

## **Acknowledgements**

The Georgian security sector is not a well-documented area. Authoritarian systems are not known for the free flow of qualified information, nor for fostering the type of analysis that lends itself to media where information must be in a concentrated form.

The editors would like to express their deep gratitude to all those who contributed by writing articles and/or translating and/or shaping some of these articles into publishable entities. They regret that not all articles sent in could be accommodated in this publication, and remain convinced that reforms will eventually make the task of reporting on security sector reform and security sector governance a more joyful and less cumbersome undertaking.

The Editors

## Introduction

### Georgian Security Sector Governance after the Rose Revolution

*Philipp H. Fluri and Shorena Lortkipanidze*

Georgia has been on many an observer's mind ever since President Eduard Shevardnadze's regime collapsed. Grave economic and social problems, the "political disillusionment" of the people, grave and ever-increasing systemic corruption and the falsification of the 2003 parliamentary elections eventually led to the "the Rose Revolution" in Georgia – in part by the protégées of Shevardnadze himself.

The new Georgian leadership seems to understand the challenges to be addressed in the near future: conducting free, fair and transparent elections (presidential and parliamentary); fighting corruption and organized crime; revamping government institutions and the civil service, which collapsed or withered under Shevardnadze; attracting honest, competent and educated people to the government; delivering pensions, salaries and other social security payments on time; setting the conditions for economic growth and foreign investment to overcome the deep economic crisis (or rather the fact that macro-economic activity in the free market sense hardly exists); managing a difficult relationship with Russia; attempting territorial reintegration while Russian passports are given to inhabitants of the separatist regions. All these tasks need to be addressed on the short term, but will hardly lead to immediate success.

The new leadership made some first steps, such structural changes as the modification of the Georgian constitution within a few weeks of the revolution. The government also began reforms in the Ministry of Defence, Ministry of Interior, and across entire fiscal administration system. Reforms in education and the decentralization of power are in the progress now.

The change of power alone will not resolve Georgia's systemic problems. The corruption, economic stagnation, energy shortage, uncontrolled borders and relinquished significant territories to separatists movements supported by Russia in Abkhazia and South Ossetia represent great obstacles for the development of the country.

Nor are Georgian and international commentators agreed on their interpretation of the "Rose Revolution". Remarks such as those that suggest the "Georgian revolution may be the model for dissolving dictatorship in other former Soviet republics... Democrats in countries such as Belarus and Turkmenistan may be learning the lessons of Georgia, just as Saakashvili and his friends learned their lessons from the Serbian revolutionaries," are circulating on the international scene. But there are also critical assessments of the revolution and its post-revolution implications.

It will be difficult for Georgia to both overcome and retain some revolutionary spirit. The focus of our interest is security sector and the governance after revolution. In many ways the general security situation of Georgia can be said to have improved after the revolution. But the main issue for Georgian Security Policy and Security Sector Governance is to assess threats and challenges to its security and to design forces and services capable of dealing with these threats and challenges. The situation remains fragile and the requirements to modernize the security sector remains of major importance to the stability of Georgia. Currently the defence planning system remains limited as a National Security Concept has not yet been worked out and decided about. The new system as is implied in the IPAP (Individual Partnership Action Plan with NATO) is being elaborated

The NATO-Georgia relationship is a very important point to be addressed. NATO membership has public support in Georgia. The Parliament of Georgia has already confirmed that membership in NATO is a high priority of Georgian security and foreign policy. On September 13, 2002, the "Resolution on the Beginning of the Process of Accession to the North Atlantic Treaty Organization (NATO)" was passed. The "Interagency Governmental Commission

of Euro-Atlantic Integration”, established by presidential decree, elaborated a “State Program of Euro-Atlantic Integration.” In December 2002 the National Security Council of Georgia approved this programme. The political will to membership in the Euro-Atlantic Structures grew in strength after the Rose Revolution. But again, only political will is not enough for the democratic and economically effective transformation of a country.

In this book we will seek to give a concrete picture of how the security sector in Georgia looks after the “Rose Revolution”. Georgian and international experts will address the issue of post-authoritarian internal security (David Darchiashvili), power elites in Georgia (Zurab Chiaberashvili and Gigi Tevzadze), the legal provisions for the deployment of foreign forces in Georgia: (Mindia Vashakmadze) , the role of regional and international organisations in Georgia (Heidemaria Güter), successes and failures of International Observer Missions (Axel Wohlgemuth), the legal framework of Security Sector Governance in Georgia and its effectiveness (Mindia Vashakmadze), the place of civilians in national security structures and Civil-Military Relations in Georgia (Tamara Pataraiia), military justice and the military service appeals system (Irakli Sesiashvili) and the role of domestic and international NGOs (Duncan Hiscock). The analytical chapters will be joined by Conclusions and Recommendations by Dov Lynch and Antje Fritz

### *Reform as a Process – Status and Prospects*

What, then, have been the major reforms in the security sector since the Rose Revolution, and what can we expect from the Saakashvili government in the future?

The strong political will to implement legal and systemic reforms and to transform the whole political system can play a very important role in the creation of a new security environment in Georgia. On the other hand, for the newly independent state having no democratic tradition, the major goal was and is to establish reliable and effective security structures, to find funding for and to coordinate their activities and to democratically watch and control them. The “Rose Revolution”, which was followed by constitutional changes and fast reform of the so-called “power ministries”, much stressed the need to adapt the laws overseeing and regulating the security sector. The Law “On the Structure and Activity of Executive Bodies” identifies the list of ministries and departments belonging to the security sector:

1. The Ministry of Defence
2. The Ministry of the Interior
3. The Ministry of State Security
4. The State Department of the Border Guard Service
5. The Intelligence Department
6. The Special Service for State Protection

This law, though still in power today, does not address services which still exist in reality. They have been reformed without the legal basis having been created: the State Department of Border Guard was integrated into the Ministry of Interior, the Intelligence Department was incorporated into the Ministry of State Security.

In the constitution of Georgia the division of labour between parliament and executive branch are defined as following:

- The Parliament of Georgia determines the main directions of the country's domestic and foreign policy via standing parliamentary committees, carries out legislative work, adopts state budget, and ensures control over implementation of current tasks.
- The Government of Georgia, as the executive authority, bears responsibility for the activities of state agencies operating in the field of security and defence. It is liable to

provide these agencies with all necessary material resources and funds in accordance with the decisions of the parliament or the decrees of the President within the limits of its constitutional power.

The democratic control of the security sector first of all means parliamentary oversight of the MoD budgets, legislative actions regarding soldiers' rights, and the program of civil education in security related matters. Generally, the exercise of democratic control through parliamentary oversight has improved, with the strongest emphasis on the Ministry of Defence. However, much of the enthusiasm for genuinely parliamentary committee work seems to have vanished since the revolution.

For a better understanding of the current trends in the security sector it will help to review each service within the security sector..

### *Reforms in the Defence Services*

After the revolution the first step towards reforms in the Ministry of Defence was the appointment of a civilian minister of defence. This had for years been one of the main recommendations made by the ISAB (International Security Advisory Board) to the Georgian government.

A Defence Restructuring Process was initiated in March 2004 and addressed personnel and human resources issues in the Armed Forces. The directive is to downsize the Georgian Armed Forces (GAF) from 24000 to 15000. The specific tasks of the restructuring process are:

- Identification of missions of structures and substructures in MoD and GAF;
- Definition of manpower requirements;
- Reorganization of financial management and procurement to meet western standards and put in place corruption measures;
- Identification of current accommodation;
- Identification of the economic effects of downsizing GAF.

The Georgian Ministry of Defence has initiated the drafting of proposals for legal changes in the spheres of the *Law on Defence*, *Law on State Procurement*, *Law on Military Service and Military Compulsory Service*, *Law on the Status of Military personnel*. A short term restructuring process foresees that:

- the MoD transform into a civilian Agency;
- the MoD and General Staff comprise by both civilians and militaries;
- integrated cooperation between the MoD and General Staff be ruled and tasks and responsibilities clearly divided;

Under the new rulings, the Chief of the General Staff becomes Chief of Defence and takes responsibilities over the GAF. The objectives of the reorganisation effort are specified as:

- to establish civilian control of the MoD,
- to streamline the Ministry and General Staff,
- to identify the functions of MoD and GS,
- to eliminate duplications, and improve efficiencies and effectiveness of these services.

At this moment a lot of ambiguities regarding the above mentioned points can be observed: the span of control is too broad, the lines of responsibility, authorisation and

accountability are not clear and well understandable, and the mix of Soviet and Western approaches creates obstacles for the reforming process in MoD and GS. The appointment system is centralized in the Ministry of Defence.

The Ministry of Defence develops the defence policy. It is a political civilian agency. Its key features are:

- Policy planning and programming
- Finance and budget
- Contracts and purchasing
- Audit functions
- Inspector general
- Military legal department/legal adviser
- Mix of political appointees and Career Civil servants
- Mix of civilian and military personnel.

#### *The Ministry of the Interior of Georgia*

The Ministry of Internal Affairs is also in the process of reforming. Objectives of the reform are defined as following:

- To transform the ministry from a police staff structure into the body responsible for the internal policy of the country;
- To reinforce preventive activities of the police;
- To establish partnership between the police and the public;
- To ensure the consistence and gradual implementation of the reform.

The term of “power ministries” is taken from Soviet terminology. The MIA was one of the bases of power of the Soviet (and post-Soviet) regime. The influence of the Soviet legacy is very strong today. The police is one of the services with the lowest regard in the Georgian society. The level of trust towards police is abysmal. The Police are viewed as the most corrupted service in the security. The current transformation process seeks to implement full de-politicisation of the police.

Staff optimisation is a crucial part of the reforming process. Reductions will take place in the first quarter of 2005 in the following services:

- transport police - 50%
- Property protection police - 100%
- Ecology police -100%
- Police Academy - 50%
- Special Purpose Police named after G. Gulua - 33%
- traffic police - 40%
- Tbilisi police - 30%

In the first stage the total number of policemen will be reduced by 32%. There does, however, not seem to be a screening of police to be kept, hired, or laid off, and the uneasy question of who will be a policeman in Georgia based on what merits remains unanswered.

Transformation of the MIA into a civilian body implies the demilitarisation of the so-called Interior Troops and the Border Guard and their conversion into law-enforcement institutions. The Ministry of the Interior was additionally put in charge migration and national

minorities. The responsibility of these services is not fully defined yet. The creation of patrol and criminal police units is one of the impending changes.

The property protection police, medical units in the MIA and the ecological police services are being detached from the MIA.

The central apparatus of the Ministry of Interior is being transformed into the analytical administrative centre. There is a need to create effective analytical service of crime investigation, statistics and forecasting. The system of information collection, distribution and control is to be activated and modernized (computerization and creation of e-government). Donor organisations (such as the Soros Foundation) are very active in assisting Georgia in this regard .

The integration of the Border Guard Department into the Ministry of Interior is a part of the state reforms in Georgia. Reforms began in the independent Border Guard Department in 1998-1999. In a very short time the Department established bilateral relations with Border guard services of many foreign countries. The relationship with Germany is said to be of prime importance. Reform of the Georgian Border Guard service is said to follow the German-Finnish Model.

A Coast Guard Service was created in 2001 with the American assistance. In 2003 a reform of the Coast Guard service was implemented, again with American assistance. The main tasks of this department are:

- The transformation of Border Guard Forces from a military structure into the civilian law enforcement body and the creation of Border Police;
- The creation of a decentralized system of Border management and the realization of structural reorganization according to this principle;
- The creation of a professional education system and contact system;
- The equipment of the Border guard service with modern technologies;
- The transformation to a system of operational legal control;

The integration of Border Guard Department into the MIA has become a fact and now the major goal of this integration process is clarification and streamlining of functions, tasks and responsibilities of each service. The tradition of decentralized governance is very weak in the security sector. The decentralized system of police force management decreases bureaucratic barriers and dilettantism in the system. The functions of the Border guard department in the MIA are defined as following:

- Protection and control of borders by police functions;
- The safety of air and marine ways;
- The safety of railways.

#### *The Ministry of State Security*

The reforms and transformation process also concerns the Ministry of State Security. The independent Intelligence Department was integrated into the Ministry of State Security. The head of this department simultaneously represents the deputy minister of State Security leading intelligence of the country. It could be said that the Ministry is attempting to be more open for the society. One of the deputy ministers is responsible for Public Affairs and relations with Media. The traditional image of this service proves, however, difficult to change.

#### *The Special Service of State Protection*

## After Shevardnadze: Georgian Security Sector Governance

The Special Service of State Protection has only operational functions. The International Security Advisory Board advises to adapt the profile of the service to democratic exigencies. The role of the service is the protection of the head of state and other key elements of the state. Other functions of essentially police nature should be transferred to the Ministry of Interior. The Special Service of State Protection is growing in size to assume new responsibility in pipeline protection..

