Moldova Report No.13, 1993, 1.

<sup>43</sup> *Ibid.*, 3.

executive, elective assembly, and court.<sup>44</sup> In 2004, another set of proposals from mediators from the OSCE, Russia, and Ukraine suggested the creation of a federal state with the Transdnistriean region as a federal subject. The proposals detailed exclusive and joint responsibilities and provided residual authority for federal subjects.<sup>45</sup> In 2006, after the Transdnistriean independence referendum, the media announced a new OSCE plan, which proposed a semi-independent status for Transdnistria within a Moldovan federation.<sup>46</sup> Although the OSCE rhetoric evinces some changes in the form of conflict resolution, it is unclear whether there has been any actual increase of the TMR's powers within the settlement proposals, let alone if such an increase has come in response to the constitutional development of Transdnistria. Further work should account for changes to the details of proposals regarding the resolution of an unrecognized state in relation to its internal constitutional structures and practices.

Similarly, the other key actors, Moldova, the Russian Federation, and Ukraine, have referred in various documents to a special status for Transdnistria within Moldova, each giving its own particular meaning to this term at different stages of the negotiation process. The idea of a "common state" put forward in 1997 explicitly provided Transdnistria with the right to conduct independent economic, scientific, and cultural activities, as well as to participate in Moldovan foreign policy making.<sup>47</sup> The 2003 draft of the Kozak Memorandum suggested creating an asymmetrical federation, in which Transdnistria as a federal subject would have its

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<sup>44</sup> Ibid., 1.

<sup>45</sup> Proposals and Recommendations of the mediators from the OSCE, the Russian Federation, Ukraine with regards to the Transdnistriean settlement, CIO.GAL/11/04, February 13, 2004, distributed at the request of the Bulgarian Chairmanship.

<sup>46</sup> "OSCE Proposing the Reunification Plan to Transnistria," *Deutsche Press-Agentur*, October 10, 2006. The proposal was sponsored by Belgian Foreign Minister, Karel De Gucht.

<sup>47</sup> Memorandum on the Bases for the Normalization of Relations between the Republic of Moldova and Transdnistria, signed on May 7, 1997, in the presence of the Presidents of Russia and Ukraine, and a representative of the OSCE.



own governing bodies and would participate in federal structures.<sup>48</sup> The 2005 Ukrainian plan<sup>49</sup> and the 2005 Moldovan law<sup>50</sup> stipulated the creation of a Transdniestrian autonomous region with a special status and division of powers established in organic special-status law. The 2005 law also provided Transnistria with its own legislative and executive bodies, a range of competencies, and three official languages.<sup>51</sup> Although there are some indications that the status offered to Transnistria by the external actors after a decade of its de facto existence has become more autonomous, these provisions are inconsistent and lack a clear connection to the development of the TMR's constitutional framework.

Overall, all the external actors' proposals on establishing relations between Moldova and Transnistria have had similar underlying principles. First, they have all sought to find a settlement of the Transdniestrian issue within a single economic, social, and legal space. Second, the OSCE's 1993 Report, the 2003 Kozak Memorandum, the 2004 Mediators' Proposal, and the 2005 Ukrainian Plan all provided an option for Transdniestrian secession. Whereas some external actors, such as the OSCE, suggested the right to "external self-determination" for Transnistria should Moldova renounce its statehood and merge with another country,<sup>52</sup> others, such as Russia, added to this option the condition of Moldova's loss of its neutrality, in which case "the Russian Federation would return to the issue of the enjoyment by the TMR of the right to self-determination."<sup>53</sup>

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<sup>48</sup> Memorandum on the Basic Principles of the State Structure of a Common State, drafted under the Russian mediators and the leadership of Dmitry Kozak, and presented to the negotiating actors on November 17, 2003.

<sup>49</sup> The Ukrainian Plan on Settlement of the Transdniestrian Issue, made public on May 20, 2005.

<sup>50</sup> Law on the Basic Provisions of the Special Legal Status of Localities from the Left Bank of Nistru (Transnistria), #173, 2005 [Parlamentul Republicii Moldova. Lege cu privire la Prevederile de Bază ale Statutului Juridic Special al Localităților din Stînga Nistrului (Transnistria) Nr.173 din 22.07.2005].

<sup>51</sup> Ibid.

<sup>52</sup> The CSCE (OSCE) Mission to Moldova Report No.13, 1993, 1.

<sup>53</sup> Serghei Gubarev, the representative of the Russian Federation in the negotiation process. "Utrata Moldovoi statusa neitraliteta ili svoiei gosudarstvennosti privedet k priznaniu nezavisimosti Pridnestrov'a" [Serghei Gubarev:

As a result, a general overview of the proposals suggests that the external actors have employed different options in framing the Transdniestrian settlement while keeping the principle of a specific status for the TMR within the borders of Moldova unchanged. A closer look into the details of these proposals and the conditions of their introduction during the negotiations could clarify the question of the interplay between providing a more autonomous status for Transdniestria and its constitutional development. Further research could also explain several issues that are currently unclear, such as whether the democratic character of the Transdniestrian constitution has influenced particular delineations of powers, or the introduction of particular competencies for Transdniestria. More broadly, additional research may suggest answers to the question of whether the position of external actors regarding other unrecognized states changes in response to the nature of their constitutional development and, if so, what factors condition these changes. Future work might also further elaborate the correlation between democratization and specific proposals for settlement in other de facto states and trace, if appropriate, the general principles for such a relationship.

To conclude, the findings of the Transdniestrian case provide a more nuanced picture of the role that a constitution plays in an unrecognized state. The present study suggests that this foundational legal document not only strengthens the statehood of a state-like entity and defines the nature of its interactions with external actors, but also hardens the position of the de facto state in negotiations over its status. These outcomes both contribute to scholarship on international and constitutional law and raise a range of questions for further interdisciplinary analysis. First, the research shows that an unrecognized state undertakes considerable efforts to satisfy the traditional and contemporary criteria for recognition through different means,

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The Loss of Neutrality Status or Its Independent Statehood by Moldova Would Lead to Recognition of Transdniestria's Independence], *Moldnews*, October 13, 2012.

including its constitution. This fact alone, however, is not enough to gain international recognition, as this decision remains within states' discretion and is a politically charged issue. Second, the present research reveals that, in the context of an unrecognized state, a constitution not only organizes and regulates a polity, ensures the protection of human rights, and limits the power of a government, but also serves as a tool to seek international acceptance as a state.

For the purposes of future interdisciplinary analysis, the conceptual and methodological tools of international law, international relations, constitutional law, political science, conflict resolution, and anthropology could all help in clarifying the nature of unrecognized states, the factors that influence and determine the criteria for their recognition, and the role of a constitution in the process of conflict settlement. Finally, this study and further research to come could also have important policy implications by helping actors involved in the resolution of protracted conflicts to develop a more efficient approach toward negotiations that would ensure their peaceful settlement.

## Bibliography

- "10 dekabrya- Den Prav Cheloveka [10 декабря – День Прав Человека]." *Olvia-Press*, December 11, 2007, <http://www.olvia.idknet.com/ol67-12-07.htm>.
- "24 dekabrea v Pridnestrov'e otmechaiut Den' Konstitutsii [24 декабря в Приднестровье отмечают День Конституции]." *Olvia-Press*, December 24, 1999.
- "24 dekabrya – Deni Konstitutsii Pridnestrovskoi Moldavskoi Respubliki [24 декабря - День Конституции Приднестровской Молдавской Республики]." *Olvia-Press*, December 24, 2010. <http://www.olvia.idknet.com/ol259-12-10.htm>
- "24 dekabrya v Pridnestrovskoi Moldavskoi Respublike otmechaetsea kak Deni Konstitutsii. [24 декабря в Приднестровской Молдавской Республике отмечается, как День Конституции]." *Olvia-Press*, December 24, 2012. <http://novostipmr.com/ru/news/12-12-24/glava-gosudarstva-pozdravil-pridnestrovcev-s-dnyom-konstitucii>
- "The 2010 Elections results." <http://cikpmr.idknet.com/arhiv-2010.html>
- "Abkhazia, Yuzhnaya Osetia i Pridnestrov'e priznali nezavisimost' drug druga i prizvali vseh k etomu je [Абхазия, Южная Осетия и Приднестровье признали независимость друг друга и призвали всех к этому же]." *NewsRu.com*, November, 17 2006. <http://www.newsru.com/russia/17nov2006/aup.html>
- "Adriaan Jacobovits de Szeged: Plan deistvii est'. Plana uregulirovania net. [Адриаан Якобовиц де Сегед: План действий есть. Плана урегулирования нет]." *Logos-Press*, #14, April 15, 2005. <http://logospres.md/node/14858>
- Agenda of the Official Negotiation Process between the Republic of Moldova and Transdnistria, adopted in Vienna. 2012.

Agreement on Confidence Measures and the Development of Contacts between the Republic of Moldova and Transnistria (Odessa Agreement). March 20, 1998.

Agreement on Principles of the Peaceful Settlement of the Armed Conflict, signed between Moldova and Russia. July 21, 1992. [Соглашение о принципах мирного урегулирования]

"Ambassador Finley Issues Statement Regarding Transnistrian Referendum." *US Fed News (Hindustan Times)*, September 21, 2006.

"Breakaway Transnistria Wants New Life with Russia." *Inter Press Service*, October 16, 2006.

*Case of Catan and others v. Moldova and Russia*, (2012).

"Chisinau Won't Recognize Transnistrian Elections but Will Work with Winning Candidate - Moldovan PM." *Interfax: Russia & CIS General Newswire*, December 13, 2011.

*Constitution of the Czech Republic*, 1992/

*Constitution of the Former Yugoslav Republic of Macedonia*, 1991.

*Constitution of the Moldavian Autonomous Soviet Socialist Republic*, 1925.

*Constitution of the Republic of Slovenia*, 1991.

*Constitution of the Transnistrian Moldovan Republic*, 1995.

*Constitution of the Transnistrian Moldovan Soviet Socialist Republic*, 1991.

*Constitutional Charter of Serbia and Montenegro*, 2003.

"Cooperation in the Transboundary Dniestr River Basin." <http://dniester.org>.

*Croatian Constitutional Act*. 1991.

"Daesh' Pridnestrov'e! Vpervye s 1954 goda, kogda k Ukraine prisoedinili Krym, nasha strana mojet prirastit' territoriu [Даешь Приднестровье! Впервые с 1954 года, когда к Украине присоединили Крым, наша страна может прирастить территорию]."

*Segodnya*, May 20, 2010, [Give Us Transdnistria! For the First Time since 1954, when Ukraine Took in Crimea, Our Country Could Gain Territory].  
<http://www.segodnya.ua/news/14137900.html>

*Decision on the Creation of the Transdnistrian Moldovan Soviet Socialist Republic*, 1990.

*Declaration of Independence of the Transdnistrian Moldovan Soviet Socialist Republic*, 1991.

*Declaration of Kosovo's Independence*, 2008.

*Declaration of Sovereignty of the Transdnistrian Moldovan Soviet Socialist Republic*, 1990.

*Declaration of the Creation of the Transdnistrian Moldovan Soviet Socialist Republic*  
[Декларация о создании Приднестровской Молдавской Советской  
Социалистической Республики], 1990. <http://mfa-pmr.org/index.php?newsid=230>.

*Decree of State Power of the Transdnistrian Moldovan Soviet Socialist Republic*, 1990.

"Deputaty Gosudarstvennoi Dumy RF nabludaiut za vyborami v Berhovnyi Sovet PMR  
[Депутаты Государственной Думы РФ наблюдают за выборами в Верховный Совет  
ПМР]". *Olvia-Press*, December 10, 2000. <http://www.olvia.idknet.com/ol31-12-00.html>

"Dnestr Constitution Signed." *BBC Monitoring Service: Former USSR*, January 19, 1996.

"Dniestr Vote will Have no Legal Consequences, Says Lucinschi." *Deutsche Presse-Agentur*,  
December 23, 1996.

*Documenty vneshney politiki SSSR, 7 noieabrea 1917-31 dekabrea 1918* [Документы внешней  
политики СССР. 7 ноября 1917г. - 31 декабря 1918 г.]. Vol. 1. Moscow, 1959.

"Doklad I.N. Smirnova: Pridnestrovskaya Moldavskaya Respublika sostoyalas! [Доклад И. Н.  
Смирнова Приднестровская Молдавская Республика состоялась!]" *Olvia-Press*,  
September 1, 2000, [Smirnov's Report on Occasion of the Republic Day: Transdnistrian  
Moldovan Republic Has Established Itself].

"Doklad Presidenta Smirnova na torzhestvennom zasedanii Vehovnogo Soveta, Pravitel'stva i obschestvennyh organizatsii, posvyaschennom vos'moi godovschine PMR [Доклад Президента Смирнова на торжественном заседании Верховного Совета, Правительства и общественных организаций, посвященном восьмой годовщине ПМР/Report of the President Smirnov I.N. at the Special Session of the Supreme Council, Government and Public Organizations, dedicated to the 8th year of PMR existence]." *Pridnestrovi'e*, #171, September 8, 1998.

"Duma Member: Transnistria Election Results 'Predictable'." *Interfax News Service*, December 12, 2005.

"Elections to the Parliament of the Self-proclaimed Republic of Transnistria Have Been Declared Valid." *Interfax News Service*, December 11, 2005.

"EU/ EP/Transnistria: Concern about Referendum on Independence." *Agence Europe (Brussels)*, September 7, 2006.

"Yevgeny Levitsky's Interview." *Dnestrovskaya Pravda*, #95, August 19, 1999.

*Ezhegodnyi Istoricheskiy al'manah Pridnestrovia [Ежегодный исторический альманах Приднестровья]*. Tiraspol, 1997.

*Fenomen Pridnestrovia [Феномен Приднестровья]*. Tiraspol: RIO PGU, 2000.

"G.Marakutsa v tretii raz stal Predsedatelem Verhovnogo Soveta PMR [Г.Маракуца в третий раз стал Председателем Верховного Совета ПМР]." *Olvia-Press*, December 27, 2000.  
<http://www.olvia.idknet.com/ol73-12-00.html>

"G.Marakutsa: My budem vesti dialog... [Г.Маракуца: Мы будем вести диалог...]." *Dnestrovskaya Pravda*, #215, September 18, 1992.

"Georgia Not to Recognize Presidential Election in Transdnistria." *Black Sea Press (Georgia)*,  
December 14, 2006.

"Hard-liner Smirnov Re-elected in Breakaway Dniestr Region." *Deutsche Presse-Agentur*,  
December 23, 1996.

*Hotarirea Sovietului Supreme al RSS Moldova cu privire la Avizul Comisiei Sovietului Supreme al RSS Moldova pentru Aprecierea Politico-Juridica a Tratatului Sovieto-German de Neagresiune si a Protocolului Aditional Secret din 1939, precum si a consecintelor lor pentru Basarabia si Bucovina de Nord [Decision of the Supreme Council of Moldovan SSR on the Conclusion of the Commission of the Supreme Council of MSSR regarding Political and Legal Assessment of the Non-Agression Pact between Germany and Soviet Union from 1939, as well as its Consequences for Besarabia and Northern Bucovina],*  
1990. June, 23.

"Igor Smirnov: K Pridnestrov'iu ne primenim termin separatism [Игорь Смирнов: К Приднестровью неприменим термин сепаратизм]." *Olvia-Press*, December 11, 2001,  
[Igor Smirnov: The Termin Sepatism is not Applicable to Transdnistria].  
<http://www.olvia.idknet.com/ol49-12-01.htm>

"Igor Smirnov: Konstitutsia PMR – garant ravnopravia pridnestrovtsev [Игорь Смирнов: Конституция ПМР – гарант равноправия приднестровцев]." *Olvia-Press*, December 24, 2003. <http://olvia.idknet.com/ol154-12-03.htm>

"Igor Smirnov: Nasha Konstitutsia ukrepila prioritet demokraticheskikh prav i svobod, mir i sotrudnichestvo v nashem obschestve I gosudarstve [Игорь Смирнов: Наша Конституция укрепила приоритет демократических прав и свобод, мир и



- сотрудничество в нашем обществе и государстве]." *Olvia-Press*, December 25, 2007.  
<http://www.olvia.idknet.com/ol202-12-07.htm>
- Ilaşcu and others v. Moldova and Russia* (2004).
- "Interview William Moser [Интервью Ульяма Мозера]." *Novyi Region*, October 8, 2012.  
<http://nr2.ru/kishinev/407138.html>
- "Interview s Igorem Smirnovym [Интервью с Игорем Смирновым]." *Pridnestrov'e*, #213-214, November 10, 2001, [Interview of Igor Smirnov].
- "Interviu Erwan Fouere [Интервью Эрвана Фуере]." *Novyi Region*, September 24, 2012.  
<http://nr2.ru/kishinev/405139.html>
- "Istoriko-pravovye predposylki sozdania Pridnestrovskoi gosudarstvennosti. Rol' i znachenie Pridnestrovskoi Moldavskoi Respubliki v mirovom politicheskom protsesse [Историко-правовые предпосылки создания Приднестровской государственности. Роль и значение Приднестровской Молдавской Республики в мировом политическом процессе]." *Diplomaticheskij vestnik* 1 (2010).
- "Itogi Pridnestrovskoi pererisi naselenia [Итоги Приднестровской переписи населения]." *Olvia-Press*, September 7, 2005, [Report on Transdnestrian Census].  
<http://www.olvia.idknet.com/ol37-09-05.htm>
- "Iulian Chifu: V Buchareste schitaiut, chto naznachenie Rogozinaablokirovalo pryamoi dialog mejdu Kishinevom i Tiraspolem [Юлиан Кифу: В Бухаресте считают, что назначение Рогозина заблокировало прямой диалог между Кишинёвом и Тирасполем]." *Novyi Region*, January 29, 2013. <http://nr2.ru/pmr/422031.html>
- Joint Statement of the Mediators: Russia, Ukraine and the OSCE to the Odessa Agreement. 1998, March 20.