## Chapter 1

### Georgian Security - Challenged from Within and Without

*David Darchiashvili*

A former Minister for Foreign Affairs of Georgia once declared that only a strong country can have a well defined foreign policy<sup>1</sup>. However, during the period concerned, for the greater part of Georgian society the idea of creating a strong country included the involvement of external and material factors rather than the mobilisation of internal willpower and order. As a result, expectations (which external actors could in fact have assisted more actively) exceeded the mobilisation of internal resources to achieve such ends. In such an inert environment, corruption, government mismanagement and the alienation of ethnic groups living in the country became chronic conditions.

This socio-political/cultural condition represents one of the factors determining the nature of Georgia's external orientation: policy makers try to maintain the country's foreign policy or security alliances so that they will not change the internal politico-economic status quo of the country. As a consequence, corruption, executive weakness, and the xenophobic potential of ethnic and religious relations have been exploited by some Georgians to secure their own interests. For them, nothing should disturb the existing balance of power.

Georgian statehood is in need of stabilisation:

I would not say, that Georgia belongs to a number of 'frustrated' states, but it is very weak. Its weakness undermines Georgia even as a partner for us<sup>2</sup>

The state's weakness has tempted interference from interest groups in Russia and other actors, creating legitimate concerns. The quotation also provides an insight into understanding Georgia's place and role in modern international relations. Georgia's position cannot be measured by the strategic location of the country or by oil pipeline projects attached to it: nor can it be measured by the fact that some politico-military circles in Russia, nostalgic for the Soviet past, closely focus on the southern Caucasus, particularly Georgia. Georgia's disorganised statehood determines the place and role of the country with respect to its neighbours and region as well as other interested states and the world's international organisations.

Not only, therefore, do some Russian interest groups hold Georgia under permanent threat of blackmail, attempting to establish a protectorate over it in one form or another, but, ironically, Georgian political and economic structures assist Russian interests. On the other hand, the help of Western financial institutions which offer the main pillar of external support for Georgia are under constant risk of reduction and/or cessation. Today, the delay of special tranches of World Bank and the International Monetary Fund (IMF) funds allocated for Georgia is usual. In parallel to the United States instigated and led 'Train and Equip' programme (GTEP), there is a prevailing view in political and administrative establishments of the United States that economic-financial assistance to the countries like Georgia should be reduced<sup>3</sup>. Until recently, Washington guarded itself against active interference in the Georgian-Abkhazian and Georgian-Ossetian conflicts and, moreover, did not follow the interests of the Georgian authority in this

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<sup>1</sup> Olga Vasilieva., "The Foreign Policy Orientation of Georgia" *SWP-AP*, 2968, July 1996, p. 7.

<sup>2</sup> US Administration Representative, Forum of the Georgian-American Business-Council "Georgia in 2003 and later," Washington D.C., April 24, 2003.

<sup>3</sup> Interview with Georgian diplomat, December 2002.



question. Consequently, the recent statements of Georgian officials concerning a NATO membership in the near future provoked smiles all round in diplomatic circles.

But here again the problem is not that the interests of the West and, especially, of the United States, represent an illusion. Neither is the central problem related to any fear the West might have in terms of causing irritation to Russia; The main problem, mentioned by Western political circles, is the unreliability of Georgia itself, both in terms of democracy and in terms of the stable construction of statehood.

According to the IMF, the income from state taxes remains very small, amounting to 15% of GDP. According to the World Bank and the European Bank of Reconstruction and Development (EBRD), the business sphere in Georgia is one of the worst amongst the former countries of the Soviet Union<sup>4</sup>. The largest foreign investor of Georgia, AES-TELASI, which has now left the country, regularly faced mass non-payments for electricity and was attacked by populist politicians. As for the government, nothing was done to protect the legitimate interests of the company<sup>5</sup>. Two of the largest air companies connecting Georgia with the world, British Airways and Turkish Airlines, were recently opposed not only by local businesses, but even by the Tax Department and the Parliament. Both airlines consequently ceased flights in April 2003. Whatever the faults of parties in these disputes, the events represented a serious blow for Georgia and its external links. These stories illustrate how the cornerstones of Western policy and values – liberal trade and market economics – have hardly affected Georgia.

The American military programme is one whose implementation results have pleased both parties. However, since independence the Georgian military forces have been crippled by desertion, wasted resources and salary delays. For the American sponsors, the ultimate fate of the ‘Train and Equip’ battalions is a disturbing thought<sup>6</sup>. Consequently, it is necessary to rethink the format of future mutual relations between the battalions and their American partners. The management of the Georgian security and financial sectors leaves an untrustworthy impression. The ability to manage even small military forces is questionable. As a result, the symbol of the sovereignty of the country has de facto become a matter for foreign care and management.

Violation of territorial integrity (attributed in the Abkhaz case to a latent ‘Russian hand’) is seen not so much as a problem of foreign policy as of internal policy. It reflects the absence of ethnic consensus and the collision of various ethno-nationalisms in the territory of Georgia. For many years, people from Tbilisi failed to take an interest in winning the hearts of the Abkhazian shepherd or rural teacher. As a result, they played a role not dissimilar to other actors in the violation of the territorial integrity. Abkhazian and Ossetian nationalisms, proceeding from historical conditions, have consequently developed anti-Georgian, and thus pro-Russian, characteristics.

### *Law, Ideology and Ethnic Realities*

As a member of the Council of Europe, the government of Georgia pursues a pro-Western discourse. The official rhetoric of the government is filled with civil values and individual equality. The Constitution also contains an extensive chapter about the rights of citizens, which is written in the best traditions of European legislation. Nevertheless, in the discourse itself and in the practical actions of the elite, it is clear that the Constitution and official statements intended for Western consumption are one thing and that deeper cultural-ideological layers keep elites captive to and/or aware of the benefits of exploiting ethnic affiliations and stereotypes. Recently, circumstances have been complicated with signs of religious xenophobia and other related

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<sup>4</sup> Paul Neuhans IMF, Presentation on roundtable session on ‘Georgia in 2003 and Beyond’, America-Georgia Business Council, April 24, 2003.

<sup>5</sup> News Agency Caucasus Press. December 5, 2002; News Agency Prime-News, February 10, 2003.

<sup>6</sup> Interview to the Senior Representative of the US administration, April 2003.

struggles which the authorities have not taken any interest in. The authorities of the country do not have a strategic vision or concrete programme of action on inter-reconciliation of ethno-nationalistic, religious preferences and individualist-universal values, unifying the nation by its construction of cultural and political bases. As a result, the potential for conflict is sustained, making reconciliation of the separated Abkhazian and South Ossetian regions difficult and creating grounds for new 'misunderstanding'.

Against a background of ideological fluctuations and poverty, the main social problem is corruption, which, spreading in an imperious vertical line, has underpinned much post-Soviet socio-political life. The phenomena is interconnected and noticeable, particularly in the areas of commerce and in political processes, as illustrated by the process of elections. Whilst the presidential elections of 2000 were distinguished by the scale of falsification, the local elections of 2002 were marred by obvious violence. These occurrences reflected the weakness of the state machinery, a problem created by the lack of restrictions on corruption and criminality, insufficient co-ordination in governmental circles and the very low level of state revenue.

The nature of Georgia's internal problems makes pragmatists in the Russian establishment believe that the Georgian state is only temporary. Such conditions cause doubt amongst those in the US administration of the viability of Georgia and prevent the rendering of substantial assistance. Europeans tend to perceive the southern Caucasus as much further away from Europe politically and culturally than it they are even geographically. Because of this, or because the country is unable to defend itself adequately and unable to provide fundamental rights for its citizens, corruption, organised crime, ideological confusion and structural weakness of the power structures are problems of national security. Many Western security experts, recognizing the complexity of the geopolitics of Georgia, thus consider that its greatest dangers are ultimately internal.

#### *Corruption, Organised Crime and 'War Economy'*

The President of Georgia proclaimed 2002 as the most successful year in the new history of the country. Together with an official statement on the intention to join NATO and the beginning of construction of the Georgian professional army with the help of Americans, Shevardnadze detailed, as signs of success, the decisive steps needed to overcome an economic crisis as well as positive tendencies in the struggle against smuggling and tax collection. As Shevardnadze argued, it was necessary to emphasize definition, by way of constitutional agreement, of the relations between the Orthodox Church and the State. As stated by the President, in 2003, positive tendencies could develop as long as deliberate interference failed to uproot them<sup>7</sup>.

However, the statements of some politicians and officials of a high rank, expert estimations, and data show that the President's statements represented only a desire and not a realistic portrait of the situation. A fundamental problem of internal security was the weakness of the state itself. Despite continuous dialogue from a high-level tribunal on reform of state machinery, its remedial features, power sectors, and the struggle against corruption, there were few visible results.

Just days prior to the President's statement, at the expanded incorporated session of the Security Council and Justice, the Minister of Security, V. Khaburdzania, declared that the criminal situation in Georgia had worsened and that there were criminal-oligarchic groupings in the country. With the disintegration of the USSR, these groups illegally obtained huge sums, capitalized on the distress of the civilian population and fell into 'oligarchic proselytism', buying anything and everything. Khaburdzania did not 'name' names, but noted that such criminal groupings bought architectural buildings, mass media and the strategic assets of the transport and military-industrial complex, becoming financial monopolists with the capacity to blackmail

<sup>7</sup>

Statement on national radio, cited in: *Black Sea Press*, 30<sup>th</sup> December 2002.

representatives of authority.

Khaburdzania touched on the theme of professional criminals in the country. In a number of regions, these criminals are united in clans. They support members of the influential military formation 'Mkhedrioni' active during the period of the civil war. According to the statement of the Minister, authorities of this professional criminal world, so-called 'thieves-in-the-law,' which earlier considered kidnapping a sin, now work in this 'business' with pleasure.<sup>8</sup> Kidnappings are now frequent.

Koba Narchemashvili, who was appointed Minister of Internal Affairs in November 2001, showed a desire to speak about the dramatic character of the situation. In his estimations, the growth of serious crimes was a reality. At the same joint session of the Security Council and the Council of Justice, Narchemashvili noted that 15328 crimes were registered in 2002, and that this exceeded the previous year by 7.7%. During the same period, the growth of serious crimes was at 13%.<sup>9</sup> In February 2003; the official data of the Ministry detailed that crimes had been registered 32 more times than in the same period of the previous year<sup>10</sup>.

The Office of the Public Prosecutor of Georgia presented similarly disturbing data. General Public Prosecutor Nugzar Gabrichidze stated that in almost all regions, the criminal world has tried to intensify its activity<sup>11</sup>. In comparison with 2001, heavy crimes had been committed over 1,057 times more than the previous year. The number of murders and armed assaults had also increased. Furthermore, the First Deputy to the General Public Prosecutor and the Public Prosecutor of Tbilisi declared that of the 32 supervising bodies working in Tbilisi, carrying out 13-14,000 checks annually, practically none had transferred cases to the Office of the Public Prosecutor for follow-up investigation. The Public Prosecutor of Tbilisi noted that, on the one hand, policeman were active in the concealment of crimes, and on the other, the groundless detentions similarly occurred. In 2002, the Office of Public Prosecutor provided evidence of 150 unregistered crimes and 100-150 un-prosecuted murderers in Tbilisi alone.<sup>12</sup>

With this in mind, a rhetorical question arises: what was the basis of the cheerful pre-New Year's statement of the President on overcoming an economic crisis and progressing in the collection of taxes, when the country's criminal situation had invariably worsened and power departments again face the unresolved problem of necessary reform?

A second question concerns the reality of genuine reform by the supreme authority under Shevardnadze. Such appeals for reform were heard repeatedly, and the process is dragged out over years. Replacements within departments did not necessarily result from fundamental system changes. So, for example, the session of December 2002, in its structure, subject matter and overall pathos, resembled the expanded session of the government carried out on September 2001. At the latter session, the Secretary of the newly-created Advisory Body of the President, Coordination Council of an Anticorruption Policy, was Mirian Gogiashvili. In Gogiashvili's statement, the wide scale of corruption, the embezzlement of State funds and the inability of power and law-enforcement departments to overcome these phenomena were all emphasized<sup>13</sup>. Gogiashvili declared, that the ministries had become similar to the commercial enterprises of limited liability (LTD) because officials of a high rank were preoccupied with the lobbying of businesses; there was chaos involved in tax collection and in the expenditure of grants and credits; experts of the United Nations on drug business expressed fears concerning the so-called Caucasian direction and that there was no concerted response to the facts raised by the media. Gogiashvili cited figures, in particular, that in within several months of 2001 only 27% of the

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<sup>8</sup> *Caucasus Press*, Tbilisi, 21<sup>st</sup> December 2002; *Prime News*, Tbilisi, 22<sup>nd</sup> December 2002.

<sup>9</sup> Georgian TV, 21<sup>st</sup> December 2002.

<sup>10</sup> 'Crime Climbs, Increasing Fears, Lessening Confidence Towards the Government', *Civil.ge*, 26<sup>th</sup> February 2003, available at <http://www.civil.ge/eng/article.php?id=3255>.

<sup>11</sup> Georgian TV, 21<sup>st</sup> December 2002.

<sup>12</sup> *Prime News*, 23<sup>rd</sup> February 2003.

<sup>13</sup> *Sakartvelos Respublika*, No. 220, 6<sup>th</sup> September 2001.

petrol consumed in the country was imposed with the official tax, and the situation with other mineral oil and cigarettes was roughly the same.

Gogiashvili spoke of the necessity of system transformation in order to ensure that the struggle against corruption did not take the form of political intrigue. He mentioned that none of the ministries had fulfilled the Decree of the President on primary anticorruption actions, which, from its part, based on the conclusion of the group created earlier in July 2000, developed the basic direction of the anticorruption program.

The proposals developed by these groups assumed concrete steps in the direction of isolation from a policy of management by business into reform, transparency and public control of the law-enforcement sphere. But as it was specified in the statements of Gogiashvili in 2001, and also his above-stated successor at the end of 2002, until recently the matter to an essence had not really moved. Extraneous observers echoed the same concern; interesting anticorruption offers, in which is meant also eradication of a lack of the legislation, basically remained at the level of projects, declared George Soros in June 2002<sup>14</sup>.

A great number of commissions and projects (in 2001 two more state commissions were added in the sphere of defence, security and legal assistance)<sup>15</sup> showed authority and the President showed concerns for the developing situation. It became impossible to completely ignore the media, or the opposition growing both domestically and internationally. Even if it was not be so, the existing deficit of the budget and its continuous sequestration demonstrated that corruption, smuggling and other forms of criminality put the possibility of an existence of a State in serious doubt.

In judging the results of the Commission's level of implementation, a certain impression remains - that authorities either did not know what particularly to undertake, or that everything that was embarked on, tactically speaking, was done so blindly, in order to escape from problems and in the hope of gaining time. The commissions were varied, as were their final product, from the point of view of concepts and bills, with varying levels of non-competitiveness and incompleteness.

In recent years, the State Minister, Ministers of Internal Affairs and Security, the General Public Prosecutor, the Minister of Finance and the heads of tax and customs departments were replaced. Externally, the reason for personnel changes rested with the untenable social, economic and criminal situation of the country. These changes were linked to the need for urgent reform of the state structures. The new staff expressed such hopes and promises and certainly, amongst members of the independent media and society, staff enjoyed a certain level of trust. The new Minister of Security, Valery Khaburdzania, was for instance, free from accusations that he was involved in the smuggling or bribery familiar to his predecessor or to the former Minister of Internal Affairs.

However, many present officials of a high rank do not use such images, and despite the evident improvements in the system, it is not realistic to assume that the cabinets of security and finance are immune to illegal financial deals. In light of this, it has to be said that, for the new staff, the reformatory pathos was gradually lost. Doubts in their professionalism and adherence to principles emerged. In summer 2003, the budget was faced with the necessity of sequestering many millions, that showed the still continuing non-payment of taxes, non-accountability or

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<sup>14</sup> George Soros's statement on air of TV company Rustavi-2, on 20<sup>th</sup> June 2002.

<sup>15</sup> On 20<sup>th</sup> July 2001 under the order of the President at the Council of National Security, the interdepartmental commission on studying and improving the legislation of the military sphere headed by the Minister of Justice was created. In December 2001, again under the order of the President, at the Council of National Security the interdepartmental commission developing the offers of the institutional reform of the bodies of the systems of security and law-enforcement were created, to be headed by the Chairman of the Supreme Court. In the same order it was mentioned, that the commission should take into account the views of the European Union. Here it is necessary to note, that since 1996, the commission developing the concept of national security was functioning. It is considered to be existing up until today.

corruption, behind which again stood non-State pathos of government officials, impunity of criminals and corruption.

All this brings us to the conclusion that, in Georgia, formation of oligarch clans has been promoted, which has effectively transformed into fiction the legislative differentiation between political and economic sectors, principles of leadership of the law and the constitutional equality of citizens. Different forms of organised crime are obvious. On the one hand, it is shown in the squandering of budgetary funds, in the widespread corruption among officials and amongst the various political echelons. In the business-sector, the shadowy inter-relations and smuggling prevail. There exists also elements of the so-called economy of conflict. Finally, behind the official political-economic facade of Georgia, the contours of a mounting mafia-State pierce through.

In research and in the policy of security, more attention has been paid to such phenomena. Concerning a number of the developing post-Soviet countries, criminal activity has been raised to the rank of national threat<sup>16</sup>. The matter is not only that these phenomena are characterized by an alliance with the modern global threat of terrorism and creation fertile grounds for it. Probably, the matter will not reach conception, however, corruption and organised crime together can undermine the basis of the most important institutions of the constitutional structure.

One of the intermediate consequences of this is the Georgian ‘war economy’ and so-called ‘mafia-dominated state’. In an economy of war, there is a fusion of roles between the policy maker, the military leader, the businessman and those of the criminal world<sup>17</sup>. In such situations, military actions and the ‘preservation’ or ‘freezing’ of conflicts becomes for many an end in itself. In explosive situations, an uncontrolled circulation of weapons enrich certain circles and the state finds difficulty resisting these dynamics. The control over public life passes to ‘persons with guns’.

Usually a monopolised duty of the state, Georgian state structures and mafia groups divide among themselves security ‘business’ and, most probably, their activities are interrelated. In some cases, the state and the mafia share the protection business and perhaps even have overlapping membership<sup>18</sup>. As a result, a mafia-dominated state has emerged.

In such cases there is an atrophy of public services and political machinery through its mixture with the criminal world. Laws are replaced with unwritten norms, which, mixed together’ cause occasional ‘explosions’ of violence. Society is threatened not only by poverty and lawlessness, but by a degradation of its values whereby public groups are replaced by the consolidated clientelist networks.

Such a state fails to care for the safety of its citizens, there is no so called human security involved, and in modern conditions, when the principles of human rights and cooperative mutual relations between countries are global imperatives, such a state is doomed for internal cataclysms and external complications. Financial assets and its accumulation and optimal distribution cannot be fulfilled by criminal systems which are focused on the momentary interests of separate clans.

In the bowels of the political and economic system of Georgia there are civil spaces, the rule of law, and a market economy. Not all serving civil servant or politicians are corrupt; the aforementioned parliamentary commissions, sessions, and meetings of ministers and parties testify to this. However, the fact that the share of the shadow economy in the GSP of Georgia

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<sup>16</sup> Chris Donnelly, “Rethinking Security”, *NATO Review 2000-2001*, Vol. 48, Web edition, p. 33. <http://www.nato.int/docu/review/2000/0003-08.htm>

<sup>17</sup> Jan Davis, Chrissie Hirst and Bernardo Mariani, “Organised Crime, Corruption and Illicit Arms Trafficking in an Enlarged EU: Challenges and Perspectives,” *Saferworld Research Report: Small Arms and Security in EU Associate Countries*, December 2001, p. 26. Available at <http://www.saferworld.co.uk/Organised%20crime.pdf>

<sup>18</sup> Sisan Rose-Ackerman, *Corruption and Government, Causes, Consequences, and Reform*, (Cambridge: Cambridge University Press, 1999), p. 121.

totals 66%, and that the illegal turnover in building, hotel and restaurant business exceeds 80% indicates that corruption is entrenched and that the state is weak.<sup>19</sup> Only in fuel exports was the share of smuggling 80%<sup>20</sup>, which specifies the dominance of clan and mafia relations in economic field.

A number of sectors of the political and economic life of Georgia, and also some regions of the country, in essence, have left the legislative space. The clannish-corrupt inter-relations and organised crime instead dominate them. The arbitrariness with which the country and economy was managed in the first half of 1990s, the civil war and ethnic conflicts created this situation. The country was turned into an arena for the excesses of armed formations and ‘brotherhoods’. Although a ‘national’ history returned to Georgia in the form of its independence, it developed a non-democratic shape inspired by globalization, Soviet inertia and revived, liberated forces from an agrarian-feudal culture. The disputed ownership of the economy – formal or informal - was formed in this background of national patriotic rhetoric.

In the cessation of hostilities with secessionists in the middle of the 1990s allowed Shevardnadze, who had earlier named leaders of some uncontrolled formations as his friends and power-sharers, to consolidate his own authority. In 1995, the new constitution was passed and some of the armed figures of the previous years were arrested. In society in general, there was hope for free market relations and the country became a recipient of the World Bank and IMF assistance. Very quickly, however, it was clear that the phantoms of the chaotic past had not been expelled. New civil authorities consolidated themselves with presidential powers, gradually driving society into its clannish-oligarch mode.

The remaining Soviet-era *nomenklatura* also found a second wind at this time. The mixture of an illegal, predatory form of privatisation of former public and state property - party funds, factories, hotels and restaurants, sport complexes, sanatoria, earth grounds, banks – allowed everything to fall into the hands of former ‘red’ directors, party and Soviet bosses and heads of departments either indirectly or directly through their protégés and relatives. The population was handed left with devaluated vouchers. After independence, the name of the Communist Party became the property only of marginal old age members and fanatics. But the ruling elite, under the direction of the President, later appeared, to a great extent, to be composed of former leaders of the communistic nomenclature and *komsomol* of Georgia. There were also younger people among them, including the staff of national movements and the sons and relatives of former party bosses.

The influence of the main clan reached across a significant part of the region. A number of regions are characterized by independent oligarchic dynamics. An example was Ajara with its leader Aslan Abashidze implementing personal rule, where his relatives acted as local authorities. However, the Tbilisi elite and family of Shevardnadze appear disposed to the centralization of the structures of authority where possible and to participating in the privatisation of central objects in the country. From this, the most successful step was made in the direction of Poti by the father of Shevardnadze’s daughter-in-law, Akhvlediani. Today, his interests dominate Poti’s port. By all accounts, the Georgian authority does not differ from a number of other post-Soviet pyramid power-dynamics<sup>21</sup>.

As with the leaderships of other post-Soviet countries, the activities of Shevardnadze’s family followed an amalgamation of policy with economic interests. The role and influence of

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<sup>19</sup> Alexander Tvalchrelidze, “Shades of Georgian Economy”, *CaucasUS Context*, No. 1, 2003, p. 76.

<sup>20</sup> Ken Stier, “Report Details Failures in Georgian Petroleum Tax Collection”, *Eurasianet.org Business and Economics*, 10<sup>th</sup> December 2002. Available at: <http://www.eurasianet.org/departments/business/articles/eav120202.shtml>

<sup>21</sup> About Georgian political-economic clans and a kernel consisting of the family of the President see: “*Akhali versia*” (the New version) 1<sup>st</sup>-7<sup>th</sup> April 2002 For comparison on the politico-economical system of Russia see V. V. Fedorov, A. M. Tsuladze, *Epokha Putina: Zagadki i taini Kremliia*, (The Epoch of Putin) (Moscow: Eksmo, 2003) (in Russian).

the family interfered seriously with personnel policy. Under the law on the incompatibility of interests in public service and corruption no one had a right to conclude commercial deals with relatives. The legislation forbade officials and Parliament members from combining the management of commercial structures. Naturally, corruption was inadmissible as was any other non-purpose use of State posts. The President of Georgia repeatedly declared that was is in no way responsible and was disinterested in the commercial affairs of his relatives. No authentic documents detailing the use of Shevardnadze's posts for the purpose of personal enrichment exist. Nevertheless, the financial success of the President's brother-in-law, Akhvlediani, son-in-law, Jokhtaberidze and nephew, Nugzar Shevardnadze reveal that legality was not an imperative for success within the family. MAGTI Telecommunications is leading among Georgian telecommunication companies and profited from substantial privileges in the past. It also belongs to Jokhtaberidze. For a number of years the names of Nugzar Shevardnadze and Akhvlediani were closely associated with the petrol business, and this at a time when the export of petrol represented one of the shadow sectors in the economy of Georgia<sup>22</sup>. In the profits of Poti port, the main share belonged to Akhvlediani. There is a substantial evidence that the representatives of the family have achieved this position by means of nepotism and that they profited heavily from their closeness to political power.

The obligation of foreign airlines to transfer a part of their income to the Georgian airline company Airzena provides an example of the benefits shared by various members of the Georgian business community as established by the Decrees of the President. Essentially, the requirement of an implementation of this Decree led to the disappearance of Turkish and British airlines from Georgian airspace<sup>23</sup>. Airzena is not the direct property of Shevardnadze nor his family. However, the concept of *family* for Shevardnadze encompassed more than just close relatives. In Airzena, therefore, the leading position was occupied by Shevardnadze's former personal pilot. Until recently, the former Minister of Sports and Tourism, in the past, well-known football player Kakhi Asatiani, had a share in the company and on his death, his share was to be imparted to his daughter. The State Minister, Jorbenadze was close to the *family*, and the former Minister of Internal Affairs known for his participation in shadey forms of business (so for example, export of tobacco was special sphere of protection of police when Kakha Targamadze was the Minister of Internal Affairs), was closely associated with the nephew of Shevardnadze<sup>24</sup>.