*Joint Statement of the Russian Federation, Moldovan and Ukrainian Presidents on Political Settlement of the Transdnestrian Conflict*, January 19, 1996.

"Konstitutsia- Osnovnoi Zakon gosudarstva [Конституция – Основной Закон государства]." *Olvia-Press*, December 11, 2007, [Constitution is the Fundamental Law of a State].  
<http://www.olvia.idknet.com/ol177-12-07.htm>

Konstitutsionnyi zakon N94-KZID-V o vnesenii izmenenii i dopolnenii v Konstitutsiu PRM [Конституционный Закон ПМР № 94-КЗИД-V «О внесении изменений и дополнений в Конституцию Приднестровской Молдавской Республики]. 2011. [Constitutional Law on Amendments and Additions into the TMR Constitution]  
<http://president.gospmr.ru/>.

"Kosovo Example Spurs Hopes for Transdnestria, Nagorno-Karabakh." *Tiraspol Times*, July 18, 2007.

"Kyiv Hopes Transdnestrian Election Will Help Resolve Conflict." *Interfax News Agency (Moscow)*, December 30, 2011.

*The Lutsk Treaty*, 1711.

Memorandum adopted at a Mediators' Meeting of Ukraine, Russian Federation and OSCE with Representatives of the Republic of Moldova and Transdnestria. 2005, September 27.

Memorandum on the Bases for the Normalization of Relations between the Republic of Moldova and Transdnestria. May 7, 1997.

Memorandum on the Meeting of the Russian President Medvedev and German Kaiser Merkel. 2010.

- "Mezhdunarodno-politicheskoe polozhenie Pridnestrov'a. [Международно-политическое положение Приднестровья]." *Ministry of External Affairs of the TMR*, 2014. <http://mfa-pmr.org/index.php?newsid=40>
- "Mezhdunarodnyh nabludatelei, predstavleaiuschih GosDumu Rossii i Verhovnuiu Radu Urkaini porazil spokojnyi hod vyborov v Verhovnyi Sovet PMR. [Международных наблюдателей, представляющих Госдуму России и Верховную Раду Украины поразили спокойный ход выборов в Верховный Совет ПМР]." *Olvia-Press*, December 13, 2010. <http://www.olvia.idknet.com/o1144-12-10.htm>
- "Minorities in Moldova Opt for Independence." *Agence France Presse - English*, December 2, 1991.
- "Moldova Hopes for Invigorated Talks on Transdnistria Settlement." *ITAR-TASS*, December 26, 2011.
- "Moldova Hopes for Invigorated Talks on Transdnistria Settlement." *ITAR-TASS*, December 26, 2011.
- "Moldova Protests at Presence of Russian Observers at Dnestr Region Polls." *BBC Monitoring Service: Former Soviet Union*, December 13, 2000.
- "Moldova Refuses Concessions to Dniestr Republic." *Deutsche Presse-Agentur-Moscow*, December 25, 1995.
- "Moldova Urges not to Send International Observers to Transdnistria's Presidential Election." *RIA Novosti*, December 1, 2001.
- "Moldovan Parliament Fails to Issue Statement on Transdnistria Elections." *Russia & CIS General Newswire*, December 15, 2006.

- "Moldovan, Georgian Separatists Hail New Montenegro." *RFE/RL*, May 23, 2006.  
<http://www.rferl.org/featuresarticle/2006/05/c28a6e94-f60a-4d87-838b-e11047643f65.html>
- "Moldova's President Demands Criminal Prosecution of the Leaders of Dniestr and Gagauz Republics." *Official Kremlin Int'l News Broadcast*, September 19, 1990.
- "Monitoring referenduma v Pridnestrov'e vedut 174 mejdunarodnyh nabliudatelya [Мониторинг референдума в Приднестровье ведут 174 международных наблюдателя]." *Olvia-Press*, September 17, 2006. <http://www.olvia.idknet.com/ol133-09-06.htm>
- "Natsional'nyi sostav naselenia SSSR [Национальный состав населения СССР]." Moscow, 1991.
- "No Proper Conditions for Democratic Elections Exist in Transnistria, Ukraine Says." *Unian*, December 1, 2005.
- "Obraschenie k MSSR s predlozheniem o sozdanii politicheskoi i ekonomicheskoi avtonomii [Обращение к МССР с предложением о создании политической и экономической автономии]." *Pridnestrovskaya Pravda*, October 3, 1989.
- "Obraschenie Komissii Pridenstrovskoi Moldavskoi Sovietskoi Sotsialisticheskoi Respubliki k narodam SSSR [Обращение Комиссии Приднестровской Молдавской Советской Социалистической Республики к народам СССР]." *Dnestrovskaya Pravda*, #217, September 14, 1990, [The Address of the Committee of Transdnistriian Moldovan Soviet Socialist Republic toward the Peoples of the USSR].
- "Observers to Monitor Elections in Dniestr Republic of Moldova." *Deutsche Presse-Agentur*, December 18, 1996.

- "Ocherednaya godovschina Pridnestrovskoi Konstitutsii [Очередная годовщина Приднестровской конституции]." *Olvia-Press*, December 22, 1999.
- "Okonchanetl'nye itogi vyborov presidenta i vise-presidenta PMR. Soobschenie Tsentral'noi Izbiratel'noi Komissii PMR [Окончательные итоги выборов президента и вице-президента ПМР. Сообщение Центральной Избирательной Комиссии ПМР]." *Olvia-Press*, December 14, 2001, [Information of the TMR Central Election Commission on the Final Results of the Elections of the President and Vice-President of the TMR]. <http://www.olvia.idknet.com/ol55-12-01.htm>
- "OSCE Proposing the Reunification Plan to Transnistria." *Deutsche Press-Agentur*, October 10, 2006.
- "OSCE Rejects Transdnistria Referendum, Calls for Resumption of Talks." *Russia & CIS Diplomatic Panorama*, September 22, 2006.
- "Osnovnoi vopros-konstitutsionnyi kontrol [Основной вопрос-конституционный контроль]." *Dnestrovskaya Pravda*, #4, January 12, 1999, [The Key Question is the Question of Constitutional Review].
- "Osnovnomu Zakonu strany – Konstitutsii – 13 let [Основному Закону страны – Конституции – 13 лет]." *Olvia-Press*, December 24, 2008. <http://www.olvia.idknet.com/ol267-12-08.htm>
- "Otvét ofitsial'nogo predstavitelea MID Rossii M.L.Kamynina na vopros SMI ob otsenke vyborov v Pridnestrov'e [Отвѣт официального представителя МИД России М.Л. Камынина на вопрос СМИ об оценке выборов в Приднестровье]." *Olvia-Press*, December 14, 2005. <http://www.olvia.idknet.com/ol101-12-05.htm>
- "The Parliamentary Elections will be Held in Transnistria." *ITAR-TASS*, December 12, 2010.

*Peace Treaty of Paris*, 1947.

"Peregovornye mehanizmy moldo-pridnestrovskih otnoshenii [Переговорные механизмы урегулирования молдо-приднестровских отношений]." *Diplomaticheskii Vestnik Pridnestrov'ia* 1 (2010).

"Piotr Denisenko: Vybory v Verhovnyi Sovet PMR provedeny v sootvetstvii s Konstitutsiei PMR, zakonami, reguliruiuschimi izbiratel'noe pravo na territorii gosydarstva i mejdunarodnymi standartami. [Петр Денисенко: Выборы в Верховный Совет ПМР проведены в соответствии с Конституцией ПМР, законами, регулирующими избирательное право на территории государства и международными стандартами]." *Olvia-Press*, December 21, 2010. <http://www.olvia.idknet.com/ol224-12-10.htm>

"Po predvaritel'nyim itogam, konstitutsionnyi referendum po voprosy vvdenia chastnoi sobstvennosti na zemliu priznan nesostoeavshimsea. [По предварительным итогам, конституционный референдум по вопросу введения частной собственности на землю признан несостоявшимся]." *Olvia-Press*, April 7, 2003, [According to Preliminary Results, the Constitutional Referendum on the Issue of Introducing Private Ownership on Land is Considered Invalid]. <http://www.olvia.idknet.com/ol33-04-03.htm>

*Postanovlenie Verhovnogo Soveta nr.243 Ob utverjdenii Vremennogo polojenia ob ohrane Gosydarstvennoi granitsy PMR [Постановление Верховного Совета «Об утверждении Временного положения об охране Государственной границы ПМР»]* 1992. October 15. [Supreme Council Act on Adoption of the Temporar Regulation on Protection of State Borders of the TMR]. <http://zakon-pmr.com/>.

"Pozdravitel'noe obraschenie Smirnova I.N. [Поздравительное обращение Смирнова И. Н.]." *Pridnestrov'e*, #165-166, September 1, 2001, [Smirnov's Congratulatory Message].

"Premier Calin Popescu-Tariceanu on Referendum in Transnistria." *Rompress*, September 19, 2006.

"President PMR: Nasha s vami oschaya zadacha-sberech provozglashennye tsennosti [Президент ПМР: Наша с вами общая задача - сберечь провозглашённые ценности]." *Olvia-Press*, December 23, 2004. <http://www.olvia.idknet.com/ol107-12-04.htm>

"President pozdravil pridnestrovtsev s Dnem Konstitutsii [Президент поздравил приднестровцев с Днём Конституции]." *Olvia-Press*, December 24, 2003. <http://olvia.idknet.com/ol155-12-03.htm>

"Press-konferentsia generala 14oi armii Alexandra Lebedeva v Tiraspole [Пресс-конференция генерала 14ой армии Александра Лебедева в Тирасполе]." 1992, June 20, 2013. <http://www.youtube.com/watch?v=eOyjEzMd15s>

"Press-konferentsia nabliudatelei sledivshih za hodom v Verhovnyi Sovet PMR [Пресс-конференция международных наблюдателей следивших за ходом выборов в Верховный Совет ПМР]." *Olvia-Press*, December 10, 2000. <http://www.olvia.idknet.com/ol37-12-00.htm>

"Pridnestrov'e progolosovalo za prisoedinenie k Rossii. Za eto vyskazalis' bole 97% grajdan respubliky, uchastvovavshih v referendum [Приднестровье проголосовало за присоединение к России. За это высказались более 97% граждан республики, участвовавших в референдуме]." *Olvia-Press*, September 18, 2006. <http://www.olvia.idknet.com/ol160-09-06.htm>

"Pridnestrovskii politolog: chernogorskkii pretsedent uvelichivaet shansy na priznanie nezavisimosti Pridnestrov'a [Приднестровский политолог: черногорский прецедент

увеличивает шансы на признание независимости Приднестровья]." *Regnum*, May 23, 2006, [Transdnestrian Political Scientist: Montenegrin Precedent Increases the Chances of Recognition of Transdnestria's independence]. <http://www.regnum.ru/news/644205.html>

Principles and Procedures of the Negotiation Process within 'Permanent Consultations in the Framework of Negotiation Process on the Transdnestrian Conflict Settlement', signed in Vienna. 2013.

"Protokol po itogam rabochei vstrechi Zamestitelea Predsedatelya Pravitel'stva Rossiiskoi Federatsii A.D.Zhukova s Presidentom Pridnestrov'a I.N.Smirnovym. [Протокол по итогам рабочей встречи Заместителя Председателя Правительства Российской Федерации А.Д. Жукова с Президентом Приднестровья И.Н.Смирновым] ". (2006). [Protocol on the Results of the Working Meeting of the Deputy Chairman of the Government of the Russian Federation, A.D.Zhukov, with the President of Transdnestria, I.N.Smirnov]

"Protokol raboty grupy mezhduнародnyh nabliudatelei na vyborah Presidenta PMR [Протокол работы группы международных наблюдателей на выборах Президента ПМР]." *Olvia-Press*, December 12, 2001. <http://www.olvia.idknet.com/ol46-12-01.htm>

"Protokol Tsentral'noi Izbiratel'noi komissii PMR 'O rezul'tatah vyborov Presidenta PMR' [Протокол Центральной избирательной комиссии ПМР «О результатах выборов Президента ПМР»]." *Olvia-Press*, December 26, 2011, [The TMR CEC Protocol on the Results of the Elections of the President of the TMR]. <http://cikpmr.idknet.com/>

Protokol'noe reshenie po razresheniu vznikshih problem v oblasti deyatelnosti tamozhnykh slujb Moldovy i Pridnestrov'a [Протокольное решение по разрешению возникших



проблем в области деятельности таможенных служб Республики Молдова и Приднестровья]. 1996, February 7. [Protocol Decision on Resolution of Problems that Appeared in the Field of Functioning of Customs Services of the Republic of Moldova and of Transdnistria] <http://mfa-pmr.org/index.php?newsid=222>.

"Rada Speaker Oleksandr Moroz Once Again Suggests to Convene European Security Conference In View Of Transdnestrian Referendum." *Ukrainian National News Agency*, September 19, 2006.

*Reference re Secession of Quebec*, 2 S.C.R. 217 (1998).

"Rezultaty uchastia i golosovania Pridnestrovtsev v referendumah v period 1989-1990 g. [Результаты участия и голосования приднестровцев в референдумах в период 1989-1990 гг.]" *Dnestrovskaya Pravda*, #299, December 12, 1990, [The Results of the Participation and Voting of the Transdnestrian Population in Referenda in the Period of 1989-1990].

"Romania Reasserts Non-recognition of Separatist Actions in Tiraspol." *Rompres*, December 10, 2001.

"Russia Adheres to Territorial Integrity Principle in Transdnistria – Putin." *Ukraine General Newswire*, September 23, 2006.

"Russian MFA Press and Information Comments on Transnistria Election." *States News Service (Moscow)*, December 27, 2011.

"Scrutin Présidentiel en Transnistrie." *Reuters*, December 22, 1996.

"Separatist Wins Fourth Term as President in Transnistria." *Deutsche Press-Agentur*, December 10, 2006.

- "Serghei Gubarev: Utrata Moldovoi statusa neutraliteta ili svoiei gosudarstvennosti privedet k priznaniu nezavisimosti Pridnestrov'a." *Moldnews*, October 30, 2012, [The Loss of Neutrality Status or Its Independent Statehood by Moldova Would Lead to Recognition of Transdnistria's Independence]. <http://moldnews.md/rus/news/52679>
- "Shevchuk Leading in Transdnestrian Elections, after 84% Counted." *ITAR-TASS*, December 26, 2011.
- "Slavic Enclave in Moldova Backs Presence of Russian Troops." *Deutsche Presse-Agentur*, March 27, 1995.
- "Smirnov Re-elected Leader of Renegade Moldova Province." *Deutsche Press-Agentur*, December 11, 2006.
- "Smirnov: Dlea zhitel'ei nashei strany Konstitutsia byla i ostaetsya glavnoi pravovoi normoi, Zakonom sohranenia grajdanskogo mira i solglasia [И.Смирнов: Для жителей нашей страны Конституция была и остаётся главной правовой нормой, Законом сохранения гражданского мира и согласия]." *Olvia-Press*, December 24, 2009. <http://www.olvia.idknet.com/ol228-12-09.htm>
- "Smirnov: Konstitutsia-Glavnyi Zakon strany [Смирнов: Конституция - Главный Закон страны]." *Dnestrovskaya Pravda*, #150, December 24, 1998.
- "Smirnov: Pridnestrovtsy-narod sil'nyi i mujestvennyi [Смирнов: Приднестровцы - народ сильный и мужественный]." *Pridnestrov'e*, #171, September 8, 1998.
- "Smirnov: Stabil'nost' Konstitutsii opredelyaet stabil'nuiu raboty institutov gosudarstvennoi vlasti [Смирнов: Стабильность Конституции определяет стабильную работу институтов государственной власти]." *Olvia-Press*, December 23, 2006. <http://www.olvia.idknet.com/ol208-12-06.htm>

"Statement of Secretary of Foreign Relations of Mexico Estrada, 27 September 1930." (1963).

Whiteman, Digest of International Law.

Statement of the Participants of the "5+2" Consultations about the Resumption of the Work of the 'Permanent Conference on Political Issues in the Framework of the Negotiating Process for Transdniestrian Settlement', signed in Moscow. September 22, 2011.

*Statement on the Political and Legal Grounds for the Creation of the Transdniestrian Moldovan Soviet Socialist Republic [Политические и правовые основания создания Приднестровской Молдавской Советской Социалистической Республики], 1990.*

"Strongman Smirnov Re-elected to Run Renegade Region Trans-Dniestr." *Deutsche Presse-Agentur*, December 10, 2001.

"Time for Independence May Have Passed." *Financial Times*, March 27, 1995.

"Transdniestrian Parliamentary Vote to Follow Republic's Law – Speaker." *Interfax News Agency*, June 21, 2005.

"Transdniestrian President Elect Inaugurated." *ITAR-TASS*, December 30, 2011.

"Transdniestrian President to Follow Republican Independence Line." *RIA Novosti*, December 24, 2001.

"Transdniestrian Presidential Election Well Governed, Democratic - Observers." *ITAR-TASS World Service*, December 25, 2011.

"Transdniestrian Referendum Met Democratic Standards – Lavrov." *Russia & CIS Diplomatic Panorama*, September 19, 2006.

"Transdniestrian Settlement Must Have Support of Local Population – Leader." *Interfax News Service*, December 11, 2005.

*The Treaty of Bucharest*, 1812.

*The Treaty of Iasi*, 1791 (1792).

*The Treaty of Non-Aggression between Germany and the Soviet Union* 1939.

"'Troika' Evrosoyza v Pridnestrov'e ["Тройка' Евросоюза в Приднестровье] ". *Dnestrovskaya Pravda*, #121, October 21, 1999, [European Union's 'Troika' in Transnistria].

Trudovoi Kodeks PMR, N161-3-III (CA3 02-29) [Трудовой кодекс ПМР]. 2002. [TMR Labor Code]

"Tsentrizbirkom Pridnestrov'a utverdil okonchatel'nye itogi presidentskih vyborov [Центризбирком Приднестровья утвердил окончательные итоги президентских выборов]." *Olvia-Press*, December 13, 2006, <http://www.olvia.idknet.com/ol142-12-06.htm>.

"Tuesday Moldavia's Minorities Vote to Quit." *The Independent*, December 3, 1991.

"Turks Recognize the New Nation." *New York Times*, November 16, 1983.

"Turnout in Dniestr Elections Reported over 50 per cent." *Deutsche Presse-Agentur*, December 22, 1996.

"U.S. State Department Official Hopeful for Resolution In Transnistria." *US Fed News (Hindustan Times)*, September 29, 2006.

"Ukraine Describes Transnistrian Elections as Illegitimate." *Ukrainian Independent Information and News Agency (UNIAN)*, December 12, 2006.

"Ukraine Refuses to Acknowledge Transdnistriian Elections." *Russia & CIS General Newswire*, December 13, 2005.

"Ukraine Refuses to Acknowledge Transdnistriian Elections." *Interfax*, December 13, 2005.

"Ukraine Views Presidential Election in Transdnistriia as Illegitimate." *Ukrainian National News Agency*, December 11, 2006.

"The United States on Monday Rejected Independence for Moldova's Transnistrian Region."

*Deutsche Press-Agentur (Washington)*, September 18, 2006.

"V Tiraspole otkrylsea novyi korpus vyezdnoho konsul'skogo obsluzhivania Rossiiskogo posol'stva [В Тирасполе открылся новый корпус выездного консульского обслуживания Российского посольства]." *Novyi Region*, April 16, 2013.  
<http://nr2.ru/pmr/434530.html>

"V Tiraspole proshlo torjestvennoe sobranie, posvyaschennoe Dniu Konstitutsii [В Тирасполе прошло торжественное собрание, посвященное Дню Конституции]." *Olvia-Press*, December 23, 2005. <http://www.olvia.idknet.com/ol159-12-05.htm>

"Valery Litskay: Takogo poneatya kak 'priznanie' ili 'nepriznanie' vyborov v mejdunarodnoi praktike voobshe ne suchestvuet. [Валерий Лицкай: Такого понятия, как «признание» или «непризнание» выборов, в международной практике вообще не существует]." *Olvia-Press*, November 2, 2005. <http://www.olvia.idknet.com/ol14-11-05.htm>

"Vsenarodnyi referendum v Pridnestrov'e sostoitse 17 sentyabrea. V chisle ego voprosov-vozmozhnost' prisoedinenia PMR k Rossii. [Всенародный референдум в Приднестровье состоится 17 сентября. В числе его вопросов – возможность присоединения ПМР к России] ". *Olvia-Press*, July 12, 2006.  
<http://www.olvia.idknet.com/ol79-07-06.htm>

"Vsesoiuznaya perepis' naselenia 1989 g. Natsional'nyi sostav naselenia po respublikam SSSR [Всесоюзная перепись населения 1989 г. Национальный состав населения по республикам СССР]." 1989. [http://demoscope.ru/weekly/ssp/sng\\_nac\\_89.php?reg=9](http://demoscope.ru/weekly/ssp/sng_nac_89.php?reg=9).

"Vstrecha Britanskih diplomatov s Predsedatelem Verhovnogo Soveta Pridnestrov'а [Встреча Британских дипломатов с Председателем Верховного Совета Приднестровья]."

*Olvia-Press*, December 13, 2000. <http://www.olvia.idknet.com/ol43-12-00.html>

*Vtoroy s'ezd narodnyh deputatov SSSR, 12-24 December, 1989: Stenographicheskiy otchet [Второй съезд народных депутатов СССР, 12 - 24 декабря 1989 г.: Стенографический отчет]. [Second Meeting of the USSR Deputies. Records of the Proceedings]. Vol. IV, Moscow: Supreme Council of the USSR, 1990.*

"World Community Must Take Note of Transdnistria Poll – Duma." *Ukraine General Newswire*, September 18, 2006.

*Zakon nr. 109-3-V o gosudarstvennoi granitse PMR [Закон о государственной границе ПМР]*, 2013. June 10. [Law on the TMR State Borders].

"Zayavlenie grupy mejdunarodnyh nabludatelei o resultatah vyborov v Verhovnyi Sovet PMR; Zayavlenie grupy nabludatelei Britanskoi Helskinskoj Gruppy po pravam cheloveka [Заявление группы международных наблюдателей о результатах выборов в Верховный Совет ПМР; Заявление Группы наблюдателей Британской Хельсинской Группы по Правам человека]." *Olvia-Press*, December 10, 2000, [Statement of International Observers on the Results of the Elections to the Supreme Council of the Transdnistrian Moldovan Republic; Statement of Observers from the British Helsinki Human Rights Group]. <http://www.olvia.idknet.com/zaiava.html>

"Zayavlenie Presidenta Pridnestrovskoi Moldavskoi Respubliki [Заявление Президента Приднестровской Молдавской Республики]." *Olvia-Press*, November 25, 2003, [Statement of the President of the Transdnistrian Moldovan Republic] <http://olvia.idknet.com/ol132-11-03.htm>

"Zayvlenie Ministerstva inostrannyh del PMR k Rossii, Ukraine i OBSE s pros'boi vosstanovit' pravo Pridnestrov'a na samostoyatel'noe reshenie voprosov sotsial'no-ekonomicheskogo razvitiya respubliky. [Заявление Министерства иностранных дел ПМР к России, Украине и ОБСЕ с просьбой восстановить право Приднестровья на самостоятельное решение вопросов социально-экономического развития республики]." *Olvia-Press*, September 17, 2001. <http://www.olvia.idknet.com/ol65-09-01.htm>

Ackerman, Bruce A. "Neo-federalism?". In *Constitutionalism and Democracy*, edited by Jon Elster and Rune Slagstad. Cambridge: University Press, 1988.

———. "The Rise of World Constitutionalism." *Virginia Law Review* 83 (1997): 771-97.

Ajemian, Michael. "Territorial Stalemate: Independence of Nagorno-Karabakh Following the Dissolution of the Soviet Union, and Its Lingering Effects Decades Later." *Suffolk Transnational Law Review* 34, no. 1 (2011): 375-402.

Alexander, Larry. "Constitutionalism and Democracy: Understanding the Relation." In *The Supreme Court and the Idea of Constitutionalism*, edited by Steven et al. Krautz, 161-69. Philadelphia: University of Pennsylvania Press, 2009.

Alexander, Larry ed. *Constitutionalism: Philosophical Foundations* Cambridge; New York: Cambridge University Press, 1998.

Alexandrova, Lyudmila. "New Dniester Leader Beats Moscow-backed Rival, but Vows to Be Pro-Russian." *ITAR-TASS World Service*, December 27, 2011.

———. "New Dniester Leader Beats Moscow-backed Rival, but Vows to Be Pro-Russian." *ITAR-TASS World Service*, December 27, 2011.

- Amar, Akhil. "Some New World Lessons for the Old World." *University of Chicago Law Review* 58 (1991).
- Antonova, Svetlana, and Georgy Stoilik. "Elections of the Supreme Council Underway in Trans-Dniestria." *RIA Novosti*, December 10, 2000.
- Assotsiatsia Uchenyh Moldovy im. N.Milesku-Spataru, ed. *Istoria Respubliki Moldova. S drevneishih vremen do nashih dnei [История Республики Молдова. С древнейших времён до наших дней]*. Chisinau, 2002.
- Babilunga, Nikolai. "Istoria Pridnestrovskoi Moldovskoi Respubliki." In *Pridnestrov'e v makroregional'nom kontexte chernomorskogo poberej'yu*, edited by Kimitaka Matsuzato: Hokkaido University, 2008.
- Babilunga, Nikolai, Bomeshko, V.G. [ Бабилунга, Николай, Бомешко, Б.Г.]. *Kniga pamjati zaschitnikov Pridnestrov'a [Книга памяти защитников Приднестровья]*. Tiraspol, 1995.
- Babilunga, Nikolai "Pridnestrovskaya Moldavskaya Respublika: Priznannaya istoriografia nepriznannogo gosudarstva [Приднестровская Молдавская Республика: Признанная историография непризнанного государства]." In *Istoriograficheskiy dialog vokrug nepriznannyh gosudarstv: Pridnestrovie, Nagornyi Karabakh, Armenia, Yujnaya Ossetia I Gruzia [Историографический диалог вокруг непризнанных государств: Приднестровье, Нагорный Карабах, Армения, Южная Осетия и Грузия]*, 18, 2007.
- Babilunga, Nicolai. "Pridnestrovskaya Moldavskaya Respublika: Priznannaya Istoriographia Nepriznannogo Gosudarstva." In *Istoriographicheskiy dialog vokrug nepriznannyh gosudarstv: Pridnestrov'e, Nagornyi Karabakh, Armenia, Yujnaya Osetia i Gruzia* edited by Kimitaka Matsuzato: Slavic Research Center, 2007.



- Babilunga, N.V., and B.G. Bomeshko. *Pridnestrovskiy konflikt: istoricheskie, demoraficheskie, politicheskie aspekty [Приднестровский конфликт: исторические, демографические, политические аспекты]*. Tiraspol: RIO PGU, 1998.
- Backer, Larry Gata. "From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems." *Penn State Law Review* 113, no. 3 (2009): 671-723.
- . "God(s) Over Constitutions: International and Religious Transnational Constitutionalism in the 21st Century." *Mississippi College Law Review* 27 (2008): 11-65.
- Bahcheli, Tozun, Barry Bartmann, and Henry Srebrnik, eds. *De Facto States: the Quest for Sovereignty* London, New York: Routledge, 2004.
- "We're No Worse than Kosovo Say ex-Soviet Separatists." *Baseyev, Kazbek*. 2008, February 18,
- Bassiouni, M. Cherif. "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes'." *Law and Contemporary Problems* 59, no. 4 (1996): 63-74.
- Batt, Judy. "Federalism Versus Nationalism in Post-Communist State-Building: The Case of Moldova." *Regional and Federal Studies* 7, no. 3 (1997): 25-48.
- Beetham, David, ed. *Politics and Human Rights*. Oxford: Blackwell, 1995.
- Berg, Eiki. "Parent States versus Secessionist Entities: Measuring Political Legitimacy in Cyprus, Moldova and Bosnia & Herzegovina." *Europe-Asia Studies* 64, no. 7 (2012): 1271-96.
- . "Pooling Sovereignty, Losing Territoriality? Making Peace in Cyprus and Moldova." *Tijdschrift voor Economische en Sociale Geografie* 97, no. 3 (2006): 222-36.

- Berg, Eiki, and Wim van Meurs. "Borders and Orders in Europe: Limits of Nation- and State-Building in Estonia, Macedonia and Moldova." *Journal of Communist Studies and Transition Politics* 18, no. 4 (2002/12/01 2002): 51-74.
- Berks J., Amy, and Kara Zivin. "Yugoslavia." *American Society of International Law Proceedings* 90 (1996): 471-86.
- Beutz, Molly. "Functional Democracy: Responding to Failures of Accountability." *Harvard International Law Journal* 44 (2003).
- Beyer, John. "Transnistria: In Search of a Settlement for Moldova's Breakaway Region." *St. Anthony's International Review* 6, no. 1 (2010): 165-87.
- Beyme, Klaus von. "Institutional Engineering and Transition to Democracy." In *Democratic Consolidation in Eastern Europe* edited by Jan Zielonka and Alex Pravda, 1: Institutional Engineering Oxford Scholarship Online: 2003.
- Bieber, Roland. "European Community Recognition of Eastern European States: A New Perspective for International Law?". *American Society of International Law Proceedings* 86 (1992): 374-77.
- Binavince, Emilio S. "Canadian Practice in Matters of Recognition." In *Canadian Perspectives on International Law and Organization*, edited by Ronald MacDonald, Gerald Morris and Douglas Johnston. Toronto: University of Toronto Press, 1974.
- Blakkisrud, Helge, and Pål Kolstø. "From Secessionist Conflict Toward a Functioning State: Processes of State- and Nation-Building in Transnistria." *Post-Soviet Affairs* 27, no. 2 (2011): 178-210.
- Bogomolov, Alexander, Igor Semyvolos, Victor Pushkar, and et al. "Transnistria Assessment Mission Report. Transnistrian crisis: human dimension. December 2008 – February

- 2009." (2009), <http://www.peaceportal.org/documents/130276236/a08b7fb3-a8a1-451e-b8f4-526d3c1deca4>
- Bohomolov, A., I. Semyvolos, and D. Pushkar. "The Transnistrian Crisis: The Human Dimension." Center for Near Eastern Studies, (2010), [http://www.uames.org.ua/index.php?option=com\\_content&view=article&id=42:2010-09-06-11-46-32&catid=3:2010-05-23-14-51-23&Itemid=18](http://www.uames.org.ua/index.php?option=com_content&view=article&id=42:2010-09-06-11-46-32&catid=3:2010-05-23-14-51-23&Itemid=18)
- Bomeshko, B.G. "Sravnitel'nyi analiz natsional'noi struktury naselenia MASSR i PMR [Сравнительный анализ национальной структуры населения МАССР и ПМР]." In *Nepriznannaya respublika. Ocherki. Dokumenty. Khronika [Непризнанная республика. Очерки. Документы. Хроника]*, edited by Gryzlov F.V., 34-37. Moskva: RAN, 1999.
- Bomeshko, B.G., *Verhovnyi Soviet Pridnestrovskoi Moldavskoi Respubliki, 1990-2010 [Верховный Совет Приднестровской Молдавской Республики, 1990–2010 гг.]*. Bendery: Poligrafist, 2010.
- Boonstra, Jos. "Moldova, Transnistria and European Democracy Policies." FRIDE, (2007), [http://www.fride.org/descarga/COM\\_Moldav\\_ENG\\_feb07.pdf](http://www.fride.org/descarga/COM_Moldav_ENG_feb07.pdf)
- Bor, Alexandra. "Smirnov Prevailed in Trans-Dniestria." *Russian Press Digest (Izvestia)*, December 10, 2001.
- Borgen, Christopher J. "Imagining Sovereignty, Managing Secession: The Legal Geography of Eurasia's 'Frozen Conflicts'." *Oregon Review of International Law* 9 (2007): 477-535.
- Botan, Igor. "The Negotiation Process as a Way to Postpone the Solution." In *Moldova–Transdnistria: Working Together for a Prosperous Future*, edited by Denis Matveev, Galina Selari, Elena Bobkova and Bianca Cseke, 116-34. Chisinau: Cu drag, 2009.
- Boţan, Igor. *Reglementarea Transnistreană: O Soluție Europeană*. Chisinau: Arc, 2009.

- Bowring, Bill. "The Unexpected After-life of the 'Soviet people'? The 'Pridnestrovskaya Moldavskaya Respublika' as a Political Fact and Legal Anomaly. A case-study.", 2012.
- Brancati, Dawn. "Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?". *International Organization* 60, no. 3 (2006): 651-85.
- Broers, Laurence. "The Politics of Non-Recognition and Democratization." In *The Limits of Leadership: Elites and Societies in the Nagorny Karabakh Peace Process*, 17, London: Conciliation Resources, 2005. <http://www.c-r.org/accord-article/politics-non-recognition-and-democratisation>.
- Brown, Nathan. *Constitutions in a Nonconstitutional World. Arab Basic Laws and the Prospects for Accountable Government*. Albany: State University of New York Press, 2001.
- Brown, Philip Marshall. "The Legal Effects of Recognition." *American Journal of International Law* 44 (1950): 617-40.
- . "The Recognition of New States and New Governments." *The American Journal of International Law* 30, no. 4 (1936): 689-94.
- Brownlie, Ian. *Principles of Public International Law*. 4th ed. Oxford: Clarendon Press, 1990.
- Bruhis, Mihai. *Russia, Romania si Basarabia. 1812, 1918, 1924, 1940*. Chisinau: Universitas, 1992.
- Bruno, Patrick, Phillip Velmot, and Oleg Vernik. *Mezhdunarodnoe pravo i nezavisimost' Pridenstrov'a [Международное право и независимость Приднестровья]*. Bendery: Poligrafist, 2007.
- Bryden, Matt. "State-Within-a-Failed-State: Somaliland and the Challenge of International Recognition." In *States-Within-States: Incipient Political Entities in the Post-Cold War*

- Era*, edited by Paul Kingston and Ian S. Spears, 167-88. New York: Palgrave Macmillan, 2004.
- Buchanan, Allen. "Democracy and Secession." In *National Self-Determination and Secession* edited by M. Moore: Oxford University Press 1998.
- Burian, Alexandr. "Pridnestrovskiy konflikt i perspektivy ego razresheniya: vzglead iz Kishineva [Приднестровский конфликт и перспективы его разрешения: взгляд из Кишинева]." *AVA Portal*, July 19, 2011. <http://ava.md/analytics-commentary/012138-pridnestrovskii-konflikti-perspektivi-ego-razresheniya-vzglyad-iz-kishineva.html>
- Byman, Daniel, and Charles King. "The Mystery of Phantom States." *The Washington Quarterly* 35, no. 3 (2012): 43-57.
- Caplan, Richard. "Conditional Recognition As An Instrument of Ethnic Conflict Regulation: The European Community and Yugoslavia." *Nations and Nationalism* 8, no. 2 (2002): 157-77.
- . *Europe and the Recognition of New States in Yugoslavia*. Cambridge University Press, 2005.
- Caspersen, Nina. "Playing the Recognition Game: External Actors and De Facto States." *International Spectator* 44, no. 4 (2009): 21-34.
- . "Separatism and Democracy in the Caucasus." *Survival: Global Politics and Strategy* 50, no. 4 (2008): 113-36.
- . "States Without Sovereignty: Imitating Democratic Statehood." In *Unrecognized States in the International System*, edited by Nina Caspersen and Gareth Stansfield. USA: Routledge, 2011.