Is it possible to see a national danger in the surplus of illegal secret agreements undertaken by the political and economic elites of the State? It is said that Georgian business is gradually cleared and that there is enough of a stable strata among wealthy people in the country to adequately serve the national economy and replenish losses in the budget. For this reason, some have argued that it is not necessary to raise alarm about the origins of the ties and dealings of politicians, officials and businessmen. It has, indeed, been argued that American big business

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<sup>22</sup> Stier, "Report Details Failures".

<sup>23</sup> 'Leading Airlines Pull Out from Georgia', *Civil.ge*, 16<sup>th</sup> April 2003, available at <http://www.civil.ge/eng/article.php?id=4054>

<sup>24</sup> In the light of this discussion, Niko Lekishvili, former member of the communist *nomenklatura* and one of the leaders of Tbilisi, should be mentioned. After independence, Lekishvili was appointed as mayor of the city, then its State Minister. He consolidated various positions in business and later went on to the position of deputy mandate, actively lobbying affairs to posts in the executive authority. Some evidence reveals his strong reconciliatory skills in negotiating relations between rival members of the oligarchy. Young businessmen who have paved the way for the new political scene have made use of his protection. Activists of the former Komsomol have created banks and achieved success in insurance, business and the media thanks to his support - one such person being the current mayor of Tbilisi, former supervisor of the Komsomol in university. The President once declared in an address that this cohort should not forget under whose protection they could achieve their success, whether it be in business or politics. In this statement, the true inseparability of the supreme echelon of politics and business in Georgia was made clear. A separate case is the railway of Georgia and a road fund, the chiefs of which can be added to the members of the big family of Shevardnadze's clan. The first do not pay taxes regularly, despite sufficient profit, the second receive solid sums from the budget, and this is reflected very little by the condition of roads.

was created in the very same way. For some, it makes sense that having legalized the existing position, the country will move into the market economy and respect the superiority of the law.

Such argumentation is wrong by several parameters: firstly, even those large respectable Georgian firms, only several years ago, either appropriated funds of the Communist Party and the State, or occupied a monopoly position with government instruction. Representatives of the communist nomenclature and power departments participated in these operations. Naturally, this involved deals with former representatives of the allied centre, the former party elite of the former Soviet Union and its special services. Consequently, the greater part of new Georgian business has been obliged to consider those forces within which the wider interests of democratization and independence, to put it mildly, do not enter. These circles are privy to the "secrets" of Georgian businessmen and it is possible to assume that they influence them even now. Therefore, the greater part of new Georgian business remains bound in its actions and choices. In such an environment, businesses cannot feel protected. Despite the personal preferences of its separate representatives, independence and democracy cannot be served. Such positions, at the very least, are risky for national security.

Secondly, appropriation of "public" property has not been carried out within the limits of clear legislative frameworks and there is always a chance, that proceeding from the same imperatives of justice, democracy, even at the most respectable Georgian firms, serious problems will be created not only from former representatives of the allied Communist Party and special services, but also from the wider public. In Georgia, the ground for serious social cataclysms rests not only with the fact that there is very rich and very poor people, but because the first ones openly, with application of political and corruption instruments have robbed the second ones.

Thirdly, there are very few Georgian businessmen whose activities can be considered completely "clean." This business in its practice and relations is a noticeable amalgamation of politics, economics and, moreover, criminality. All this gives a sense of national danger to the political system of Georgia itself, in which the business-elite plays a significant role. The matter is that Georgian business is open to professional criminality. Criminality in business is taking place in different ways. One is the domination over legal forms of business by criminals themselves, organised during the Soviet period as a grouping of so-called "thieves in the law."<sup>25</sup> The second way is an appropriation of a share of accounts of payment for "protection." There are very few businessmen who are clear before the law and consequently, they require favour from law enforcement bodies and also from non-official owners of prisons, from the criminal authorities themselves.

Sometimes it takes the form of payment of certain unwritten taxes, sometimes by introduction of criminals into a share, and sometimes by employment as security guards as representatives of the criminal world. In any case, criminals have close business links and, in such conditions, it is difficult to determine who is the master of the situation and who is simply employed for protection. In organised crime and business, everything takes on a mixed character. Whilst the level of complicity in concrete companies varies, there is opportunity to make common conclusions in its consideration.

According to a number of estimations, if one wants to establish a big business in Georgia, he needs to find a common language with the family of the President. If small, corruption links might be found in the various power services and tax departments<sup>26</sup>. In other cases, he will be

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<sup>25</sup> The concept derives from a phenomenon, which during the Soviet period controlled prisons from the inside and continues to do so today. These people probably no longer steal, but they coordinate the criminal world, are to some extent judges in this world and not only in it; their influence reaches citizens and official law-enforcement structures as well as young people, attracted to the romanticism of criminality. From the beginning the "thieves' code" forbade personal enrichment. Gradually, it has changed. According to some information, 30% of "thieves in law" currently working in the former Soviet space are Georgians.

<sup>26</sup> Interview to employees of the parliamentary apparatus who studied an economic life of the country, December 2002.



pressed with taxes, which are of little concern to those who have found protectors. Such a situation undermines the bases of social justice and opportunities to benefit from effective social programs by the State, because such a business-sphere brings a loss to ordinary citizens and to the budget. In its origins, corrupt practice and amalgamation with politics, Georgian business on the whole, represents not simply a risk, but a national danger<sup>27</sup>.

Business is not the only sphere that attracts criminals or illegal methods. The same is to be said for politics, especially in the State strata where serious corruption exists. Despite legislative interdictions, politics and economics remain intrinsically linked.

The core of Shevardnadze's family, by the influence of the President and in light of his wealth, supervises over the essential parts of the political spectrum and the top layers of the official machinery. From time to time, a number of the businessmen, who have achieved success, become deputies, heads of tax and financial departments and ministers. For instance, the Komsomol tandem Chkhartishvili and Sioridze, together with other former associates supervised the United Georgian Bank. At the same time, these two persons supervised over the Ministry of Economics and Parliamentary Committee of Incomes, accordingly. Rcheulishvili - one of the leaders of the ruling coalition and the Vice-Speaker of the Parliament owns building business and has serious positions in power-business. Leaders of political parties are well-known representatives of wine and insurance businesses Gachechiladze and Gamkrelidze, and as to the level of professional criminality, a number of representatives of Shevardnadze's family, as well as of Parliament are familiar with the criminal world. There are cases when so-called "thieves in the law" review the results of certain elections. Some political leaders during their election campaigns visit them in their various corners of Georgia for support<sup>28</sup>.

The weakness of law-enforcement departments responsible for safety in the struggle against various forms of criminality is caused not only by the corruption of the political establishment, though in itself, this is a serious obstacle blocking effective law-enforcement and security systems. The matter is that despite the honesty and professionalism of individual officers, power agencies are rife with corruption. In this sector, unauthorized expenditures of budgets, bribing from both the business-sector and ordinary citizens and cooperation with the organised criminal world are all usual phenomenon. Results of checks of the financial order carried out in the Ministry of Defence in 2003 by the Chamber of Control are kept secret. At the same time, the media has reported that approximately 40% of sums received by the Ministry as foreign grants are not taken into account. High ranking officials of the Ministry defend this as a problem of "inexperience" - imperfections in accounting mechanisms. It is difficult to believe such a defence, specifically in light of the fact that from the end of the 1990s, the United States has helped the Ministry in establishing the new financial order.

The Ministry of Defence should lead the process of security sector reform. The transition of management along western standards commenced in 1998, under the Minister of Defence David Tevzadze who had graduated in the United States. The aspects of contemporary reform include: the management of defensive resources of the Ministry, the change of functions of the General Headquarters, the transfer of the process of appeal from military commissariats to civil structures, the formation of professional battalions with US help, the preparation of a new disciplinary charter and the introduction of Turkish and British *curricula* in the military academy. Unfortunately though, serious accusations have been made concerning participation of the supreme military grades in corruption, desertion and the embezzlement of budgetary funds.

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<sup>27</sup> There are exceptions to the general tendency. First, there are zones that are not subject to the influence of a family, there are businessmen more or less working cleanly, but in the first case we have to deal with other clans, than with superiority of the law (for example, a monopoly position of clan Abashidze in autonomous Ajara), the second case, i.e. commercial activity in the borders of the law, if similar in general exists, it is such exception, which confirms a rule.

<sup>28</sup> Confidential interview with one Deputy, June 2003. Confidential interview to the former active worker of the Union of Citizens, August 2003.

Representatives of the Ministry of Defence are noted for their relations with crime figures and their role in the maintenance and protection of private clubs, in suspicious financial dealings and even in the trafficking of arms<sup>29</sup>.

A much heavier position is in a number of other power departments which traditionally should be mentioned by the Ministry of Internal Affairs. It so far successfully resists the requirements of experts of the European Community and the local nongovernmental organisations about bringing into conformity with the usual practice of democratic countries, the procedures and terms of imprisonment before trial. The detained person against which criminal proceedings have not begun has no opportunity of meeting with a lawyer and the number of persons in the chamber of imprisonment before trial is excessive. In the opinion of the representatives of legal organisations, this data, as well as evidence of torture and bribery shows the criminal practices amongst police.

In light of the evidence, policemen cooperate with the above-stated "institute of thieves in the law". In the opinion of some analysts, collection from thieves of regular "tax" for policemen is the most painless illegal income. To investigate and uncover the extent of embezzlement and bribery is practically impossible. Professional criminals are extremely weary to betray their colleagues and would rather have an opportunity "to work" with guarantees of domination in prisons. This latter is a little bit complicated by the fact that the penitentiary system has been handed over to the Ministry of Justice. Probably, therefore, the Ministry of Internal Affairs constantly demands restoration of unlimited control over the system and secures the sympathy of the President. In general, professional criminals, so-called "thieves in the law" again take the exclusive position in penitentiary establishments. In light of the data, meetings of well-known criminal authorities, their so-called "send-offs" are usually protected and provided by the employees of power departments.

Some analysts consider that, in Georgia, the criminal world was an additional weapon of authority and the power structures, as a whole, are subject to their control<sup>30</sup>. Although, as in mutual relations of power departments and the political establishment, as well as in a triad of politicians, power bodies and criminals, it is not so easy to say, who serves and when roles interchange, especially if a criminal possesses compromising evidence on a politician or official, or, if the scale of his activity is extensive. So for example, there was information in the media, that the officer of the Ministry of Security served as the driver of a known criminal and that at the request of the government, criminal authorities interfered in the liberation of the UN observers kidnapped in Abkhazia. As a result, nobody was taken to court.

Up until the end of 2001, the Ministry of Internal Affairs dominated in the criminal spheres, differentiation of which was never easy in Georgia. Kakha Targamadze ruled over the Ministry of Internal Affairs of Georgia. He was considered as the "iron person." Essentially, the Ministry of Security was also under the influence of Targamadze and the police. So for example, the former Chief of Traffic Police supervised over the antiterrorist centre of the Ministry. By general estimation, chiefs of police and security, which in due time have helped Shevardnadze end the domination of uncontrollable formations, themselves have turned into weapons of corruption, "patrons" of business and violence. Priority has belonged to Targamadze. On September 4, 2001 at the expanded session of the government, the Secretary of the Anticorruption Coordination Council mentioned that he had received many complaints about the Ministry of Internal Affairs, that from 9 kinds of non-budgetary incomes of the Ministry of Internal Affairs - 6 are illegal; that as police, as well as other power structures are involved in such forms of corruptive inter-relations, such as "crisis corruption", "patronage systems", "friendship - nepotism". He concluded that power structures are a support of corrupt officials and their

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<sup>29</sup> Interview to the former officer of a high rank of the Ministry of Defence, September 2001. The data on last checks of the Chamber of Control. See *24 Saati* (24 hours), 17<sup>th</sup> September 2003.

<sup>30</sup> Interview with Gigi Tevzadze, the author of books of *Simulation of authority* and *Returning of authority*,

existence in such a form is a threat to the State<sup>31</sup>.

By this time, one of the officials of the President's Office admitted that behind the smuggling are representatives of the authorities themselves. However, in the case of their infringement there was nobody to protect the streets. In these words, a praetorian mode has been seen: bribery of "security guards" of a regime, which finally transformed authority into the hostage of "security guards".

In the specific arena of business contacts of the power structures and criminal world, as well as of criminalization of the militarized structures, are the conflict zones. Against a background of processes taking place in these zones, the economy of war and conflict was formed, in which the leading role was played by law-enforcement bodies and criminals, or criminalized law-enforcements which are far from being eradicated.

In 1992-1993, Georgia was one big conflict zone. Bloody civil and ethno-political conflicts took place against a background of essential collapse of the machinery of State and financial and economic systems. As a result, it was difficult to differentiate national-state actions and forces from illegal practice. According to one officer, the participant of then events, directly in the army dominated that system of maintenance, which has been based on violence and robbery. Essentially, there was no other system. In such conditions, criminals and persons with criminal habits became very active. A separate theme is semi-official and non-official formations. So for example, formation Mkhedrioni, as one of the forms of the material interest of its members, applied their inclusion to commercial structures.