- . *Unrecognized States: the Struggle for Sovereignty in the Modern International System*. Cambridge, UK; Malden, MA: Polity, 2012.
- Caspersen, Nina, and Gareth Stansfield, eds. *Unrecognized States in the International System*. USA: Routledge, 2011.
- Cassese, Antonio. *International Law in a Divided World*. Oxford: Clarendon Press, 1991.
- Chalbysheva, Anna. "Ukraine Not to Recognize Transdnistria's Election." *ITAR-TASS World Service*, December 11, 2006.
- Chebotarenko, L. "Na etape priznaniya [На этапе признания]." *Pridnestrov'e*, #212, November 9, 2001.
- . "Po nelegkomu i ternistomy puti priznania [По нелегкому и тернистому пути признания]." *Pridnestrov'e*, #244, December 12, 2001.
- Chin, Jeff, and Steven D. Roper. "Ethnic Mobilization and Reactive Nationalism: The Case of Moldova." *Nationalities Papers* 23, no. 2 (1995).
- Chirikba, Vyacheslav [Вячеслав Чирикба]. "Gruzia i Abkhazia: Predlozhenia k konstitutsionnoi modeli [Грузия и Абхазия: Предложения к конституционной модели]." Chap. 6 In *Praktika federalizma: Poiski al'ternativ dlea Gruzii i Abkhazii [Практика федерализма: Поиски альтернатив для Грузии и Абхазии]*, edited by Bruno; Darchiashvili Kopiters, David; Akaba Natella [Копитерс, Бруно; Дарчиашвили, Давид; Акаба, Нателла] 387-439. Moskva: Ves' Mir, 1999.
- Chirtoaca, Natalia. "Juridical Study of the Documents Signed in the Course of the Negotiations Process on the Transnistrian Conflict Settlement." Institute for Public Policy, (2001), <http://www.ipp.md/lib.php?l=en&idc=162&year=&page=2>

- Chorev, Matan. "Complex Terrains: Unrecognized States and Globalization ". In *Unrecognized States in the International System*, edited by Nina Caspersen and Gareth Stansfield. USA: Routledge, 2011.
- Cioranescu, George. *Basarabia, Pamant Romanesc*. Bucuresti: Fundatia Culturala Romane, 2002.
- Closson, Stacy. "What Do Unrecognized States Tell Us about Sovereignty? ." In *Unrecognized States in the International System*, edited by Nina Caspersen and Gareth Stansfield. USA: Routledge, 2011.
- Cojocaru, Gheorghe. "Cauzele Separatizmului Politic si Teritorial al Republicii Moldova ". *Destin Romanesc. Revista de Istorie si Cultura*, no. 2 (2001): 127-33.
- . *Separatismul in Slujba Imperiului*. Chisinau: Civitas, 2000.
- Commission on Security and Cooperation in Europe: U.S. Helsinki Commission*. "Moldova: The Growing Pains of Democracy." (2012). Federal News Service Washington D.C. [http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewTranscript&ContentRecord\\_id=519&ContentType=H,B&ContentRecordType=B&CFID=76145530&CFTOKEN=83590937](http://www.csce.gov/index.cfm?FuseAction=ContentRecords.ViewTranscript&ContentRecord_id=519&ContentType=H,B&ContentRecordType=B&CFID=76145530&CFTOKEN=83590937)
- Commonwealth Head of Government Meeting*. "Durban Communiqué of the Commonwealth Head of Government Meeting held in Durban, South Africa." (1999, November 12-15). [http://www.thecommonwealth.org/document/181889/34293/35232/35247/the\\_durban\\_communique\\_\\_november\\_1999.htm](http://www.thecommonwealth.org/document/181889/34293/35232/35247/the_durban_communique__november_1999.htm)
- Conference on Security and Cooperation in Europe*. "Helsinki Final Act." (1975).
- Conference on Security and Co-operation in Europe (CSCE)*. "Charter of Paris for a New Europe." (1990).

Conference on Security and Cooperation in Europe (OSCE) Mission to Moldova. "Report No. 13 by the CSCE Mission to Moldova." (1993).

*Conference on Yugoslavia Arbitration Commission.* "Opinion No. 4 on International Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States." (1992, January 11). *International Legal Materials* 31. 1501-03.

———. "Opinion No. 5 on the Recognition of the Republic of Croatia by the European Community and its Member States." (1992, January 11). *International Legal Materials*. 31. 1503-05.

———. "Opinion No. 6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States." (1992, January 11). *International Legal Materials*. 31. 1507-12.

———. "Opinion No. 7 on International Recognition of the Republic of Slovenia by the European Community and its Member States." (1992, January 11). *International Legal Materials*. 31. 1512-17.

———. "Opinions on Questions Arising from the Dissolution of Yugoslavia." (1992). *International Legal Materials*. 31. 1488.

*Congress of Berlin.* "The Treaty of Berlin." (1878).

<http://archive.org/stream/mapofeuropebytre04hert#page/2758/mode/2up>

Cooley, Alexander, and Lincoln A. Mitchell. "Abkhazia on Three Wheels." *World Policy Journal* (2010): 73-81.

———. "Engagement without Recognition: A New Strategy toward Abkhazia and Eurasia's Unrecognized States." *The Washington Quarterly* 33, no. 4 (2010): 59-73.



- Corwin, Edward S. "The Constitution as Instrument and as Symbol ". *American Political Science Review* 30 (1936): 1071-.
- Council of Europe*. "Parliamentary Assembly Recommendations." (2001, April 25). Report of the Political Affairs Committee, Rapporteur: Mrs. Kautto, Doc. 9020, adopted by the Assembly at 12th Sitting.
- Crawford, James. *The Creation of States in International Law*. Oxford: Clarendon Press, 1979.
- Cremona, M. "Enlargement: A Successful Instrument of EU Foreign Policy?". In *European Union Law for the Twenty-first Century: Rethinking the New Legal Order*, edited by T. Tridimas and P. Nebbia. Oxford: Oxford University Press, 2003.
- Crowther, William E., Fedor, Helen. "Moldova." In *Belarus and Moldova: Country Studies*, edited by Helen Fedor. Washington, D.C.: Library of Congress, 1995.
- Culic, Irina. "State Building and Constitution Writing in Central and Eastern Europe after 1989." *Regio-Minorities, Politics, Society (English Edition)*, no. 1 (2003): 38-58.
- Cummings, Richard M. "The Rhodesian Unilateral Declaration of Independence and the Position of the International Community." *New York University Journal of International Law and Politics* 6, no. 1 (1973): 58-84.
- Damrosch, Lori F., Louis Henkin, Sean D. Murphy, and Hans Smit, eds. *International Law: Cases and Materials*. 5th ed: West Publishing, 2009.
- De Wet, Erika. "The International Constitutional Order." *International and Comparative Law Quarterly* 55 (2006): 51-76.
- DeLisle, Jacques. "Law's Special Answers to the Cross-Strait Sovereignty Question." *Orbis* 46, no. 4 (2002): 733-52.

- Devyatkov, Andrei. *Pered vyzovom evropeizatsii: Politika Rossii v Pridnestrovskom uregulirovanii* [Перед вызовом европеизации: Политика России в Приднестровском урегулировании]. Tyumeni: Tyumeni State University, 2012.
- . "Russian Relations with Moldova under a Paradigm of Ambiguity." In *Moldova: Arena of International Influences*, edited by Marcin Kosienkowski and William Schreiber. UK: Lexington Books, 2012.
- Dixon, Martin. *Textbook on International Law*. 4th ed. London: Blackstone Press, 2000.
- Dixon, William J. "Democracy and the Peaceful Settlement of International Conflict." *The American Political Science Review* 88, no. 1 (1994): 14-32.
- Dnestr'yanskii, Ivan. "Pravda i lozh o voine v Pridnestrov'e [Правда и ложь о войне в Приднестровье]." 2011. [http://artofwar.ru/i/iwan\\_d/](http://artofwar.ru/i/iwan_d/).
- Donnelly, Jack. *Universal Human Rights in Theory and Practice*. 2d ed. Ithaca: Cornell University Press, 2002.
- Doorensplee, Renske. "Reassessing the Three Waves of Democratization." *World Politics* 52 (2000): 384-406.
- Doorenspleet, Renske. "Reassessing the Three Waves of Democratization." *World Politics* 52 (2000): 384-406.
- Dore, Isaak I. "Recognition of Rhodesia and Traditional International Law: Some Conceptual Problems." *Vanderbilt Journal of Transnational Law* 13, no. 1 (1980): 25-42.
- Dozer, Donald Marquand. "Recognition in Contemporary Inter-American Relations." *Journal of Inter-American Studies* 8, no. 2 (1966): 318-35.

- Dubinsky, Gregory. "The Exceptions That Disprove the Rule? The Impact of Abkhazia and South Ossetia on Exceptions to the Sovereignty Principle." *Yale Journal of International Law* 34 (2009): 241-56.
- Dubrovin, Denis. "EU Not to Recognize Transnistria's Election." *ITAR-TASS World Service*, December 11, 2006.
- Dugard, John. *Recognition and the United Nations*. Cambridge: Grotious Publications, 1987.
- . "South Africa's Independent Homelands: An Exercise in Denationalization." *Denver Journal of International Law and Policy* 10, no. 1 (1980): 11-36.
- Dugard, John, and David Raic. "The Role of Recognition in the Law and Practice of Secession." In *Secession: International Law Perspectives*, edited by Marcelo G. Kohen. New York: Cambridge University Press, 2006.
- Dujisin, Zoltán. "Breakaway Region Prepares to Reelect a Dictator." *Inter Press Service*, December 6, 2006.
- . "Breakaway Republic Re-Elects Pro-Russian President." *Inter Press Service*, December 12, 2006.
- Duursma, Jorri. *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood*. Cambridge Studies in International and Comparative Law. Cambridge, New York: Cambridge University Press, 1996.
- Elgie, Robert, and Jan Zielonka. "Constitutions and Constitution-Building: A Comparative Perspective." In *Democratic Consolidation in Eastern Europe*, edited by Jan Zielonka, V.1: Institutional Engineering, Oxford Scholarship Online: 2003.
- Elman, Miriam Fendius, ed. *Paths to Peace: Is Democracy the Answer?* Cambridge, MA: The MIT Press, 1997.

Elster, Jon, Claus Offe, Ulrich K. Preuss, Frank Boenker, Ulrike Goetting, and Friedbert W. Rueb. *Institutional Design in Post-Communist Societies: Rebuilding the Ship at Sea*. Cambridge, UK; New York, NY, USA: Cambridge University Press, 1998.

Ester, John, and Rune Slagstad, eds. *Constitutionalism and Democracy*. Cambridge, New York: Cambridge University Press, 1988.

*European Commission*. "Towards the Enlarged Union: Strategy paper and report of the European Commission on the progress towards accession by each of the candidate states." (2002). <http://www.europarl.eu.int/meetdocs/delegations/latv/20021218/04%20EN.pdf>

European Commission, COM/405. "The 2011 Annual Report on the Instrument for Stability to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions." (2012), [http://eeas.europa.eu/ifs/docs/ifs\\_annual\\_report\\_2011\\_workingdoc2\\_en.pdf](http://eeas.europa.eu/ifs/docs/ifs_annual_report_2011_workingdoc2_en.pdf)

*European Community*. Declaration on the "Guidelines on the Recognition of New states in Eastern Europe and in the Soviet Union" and "Declaration on Yugoslavia", December 16, 1991, 1992.

———. "Declaration on Yugoslavia." (1991, December 16).

European Community Conference on Yugoslavia. "Draft Convention (the "Carrington Plan")." (1991, November, 4).

*European Council*. "Conclusions On the principle of conditionality governing the development of the European Union's relations with certain countries of Southern Europe." (1997). EU Bulletin, 4.

———. "Copenhagen Presidency Conclusions." (1993, June 21-22). SN 180/1/93. [http://www.europarl.europa.eu/enlargement/ec/pdf/cop\\_en.pdf](http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf)

———. "The Declaration on Democracy." (1978, April 7). Conclusions of the European Council Session in Copenhagen. 11 European Council Bulletin 3/78.

*European Parliament*. Resolution on Moldova (Transnistria), October 25, 2006.

*European Political Cooperation EPC 91/385*. "Answer to the Question No H-925 by Mr. Cushnahan Concerning Relation with the Soviet Republics." (1991). V.7 European Political Cooperation Documentation Bulletin, 644.

*European Political Cooperation EPC 91/469*. "Statement Concerning the Future States of Russia and Other Former Soviet Republics." (1991). V.7 European Political Cooperation Documentation Bulletin, 772.

*European Political Cooperation EPC 91/472*. "Statement Concerning the Recognition of Former Soviet Republics." (1991). V.7 European Political Cooperation Documentation Bulletin, 773.

*European Union*. "Agenda 2000." (1997). European Union Bulletin Supplement 5/97. [http://europa.eu/legislation\\_summaries/enlargement/2004\\_and\\_2007\\_enlargement/160001\\_en.htm](http://europa.eu/legislation_summaries/enlargement/2004_and_2007_enlargement/160001_en.htm)

———. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2008. Official Journal C 115, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:EN:HTML>.

———. Treaty on European Union (Maastrich Treaty), 1992. Official Journal C 191, <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001>.

*European Union Council*. "Council Conclusions on Moldova." (2004). EU Bulletin. 6. <http://ec.europa.eu>

- . "Council Conclusions on Moldova." (2008). EU Bulletin. 10.  
<http://ec.europa.eu/archives/bulletin/en/200810/p135014.htm>
- European Union Council, 12925/1/06 REV I.* Declaration by the Presidency on behalf of the European Union on the "Referendum" in the Transnistrian Region of the Republic of Moldova 17 September, 2006.
- Eyal, J. "Moldovians." In *The Nationalities Question in the Soviet Union*, edited by G. Smith. London: Longman, 1990.
- Fabry, Mikulas. *Recognizing States: International Society and the Establishment of New States Since 1776*. Oxford, New York: Oxford University Press, 2010.
- Fawcett, J.E.S. "Security Council Resolution on Rhodesia." *British Yearbook of International Law* 41 (1965-1966): 103-21.
- Fawn, Rick. "The Kosovo – and Montenegro – Effects." *International Affairs* 84, no. 2 (2008): 269–94.
- Ficchi, Luisa. "Candidate Countries Facing A Binding Charter of Fundamental Rights: What's New?." *IUS Gentium: Comparative Perspectives on Law and Justice* 8 (2011): 109-21.
- Forsberg, Tuomas. "Explaining Territorial Disputes: From Power Politics to Normative Reasons." *Journal of Peace Research* 33, no. 4 (1996): 433-49.
- Franck, Thomas. "Democracy as a Human Right." *Studies in Transnational Legal Policy* 26 (1994): 73-102.
- Franck, Thomas M. "The Emerging Right to Democratic Governance." *American Journal of International Law* 86, no. 1 (1992): 46-91.
- Friedmann, Wolfgang. *The Changing Structure of International Law*. New York: Columbia University Press, 1964.

- Froltsov, Vladislav. "Belarus: A Pragmatic Approach toward Moldova." In *Moldova: Arena of International Influences*, edited by Marcin Kosienkowski and William Schreiber. UK: Lexington Books, 2012.
- Fruntasu, Iulian. *O Istorie Etnopolitica a Basarabiei: 1812-2002*. Chisinau: Cartier, 2002.
- Galushenko, Oleg. "Pridnestrovskiy konflikt: predystoria protivostoiania [Приднестровский конфликт: предыстория противостояния]." *Anuarul Institutului de Cercetari Interetnice* 4 (2003): 29-34.
- Gardner, Anne-Marie. "Beyond Standards Before Status: Democratic Governance and Non-state Actors." *Review of International Studies* 34, no. 03 (2008): 531-52.
- Gavison, Ruth. "What Belongs in a Constitution?". *Constitutional Political Economy* 13 (2002): 89-105.
- Geldenhuis, Deon. *Contested States in World Politics*. UK: Palgrave Macmillan, 2009.
- Geographic, National. "Somaliland." In *Atlas of the World*. Washington, DC, 2005.
- Getmanchuk, Alyona, Sergiy Solodkyy, Yevhen Yenin, and Kateryna Zarembo. "Scenarios for the Development of the Transnistria Conflict. Challenges to European Security." Institute of World Policy, (2011),
- Ghazarians, Ara. "From Frozen Conflicts to Unrecognized Republics: The de facto States in the Emergent Region of the Post-Soviet States of the South Caucasus." PhD, Fletcher School of Law and Diplomacy, 2007.
- Ginsburg, Tom, and Alberto Simpser. "Introduction." In *Constitutions in Authoritarian Regimes*, edited by Ginsburg Tom; Simpser Alberto: Cambridge University Press, 2013.