Now there is another situation, where so-called zones of the "frozen conflicts" are the sources of smuggling. There the Georgian, Ossetic and Abkhazian power structures, Russian peace-making forces, guerrillas and criminals establish "order". This order is built on informal talks. Quite often it is accompanied with bloody settling scores, in which it is difficult to distinguish a criminal motive from a national one and from the projects of an opponent. The property and a life of the ordinary citizen are not at all protected at all<sup>32</sup>.

Svaneti region does not concern zones of war and conflict, or the Pankisi gorge. However, the first one even today causes alarm by its criminal situation, and the gorge Pankisi not such a long time ago became well known to the world media. The reason for this was the Chechen trace of Arabian terrorists, which has continued in Pankisi. The essential reason for the crisis situation created was economy of the conflict, in particular, cooperation of the law-enforcement and criminals.

Svaneti borders upon a zone of the Georgian-Abkhazian conflict and differs by its apartness. For a certain part of Svaneti youth, robbery became a mean of subsistence. The uncontrolled weapon in Svaneti did not represent a rarity. For years, police and security had failed to undertake measures to improve the situation, and this again caused suspicion about the existence of agreements between law-enforcement and criminals. As for the Pankisi gorge, it was played out against a background of the Chechen Republic conflict. Concentration of the Chechen refugees in the gorge turned into a criminal enclave, where drug trafficking and an arms trade blossomed. People kidnapped with the purpose of ransom were taken to Pankisi. Journalists and politicians expressed assumptions that all that was possible was participation of representatives of power departments. Just in the process of journalistic investigation of Pankisi stories, the journalist of a broadcasting company Rustavi-2 Giorgi Sanaia was lost, as well as a criminal who had made contact with journalists prior to his death. Somehow or other on November 28, 2002,

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<sup>31</sup> *Sakartvelos Respublika* (Republic of Georgia), 6<sup>th</sup> September 2001.

<sup>32</sup> In sensational journalistic investigations of the TV company Rustavi-2, which was carried out by the program *60 Minutes* and which was broadcast on 23<sup>rd</sup> September 2002, it has been shown that against a background of the absolute passivity of the law-enforcement bodies in a zone of the Georgian-Abkhazian conflict, the criminal business is flourishing. Participants are representatives of the *de facto* government of Abkhazia and the Georgian Abkhazian government based in Tbilisi, Russian peacemakers, guerrillas and criminals. Here, frequently, the bloody settling of scores take places, which are presented as continuation of the ethno-conflict.

at a meeting with the population of the Akhmeta region concerned with Pankisi criminals, the newly appointed Minister of Internal Affairs K. Narchemashvili declared that despite everything that had happened and was happening in Pankisi, to a great extent, responsibility rested with the Ministry of Internal Affairs<sup>33</sup>.

In 2001, Pankisi paradoxically has contacted people in a zone of the Georgian-Abkhazian conflict. In autumn, with the help of Georgian power structures from Pankisi in the Kodori gorge, there passed a group belonging to field commander, Ruslan Gilaev. Many well-informed persons from political and journalistic circles purported the participation of Georgian power bodies in this operation. Presumably, there are enough high-ranking officials within the country with information on this. In Pankisi stories, there were the visible shadow agreements of criminals, power structures and representatives from within the political establishment. The participation of Russian special services, then Ministers of Internal Affairs and Security of Georgia, who were directly responsible for the settlement of the Pankisi problem, had confidential consultations with Russian colleagues.

Whatever was the reason for the raid the illegality of these actions is obvious. The history of gorges of Pankisi and Kodori is a clear example of not only infringements of the law, but also existence and actions of the so-called shadow State, because all these actions took place with the consent and participation of power structures, without any written order and on conditions of complete non-information of the Members of the Parliament.

As it was already mentioned in 2002-2003, the authorities have undertaken a number of steps against criminality, corruption, economy of the conflict and, in general, against shadow inter-relations. Anti-criminal operations in Pankisi were added to the creation in 2000-2001 of anticorruption and reforming commissions with following replacements of the Ministers of Internal Affairs and Security and also of the General Public Prosecutor. The Minister of Internal Affairs and the President recently arrived in Svaneti. It has been mentioned that there is an anti-criminal operation in this high mountainous area. Conversations on the necessity of the isolation of professional criminals, so-called thieves in law, from the economy and politics, have become frequent.

In the summer of 2003, the Police and the Ministry of Security together with a special legion of the Ministry of Finance started to uncover the facts of the concealment of taxes in the cigarette business and the business of mineral oil. In the government, one more commission was created, entrusted with the improvement of taxation and headed by the former Deputy to the General Public Prosecutor, currently the Deputy of the State Minister, Anzor Baluashvili. Everything took place from the control of the petrol filling stations. It has been said that behind this illegal activity, there were Members of the Parliament, high-ranking officials, "thieves in the law," local authority members and that is already illegal, because of an interdiction for them not only of illegal, but also of legal business<sup>34</sup>.

It was the beginning of a break-through – a regular struggle against the shadow state and sources of its existence - corruption, economy of conflicts, organised crime. Both opposition and independent experts from the part of present authority exclude such an opportunity<sup>35</sup>. In their opinion, the matter concerns the impossibility of ignoring criticism from official circles of the West, attempts of collection of the additional sums before parliamentary elections, correction of the spoiled image in opinion of the population. Alone, all these motives can be estimated positively as a former member of the state commission declared on the reforming of power and law-enforcement departments - D. Usupashvili and the Head of Parliamentary Budgetary Office R. Gotsiridze, struggle against smuggling carries company character. The process is lacking a

<sup>33</sup> TV company Rustavi-2, information broadcast *Courier*, January 28, 2002.

<sup>34</sup> *Mteli Kvira*, Supplement, *Resonance*, 18<sup>th</sup> August 2003.

<sup>35</sup> Ibid.; personal interview with D. Usupashvili, who participated in more than one anticorruption and reforming commission; interview with the representative of the Georgian Young Lawyers Association, Tinatin Khidasheli.

system structure and if one considers former or present steps of the government, it is rather doubtful that this campaign will bring serious success.

Company character might sacrifice the interests of several officials, businessmen and criminals. It could mean their replacement by new persons in corruption - criminal economy; ministers say that behind smuggling stand influential people, but they have not been named. They struggle against an unregistered trade in petrol filling stations, when the main problem is smuggling.

If the shadow state is created by the official political elite, the ruling oligarchy, then in what way will its infringement by the oligarchy take place? It is easy to imagine that the struggle against concealment of taxes will fall again on the people; in the pricing of goods the share of a bribe cannot turn to the tax and the tax will be added separately. Rehabilitation of a part of a shadow business is possible, signs of which characterize the father of Shevardnadze's daughter-in-law, Akhvlediani's. Yet, he simultaneously dominates significant levers of a monopolist in telecommunications and transportations in Poti port. As a result of the amalgamation of politics and economy, the oligarchy mode is preserved. With that, this system again remains the debtor of power-enforcement bodies and criminals. It is doubtful that, in such a condition, the level of maintenance of national and human security will be seriously raised.

In parallel with this 'struggle', the representatives of authority show obvious violence towards that political group that opposes the corrupt nature of the system. On September 26 policemen and local authorities in the Bolnisi region physically finished off representatives of the oppositional 'national movement' in the same way they acted towards the nongovernmental movement 'Kmara' (it is enough), whose main credo was struggle against corruption and criminality.

In Georgia today there is more stability than in the years 1992-1993. However, the internal threats of corruption, organised crime and the economy of conflict continue to exist. It should not be excluded that against a background of financial and economic crisis existing in the country, because of unsolved social, political and ethno-national, and newly surfacing confessional conflicts, the political space can appear divided to pieces by the competitive armed groupings. For today, at the Ministry of Defence alone, 14,000 units of firearms were lost. Losses of the Ministry of Internal Affairs exceed 3,000 units. Some amount was taken from the country or remained in the separated Abkhazia and South Ossetia but, in parallel, there was an import of illegal weapons. An example of this was the detention on 17<sup>th</sup> June 2002 of a security employee, whose vehicle was carrying anti-tank rockets secretly imported from Tskhinvali.

#### *A Systemic Problem of the Security Sector: an Inability to Deal Effectively with Threats*

In October 2003, a delegation of the State Department of the United States headed by Thomas Adams visited the President of Georgia. After his visit, Adams declared that the authority of Georgia was not moving forward in its economic and administrative reforms and that corruption was at a very high level. As a result, the US State Department reduced its financial assistance to Georgia. This represented another setback from the part of foreign donors. The authority of Georgia is unable to struggle against corruption and organised crime. It is not capable of realizing the recommendations, which in a great number, suggest the establishment of local commissions of anticorruption or the development of system reforms.

Even in October 2001, the Secretary of the Coordination Council of Anticorruption Policy Mirian Gogiashvili at the expanded session of the government declared that none of the executive departments had completely executed the Presidential decrees about primary anticorruption actions, which were based on the offers prepared by the Council<sup>36</sup>. Later, Gogiashvili became the Minister of Finance. He was designated control over tax and customs

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<sup>36</sup> *Sakartvelos Respublika* (Republic of Georgia), 6<sup>th</sup> September 2001.

structures. The budget of 2003 has been planned with the addition. In 2002, he and new State Minister A. Jorbenadze promised to declare a serious war on smuggling and the concealment of taxes. New power ministers were also given hopes. However, the situation essentially has not changed. In summer 2003, the government faced the necessity of the many-millions sequestration of the budget.

The main reason that political and administrative institutes of the country, sectors of security and law-enforcement are inefficient, is that corruption in them is widespread. The facts of the mercenary use by officials of their posts, the tendency of forming an oligarchy by them or by the members of their families, have been mentioned above. It has been said that organised crime also undertakes monopolization of the economy together with political and administrative elite. It is frequently difficult to determine the border between organised crime and representatives of power departments. There are co-participators in the supreme political circles and it is not clear who is whose master in this business.

Despite the signs of cooperation between businessmen, criminals, power structures and political leaders, proof of criminalization is necessary. Even if it is so, without conclusive evidence, it is impossible to say that all ministers, representatives of ruling circles, or deputies manipulate the legislation, that the constitutional system and the courts are completely fictional and that everything is solved by criminal logic and institutes in the country.

In conditions of the open information about a lifestyle, world outlook and actions of the majority of representatives of authority, it is more preferable to speak about a certain bifurcation of the socio-political system. The machinery of the State and internal policy, as a whole, are predatory. The international environment and internal public pressure and political pluralism leave certain place for rules of a civil life, if somebody has the corresponding desire and will. So for example, the Association of Young Lawyers, which is a significant element of a civil sector, achieves the possibility of familiarization with official financial documentation of the Ministry of Internal Affairs by application of legislation, constant pressure and with the help of the Court<sup>37</sup>. It carries out serious pressure on the Council of National Security by applying the administrative code, it makes the greater part of its sessions open.

Existence of the Administrative Code, which demands from the machinery of State concrete steps in a matter of superiority of the law and transparency, is an interesting example of the struggle of official political and also civil institutions against mafia inter-relations. In due time, the Code has been developed by a reformatory wing of the party in power and by nongovernmental organisations.

Recently, frank regrets concerning the strengthening of organised criminality were expressed not only by democratic opposition and/or the civil sector, but also by the Ministers of Security and Justice, a number of representatives of local authority and the governor of the President in the Imereti region<sup>38</sup>. If the results of these regrets are very insignificant, the reason is not only that many representatives of authority are identical to professional criminals, but that the authority, as such, does not have enough political will and force to struggle against the defects. It does not have the moral, cultural, intellectual and organisational - institutional ability. A problem is a world outlook confusion of the supreme echelons of power, which is expressed even in infinite extension of the process of development - reception of the concept of national security. All this directly influences the security sector and law-enforcement. These reasons complicate the problems caused by criminal inter-relations and institutes rushed into this sector.

### *Conflicts of Interests*

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<sup>37</sup> Interview with one of leaders of the Association of Young Lawyers, Tinatin Khodasheli, September 2003.

<sup>38</sup> Interview with David Losaberidze, who supervises over programs of reforming of local authorities in the Caucasian Institute of Peace, Democracy and Development, September 2003. Also interview and press conference of former Minister of Justice R. Giligashvili, Minister of Security V. Khaburzania, with regional representative of Imereti region T. Shashiashvili, which were covered in mass media.

It is possible to assume that the illegal business activity of the Presidential environment represented an interest of Shevardnadze himself. The President based his money and power opportunities on the post-communistic elite. But Shevardnadze was also the Head of the State of Georgia, the official subject of international law. He has, until recently taken care of his image as reformer and democrat, positions which he received in international circles due to the decomposition of the Warsaw block. Proceeding from this, Shevardnadze needs political and economic stability. He also needed the growth of the budget. He has the experience of suppressing the anarchy of the civil war in 1994-1995 and he has not regretted the help of the so-called warlords – Loseliani and Kitovani, who in 1992 brought him to authority after the downfall of Gamsakhurdia.