- Goebel, Roger J. "The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden." *Fordham International Law Journal* 18 (1994-1995): 1092-190.
- . "Joining the European Union: The Accession Procedure for the Central European and Mediterranean States Featured Article." *Loyola University Chicago International Law Review* 1, no. 1 (2003-2004): 15-54.
- Goldsmith, Jack, and Eric Posner. *The Limits of International Law*. Oxford, New York: Oxford University Press, 2005.
- Goodman, Ryan. *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*. New York: Cambridge University Press, 2012.
- Gordon, Scott. *Controlling the State: Constitutionalism from Ancient Athens to Today*. Harvard University Press, 1999.
- Gosalbo-Bono, Ricardo. "The Significance of the Rule of Law and Its Implications for the European Union and the United States." *University of Pittsburgh Law Review* 72, no. 2 (2010-2011): 229-60.
- Grant, Thomas D. "Defining Statehood: The Montevideo Convention and Its Discontents." *Columbia Journal of Transnational Law* 37, no. 2 (1999): 403-57.
- . *The Recognition of States: Law and Practice in Debate and Evolution*. Westport: Praeger, 1999.
- Grosul, V.Ia., and T.S. Guzenkova. "Pridnestrov'e [Приднестровье]." In *Moldavia: sovremennye tendentsii razvitiia [Молдавия: современные тенденции развития]*, edited by E.M. Kozhokin. Moskva: ROSSPEN, 2004.
- Grosul, V.Ya. *Fenomen Pridnestrov'a [Феномен Приднестровья]*. Tiraspol. , 2000.



- Grosul, V.Ya., N.V. Babilunga, Bomeshko B.G., and et al., eds. *Istoria Pridnestrovskoi Moldavskoi Respubliki [История Приднестровской Молдавской Республики]*. 2 vols. Vol. 1. Tiraspol, 2000.
- Grosul, V.Ya.; Babilunga, N.V.; Bomeshko B.G.; et al, ed. *Istoria Pridnestrovskoi Moldavskoi Respubliki [История Приднестровской Молдавской Республики]*. 2 vols. Vol. 2. Tiraspol, 2001.
- Gryzlov, V.F., ed. *Nepriznannaya respublika. Ocherki. Dokumenty. Khronika [Непризнанная республика. Очерки. Документы. Хроника. Под ред. Грызлова В.Ф., Москва]*. [Unrecognized Republic. Featured Articles, Documents, Chronicles]. 3 vols. Moskva: Rossiiskaya academia nauk, 1997.
- Guboglo, M.N. "Tyazhкое vreamеа konkuriruiuschih identichnostei. Opyt Pridnestrov'a [Тяжкое время конкурирующих идентичностей. Опыт Приднестровья]." In *Nepriznannaya respublika. Ocherki. Dokumenty. Khronika*, edited by V.F. Gryzlov. Moskva: Rossiiskaya academia nauk, 1997.
- Guibernau, Montserrat. *Nation without States: Political Communities in a Global Age*. Cambridge: Polity Press, 2000.
- Gurgulia, Manana. "Democratization in Conditions of A Non-Recognized State." In *Abkhazia in the Context of Contemporary International Relations*. Pitsunda, the Republic of Abkhazia, 2004.
- Gurr, Ted Robert. "Minorities at Risk: A Global View of Ethnopolitical Conflicts." United States Institute of Peace Press, (1993),
- Gusudarstvennaya Duma Rossiiskoi Federatsii. "Predsedatel' Komiteta po delam SNG i svyazyam s sootchestvennikami, A.Ostrovskiy, vstretilsea s deputatami parlamenta

- Pridnestrov'a. [Председатель Комитета по делам СНГ и связям с соотечественниками А.Островский встретился с депутатами парламента Приднестровья]." News Release, 2010, [The Meeting of the Chairman of the Committee on CIS and Relations with Fellow Nationals, A.Ostrovskiy, with MPs of Pridnestrov'a] [http://www.duma.gov.ru/news/273/59562/?sphrase\\_id=875567](http://www.duma.gov.ru/news/273/59562/?sphrase_id=875567).
- Hammarberg, Thomas. "UN Report on Human Rights in the Transnistrian Region of the Republic of Moldova." (2013),
- Harding, Christopher. "Democratic Rights in European Law: Talking Stock at the Close of the 20th Century." *Oregon Review of International Law* 2 (2000): 64-81.
- Hart, H.L.A. *The Concept of Law*. Clarendon Law Series. edited by Joseph Raz and Penelope Bullock. 2 ed. USA: Oxford University Press, 1994.
- Hart, Vivien. "Democratic Constitution Making." United States Institute of Peace, (2003), <http://www.usip.org/files/resources/sr107.pdf>
- Harvey, James, and Gareth Stansfield. "Theorizing Unrecognized States: Sovereignty, Secessionism, and Political Economy." In *Unrecognized States in the International System*, edited by Nina Caspersen and Gareth Stansfield. USA: Routledge, 2011.
- Harzl, Benedikt. "Kosovo in Abkhazia or the Universality of De Facto States." Chap. 6 In *Minorities in South Asia and in Europe*, edited by Samir Kumar Das, 191-223. Kolkata: Madira Sen for SAMYA, 2010.
- Hathaway, Oona A., and Harold Hongju Koh, eds. *Foundations of International Law and Politics*. New York: Foundation Press, Thomson West, 2005.
- Held, David. *Models of Democracy*. Stanford: Stanford University Press, 1987.

- Herd, Graeme P. *Moldova and the Dniestr Region: Contested Past, Frozen Present, Speculative Futures?* : Conflict Studies Research Center, 2005.
- Hill, William H. "Making Istanbul a Reality: Moldova, Russia and Withdrawal from Transdnistria." *Helsinki Monitor* 13, no. 2 (2002): 129-45.
- . *Russia, the Near Abroad, and the West: Lessons from the Moldova-Transdnistria Conflict*. Johns Hopkins University Press, 2012.
- . "Who's Next? Russia's Cat and Mouse Game with Moldova." *Open Democracy*, October 24, 2008. <http://www.opendemocracy.net/article/russia-theme/who-s-next-russia-s-cat-and-mouse-game-with-moldova>
- Hillgruber, Christian. "The Admission of New States to the International Community." *European Journal of International Law* 9, no. 3 (1998): 491-509.
- Hillion, Christophe. "The Copenhagen Criteria and their Progeny." Chap. 1 In *European Union Enlargement: A Legal Approach*, edited by Christophe Hillion, 1-22. Oxford: Hart, 2004.
- Hitchens, K. *Romania 1866-1947*. Oxford: Clarendon Press, 1994.
- Hoch, Tomas. "EU Strategy towards Post-Soviet De Facto States." *Contemporary European Studies* 2 (2011): 69-85.
- Holmes, Stephen. "Precommitment and the Paradox of Democracy." In *Constitutionalism and Democracy*, edited by Jon Elster and Rune Slagstad. Cambridge: Cambridge University Press, 1988.
- Horodetska, Olena. "Moldova Rebel Region Re-elects Pro-Moscow Leader." *Reuters*, December 11, 2006.
- Horowitz, Donald L. "Conciliatory Institutions and Constitutional Processes in Post-Conflict States." *William and Mary Law Review* 49 (2008).

- Huth, Paul K., and Todd L. Allee. *The Democratic Peace and Territorial Conflict in the Twentieth Century*. UK: Cambridge University Press, 2003.
- Ijalaye, David A. "Was 'Biafra' at Any Time a State in International Law?". *American Journal of International Law* 65, no. 3 (1971): 551-59.
- Inter-American Conference on Problems of War and Peace, Mexico City, February 21-March 8, 1945. "Report of the Delegation of the United States of America." U.S. Government Printing Office, (1946),
- International Court of Justice*. Conditions of Admission of a State to Membership in the United Nations, 1948, May 28.
- International Crisis Group. "Moldova: No Quick Fix." (2003), <http://www.crisisgroup.org/en/regions/europe/moldova/147-moldova-no-quick-fix.aspx>
- . "Moldova: Regional Tensions over Transdnistria." (2004),
- . "Moldova's Uncertain Future." (2006),
- Ishiyama, John, and Anna Batta. "The emergence of dominant political party systems in unrecognized states." *Communist and Post-Communist Studies* 45, no. 1–2 (2012): 123-30.
- Ishiyama, John, and Anna Batta. "The Emergence of Dominant Political Party Systems in Unrecognized States." *Communist and Post-Communist Studies* 45 (2012): 123-30.
- Ivanov, V.M. *Konstitutsionnoe pravo Respubliki Moldova [Конституционное право Республики Молдова]*. Chisinau, 2000.
- Jackson, R.H. *Quasi-States: Sovereignty, International Relations and the Third World*. Cambridge: Cambridge University Press, 1990.
- James, Alan. "System or Society?". *Review of International Studies* 19, no. 3 (1993): 269-88.

- Johansson, Andreas. "The Transnistrian Conflict after the 2005 Moldovan Parliamentary Elections." *Journal of Communist Studies and Transition Politics* 22, no. 4 (2006).
- Kabinet Ministrov Ukrainy*. Postanovlenie N112-P, napravlennoe na vypolnenie moldavsko-ukrainskogo soglashenia [Постановление №112-Р, направленное на выполнение молдавско-украинского соглашения] 2006. [The Ukrainian Cabinet of Ministers Act aimed at the implementation of the Moldovan-Ukrainian Agreement]
- Kalder, Mary, and Ivan Vejvoda, eds. *Democratization in Central and Eastern Europe*. London, New York: Printer, 1999.
- Kashin, Vasilii. "Unrecognized Elections Took Place in Time." *Russian Press Digest (Izvestia)*, December 12, 2005.
- Kaufman, S. "Spiraling to Ethnic War: Elite, Masses and Moscow in Moldova's Civil War." *International Security* 21, no. 2 (1996): 108-38.
- Kautz, Steven, Arthur Melzer, Jerry Weinberger, and M. Richard Zinman. "Introduction: The Idea of Constitutionalism." In *The Supreme Court and the Idea of Constitutionalism*, edited by Steven Kautz, Arthur Melzer, Jerry Weinberger and M. Richard Zinman. Philadelphia: University of Pennsylvania Press, 2009.
- , eds. *The Supreme Court and the Idea of Constitutionalism*. Philadelphia: University of Pennsylvania Press, 2009.
- Kay, Richard. "American Constitutionalism." In *Constitutionalism: Philosophical Foundations*, edited by Larry Alexander. Cambridge, New York: Cambridge University Press, 1998.
- Keck, Margaret E., and Kathryn Sikkink. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press, 1998.

- Kelsen, Hans. *The Pure Theory of Law*. Translated by Max Knight. 2d ed. Berkeley: University of California Press, 1967.
- . "Recognition in International Law." *American Journal of International Law* 35, no. 4 (1941): 609-17.
- King, Charles. "The Benefits of Ethnic War: Understanding Eurasia's Unrecognized States." *World Politics* 53 (2001): 524-52.
- . *The Moldovans: Romania, Russia, and the Politics of Culture*. Hoover Institution Press, 2000.
- . *Post-Soviet Moldova*. Iasi: The Center for Romanian Studies, 1997.
- Kingsbury, Benedict. "Claims by Non-State Groups in International Law." *Cornell International Law Journal* 25, no. 3 (1992): 481-514.
- Kingston, Paul, and Ian S. Spears, eds. *States-within-states: Incipient Political Entities in the Post-Cold War Era*. New York: Palgrave Macmillan, 2004.
- Kirby, Mandy. "Breakaway Moldovan Region Holds Unrecognised Presidential Vote." *Global Insight Daily Analysis*, December 11, 2006.
- Kirby, Michael. "Interview to Kommersant Plus." US Department of State: reviewed on April 15, 2008, and released on November 12, 2009, <http://www.state.gov/documents/organization/131943.pdf>
- Kirochko, Konstantin. "Self-proclaimed Russian-speaking Moldavian Republic Votes on Sunday." *Agence France-Presse*, December 23, 1995.
- Kirschner, Nathan P. "Making Bread from Broken Eggs: A Basic Recipe for Conflict Resolution Using Earned Sovereignty." *Whittier Law Review* 28 (2007): 1131-66.

- Kiss, Alexandre Charles, and Mary Frances Dominick. "The International Legal Significance of the Human Rights Provisions of the Helsinki Final Act." *Vanderbilt Journal of Transnational Law* 13, no. 2 (1980): 293-316.
- Kochenov, Dmitry. "Behind the Copenhagen Facade. The Meaning and Structure of the Copenhagen Political Criteria of Democracy and the Rule of Law." *European Integration On-Line Papers* 8, no. 10 (2004): 24 pages <http://eiop.or.at/eiop/texte/2004-010a.htm>.
- Kolossov, Vladimir, and John O'Loughlin. "Pseudo-states as Harbingers of a New Geopolitics: the Example of the Transdniestr Republic (TMR)." In *Boundaries, Territory and Post-modernity*, edited by D. Newman. London: Frank Cass, 1999.
- Kolossov, Vladimir, and Dmitriy Zayats. "Moldova i Pridnestrov'e: natsional'noe stroitel'stvo, territorial'nye identichenosti, perspektivy razreschenia konflikta [Молдова и Приднестровье: национальное строительство, территориальные идентичности, перспективы разрешения конфликта]." *Vestnik Evrazii* 1 (2001): 88-122.
- Kolstø, Pål. *Russians in the Former Soviet Republics*. London: C.Hurst and Co, 1995.
- . "The Sustainability and Future of Unrecognized Quasi-States." *Journal of Peace Research* 43, no. 6 (2006): 723-40.
- Kolstø, Pål, and Malgin Andrei. "The Transnistrian Republic: A Case of Politicized Regionalism." *Nationalities Papers* 26, no. 1 (1998): 103-27.
- Kolstø, Pål, and Helge Blakkisrud. "De Facto States and Democracy: The Case of Nagorno-Karabakh." *Communist and Post-Communist Studies* 45, no. 1-2 (2012): 141-51.
- Kolstø, Pål, Andrei Edemsky, and Natalya Kalashnikova. "The Dniester Conflict: Between Irredentism and Separatism." *Europe-Asia Studies* 45, no. 6 (1993): 973-1000.
- Kondratov, E. "V Moldove mnozhatsea presydeny." *Izvestia*, #286, December 3, 1991.

- Korshak, Stefan. "Renegade Moldovan Province Transnistria Elects New President " *Deutsche Press-Agentur*, December 26, 2011.
- Kosienkowski, Marcin; Schreiber, William, ed. *Moldova: Arena of International Influences*. UK: Lexington Books, 2012.
- Kostovicova, Denisa. "Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective." *International Peacekeeping* 15, no. 5 (2008): 631-47.
- Krasner, Stephen D. "Problematic Sovereignty." In *Problematic Sovereignty: Contested Rules and Political Possibilities*, edited by Stephen D. Krasner. New York: Columbia University Press, 2001.
- . *Sovereignty: Organized Hypocrisy*. Princeton, NJ: Princeton University Press, 1999.
- Krautz, Steven. "On Liberal Constitutionalism." In *The Supreme Court and the Idea of Constitutionalism*, edited by Steven et al. Krautz, 30-49. Philadelphia: University of Pennsylvania Press, 2009.
- Kuromiya, Hiroaki. *Stalin (Profiles in Power)*. Harlow, UK: Longman, 2005.
- Lalos, Dimitrios. "Between Statehood and Somalia: Reflections of Somaliland Statehood." *Washington University Global Studies Law Review* 10 (2011): 789-812.
- Lauterpacht, Hersch. *Recognition in International Law*. Cambridge: University Press, 1947.
- Law, David S., and Mila Versteeg. "The Evolution and Ideology of Global Constitutionalism." *California Law Review* 99, no. 5 (2011): 1163-257.
- Lee, Edward G. "Book Reviews and Notes." *American Journal of International Law* 93, no. 1 (1999): 261-63.



- Leff, Carol Skalnik. "Democratization and Disintegration in Multinational States: The Breakup of the Communist Federations." *World Politics* 51, no. 2 (1999): 205-35.
- Leng, Russell J., and Patrick M. Regan. "Social and Political Cultural Effects on the Outcomes of Mediation in Militarized Interstate Disputes." *International Studies Quarterly* 47 (2003): 431-47.
- Leonid Kozhara. "Seichas vremea prinimat' vernyie reshenia [Сейчас время принимать верные решения]." *Kommersant*, January 20, 2013. <http://kommersant.md/node/12733>
- Letyga, I. "V Pridnestrov'e otmetili Den' Konstitutsii [В Приднестровье отметили День Конституции]." *Olvia-Press*, December 24, 2002. <http://www.olvia.idknet.com/ol106-12-02.htm>
- Libal, Michael. *Limits of Persuasion: Germany and the Yugoslav Crisis, 1991-1992*. Westport: Praeger, 1997.
- Lijphart, Arend. *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* New Haven: Yale University Press, 1999.
- Livezeanu, Irina. *Cultural Politics in Greater Romania: Regionalism, Nation building & Ethnic Struggle, 1918-1930*. Ithaca, London: Cornell University Press, 2000.
- Lloyd, David O. "Succession, Secession, and State Membership in the United Nations." *New York University Journal of International Law and Politics* 26, no. 4 (1993-1994): 761-96.
- Lowe, A.V., and Colin Warbrick. "Current Developments: Public International Law. Recognition of States, Part 2." *The International and Comparative Law Quarterly* 42, no. 2 (1993): 433-42.
- . "Current Developments: Public International Law. Recognition of States. Part 1." *International and Comparative Law Quarterly* 41 (1992): 473-82.

- Lynch, Dov. *Engaging Eurasia's Separatist States: Unresolved Conflicts and De Facto States*. Washington, DC: United States Institute of Peace Press, 2004.
- . "Separatist States and Post-Soviet Conflicts." *International Affairs* 78, no. 4 (2002): 831-48.
- Magen, Amichai. "The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?". *Columbia Journal of European Law* 12 (2006): 383-427.
- Magocsi, Paul Robert. *Historical Atlas of Central Europe*. Rev. and expand. ed. Seattle: University of Washington Press, 2002.
- Mainville, Michael. "Breakaway Vote Boosts Russia's Hand over 'Frozen Conflicts': Province Chooses to Stay Independent of Moldova Kremlin Hopes Raised in Battle of Soviet Alliances." *The Guardian*, September 19, 2006.
- Maresceau, M. "Pre-accession." In *The Enlargement of the European Union*, edited by M. Cremona. Oxford: Oxford University Press, 2003.
- Markedonov, Serghei. "Pridnestrov'e: kak vyiti iz konstitutsionnyh tupikov? [Приднестровье: как выйти из конституционных тупиков?]." *Politcom*, November 19, 2009. <http://www.politcom.ru/9160.html>
- Markedonov, Serguei. "Transnistrie: Le Credo Separatiste." *Politique Internationale*, no. 114 (2007): 249-70.
- Marusiak, Juraj. "The Czech Republic and Slovakia: Partnership with Moldova for Transformation and Europeanization." In *Moldova: Arena of International Influences*, edited by Marcin Kosienkowski and William Schreiber. UK: Lexington Books, 2012.
- Matsuzato, Kimitaka. "From Belligerent to Multi-Ethnic Democracy." *Eurasian Review* 1 (2008): 95-119.

- , ed. *Pridnestrov'e v Makroregional'nom Kontekste Chernomorskogo Poberezh'ia: Sbornik Stateĭ [Приднестровье в Макрорегиональном Контексте Черноморского Побережья: Сборник Статей]*. [Pridnestrov'e v Makroregional'nom Kontekste Chernomorskogo Poberezh'ia: Sbornik Stateĭ ]. Slavic Eurasian Studies, vol. 18: Sapporo: Slavic Research Center, Hokkaido University, 2008.
- Matveev, Denis, Galina Şelari, Elena Bobcova, and Bianca Cseke, eds. *Moldova–Transdnestria: Working Together for a Prosperous Future. Negotiation Process. [In Romanian, Russian and English]*. Chishinau, 2009.
- McGregor, James P. "Constitutional Factors in Politics in Post-communist Central and Eastern Europe." *Communist and Post-Communist Studies* 29, no. 2 (1996): 147-66.
- Meng, Lingqi. "China: Policy toward Moldova under the Influence of Socialism." In *Moldova: Arena of International Influences*, edited by Marcin Kosienkowski and William Schreiber. UK: Lexington Books, 2012.
- Messana, Paola. "Russians in a Breakaway Region of Moldova Voted Massively to Keep Russian Troops." *Agence France-Presse*, March 27, 1995.
- Meurs, Van Wilhelmus. *The Bessarabian Question in Communist Istoriography*. Utrecht University, 1994.
- Michelman, Frank. "Constitutional Authorship." In *Constitutionalism: Philosophical Foundations*, edited by Larry Alexander. Cambridge, New York: Cambridge University Press, 1998.
- Mil'man, Ilya. "Pervaya Konstitutsia Pridnestrov'a zadala strategicheskii vector razvitiia nashego obschstva [Первая Конституция Приднестровья задала стратегический вектор развития нашего общества]." *Diplomaticheskii Vestnik Pridnestrov'a* 5 (2011).

- Milevschi, Octavian. "Romania: From Brotherly Affection with Moldova to Disillusionment and Pragmatism." In *Moldova: Arena of International Influences*, edited by Marcin Kosienkowski and William Schreiber. UK: Lexington Books, 2012.
- Milewicz, Karolina. "Emerging Patterns of Global Constitutionalization: Toward a Conceptual Framework." *Indiana Journal of Global Legal Studies* 16, no. 2 (2009): 413-36.
- Miller, David "Secession and the Principle of Nationality." In *National Self-Determination and Secession* edited by M. Moore: Oxford University Press 1998.
- Ministerstvo Inostrannyh del Rossiiskoi Federatsii. "Interview posla po osobym porucheniam MID Rossii V.M.Nesterushkina o situatsii v Pridnestrov'e agenstvu RIA Novosti [Интервью посла по особым поручениям МИД России В.М.Нестерушкина о ситуации в Приднестровье Агенству РИА Новости]." June 2, 2006, [An Interview of the Ambassador at Large of Ministry of Foreign Affairs V.M.Nesterushkin on Situation in Pridnestrov'e to RIA Novosti Agency]. [http://mid.ru/BDOMP/Brp\\_4.nsf/arh/4A859AC4FE59C287C32571810023D8C7?OpenDocument](http://mid.ru/BDOMP/Brp_4.nsf/arh/4A859AC4FE59C287C32571810023D8C7?OpenDocument)
- . "Interview Sergheya Lavrova [Интервью Сергея Лаврова]." News Release, November 10, 2005, [Interview of Sergei Lavrov] <http://mid.ru>.
- Ministerstvo intostrannyh del PMR. Zayavlenie*, February 19, 2008. [Statement of the TMR's Ministry of Foreign Affairs] <http://mfa-pmr.org/index.php?newsid=378>.
- Ministry of Foreign Affairs and European Integration of The Republic of Moldova. The Declaration on the Issue of Pseudo-Referendum Organized by The Separatist Transnistrian Regime*, made at 625th Meeting of the OSCE Permanent Council, 2006.

- Mitchell, Sara McLaughlin, and Paul F. Diehl. "Caution in What You Wish for: The Consequences of a Right to Democracy." *Stanford Journal of International Law* 48 (2012).
- Moraru, Anton, Roman Alexandru, Mihai Cernencu, and Ion Moiseev. *Anton Moraru, Roman Alexandru, Mihai Cernencu, Ion Moiseev. Istoria Romanilor. Besarabia si Transnistria (1812-1993)*. Chisinau, 1995.
- Moravcsik, Andrew. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization* 54, no. 02 (2000): 217-52.
- Mospanov, A.V. "V Pridnestrov'e zavershaetsea predvybornaya kampania [В Приднестровье завершается предвыборная кампания]." *Olvia-Press*, December 18, 2006. <http://www.olvia.idknet.com/ol59-12-06.htm>
- Mulaj, Klejda. "International Actions and the Making and Unmaking of Unrecognized States." In *Unrecognized States in the International System*, edited by Nina Caspersen and Gareth Stansfield. USA: Routledge, 2011.
- Muntean, Anatolie; Ciubotaru Nicolae. *Romanii de la Est: Razboiul de pe Nistru (1990-1992)*. Bucuresti, 2004.
- Murav'ev, V. "OGRV-Faktor sderjivania vozmojnyh agressorov [ОГРВ-Фактор сдерживания возможных агрессоров]." *Pridnestrov'e*, #189, September 28, 1999.
- Mutua, Makau. *Human Rights: A Political and Cultural Critique*. Pennsylvania: University of Pennsylvania Press, 2008.
- . "The Ideology of Human Rights." *Virginia Journal of International Law* 36, no. 3 (1996).

- Nantoi, Oazu. "Conflictul Transnistrian – Geneza, Evolutie, Perspective." *Destin Romanesc. Revista de Istorie si Cultura*, no. 1 (2003): 47-70.
- . "Cu Privire la Situatiia in Raioanele de Est ale Republicii Moldova." In *Aspecte ale Conflictului Transnistrian (1992-2000)*. Chisinau: Institutul Politicilor Publice, 2001.
- . *The East Zone Conflict in the Republic of Moldova: A New Approach*. Chisinau: Institute for Public Policy, 2002.
- . "Transnistrian Conflict: What Could The European Union and the United States of America Do?" Institute of Public Policy, (2005), [www.ipp.md](http://www.ipp.md)
- Nazaria, Serghei. ""Ob'edinenie" Bessarabii s Rumyniei v svete mejdunarodnogo prava i pozitsia bessarabtsev ["Объединение" Бессарабии с Румынией в свете международного права и позиция бессарабцев]." *Moldovo-pridnestrovskii region*, no. 6 (2010).
- Nedelsky, Jennifer. "American Constitutionalism and the Paradox of Private Property." In *Constitutionalism and Democracy*, edited by Jon Elster and Rune Slagstad. Cambridge: Cambridge University Press, 1988.
- Neukirch, Claus. "Transnistria and Moldova: Cold Peace at the Dniestr ". *Helsinki Monitor*, no. 2 (2001).
- Ninth International Conference of American States, Bogota, Colombia, March 30-May 2, 1948. "Report of the Delegation of the United States of America, with Related Documents." Department of State Publication, Nr.3263,
- Nistor, Ioan Silviu. *Istoria Romanilor din Transnistria*. Galati, 1995.
- Ó Beacháin, Donnacha. "The Dynamics of Electoral Politics in Abkhazia." *Communist and Post-Communist Studies* 45, no. 1–2 (2012): 165-74.

- "Interview with the Chairman of the Supreme Soviet of the Dniestr Republic Grigory Marakutsa." *Official Kremlin International News Broadcast*. September 19, 1991,
- Okoth-Ogendo, H.W.O. "Constitutions Without Constitutionalism: Reflections on an African Political Paradox." In *Constitutionalism and Democracy: Transitions in the Contemporary World*, edited by Douglas Greenberg, Stanley N. Katz, Melanie Beth Oliviero and Steven C. Wheatley. New York: Oxford University Press, 1993.
- O'Loughlin, John, Vladimir Kolossov, and Andrei Tchepalyga. "National Construction, Territorial Separatism, and Post-Soviet Geopolitics in the Transdnierster Moldovan Republic." *Post-Soviet Geography and Economics* 39, no. 6 (1998): 332-58.
- O'Loughlin, John, Vladimir Kolossov, and Gerard Toal. "Inside Abkhazia: Survey of Attitudes in a De Facto State." *Post-Soviet Affairs* 27, no. 1 (2011): 1-36.
- O'Neill, Louis. "Moldova's Recent Elections: Prospects for Change in Europe's Poorest Country." (2009). Commission on Security & Cooperation in Europe: U.S. Helsinki Commission. <http://www.csce.gov>
- Open Society Institute. "Monitoring the EU Accession Process: Minority Protection." (2002), <http://www.opensocietyfoundations.org/reports/monitoring-minority-protection-eu-member-states>
- O'Reilly, Kieran, and Noelle Higgins. "The Role of the Russian Federation in the Pridnestrovian Conflict: An International Humanitarian Law Perspective." *Irish Studies in International Affairs* 19 (2008): 57-72.
- O'Reilly, Kieran, and Noelle Higgins. "The Role of the Russian Federation in the Pridnestrovian Conflict: an International Humanitarian Law Perspective." *Irish Studies in International Affairs* 19 (2008): 57-72.

Orentlicher, Diane F. "Separation Anxiety: International Responses to Ethno-Separatist Claims." *Yale Journal of International Law* 23 (1998).

Organization for Security and Cooperation in Europe. "Annual Reports." (1994-2012),

Orlov, Arkadii. "Administratsia Georga Busha schitaet vybory in Pridnestrovia popytkoi 'destabilizatsii Moldovy.'" [Администрация Джорджа Буша считает выборы в Приднестровье попыткой 'дестабилизации Молдавии']." *RIA Novosti (Washington)*, December 12, 2006.

Owtram, Francis. "The Foreign Policies of Unrecognized States." In *Unrecognized States in the International System*, edited by Nina Caspersen and Gareth Stansfield. NY: Routledge, 2011.

Panici, Andrei. "Romanian Nationalism in the Republic of Moldova ". *The Global Review of Ethnopolitics* 2, no. 2 (2003): 37-51.

*Parlamentul Republicii Moldova*. Hotărîre Nr.117 din 10 iunie cu privire la inițiativa Ucrainei în problema reglementării conflictului transnistrean și la măsurile pentru democratizarea și demilitarizarea zonei transnistrene 2005. [Decision #117 on Ukraine's Initiative for the Transnistrian Conflict Settlement and on Democratization and Demilitarization Measures of the Transnistrian Region]

———. Lege Nr.173 cu privire la Prevederile de Bază ale Statutului Juridic Special al Localităților din Stînga Nistrului (Transnistria), 2005. [Law #173 on the Basic Provisions of the Special Legal Status of Localities from the Left Bank of Nistru (Transnistria)]

Parliament of the Republic of Moldova. "Declaration of Sovereignty." (1990, June 23).

———. "Law on A Special Legal Status of Gagauzia (Gagauz-Eri)." (1994).

———. "Law on Citizenship." (1990).



- . "Law on Languages on the Territory of Moldovan SSR [Lege Nr. 3465 din 01.09.1989 Cu Privire la Functionarea Limbilor Vorbite pe Teritoriul RSS Moldovenesti]." (1989, September 1).
- . "Law on Moldovan as State Language [Lege Nr. 3464 din 31.08.1989 Cu Privire la Statutul Limbii de Stat a RSS Moldovenești]." (1989, August 31).
- Pegg, Scott. *International Society and the De Facto State*. Brookfield: Ashgate, 1998.
- Pelczynska-Nalecz, Katarzyna, Strachota Krzysztof, and Maciej Falkowski. "Para-States in the Post-Soviet Area from 1991 to 2007." *International Studies Review* no. 10 (2008): 370-87.
- Perepelitsa, G.N. *Konflikt v Pridnestrov'e. Prichiny, problemy i prognoz razvitija* [Конфликт в Приднестровье: причины, проблемы и прогноз развития]. Kiev, 2001.  
<http://old.niss.gov.ua/book/Perep/index.htm>.
- Perry, Michael. "What is "the Constitution"?" (and Other Fundamental Questions)." In *Constitutionalism: Philosophical Foundations*, edited by Larry Alexander. Cambridge, New York: Cambridge University Press, 1998.
- "Inauguratsia prezidenta PMR Evghenia Shevchuka 30 December [Инаугурация президента ПМР Евгения Шевчука 30 декабря]." *Pervyi Pridnestrovskiy kanal*. 2011,  
<http://www.youtube.com/watch?v=mktmdKguT0k>
- Peterson, M.J. *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995*. New York: St. Martin's Press, 1997.
- Platitsin, A. "Pravoe delo Pridnestrovia [Правое дело Приднестровья]." *Dniestrovskaya Pravda*, #291, December 12, 1990.

Popescu, Nicu. "Democracy in Secessionism: Transnistria and Abkhazia's Domestic Policies." Open Society Institute, (2006),

Post, Robert. "Democratic Constitutionalism and Cultural Heterogeneity." University of California- Berkeley, Institute of Governmental Studies, 2000.

Pravitel'stvo Rossiiskoi Federatsii. "Sovmestnaya press-konferentsia s Federal'nym kanslerom Germanii Angeloi Merkel po itogam rossiisko-germanskih peregovorov" [Совместная пресс-конференция с Федеральным канцлером Германии Ангелой Меркель по итогам российско-германских переговоров] News Release, June 5, 2010, [Joining Press-conference with Federal German Chancellor, Angela Merkel, Following the Results of Germany-Russia Negotiations] <http://news.kremlin.ru/transcripts/7973>.

Press-slujba Presidenta PMR. "Yevgeny Shevchuk obratil'sya s rech'iu k uchastnikam Konferentsii, posvyashennoi meram po ukrepleniю doveria." News Release, October 30, 2013, [Press Service of the TMR's President. Yevgeny Shevchuk Gave a Speech at the Conference on Confidence-Building Measures] <http://president.gospmr.ru/ru/news/evgeniy-shevchuk-obratilsya-s-rechyu-k-uchastnikam-konferencii-posvyashchennoy-meram-po>.