It is clear that Shevardnadze indefinitely postponed the struggle against corruption and criminality of the end of 1990s and in 2000. At the end of 2001, he said goodbye to the Heads of the Ministry of Internal Affairs and Security, but without making them answerable for any of the serious changes in the system of criminalized power structures. The political system of Shevardnadze represented a balance between impulses and forces. On the one hand, there was a young democracy inside the country and a western community outside. On the other hand, there were clans, a master, clientele inter-relations and flirtations with the Kremlin. Actions took place, such as acceptance of the Administrative Code and the beginning of the reforming of the Ministry of Defence under the standards of the NATO, and on the other hand, participation of police and security services in rackets and smuggling went unnoticed and there were a number of decrees declared that protected the interests of oligarch clans. The Constitution itself has been created in such a way that the President had maximum rights to carry out daily internal and foreign policy. This is one of system foundations of personal nepotism and corrupt inter-relations. The clans became an internal support of authority. Most of the reformers had left the Shevardnadze party. Only half measures followed the rhetoric of reform and the situation in these departments was largely determined by client-corrupt inter-relations.

During the last years of Shevardnadze's tenure, the specific share of organised crime has increased both in the economy and in politics. This was reflected in the budget and in the pre-election processes, which are associated with demonstrations of obvious, escalating violence. Religious extremism has increased – an expression of a syndrome of impunity, as well as of poverty and fructification of the population. While all this should disturb the President, the political elite, the system of legal assistance and security are involved in criminal dealings. The President does not have other support inside the country and he cannot cut off any branch on which he sits. This represents a moral dilemma. Loseliani and Kitovani were opposed to the President and getting rid of them was necessary for salvation of the regime. From the present elite, there is no equivalent threat. It consists of supporters of the President. The President has relied on them for a long time.

Even if it would be possible to improve the system by demonstrative legal proceedings, it is difficult to decide on because after each serious proceeding, a chain reaction necessarily follows: the unmasking of discrediting materials on other persons, probably up to a high level. Against this background, it is necessary to replace freedom of speech. Yet this involves a moral dilemma and a possible cutting off of ties to the West. Besides the style of a post-communistic elite, in particular, with Shevardnadze, always resembled "praetorian" politics. Vassals of the regime received privileges. Compromising evidence existed against them. Finally, however, the praetorian mode is overshadowed by the transformation of the governor as hostage of his defenders. Another style of board that might have been akin to the intellectual abilities of the supreme Georgian nomenclature and its boundless aspiration to authority did not appear.

Shevardnadze was not the only "victim" of system dilemmas. At all stages of the hierarchy, there was the noticeable necessity of "passing over in silence" those who are inside the system, but are worried because of the shared sociopolitical and economic problems.<sup>39</sup>

### *Inadequate Management of the Security Sector*

Resignation of the Ministers of Justice and Income, reduction of reform in the new Ministry of Security, preservation of the "reformed" Ministry of Security and the partition of the party in power showed that it is not enough to have personal decency, if not to change the system and the rules of game. It is also necessary to note that the structures of the system of control and the inter-relations of its elements even at a legislative level are not optimal, democratic or suitable for legal management. There is also a deficiency of professionalism. Board culture is, to a great extent, Soviet-inclined. On the one hand, there are numerous management departments and they are characterized by a ruggedness, non-coordination and an overlapping of functions. On the other hand, in terms of hierarchy, decisions are accepted only at the top-level. The mechanism of restraining counterweights among the supreme circles of authority is insufficient. Accordingly, there remain a lot of legislative and managerial holes for subjectivity. This, together with other individual and cultural factors, creates grounds for clans and corruption.

The incompleteness of the Constitution of Georgia only adds to the problem. Under the Constitution, the State-territorial structure should be fulfilled only after the restoration of territorial integrity, i.e. after the solution of the South Ossetia and Abkhazian questions. The extent of Ajara's autonomy is ambiguous. Formally, Ajara remains inside the national political body of Georgia. However, its leader carries out constitutional changes at an autonomous level that is not coordinated with the central authority and in a way in which a number of questions contradict the Constitution of Georgia<sup>40</sup>. The legislation of Georgia is clear enough in its definition of the rights of the so-called institute of regional representatives of the President, though practically-speaking, the institute reduces to a minimum, the already weak rights of the local self-management. Real self-management, which is achieved by direct elections, exists at the level of the cities and villages alone. Although, even in this case, the budgetary opportunities of villages and cities are reduced to a minimum. There is comparatively more financial freedom in a capital, but there is also a lack of self-management, because the President appoints the mayor of Tbilisi.

As for the realization of democratization and superiority of the law, as well as for maintenance of national and human security, special value is given to the organisation of the security sector and to what happens in its management and in the so-called sphere of military-

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<sup>39</sup> So for example, on the question of 'the journalist,' the source of smuggling, the Chairman of the Parliamentary Committee of Defence and Security has declared that it is difficult to reveal large-scale smugglers and that the earlier cigarette business was supervised by the Ministry of Internal Affairs, and now he knows nothing about it. The person concerned, I. Batiashvili, was the Chief of an Information-Intelligence bureau. He was a member of the Parliamentary Group of Trust and attended sessions of the Council of National Security of the President. Not so long ago, Batiashvili declared that he had operative data about the risky processes taking place in Pankisi Gorge and in a zone of the Georgian-Abkhazian conflict. It is difficult to believe that he had nothing to say about organised crime and corruption. The direct participation of Batiashvili in business dealings is not known, but today he is in the elected list of supporters of the President together with many 'oligarchs'. In such conditions, silence is logical, even if there is something to tell.

<sup>40</sup> For example, under the Constitution of Georgia, questions of defence and security are a prerogative of the central authority. Paragraphs of the Constitution of Ajara about the rights of the Head of Autonomous Republic during a state of emergency are contradictory: If the President of Georgia declares a state of emergency in Ajara, the leader has the right directly, without participation of the Parliament of an Autonomy, to apply his imperious powers. Without the permission of the Head of Ajara autonomy, movement of any armed forces on the territory of Ajara is forbidden. With this, the Head of Autonomy "takes measures" that "with the purpose of exclusion of provocation", there would not be concentration of armed formations on the administrative border of Ajara.



civil inter-relations. Except for criminal-corruption relations, which were established in power and law enforcement bodies, there are obvious deviations of management and military-civil inter-relations from democratic practice. As the Secretary of the Coordination Council of an Anticorruption Policy repeatedly mentioned, this sphere was characterized by its authoritative boards. The existing system did not ensure the functioning of priority directions. There was a necessary transfer from constant reorganisation into corresponding to new tasks - structural reform, decentralization, change of personnel policy<sup>41</sup>. According to Gogiashvili, the National Guard incident of May 2001, where the Guards battalion illegally occupied the Mukhrovani base of internal armies and declared insubordination, resulted from the lack of a security sector.

As for the details of system reform, Gogiashvili failed to communicate this theme. However, in his statements, there existed more or less articulated ideas of reformation, the authors of which were members of the State Commissions, representatives of some ministries and foreign advisers. The Council of the International Advisers on Security Issues (ISAB), for example, has been operating since 1988. Under its direction, one of the versions of the concept of national security was created. A general plan of transfer of the Ministry of Defence and of some other militarized departments along western standards was directed by ISAB. As previously mentioned, German experts have been working on reforming the State Department of Border Protection and the reform of the Ministry of Defence is supervised by US experts.

Beginning in 1996, the government started to create local, specialized commissions, which prepared conceptual views concerning the system of security and its structures, as well as offers on reforming Georgia's power structures<sup>42</sup>. This last mission was undertaken by the new ministers of security and internal affairs appointed in 2001. The final variant of the concept of security up to today is unknown. Works of other commissions are basically forgotten or evade many central questions and have an eclectic character.

Work at "the temporary interdepartmental commission at the Council of the National Security developing the offers on institutional reform of the bodies of system of security and law-enforcement" was completed at the beginning of 2003. It was headed by the Chairman of the Supreme Court. According to the representative of the nongovernmental sector, D. Usupashvili, the final product was not integrated and was compromised as a result. Governmental interest in the commission gradually decreased. The commission into which the heads of security and law-enforcement entered, constantly passed over disputed questions with an idea of returning to them later. The "returning" to the questions, however, never took place. Originally, the new Minister of Security expressed the desire to abolish the ministry and create a special service along German or American lines in its place. However, most probably, this initiative was not shared by the authority itself and pathos of the Minister declined. The commission has not taken into account the requirement of the nongovernmental sector about modification of the Criminal Remedial Code. They are concerned with monitoring situations in the chambers of imprisonment before trial, in increasing the rights of lawyers and in reforming the investigation process<sup>43</sup>.

Later and separately from the commission, the Ministry of Security prepared the bill, which caused indignation among nongovernmental sectors. It meant, in a number of cases, giving the Ministry of Security the right to suspend the functioning of establishments financed by

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<sup>41</sup> *Sakartvelos Respublika*, 6<sup>th</sup> September 2001.

<sup>42</sup> In 1996, on the order of the President the state commission on development of the concept of national security under the Presidency of the Minister for Foreign Affairs was created. In April 2001 coordination council of anticorruption policy was created – an advisory body of the President. On the basis of the main directions some months before the anticorruption program, development of concrete ways of action began. In July 2001, the President issued a decree on the creation of a temporary interdepartmental commission with the purpose of studying and improving legislation in the military sphere. In December 2001, the second decree of the President was issued 'On Creation at the Council of National Security of the temporary interdepartmental commission developing the offers of the institutional reform of bodies of system of security and law-enforcement'.

<sup>43</sup> Interview with David Usupashvili, 19<sup>th</sup> August 2003.

foreign sources. The matter concerned the whole nongovernmental sector. The Minister of Internal Affairs demand not a reduction of the term of imprisonment before trial but in contrast, an increase of these terms<sup>44</sup>. The Chairman of Supreme Council has independently continued to work under the Criminal Remedial Code, but in the new project again, temporal terms of imprisonment before trial and effective standards of isolation of the arrested person from the lawyer contradictory to the Constitution of Georgia were not taken into account<sup>45</sup>.

From this story, there are visible fluctuations of authority between the democratic and authoritative - repressive principles of the past and the strength of anti-reformatory resistance of corruption interrelations. It is possible to make one more conclusion: despite the results and apparent futility of these commissions, it is evident that their number, parallelism, non-delineation of functions and non-coordination in significant state affairs are characteristic features of the Georgian security sector.

It is necessary to understand reasons for the subjective character of the board and for the use of "divide and rule" mechanisms in the monitoring of the security sector. Such a style is characteristic of authoritative regimes, as other mechanisms of preservation of political domination over military and militarized forces are underdeveloped. Elements of authoritarianism are common for a number of post-Soviet countries. A low culture of management is reinforcing this. Essentially, both circumstances flow from the ignorance of the building of the democratic State.

Parallelism in the security sector as well as the risky differentiation of functions are visible in the "power structures," which clearly show elements characteristic of a number of the post-Soviet political systems - that these bodies are of a militarized character and that there is no precise functional border between the civil, police force or military, having special purpose components<sup>46</sup>.

Such a situation is problematic from the point of view of democratic military-civil interrelations. Moreover, it is anti-constitutional. Under Article 72 of the Constitution of Georgia, unification or other combinations of departments of the military forces, state security sector and police force is forbidden. A formal example of the disregarding of this provision is evident in the Law on Defence, according to which internal armies in the submission of the Ministry of Internal Affairs are a part of military forces. It is necessary to note that officer ranks in the Ministries of Defence and Security are essentially identical and the latter frequently occupy posts in the armed forces.

The rule established by the legal acts contradicts to the democratic imperative of differentiation of the sphere of politics and that of the military, according to which the heads of defence, security and internal affairs, border protection and a number of other power departments are found in the rank of General. Even the Secretary of the Council of National Security and his deputy on the protection of human rights are obliged to have military ranks. The fact that foreign advisers, who with the consent of the Georgian authorities, develop recommendations for the reforming of the security sector remains contentious. They constantly demand the precise differentiation of police and military functions in the Georgian power sector yet the situation remains unchanged.

An example of the parallelism in the security sector is that except for the Ministries of Defence and Internal Affairs, the State Department of Border Protection, Special Service of the State Protection and the Ministry of Security have military divisions. The leader of Ajara has

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<sup>44</sup> 'Interior Minister Under Fire', *Civil.ge*, 5<sup>th</sup> December 2002, available at <http://www.civil.ge/eng/article.php?id=2837>

<sup>45</sup> Interview with Tinatin Khidasheli, September 21, 2003.