Press-sluzhba Presidenta PMR. "President PMR vnes na rassmotrenie Verhovnogo Soveta PMR proekt konstitutsionnogo zakona "O vnesenii dopolnenia v Konstitutsiu Pridnestrovskoi Moldavskoi Respubliki"." December 4, 2013, [Press Service of the President of the TMR. TMR's President Submitted to the TMR's Supreme Council a Draft of Constitutional Law "On addition to the Constitution of the Transdnestrian Moldovan Republic"]. <http://president.gospmr.ru/ru/news/prezident-pmr-vnes-na-rassmotrenie-verhovnogo-soveta-pmr-proekt-konstitucionnogo-zakona-o>

- Preuss, Ulrich K. "Constitutionalism." In *Routledge Encyclopedia of Philosophy*, edited by Craig E., 1998.
- . "Equality of States - Its Meaning in a Globalized Legal Order." *Chicago Journal of International Law* 9, no. 1 (2008-2009): 17-50.
- . "Perspectives on Post-Conflict Constitutionalism: Reflections on Regime Change through External Constitutionalization." *New York Law School Law Review* 51, no. 3 (2006-2007): 467-96.
- . "The Political Meaning of Constitutionalism." Chap. 1 In *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, edited by Richard Bellamy. Aldershot: Avebury Publishing, 1996.
- Prevost, Jean-Francois. "Observations sur la Nature Juridique de l'Acte Final de la Conference sur la Securite et la Cooperation en Europe." [In French]. *Annuaire Francais De Droit International* 21 (1977): 129-53.
- Prezident Rossiiskoi Federatsii. "Vstrecha s predstavitel'yami regional'nyh sredstv massovoi informatsii." News Release, November 18, 2008, [Meeting with the Representatives of the Regional Mass-media] <http://news.kremlin.ru/news/2120>.
- Pridham, Geoffrey. *Designing Democracy: European Union Enlargement and Regime Change in Post-Communist Europe*. Hampshire: Palgrave Macmillan, 2005.
- . "European Union Enlargement and Consolidating Democracy in Post-Communist States — Formality and Reality." *Journal of Common Market Studies* 40, no. 5 (2002): 953-73.
- Prihodko, N. "Ev.Levitskiy: Kompromis doljen byt' oboiudnym. Interview Spetsial'nogo predstavitelea Ukrainy v peregovorah [Ев.Левицкий: Компромис должен быть

- обоюдным. Интервью Специального представителя Украины в переговорах]." *Dnestrovskaya Pravda*, #95, August 19, 1999, [Ev.Levitskyi: Compromise must be mutual. Interview of the Ukrainian Special Representative on the Negotiations]
- Protsyk, Oleg. "Moldova's Dilemmas in Democratizing and Reintegrating Transnistria." *Problems of Post-Communism* 53, no. 4 (2006): 29-41.
- . "Representation and Democracy in Eurasia's Unrecognized States: The Case of Transnistria." *Post-Soviet Affairs* 25, no. 3 (2009): 257-81.
- . "Secession and Hybrid Regime Politics in Transnistria." *Communist and Post-Communist Studies* 45 (2012): 175-82.
- "Litsom k litsu. Predsedatel Komiteta Soveta Federatsii po delam SNG Vadim Gustov [Лицом к лицу. Председатель Комитета Совета Федерации по делам СНГ Вадим Густов]." *Radio Svoboda*. October 26, 2008, <http://www.svoboda.org/content/transcript/473674.html>
- Raz, Joseph. "On the Authority and Interpretation of Constitutions: Some Preliminaries." In *Constitutionalism: Philosophical Foundations*, edited by Larry Alexander. Cambridge, New York: Cambridge University Press, 1998.
- Registru Center for State Informational Resources. State Register of Residents. "Statistical Data from the State Register of Residents about People Residing in the Republic of Moldova, by Territorial Administrative Units, as of April 1, 2011." (2011), [http://www.registru.md/stat1\\_ru/](http://www.registru.md/stat1_ru/)
- Reisman, Michael W., and Eisuke Suzuki. "Recognition and Social Change in International Law: A Prologue for Decisionmaking." Chap. 12 In *Toward World Order and Human Dignity*,

- edited by Michael W. Reisman and Burns H. Weston, 403-70. London: Collier Macmillan Publisher, 1976.
- Remler, Philip. "Negotiation Gone Bad: Russia, Germany, and Crossed Communications." *Carnegie Europe*, August 21, 2013. <http://carnegieeurope.eu/2013/08/20/negotiation-gone-bad-russia-germany-and-crossed-communications/gjd2#>
- Rich, Roland. "Recognition of States: The Collapse of Yugoslavia and the Soviet Union." *European Journal of International Law* 4, no. 1 (1993): 36-65.
- Richmond, Oliver P. "States of Sovereignty, Sovereign States, and Ethnic Claims for International Status." *Review of International Studies* 28, no. 2 (2002): 381-402.
- Rojansky, Matthew. "'Frozen' Transnistria Conflict Begins to Thaw." *World Politics Review*, April 17, 2012. <http://carnegieendowment.org/2012/04/17/frozen-transnistria-conflict-begins-to-thaw/a95f>
- Roper, Steven D. "Federalization and Constitution-Making as an Instrument of Conflict Resolution." *Demokratizatsiya* 10, no. 4 (2004): 527-39.
- . "Regionalism in Moldova- The Case of Transnistria and Gagauzia." In *Ethnicity and Territory in the Former Soviet Union: Regions in Conflict*, edited by Jumes; Sasse Hughes, Gwendolyn London: Frank Cass, 2002.
- Rosas, Allan. "State Sovereignty and Human Rights: towards a Global Constitutional Project." In *Politics and Human Rights*, edited by David Beetham, 61-78. Cambridge: Blackwell, 1995.
- Rosen, Keith S. "Federalism in the Americas in Comparative Perspectives ". *University of Miami Intern-American Law Review* 26 (1994).

- Rosenfeld, Michel. "Introduction: Modern Constitutionalism as Interplay Between Identity and Diversity." Chap. Introduction In *Constitutionalism, Identity, Difference, and Legitimacy: Theoretical Perspectives*, edited by Michel Rosenfeld. Durham: Duke University Press, 1994.
- Roslova, Natalya. "Tiraspol Has Conducted Two Referendums And Parliamentary Elections." *Russian Press Digest*, December 26, 1995.
- Roth, Brad. *Governmental Illegitimacy in International Law*. New York: Oxford University Press, 2001.  
<http://www.oxfordscholarship.com.ezproxy.lib.indiana.edu/view/10.1093/acprof:oso/9780199243013.001.0001/acprof-9780199243013-chapter-10>.
- Rothschild, J. . *East Central Europe between the Two World Wars*. Seattle and London: University of Washington Press, 1974.
- Rubinfeld, Jed. "Legitimacy and Interpretation." In *Constitutionalism: Philosophical Foundations*, edited by Larry Alexander. Cambridge, New York: Cambridge University Press, 1998.
- Russian Ministry of Foreign Affairs, SEC.DEL/213/06*. "Russian MFA Information and Press Department Commentary Regarding Referendum in Transdnistria." (September 14, 2006).
- Rybkina, Lyudmila. "Moldova Declares Upcoming Election in Transdnistria Illegal." *RIA Novosti*, December 5, 2001.
- Sadurski, Wojciech. "Postcommunist Constitutional Courts in Search of Political Legitimacy." Law working paper, *EUI LAW* 11(2001): 1-54.

[http://washu.wsoldev.com/harris/conferences/constitutionalconf/Constitutional\\_Courts\\_Leigitimacy.pdf](http://washu.wsoldev.com/harris/conferences/constitutionalconf/Constitutional_Courts_Leigitimacy.pdf).

Sajó, András. *Limiting Government: An Introduction to Constitutionalism*. Budapest, New York: Central European University Press, 1999.

Sanchez, W. Alejandro. "The "Frozen" Southeast: How the Moldova-Transnistria Question has Become a European Geo-Security Issue." *The Journal of Slavic Military Studies* 22, no. 2 (2009): 153-76.

Savchenko, Gennady, and Alexander Sargin. "Transdnistria Voted for Independence and an Alliance with Russia." *Russian Press Digest (Izvestia)*, September 19, 2006.

Schachter, Oscar, and Christopher Joyner, eds. *United Nations Legal Order*. Cambridge: Grotius Publications, 1995.

Scheppele, Kim Lane. "A Constitution Between Past and Future." *William and Mary Law Review* 49 (2008).

Scott, Gordon. *Controlling the State: Constitutionalism from Ancient Athens to Today*. Cambridge: Harvard University Press, 1999.

Senate Foreign Relations Committee. "Testimony of Asif J. Chaudhry." (2008), <http://www.foreign.senate.gov/imo/media/doc/ChaudhryTestimony080619p.pdf>

Senior Nello, Susan, and Karen E. Smith. *The European Union and Central and Eastern Europe: The Implications of Enlargement in Stages*. Aldershot, UK; Brookfield, USA: Ashgate, 1998.

Serebrian, Oleg. *Politosfera*. Chisinau: Cartier, 2001.

*Montevideo Convention on Rights and Duties of States*, 1933.

- Shablienکو, A. "Obsujdaem proekt popravok k kontitutsii, a ne domysly [Обсуждаем проект поправок к Конституции, а не домыслы]." *Dnestrovskaya Pravda*, #123, October 26, 1999, [Lets Discuss the Draft Amendments to the Constitution, Not Suppositions].
- Shaw, Jo. "Postnational Constitutionalism in the European Union." *Journal of European Public Policy* 6 (1999).
- Simão, Licinia. "The Problematic Role of EU Democracy Promotion in Armenia, Azerbaijan and Nagorno-Karabakh." *Communist and Post-Communist Studies* 45, no. 1–2 (2012): 193-200.
- Simmons, Beth. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: University Press, 2009.
- Siruk, Mykola. "Interview of Adriaan Jacobovits de Szeged, the EU Special Representative for the Republic of Moldova: Tiraspol's Current Policy is a Dead End for Transdnistria." *The Day*, #37, November 21, 2006. <http://www.day.kiev.ua/en/article/day-after-day/adrian-jakovits-de-szeged-tiraspols-current-policy-dead-end-transdnistria>
- Slagstad, Rune. "Liberal Constitutionalism and Its Critics: Carl Schmitt and Max Weber." In *Constitutionalism and Democracy*, edited by Jon Elster and Rune Slagstad. Cambridge: Cambridge University Press, 1988.
- Slaughter, Anne-Marie. "Pushing the Limits of the Liberal Peace: Ethnic Conflict and the "Ideal Polity"." In *International Law and Ethnic Conflict*, edited by David Wippman. Ithaca: Cornell University Press, 1998.
- Sloane, Robert D. "The Changing Face of Recognition in International Law: A Case Study of Tibet." *Emory International Law Review* 16 (2002): 107-86.



- Smirnov, I.N. "Predvybornaya programma kandidata v presidenty [Предвыборная программа кандидата в президенты Смирнова И.Н.] ". In *Nepriznannaya respublika. Ocherki. Dokumenty. Khronika* [Непризнанная республика. Очерки. Документы. Хроника. Под ред. Грызлова В.Ф., Москва], edited by V.F. Gryzlov. Moskva: Rossiiskaya academia nauk, 1997.
- Smith, Karen E. "The Evolution and Application of European Union Membership Conditionality." Chap. 6 In *The Enlargement of the European Union*, edited by M. Cremona. Oxford: Oxford University Press, 2003.
- Smith, Rogers. "Judicial Power and Democracy: A Machiavellian View." In *The Supreme Court and the Idea of Constitutionalism*, edited by Steven et al. Krautz. Philadelphia: University of Pennsylvania Press, 2009.
- Smochină, A. "Considerațiuni Teoretice privind Statutul Special al Localităților din Stânga Nistrului." *Legea și Viața* 4 (1999).
- . "Federalizarea Republicii Moldova: Pro et Contra." In *Știința Universitară la începutul Mileniului Trei*, edited by Gh. Postică: Universitatea Liberă Internațională din Moldova, 2002.
- Smolnik, Franziska. "Political Rule and Violent Conflict: Elections as 'Institutional Mutation' in Nagorno-Karabakh." *Communist and Post-Communist Studies* 45, no. 1–2 (2012): 153-63.
- Socor, Vladimir. "Moldavian Parliament Endorses Confederation." In *Radio Liberty Report on the USSR*, 18-20, 1991.

- Solonari, V. "Transdnistria: Old Problems, New Developments." In *Prospects and Risks Beyond EU Enlargement*, edited by Iris Kempe, Wim van Meurs, 195-215: Vs Verlag Fur Sozialwissenschaften, 2003.
- Sovet Federatsii Federal'nogo Sobrania Rossiiskoi Federatsii. "Sergei Mironov: Rossia gotova sodeistvovat' resheniu Pridnestrovskoi problemy [Россия готова содействовать решению Приднестровской проблемы]." News Release, May, 18, 2008, [Serghei Mironov: Russia is ready to contribute to resolution of Transdnestrian problem] <http://council.gov.ru/press-center/news/22027/>.
- Special Committee on European Affairs of the New York City Bar. "Executive Summary: Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova ". *ILSA Journal of International and Comparative Law* 14, no. 2 (2007-2008): 379-90.
- Stanislawski, Bartosz H. (ed.). "Para-States, Quasi-States, and Black Spots: Perhaps Not States, But Not "Ungoverned Territories," Either." *International Studies Review* 10, no. 366-396 (2008): 366.
- Stansifer, Charles L. "Application of the Tobar Doctrine to Central America." *The Americas* 23, no. 3 (1967): 251-72.
- Stavila, Ion. "Evolutia Reglementarii Conflictului Transnistrean." In *Evoluția Politicii Externe a Republicii Moldova (1998-2008)*, edited by Igor Sarov. Chisinau: Cartdidact, 2009.
- Steiner, Henry J., Philip Alston, and Ryan Goodman, eds. *International Human Rights in Context: Law, Politics, Morals*. 3d ed. Oxford, New York: Oxford University Press, 2008.

- Steinsdorff, Silvia von. "Incomplete State Building – Incomplete Democracy? How to Interpret Internal Political Development in the Post-Soviet de Facto States. Conclusion." *Communist and Post-Communist Studies* 45, no. 1–2 (2012): 201-06.
- . "Incomplete State Building – Incomplete Democracy? How to Interpret Internal Political Development in the post-Soviet De Facto States. Conclusion." *Communist and Post-Communist Studies* 45 (2012): 201-06.
- Steinsdorff, Silvia von, and Anna Fruhstorfer. "Post-Soviet De Facto States in Search of Internal and External Legitimacy. Introduction." *Communist and Post-Communist Studies* 45, no. 1-2 (2012): 117-21.
- . "Post-Soviet De Facto States in Search of Internal and External Legitimacy. Introduction." *Communist and Post-Communist Studies* 45, no. 1–2 (2012): 117-21.
- Stepaniuk, Victor. *Gosudarstvennost' moldavskogo naroda: istoricheskie, politicheskie i pravovye momenty [Государственность молдавского народа: исторические, политические и правовые аспекты]*. Chisinau, 2006.
- Sterio, Milena. "A Grotian Moment: Changes in the Legal Theory of Statehood." *Denver Journal of International Law and Policy* 39, no. 2 (2011): 209-38.
- Sunstein, Cass. "Constitutionalism and Secession." *University of Chicago Law Review* 58 (1991).
- . "Constitutions and Democracies: An Epilogue." In *Constitutionalism and Democracy*, edited by Jon Elster and Rune Slagstad. Cambridge: Cambridge University Press, 1988.
- Sweet, Alec Stone. "Constitutionalism, Legal Pluralism, and International Regimes." *Indiana Journal of Global Legal Studies* 16, no. 2 (2009): 621-45.

- . "Judicialization and the Construction of Governance." *Contemporary Political Studies* 32 (1999).
- Szasz, Paul C. "The Bosnian Constitution: The Road to Dayton and Beyond." In *Yugoslavia. American Society of International Law Proceedings 90*, edited by Amy J. Berks and Zivin Kara, 471-86, 1996.
- Talmon, Stefan. *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*. Oxford, New York: Clarendon Press, 1998.
- Tamanaha, Brian. *On the Rule of Law: History, Politics, Theory* Cambridge, UK; New York: Cambridge University Press 2004.
- Tansey, Oisín "Does Democracy Need Sovereignty?". *Review of International Studies* 37, no. 4 (2011): 1515-36.
- Tau, Nicolae. *Politica externa a Republicii Moldova*. Bucuresti, 2000.
- Tierney, Stephen. "In a State of Flux: Self-Determination and the Collapse of Yugoslavia." *International Journal on Minority and Group Rights* 6 (1999): 197-233.
- TMR Supreme Council. "Declaration of Creation of the Transdnestrian Moldovan Republic." (1990).
- Tomescu-Hatto. "Can Federalism Cope with the Challenges of Transnistrian Conflict." In *Weak State, Uncertain Citizenship: Moldova*, edited by Monica Heintz. Frankfurt am Main, Berlin, Bern, Bruxelles, New York, Oxford, Wien, 2008.
- Torop, Oksana. "PSPU Criticizes Ukrainian Authorities for Refusing to Recognize Results of Transdnestria's Referendum." *Ukrainian News Agency*, September 19, 2006.
- Tudoriu, Theodor. "The European Union, Russia, and the Future of the Transnistrian Frozen Conflict." *East European Politics and Societies* 26, no. 1 (2012): 135-61.

Turcanu, Ion. *Republica Moldova Independent*. Chisinau: Stiinta, 2001.

U.S. Bureau of Democracy, Human Rights, and Labor. "The 2001 Country Report on Human Rights Practices: Moldova." (2002),

<http://www.state.gov/j/drl/rls/hrrpt/2001/eur/8304.htm>

———. "The 2001 Country Report on Human Rights Practices: Moldova." (2002),  
<http://www.state.gov/j/drl/rls/hrrpt/2001/eur/8304.htm>

———. "The 2005 Country Report on Human Rights Practices: Moldova." (2006),  
<http://www.state.gov/j/drl/rls/hrrpt/2005/61664.htm>

———. "The 2011 Country Reports on Human Rights Practices: Moldova." (2012),  
<http://www.state.gov/j/drl/rls/hrrpt/2011humanrightsreport/index.htm#wrapper>

———. "Country Report on Human Rights Practices in Moldova." (1996-2011),

U.S. Department of State. "Rose Gottemoeller's Interview." By Virginia Dumitras. *Adevarul Newspaper* (December, 12, 2011), <http://www.state.gov/t/avc/rls/180095.htm>

*U.S. Embassy in Madrid (Spain)*. "State classified document: Spain on Transnistria's Proposed Independence Referendum." (2006).  
<http://wikileaks.org/cable/2006/07/06MADRID1909.html>

*U.S. Embassy in Moscow (Russia)*. "State Classified Document: Transnistria. Independence Referendum." (2006). <http://wikileaks.org/cable/2006/07/06MOSCOW7769.htm>

*U.S. State Department*. "President Bush Welcomes Commonwealth of Independent States, December 25, 1992." 2 Foreign Policy Bulletin 12 (Jan-Apr.1992).

———. "Tom Casey, Deputy Spokesman: USA Rejecting the Independence Referendum in Moldova's Transnistria Region." News Release, 2006, September 18.

———. "United States Disappointed by Latest Transnistria Conflict Talks - Attributes Lack of Progress to Transnistrian Side's 'Obstructive Attitude'." News Release, December 22, 2005.