<sup>46</sup> For example, one of the basic structural subdivisions of the Ministry of Internal Affairs, the Department of Police, according to the corresponding Law, refers to the powers of a militarized state body (the Law on Police, article 1), in which, internal armies submit to the Ministry of Internal Affairs, which by the legislation are recognized as a part of the military force (the Law on Defence, 31<sup>st</sup> October 1997).

military detachments under his personal control. In the Ministry of Defence, the National Guard uses its autonomy. One of the main missions of the National Guard has considered rendering assistance to authorities and the population in extreme situations. However, another one of the departments of the Ministry of Internal Affairs has the same mission. In 2001, it made a change to the Law on Defence, according to which the General Headquarters of the Ministry of Defence entrusted the co-ordination of all military forces during mobilization and the state of emergency. The law, however, says nothing about methods and frameworks of coordination.

For an illustration of parallelism and problems of coordination, the law on operational – investigation activity is worthy of attention, according to which realization of a number of special actions of a rank of state secret (the latent watch over suspected persons and retrieval of data, creation of the secret organisations and a secret-service network) can fulfil seven departments. Four of them directly concern a number of militarized, power structures, one is the intelligence agency. Two departments are more civil than military and are responsible for the financial and economic order of the country<sup>47</sup>. The General Office of Public Prosecutor, which is part of the judicial system, is entrusted with supervision over exact and identical execution of the law in the activities of the bodies of inquiry and operational - investigation actions. It frequently complains, however, that the majority of cases fail to reach the Office of Public Prosecutor.

In terms of security policy, the question of differentiation of the competences of the supreme state bodies has not been settled. The Constitution and laws create more than one mechanism for introduction of the civil, democratic control of power structures. So for example, the Parliament is that body, which passes the budget and determines the basic directions of external and internal policy. The President, who is the Commander-in-Chief of the Military Forces of Georgia, without the consent of the Parliament cannot involve military forces during a state of emergency or for performance of the international obligations. However, the constitutional provisions that the Parliament "determines main directions of internal and foreign policy of the country", and the President "directs and carries out external and internal policy of the State" by its content are too close and demand further specification. The President has no right to apply military forces during a state of emergency without the consent of Parliament. As such, the President is subject to infringement, especially as military forces includes internal armies of the Ministry of Internal Affairs.

According to Article 98 of the Constitution, the structure of the military forces is determined by the President, and a number by the majority of the payroll of the Parliament. As a result, the legal way out is unclear, particularly in cases where there is a difference of opinion between the Parliament and the President concerning the structure of the military forces. The Law on Defence (1997) contradicts this constitutional provision, stating instead that the law should determine the structure of the military forces.

Legal frameworks of the state secret are not clear or, at least, are incompatible with the principle of transparency. According to Article 28 of the Administrative Code, information is to be made accessible if it does not have the potential to cause harm to national security and only in the case "if there is a proved assumption, that its disclosure will threaten realization of the planned military, intelligence or diplomatic actions (or actions in process of realization), and to physical safety of their participants."

However, the Law on the State Secret contradicts the above-stated provisions of the Code. According to Article 7 of the law, in the sphere of defence information is considered

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<sup>47</sup> The Special Service of the State Protection and the State Department of Protection of Border directly belongs to the power departments of the Ministry of Internal Affairs and Security. The above-mentioned intelligence department is the Department of Intelligence Service of Georgia. By a number of parameters (ranks of the employees, armament and participation in special operations) it has a shade of the power structure. Two other structures are customs department and tax inspection. Since 2000, the power element was added to the latter so-called special legion (the Law on Operational - Investigation Activity, April 30, 1999; the legislative bulletin of Georgia, No. 14, 1999).

secret, particularly when it concerns operational and strategic plans, alertness and programs of development of arms and technical equipment. It could be understood as an interdiction of a detailed elaboration of the budget. With this, according to the law, the President approves the list of data on the State Secret. According to this list, the secret concerns practically everything in the realm of military forces. Upon the performance of its requirements, the list leaves too small a place for transparency of a policy of defence.

A number of questions concern the Law on the Council of National Security. There are the elements of the amalgamation of executive and legislative structures in it – in the work of the Council directly participate the Chairman of the Parliament, as well as the Chairmen of Autonomous Republics of Ajara and Abkhazia, and the law does not specify the difference between the status of a member of the Council and the status of "direct participants". The Council is an advisory body of the President and, at the same time, it coordinates and supervises over the activity of departments in the spheres of defence and security. The law does not make reference to the procedure of work of the Council.

In addition, the problem is that legislative acts, through orders of the President, specify the general procedural details and functioning of departments and institutes. This restrains the real legislative power of the Parliament, which is an irreplaceable attribute of democratic civil control.

This is another system shortcoming that adds to the imperfection of the Constitution, laws and codes, making them purely declarative passages and emphasizing the contradictions between the provisions of normative acts. It is also impacts directly on the carrying out of a policy of security and to the political supervision of power structures. It is difficult to negotiate a way out, if between the President and the Parliament there will be a basic opposition.

According to the Constitution of Georgia, the President cannot dissolve the Parliament. It is almost unimaginable to make the procedure of impeachment part of the Georgian political and legal system. Thus, the alternative might only be reached through consensus, if the President and the Parliament have not shared the competence within the borders of the above-listed or other disputable and contradictory provisions of the Constitution and the legislation; or alternatively, one of the branches of the supreme authority should involve others under its political influence.

It is known from the corresponding researchers that not less problematic than military dictatorship, can be circumstance, when a differentiation of functions of political bodies is not quite precise or when this or that body of authority or its representative attempts to subordinate the army for the sake of its own purposes to gain advantages over other parts of the political corps. In such cases, the military is involved in political game-playing and this is hardly coordinated to a principle of indifference towards the politics of the army, represents a risk for democracy. Such a style of control has been defined by Samuel Huntington as subjective. It could however come to the end with its contrast – intervention of army in a politics<sup>48</sup>.

If other enforcement bodies are added to the military, the above-said will reflect the Georgian model of management and the control over spheres of safety and legality. The subjectivity of this model is inclined to the side of executive authority. With the help of a range of normative and political instruments, the President possesses an actual advantage in comparison with legislative and judicial authority and the control over enforcement bodies passes into his hands.

The role of the President in the assignment of leadership of the enforcement bodies is decisive. The President, at his will and desire, could remove Ministers from their positions and, as for the Parliament, there is the complex mechanism of impeachment. It is interesting that the General Public Prosecutor, members of the Parliament and the Chairman of a Supreme Soviet enter into all institutes having the status of an advisory body of the President - in various state

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<sup>48</sup> Samuel P. Huntington, *The Soldier and the State: The Theory and Policy of Civil-Military Relations*, (Harvard University Press, 1995) 12<sup>th</sup> ed..

commissions and councils. This creates a basis of risky rapprochements of branches of authority under the aegis of the President.

It should be mentioned that Parliament has no time to control the heads of enforcement departments: the Parliament does not approve the heads of independent executive bodies with the status below the Ministry. Among special services, such departments include: the Department of Frontier Guards, Service of the State Protection and Department of Intelligence. The control over the staff of Security Council does not concern the Parliament, though it plays a significant role in the development and carrying out of a policy of security and legal assistance.

As for the budgetary control of the sphere of security, at first sight, the Parliament has significant instruments for this purpose. These are laws on the budget system and on budgetary power, parliamentary committees, the temporary inquiry commission of Parliament and on the group of trust. This latter is created in Parliament with the purpose of the control of special programs and secret activity in the sphere of defence and security.

However, realistically, the prerogative of the Members of Parliament in the budgetary process is limited; the Parliament of Georgia does not use the right to approve large purchases carried out by power structures and it has been one of the essential recommendations of foreign advisers since 1998. The Parliament has no right to make any changes in the project of the budget, which is represented by the executive authority. If agreement was impossible, the legislator either passes the project of the budget to the whole, or entirely rejects it. This latter demands from the Members of the Parliament serious mobilization and political resoluteness. The legislation does not determine what measures should apply to the parliamentary group of trust, which checks special programs of the power bodies, if after a complaint addressed to the President about inexpediency of any special program, there is no result<sup>49</sup>.

The practice of the forming and passing of the budget of defence shows a lack of security sector management, as well as of civil control in Georgia. For years, the projects of budgets of power departments had been submitted to the Parliament in 1-2 pages. Deputies had no opportunity to gain an understanding of the budget's expenditure points. The Ministry of Defence, for the first time, prepared the project of the 2002 budget by so-called program articles and presented detailed documents to the Parliament. In truth, it caused many questions (for example, the financial effect of a planned staff reduction was not reflected in it at all). The main thing, however, was that the project has not been coordinated with the Ministry of Finance. Finally, the Ministry of Finance reduced defensive expenses for 2/5. It remained also unknown for the Deputies as to how the reduced budget would be distributed by the program articles. There was no time to investigate this. The executive authority was not bothered to explain to the Members of Parliament the plan of distribution of the finances.

The budget program at the Ministry of Defence's office on resources management, which had been created with the help of Americans, was mismanaged in 2003. Again, there were disputes between the Ministry of Finance and the Ministry of Defence concerning the limits of financing. The Parliamentary role was revealed in its protest of the limit established by the Ministry of Finance. Eventually, the Ministry of Defence was allocated a larger than expected sum. However, in the project of the State budget, this amount was determined by old, pro-Soviet rules. It is necessary to note that other power departments did not even try to turn to program budgeting, which was characterized by its rather higher degree of a transparency.

### *National Security vs. Individual Interests*

One of the significant political and conceptual results of the relations of Georgia with the Euro-Atlantic structures was that the political elite of the country understood the necessity of development and publication of strategy of national security. This was reflected in the decree of

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<sup>49</sup> Interview with one of the authors of the law, L. Alapishvili

the President of 1996, according to which the state commission developing this conceptual document was created. 5 years passed however and, by mid-2003, the creation of the final version of the document had failed to take shape. In July 2003, the opposition once again noted the non-acceptance of this document. From the part of the authority, there were signals that the process was nearing an end. However, at the beginning of the same year persons close to the Secretary of the Council of National Security in private conversations revealed that the corresponding commission had stopped working for some time and that such serious matters demanded an additional term<sup>50</sup>.

In January 2003, the International Council of Advisers on Questions of National Security (ISAB), which was most active in this question, devoted attention to the problem of the development of Georgia's national security. Participants at the conference came to the opinion that any advancement in drawing up or even accepting the official concept of security had not taken place. In due time, at the end of 1990s, the official commission appeared quite nonflexible in its work. The Minister for Foreign Affairs had asked the organisation "the centre of strategic researches" to prepare the project. From the part of the authority, this project did not deserve such big attention and the process subsequently stopped. The initiative was later undertaken by the Security Council. The new project was prepared, but this project did not receive direct support of the government or wide public and political resonance. It was submitted on the above-mentioned conference and deserved criticism from its participants because of its structure and content. While the project of ISAB was published, its official status remained uncertain. There were also other versions prepared in the Parliament and in some power structures. Legitimation of any of them was similarly very late.

One essential reason for the prolonging of this process was that the international authority of such documents and foreign-policy cautioned the authority of Georgia. This question was discussed in the previous chapter. The essence of this was formulated by one Georgian General. It was argued that it was too risky to estimate critically the presence of Russian military bases in Georgia and to estimate positively was also impossible. He noted that it was better to say nothing<sup>51</sup>.

Over time, the attitude towards the Russian military presence in Georgia became more critical. The higher authority of the country refrained from fixing concrete external priorities, clearly an expression of its interests and anxieties. Although the problems of strategic partners, the returning of Abkhazia, Russian bases and peace-making forces were voiced in interviews and separate statements, official statements were often contradictory. In essence, they were mutually exclusive or/and are subject to different interpretations.

The concept of national security is one of the country's main concerns, which should give clear answers on these and other questions. It is possible to conclude that proceeding from the wavering of a foreign policy course, the authority found difficulty in coordinating the final text of the document. Non-acceptance of the concept also influenced the development of concrete missions for numerous power structures making their co-ordination and integration impossible<sup>52</sup>.

It is impossible to explain non-acceptance of the concept of national security only by way of a foreign policy choice between the United States and Russia. In a discourse of Georgian political and intellectual elites responsible for the safety of structures, there are signs of an amalgamation of democratic, civil values and traditionalist, sometimes xenophobia elements. There is a fear amongst representatives that the clannish-corruption system has taken the roots of ideals of democracy and human rights. However, here also is a visible world outlook of

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<sup>50</sup> Personal meeting with the Georgian diplomat, January 2003.

<sup>51</sup> Personal interview, September 1997.

<sup>52</sup> In the autumn of 2001, upon considerations in the parliament of the budgets of power structures, the Minister of Defence and the Commander of Boundary Forces mentioned several times that the absence of strategies for security prevented them from the future planning of forces, or from reaching mutual understanding with other governmental circles.

confusion and cultural eclecticism, which appear in more than one project of the concept of national security.

The elite finds difficulty in making a choice between compatible values and, as a consequence, projects contradictory positions. Not everyone agrees with such eclecticism and foreign advisers oppose it. The choice has been a late one and, accordingly, reforming the security sector and the entire political system has also been late.