U.S. White House. "Joe Biden's Speech at Opera House Square, Chisinau, Moldova." News Release, March 11, 2011, <http://www.whitehouse.gov/the-press-office/2011/03/11/remarks-vice-president-joe-biden-chisinau-moldova>.

*UN Doc. S/PV.383*. "Statement of US Representative Philip Jessup to the UN Security Council Regarding the Admission of Israel to the United Nations." (1948, December 2).

*UN General Assembly*. "A/47/60, S/23329, Letter of the Permanent Representative of Belarus to the United Nations Addressed to the Secretary General (Alma Ata Protocols)." (1991, December 27).

———. "Resolution 3237, A/9631." (1974).

———. "Resolution A/RES/2383(XXIII) (Question of Rhodesia)." (1968, November, 7).

———. "Resolution A/RES/31/6A (On the So-called Independent Transkei and Other Bantustans)." (1976, October 26).

———. "Resolution A/RES/51/111 (On Situation of Human Rights in Kosovo) " (1997, March 5).

———. "Resolution A/RES/67/19 (Status of Palestine in the United Nations)." (2012).

———. "Resolution A/RES/2022(XX) (Question on Southern Rhodesia)." (1965, November 5).

———. "Resolution A/RES/2138(XXI) (Question of Southern Rhodesia)." (1966, October 22).

———. "Resolution A/RES/2262 (XXII) (Question of Southern Rhodesia)." (1967, November 3).

- . "Resolution A/RES/2627 (XXV) (Declaration on the Occasion of the 25th Anniversary of the United Nations)." (1970).
- . "United Nations Charter." (1945).
- . "With Admission of Switzerland, United Nation as Family Now Numbers 190 Member States." News Release, GA/10041, September 10, 2002, <http://www.un.org/News/Press/docs/2002/GA10041.doc.htm>.
- . A/2200/XXI. "International Covenant on Economic, Social and Cultural Rights." (1966, December 16).
- . A/Conf.183/9. "Rome Statute of the International Criminal Court." (1998, July 17).
- . A/RES/41/128. "Declaration on the Right to Development." (1986, December, 4).
- . Resolution 2625/XXXV. "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations." (1970, October 24).
- UN Media Monitoring Review*. "The Committee on the Admission of New Members Submits Report on Palestine's Application." (2011, November 11). <http://unispal.un.org/>
- UN Mission in Kosovo*. Standards for Kosovo, 2003. [http://www.unmikonline.org/standards/more\\_info.htm](http://www.unmikonline.org/standards/more_info.htm).
- UN Office of the High Commissioner for Human Rights. "Human Rights Do Not Have Any Borders: Pillay." News Release, February 14, 2013, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12991&LangID=E>.

- UN Secretary-General.* "U.N. Doc. A/47/277, S/24111 An Agenda for Peace Preventative Diplomacy, Peacemaking and Peace-Keeping, delivered to the Members of the United Nations." (1992, June 17). <http://www.un.org/Docs/SG/agpeace.html>
- . UN Doc. A/47/277, S/24111. An Agenda for Peace Preventative Diplomacy, Peacemaking and Peace-Keeping, delivered to the Members of the United Nations, 1992, June 17. <http://www.un.org/Docs/SG/agpeace.html>.
- UN Security Council.* "Resolution S/RES/216 (Southern Rhodesia)." (1965, November 12).
- . "Resolution S/RES/217 (Southern Rhodesia)." (1965, November 20).
- . "Resolution S/RES/277 (Southern Rhodesia)." (1970, March 18).
- . "Resolution S/RES/288 (Southern Rhodesia)." (1970, November 17).
- . "Resolution S/RES/418 (South Africa)." (1977).
- . "Resolution S/RES/554." (1984, August, 17).
- . "Resolution S/RES/745 (Establishing an international interim authority in Cambodia)." (1992, February 28).
- . "Resolution S/RES/771 (Former Yugoslavia)." (1992).
- . "Resolution S/RES/827 (International Criminal Tribunal for the former Yugoslavia)." (1993).
- . "Resolution S/RES/1199." (1998, September 23).
- . "Resolution S/RES/1244 (case of Kosovo)." (1999, June 10).
- . "Resolution S/RES/1338 (Establishing an international interim authority in East Timor)." (2001, January 21).
- . "Resolution S/RES/1589 (Establishing an international interim authority in Afghanistan)." (2005, March 24).



- . "S/2007/168/Add.1 (Comprehensive Proposal for the Kosovo Status Settlement)." (2007).
- . "SCOR, S/PV/383. Israel's Application for Admission to Membership in the United Nations (statement of Philip C. Jessup)." (1948).
- United Kingdom Foreign and Commonwealth Office. "Demise of the Soviet Union, Background Brief (1992)."*
- Vienna Convention on the Law of Treaties, 1969.*
- Ursu, Christian. "Transnistria: Prospects for a Solution." George C. Marshall European Center for Security Studies, (2007).
- US Department of State and the Broadcasting Board of Governors. Office of Inspector General Report of Inspection. Embassy Chisinau, Moldova. "Report Number ISP-I-05-12A."* (2005).
- Vachudova, Milada Anna. *Europe Undivided: Democracy, Leverage, and Integration After Communism.* Oxford: University Press, 2005.
- Vaux, Tony, and Jan Barrett. "Conflicting Interests: Moldova and the Impact of Transdnierstria." Humanitarian Initiatives, (2003),
- Verdery, K. "Civil Society or Nation? "Europe" in the Symbolism of Post-socialist Politics." In *What was Socialism, and What Comes Next?* , edited by K. Verdery. Princeton: Princeton University Press, 1996.
- Verheugen, Gunter. "The Enlargement of the European Union." *European Foreign Affairs Review* 5, no. 4 (2000): 439-44.
- Verhovnyi Sovet PMR. Konstitutsionnyi zakon o vnesenii izmenenii i dopolnenii v Konstitutsiu PRM* [Конституционный закон о внесении изменений и дополнений в

- Конституцию Приднестровской Молдавской Республики, N310-КЗИД], 2000, N310-KZID, June 30. [Constitutional Law on Amendments and Additions into the TMR Constitution] <http://zakon-pmr.com/DetailDoc.aspx?document=62291>.
- . Postanovlenie Nr.579 ot 23 maya O priznanii ryada mezhdunarodnyh dokumentov ramochnymi normami prava na territorii PMR [Постановление №579 О признании ряда международных документов рамочными нормами права на территории ПМР], 2002. [Resolution Nr.579 On Recognition as a Legal Framework of a Set of International Acts on the Territory of the TMR]
- . Postanovlenie №226 ot 22 sentyabrea Ob otnoshenii Pridnestrovskoi Moldavskoi Respubliki k mezhdunarodnym dogovoram i drugim aktam po pravam cheloveka [Постановление Верховного Совета №226 Об отношении Приднестровской Молдавской Республики к международным договорам и другим актам по правам человека], 1992. [Resolution #226 On the Position of the Transdnistriean Moldovan Republic Towards International Treaties and Other Human Rights Acts] <http://mfapmr.org/index.php?newsid=227>.
- . "Vstrecha parlamentariev s Tomasom Hammarbergom [Встреча парламентариев с Томасом Хаммарбергом]." November 6, 2012. <http://www.vspmr.org/News/?ID=6533>
- Zakon №155-3-III ot 17 iulea ob administrativno-territorial'nom ustroistve PMR [Закон №155-3-III об административно-территориальном устройстве ПМР/Law on the TMR Administrative-Territorial Division], 2002.*
- Veselovsky, Andriy. "Referendum in Transdnistria Won't Promote Soon Conflict Regulation." *Ukrainian National News Agency*, September 19, 2006.

- Volkova, A.Z. "Referendумы v kontexte istorii stanovlenia i razvitia demokraticeskikh institutov v Pridnestrov'e (kontz XX-nachalo XXI vv.) [Волкова А.З. Референдумы в контексте истории становления и развития демократических институтов в Приднестровье (конец XX – начало XXI вв.).]" *Diplomaticheskij Vestnik Pridnestrov'a* 5 (2011).
- . *Referendумы v Pridnestrovskoy Moldavskoi Respublike (1989-2006 g.) [Референдумы в Приднестровской Молдавской Республике (1989-2006 гг.)]*. Tiraspol, 2006.
- Volkovetska, Olha. "Ukraine and EU Do Not Recognize Transdnistria Referendum." *Ukrainian News Agency*, September 18, 2006.
- Waldron, Jeremy. "Precommitment and Disagreement." In *Constitutionalism: Philosophical Foundations*, edited by Larry Alexander. Cambridge, New York: Cambridge University Press, 1998.
- Walker, Neil. "European Constitutionalism and European Integration." *Public Law* 2 (1996): 266-90.
- Waters, Christopher. "Law in Places that Don't Exist." *Denver Journal of International Law and Policy* 34 (2006): 401-24.
- Waters, Trevor. "The Republic of Moldova: Armed Forces and Military Doctrine." *Journal of Slavic Military Studies*, no. 2 (1998): 80-97.
- . "Security Concerns in Post-Soviet Moldova." Conflict Studies Research Centre, (2001), <http://www.csrc.ac.uk>
- Waters, Timothy W. "Contemplating Failure and Creating Alternatives in The Balkans: Bosnia's Peoples, Democracy, and the Shape of Self-Determination". *Yale Journal of International Law* 29 (2004).

- Webster, C.K. *Britain and the Independence of Latin America, 1812-1830*. Vol. II, Oxford: Oxford University Press, 1938.
- Weller, Marc. "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia." *American Journal of International Law* 86, no. 3 (1992): 569-607.
- Wetherall, Ben. "Moldovan Separatist Region Overwhelmingly Votes to Unite With Russia." *Global Insight Daily*, September 18, 2006.
- Williams, Andrew. "Conflict Resolution after the Cold War: The Case of Moldova." *Review of International Studies* 25, no. 1 (1999): 71-86.
- Woodward, Susan L. *Balkan Tragedy: Chaos and Dissolution after the Cold War*. Washington, DC: The Brookings Institution, 1995.
- Worster, William. "Law, Politics, and the Conception of the State in State Recognition Theory." *Boston University International Law Journal* 27, no. 1 (2009): 115-71.
- Wylegala, Wendy T. "Book Annotations." *New York University Journal of International Law and Politics* 31, no. 2-3 (1998-1999): 675-78.
- Yakovlev, V.N. "Konstitutsia Moldovy i diplomatische aktsii- osnova nestabil'nosti v Pridnestrov'e [Конституция Молдовы и дипломатические акции - основа нестабильности в Приднестровье]." In *Nepriznannaya respublika*, edited by V.F. Gryzlov. RAN: Moskva, 1997.
- Yavorsky, A. "Obsujdaem proiect popravok v konstitutsiu [Обсуждаем проект поправок в Конституцию]." *Dnestrovskaya Pravda*, #114, October 5, 1999, [The Draft Amendments to the Constitution Are Under Discussions].

Zabarah, Dareg A. "Opportunity Structures and Group Building Processes: An Institutional Analysis of the Secession Processes in Pridnestrovie and Gagauzia between 1989 and 1991." *Communist and Post-Communist Studies* 45 (2012): 183-92.

Zakaria, Fareed. "The Rise of Illiberal Democracy." *Foreign Affairs* (1997): 22-43.

Zolkos, Magdalena. "The Copenhagen Human Rights Criteria and the Relevance of the Post Communist Context." In *Papele del Este: Transiciones poscommistas. From Copenhagen to Copenhagen and Beyond: A Retrospective and Prospective Analysis of the EU Fifth Enlargement*, 26. King's College, London: University of Madrid, 2003.

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## **EDUCATION**

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*Center for Constitutional Democracy,  
Maurer School of Law, Indiana University-Bloomington, IN*  
**Doctor of Philosophy in Law and Social Science** **July 2014**  
Areas studied: Constitutional and International Law

*Poznan Human Rights Center,  
Polish Academy of Sciences, Poland*  
**Diploma in International Protection of Human Rights** **2008**

*University of Warwick, Coventry, United Kingdom*  
**Master of Laws (LL.M.) with merits** **2002**  
Areas studied: Human Rights, Law in Development

*International Independent University of Moldova, Moldova*  
**Bachelor of Laws, top 5% of the class** **1999**  
Areas studied: International Law, Public Administration

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## **CERTIFICATE PROGRAMS**

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*Building Resources in Democracy, Governance and Elections, Moldova*  
**Certificates in Facilitator -Training Course** **2009, 2010**

*Central European University Summer School, Budapest, Hungary*  
**Certificate in Human Rights and Forced Displacement** **2000**

*Council of Europe Centre, Strasbourg, France*  
**Certificate in Minorities Protection** **2000**

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## **PROFESSIONAL EXPERIENCE**

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### **GOVERNMENT**

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**Central Election Committee, Moldova** **2005-2010**  
*Senior Adviser*  
Drafted legal documents; coordinated electoral activities in localities; legal and management support for Committee Members; conducted trainings

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### **TEACHING**

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**Higher School of Anthropology, Moldova** **2002-2010**  
*Senior Lecturer*  
Taught courses of “Legal Anthropology” and “Law and Human Rights” for graduate and undergraduate students

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**NON-PROFIT/NON-GOVERNMENTAL SECTOR**

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**International Foundation for Electoral Systems-Moldova***Legal Consultant***2009**

Provided legal support to IFES, coordinated the relations between IFES and local electoral officers; wrote and edited electoral materials

**“ECO-TIRAS” International Environmental Association-Moldova***Legal Officer***2004-2009**

Drafted a regulation on the relationship between civil society and public authorities; created an environmental legislation database; assisted in capacity building for different stakeholders, including state authorities; raised public awareness on sustainable development

**Soros Foundation-Moldova***Member of Scholarship Selection Committee***2003, 2008**

Served in a selection committee of the OSI/FCO Chevening/ University of Warwick scholarship, reviewed applications, and interviewed the shortlisted candidates

**EveryChild Consortium-Moldova***Senior Legal Expert***2006-2007**

Conducted legal research on the contracting of NGOs/NCOs as service providers; developed the mechanisms for child rights' protections and outsourcing by local public authorities

**Youth Organization of the Helsinki Citizens' Assembly of Moldova***Board Member, Project Coordinator, Legal Officer***1996-2004**

Organized seminars and public opinion polls; coordinated projects on Women's Rights and the Transdnestrian conflict; analyzed research data on the rights of young women and national minorities

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**PUBLICATIONS AND PAPERS**

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*Determinants of Judgments in the the European Court of Human Rights* (with Austin Mitchell), Proceedings of 55th International Studies Association, Toronto, 2014

*A Causal Analysis of Human Rights Violations Based upon Judgments of the European Court of Human Rights, 1959-2010* (with Austin Mitchell) Proceedings of 70th Annual Midwest Political Science Association, Chicago, 2012

*Guide for District Electoral Council* (Russian/Romanian). Chisinau: IFES, 2009

*Environmental legislation of the Republic of Moldova*. (Collection of legal documents in three volumes, Russian/Romanian). Chisinau: Eco-Tiras, 2008-2009

*Outsourcing Social Services by Local Public Authorities to Non-governmental Organizations*. (with C.Newman; Romanian) Chisinau, 2006

*All Human Beings are Created Equal...* The Collage, 2001

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*Ethnic and Racial Prejudices: How to Explain Them?* The Collage, 2000

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## **REGIONAL AND INTERNATIONAL EXPERIENCE**

### ***Regional***

*Peace and Intercultural Dialogue* Workshop (Alliance for Society Advancement, **Georgia**, 2009)

*Dialogs for Conflict Peaceful Transformation* (Studio-Re, **Georgia**, 2009)

*Men and Women Make Gender and Peace Together* (Armenian Centre for Democracy and Peace, **Armenia**, 2008)

*Government- Civil Society Relationships Regional Conference* (ECNL, **Georgia**, 2008)

*Peace and Intercultural Dialogue in Conflict Areas Training course* (NATT, *Georgia*, 2005)

*Environmental Impact of Conflicts* (Federation of Youth Clubs Armenia, **Armenia**, 2004)

*Making Sustainability Tangible Training* (Environmental Youth League, **Ukraine**, 2004)

5<sup>th</sup> Pan-European Conference of Environment Ministers “Environment for Europe” (**Ukraine**, 2003)

### ***International***

*Strategic Use of Aarhus Convention Compliance Procedure Training* (European ECO-Forum, **Switzerland**, 2007)

*Civil Society Law Seminar* (International Centre for Non-for-Profit Law, **Hungary**, 2007)

*Global Review Meeting-Oxfam International Youth Parliament* (Oxfam, **India**, 2006)

*Human Rights as a Tool for Social Change Intergenerational Conference* (The UNESCO Chair & Institute of Comparative Human Rights, **USA**, 2005)

*Youth, Europe, The Future. The Role of Europe in the World Arena and New Variants of Globalization* (Polish Youth Council, **Poland**, 2003)

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## **AWARDS**

Open Society Institute Doctoral Fellows Program	<b>2010-2014</b>
OSCE-ODIHR/Poznan Human Right Centre Scholarship	<b>2008</b>
East European Scholarship The University of Warwick/OSI/British Council	<b>2001-2002</b>
Merit Based Scholarships from Soros Foundation	<b>1998, 1999</b>
Winner at the Inter-Universities Law Contests and Conferences in Moldova	<b>1997, 1998</b>

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## **LANGUAGES**

Russian – native  
English –fluent  
Romanian – fluent  
French – good

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## **MEMBERSHIPS**

American Society of International Law  
Youth Helsinki Citizens’ Assembly of Moldova  
BIOTICA Ecological Society