In an example of the amalgamation of contradictory principles and of the incurability of unclear provisions, one could consider the above-mentioned centre of strategic research created under a special state commission in the summer of 1999:

- a) The desire of Georgia's integration into the basic institutes of the Euro-Atlantic commonwealth was mentioned, however, commitments were neither made nor were stages of rapprochement with the NATO and the European Union resolved.
- b) This project was given academic and not quite clear formulations as necessary for the creation of "corresponding cultural originality of the social organisation and a political system" of public system, necessity of "strategic security of the country" "from such influence, which does not represent result of the realized decision of a society."
- c) The ISAB matter concerned cultural identity, the spiritual world, public health services and various social problems. Again, the question of the presence of foreign military forces on the territory of the State was passed over in silence. The problem of the definition of potential military threats was posed, yet there was no answer to it. The structure of the project did not follow an outline of the strategic document, according to which interests, risks or ways of their neutralization could be differentiated.

Members of ISAB and some other foreign experts criticized this project because of its multi-sided nature and inadequate structure. While the centre of strategic research prepared a new project, its documents lacked any official value. Somehow or another, the new version, which was distributed to the interested structures in the spring of 2003, was again marked by contradictory paragraphs. Although cultural identity and ideas of an inner world were downgraded, the document did not range threats, risks or calls, and failed to prioritize other aspects of its security policy. Philosophical reasoning again prevailed over reality. The border between real and hypothetical calls and achievements and wishes for the future was unclear. So for example, in the document it was argued, that the main economic danger to Georgia was economic blockade, discrimination trading mode and smuggling, etc. This latter is the reality and a level of a reality certainly exists for the others.

From the point of view of world outlook uncertainty, it is interesting to consider the reformed document produced by the Ministry of Security. It emphasizes the necessity of the development of cultural safety, in which it is argued that the subjects of security maintenance are all bodies of authorities and managements. As a rule, conversation about culture and the responsibility of all authorities does not take place in a discourse of safety of democratic, especially western countries. Rather, it takes place on the level of "integration" with which official rhetoric focuses attention. These passages specified a heritage of totalitarian management and the reality of xenophobia in the Georgian sector of security. This document represented a last attempt from the part of the Ministry of Security to draw attention to all organisations that are financed from abroad. It created a basis of desire on the part of the Ministry of Internal Affairs to limit even more civil rights of suspected and arrested persons.

Generally speaking, public discourse is not insured from totalitarian and xenophobia sights, from which priorities of a policy and national security should follow. Corruption structures are also included in the public culture, which becomes a basis of their subsequent

strengthening. The group developing foundations of the anticorruption program wrote that corruption became a way of life in certain areas. 'Corrupt thinking' was so broadly embraced by the public perception that we have to be extremely cautious when drawing lines between the roots of national originality and corrupt customary practices<sup>53</sup>.

In general, power structures, as well as all the machinery of the State have very low authority and trust from the population. Nevertheless, in the relations between society and power structures a "paradox" does exist and it can be explained by a number of data and by more than one representative of the population, especially in suburban areas of the city. While corruption deprives state and power structures legitimacy on the other hand, it produces envy in a wide strata of the population. Although citizens do not support or trust power bodies, many wish to replicate them. Such a situation makes for the amalgamation of power bodies and criminals because the pressure to perform is weak. The reasons for this "paradox" are a low political culture of the population, legal nihilism and economic difficulties.

The cultural values of the population only partially account for tolerance, professionalism and protection of human rights. The problem here centres on the backwardness of civil society, both the sign of corruption and reason for it. Basically, political parties are the clients of various charismatic leaders and representatives of authority. A weak civil society is also visible in the fact that with rare exception, the form of punishment of an official is his/her leaving of service by self-will. In most cases, an official who has violated the law can retain property that was illegally gained and frequently he/she appears on another post. The indication of the society's low level of political education is attested to by the fact that odious statesmen for a long time remain in politics for a long period of time or, after a break for suspect reasons, return without problems.

Ethnic, not civil belonging remains the dominant factor of self-identification in Georgia<sup>54</sup>. Signs of cultural violence persist. In the vein of Johan Galtung, it could be said that direct and structural violence, which authorities and, quite often, the power sector make against their own citizens, finds legitimation in the consent of a certain part of the population in the persecutions of dissenters<sup>55</sup>.

The most obvious confirmation of this is the exposure of fundamentalist Orthodoxy in public circles. In essence, only a small number of representatives of the nongovernmental sector opposed the actions by the priest, Basili. Basili, until recently, openly carried out persecutions of Jehovah's Witnesses and representatives of other, non-traditional faiths. This was done through the burning of non-Orthodox Christian literature and the dispersal of assemblies of Jehovah's Witnesses and Baptists. Police did not interfere in these events. In some places, the police participated in the dispersal of religious groupings. Some deputies openly protected Basili. These deputies were united in the ruling block, in spite of the fact that in the official rhetoric of the President, fidelity to democratic and liberal values is pointed out as a priority.

The state of Georgia faces a complex range of dangers and risks. A conversation about some of them has caused special alarm. Their character demonstrated that the problem is not so much about the security environment, though this aspect should also be taken into account. The problem involved the inadequacy of the State itself and its security structures. The political system and system of security of the country are inadequate for the construction of democracy and independence. In Georgia, there are enough visible signs of an amalgamation of the criminal world and the State apparatus, total character of shadow relations, forming of a so-called mafia State. The legal nihilism that has spread has fed into and propelled xenophobia impulses in the search for a scapegoat.

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<sup>53</sup> The main directions of National Anti-Corruption Program of Georgia, Project, Tbilisi, October 31, 2000, p. 9.

<sup>54</sup> Theodor Hanf and Gia Nodia, *Georgia Lurching to Democracy*, (Baden-Baden: Nomos, 2000), pp. 92-102.

<sup>55</sup> Johan Galtung, *Peace by Peaceful Means: Peace and Conflict Development and Civilization*, (London: SAGE for PRIO, 1996).



If the ways are not found and sufficient political will is not provided for to turn around the current political and cultural dynamics, the criminal mode might well be crystallized in Georgia. Not only will this place the future of the Georgian democracy in question, but it also hampers the restoration and preservation of its territorial integrity and independence. The fact is that today Georgian security is incapable of providing for the realization of these basic national interests. There is still a potential for its continuation, but the time for change has come to an end.

### *The Way to the Future*

The desire for reform continues nonetheless. In Georgia, freedom of speech is a reality. Its brightest demonstration is evident in the capital, nongovernmental sector and media. Recently these sectors actively participated in exposing security sector infringements. The Association of Young Lawyers achieved success in assessing the financial documentation of the Ministry of Internal Affairs and in protecting the rights of detained and condemned persons. The Institute of Freedom is an active lobbyist of democratic legislation and protects religious minorities in word and deed. The Caucasian Institute of Peace, Democracy and Development together with several organisations participates in the research of the reasons for corruption, in the organisation of open discussions of questions of national security, in making public the problems of national minorities. Journalistic investigations, which are covered in the press and in an independent broadcasting company, Rustavi 2, also work for the benefit of democratic reform and raising public discourse.

Infringements of power departments becomes publicly known with the help of the Office of Public Prosecutor and the Court. It specifies, that not everything remains unpunished and "the shadow State" has weak sectors. Some time ago, there was an interesting precedent of cooperation between these two components of legal and civil society in revealing lawlessness of power bodies. On air of an independent broadcasting company, the General Military Public Prosecutor accused the Ministry of Internal Affairs of creating obstacles to the investigation of a specific criminal case. In August 2003, the accusation of the Acting Deputy Chief of the Penitentiary Department in criminal activity and detention took place<sup>56</sup>. In spite of the fact that the opposition of clans dominates these affairs, there is an increasing struggle for legality. These cases, in any case, weaken the syndrome of impunity.

Reforming of the Ministry of Defence with the help of the United States continues. The American program of the preparation of four professional battalions in the armed forces has come to an end. Steps for the improvement of management and coordination of power departments have been undertaken. In March 2002, in Poti manoeuvres in antiterrorist operations, in which representatives of several corresponding structures participated, were carried out<sup>57</sup>.

Despite the difficulties that have arisen in the mutual relations of Georgia with the democratic West and with international political and financial institutions, the relationship continues. The United States and the European Union continue to make appearances in Georgia. The last example of this was James Baker's visit to Georgia in the summer of 2003 as the representative of the President of United States. This visit, to some degree, lessened the Georgian authority and opposition's confrontation concerning rules of the central election commission.

External and internal deterrents hinder the final forming in Georgia of the mafia state. Nevertheless, there is a real and potentially increasing place for such a state to develop. The interest and support for international democratic existence is however a primary deterrent. The ruling elite and the power bodies understands this fact. If, from the part of the West the

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<sup>56</sup> Broadcasting company Rustavi 2, *Courier*, 18<sup>th</sup> August 2003.

<sup>57</sup> Broadcasting company Rustavi 2, *Courier*, 20<sup>th</sup> March 2002.

requirement of striking roots of superiority of the law become more categorical, the signs of which already exist, then real steps should logically stem from the reformative rhetoric.

The internal factor making for reform depends on a mixture of honesty, modesty and pragmatic calculations. From the security system's point of view, in each of the power departments and among individuals more generally, there are opposite tendencies. This gives hope, however the use of this potential demands serious efforts from society's strongest and most committed forces.

Nevertheless, in relation to external and internal political dilemmas, it is not clear as to what the final choice of the Georgian political elite will be. On the one hand, it depends on the policy of the West not only in Georgia:

If the West will not invest resources for preservation of an independent line of Georgia, Georgia will be the first country, which will go on capitulation before Russian requirements; Russia again establishes the influence economically, diplomatically and from the military point of view in the former Soviet south<sup>58</sup>.

But also in the Caucasus as a whole:

The future of Caucasus again is not clear – the policy of the United States plays a leading role in the fact that whether this region becomes stable, pro-American ally or will be involved in chaos with following outside implications<sup>59</sup>.

The intensity of US and European Community assistance is dependent on the corresponding efforts of Georgian authorities and society. Firstly, well-defined requirements and the development of clear, executable plans are necessary. This is the responsibility of the recipient country.

Georgia faces a greater choice than parliamentary or presidential elections alone. It is a choice between a democratic future and ethnographic fun, where behind the 'good kitchen' and folklore music either oligarch criminal or anarchy, or a symbiosis of both will be hidden. Unfortunately, the last few years have shown that the elite does not make this choice. Externally, it declares a course of democracy and independence, if alone for continued help from the West. In the end, this leads to a loss of independence and a curtailment of the democratic process. Fortunately, in Georgia there are other forces at work. The matter is that it is necessary to renew the elite and with their help.

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<sup>58</sup> <http://www.stratfor.com> January 2000.

<sup>59</sup> Kurt M. Campbell and Michele A. Flornoy, *To Prevail: An American Strategy for the Campaign Against Terrorism*, (Washington D.C.: CSIS, 2001), p. 254.

## Chapter 2

### Power Elites in Georgia

*Zurab Chiaberashvil and Gigi Tevzadze*

'Elites', as referred to in this article, follows Pareto<sup>1</sup> and Mosca<sup>2</sup>, who defined the condition of elitism as the exercise of state control by those individuals with personal and/or group resources disproportionate to those necessary for management of the state. The terms used to describe these resources differ, but theories have in common the fact that such societies the management of a minority over the majority/masses, even in cases of democratic systems (Schumpeter<sup>3</sup>). Other classical theories about the state and society,<sup>4</sup> such as Marxism (struggle of classes) and pluralism (inter-balanced sources of authority), describe various types of authority and, accordingly, different social structures.

In the late 1980s and early 1990s, newly-formed states began to emerge in the Soviet Union. New forces came to power within these states and their 'new order' moved in different directions. In this article, we hypothesise that due to different conditions in these new states, different social structures and state-society relations evolved and, accordingly, fulfilled different theories. The differing levels of legislative activity and the rules by which executive authority was administered both affected the eventual roles of elites. Proceeding from this hypothesis, we then demonstrate how the state system in Georgia developed according to a theory of elites. Below we give concrete examples showing that, in Georgia, the legislation was developed according to the interests of strong elite groupings, based on the premise of permanently implanting, unconditionally, management of the majority by a minority.

In the newly-emerged states, no-one made considered choices between pluralistic, class or elitist structure, the economic and cultural environment, political conditions, the heritage of the Soviet Union, previous and contemporary politicians, or visions success and failure: these and many other, casual, interconnected, isolated and natural factors have determined Georgia as representing, from independence, a precise illustration of the theory of elites<sup>5</sup>.

In this article the factors creating an environment conducive to rule by elites are examined, and the relevant institutional design enabling this, are discussed.

#### *Institutional Design: the Constitution and Reality*

According to the 1995 Constitution, Georgia is a Presidential Republic. Being the Head of State and the exercising executive power, the President of Georgia is responsible for the domestic and foreign policy of the State (Article 69 of the Constitution of Georgia). The President is elected by free, universal, equal and direct suffrage by secret ballot for a term of five years. The same person can only serve two consecutive terms as President (Article 70).

President Eduard Shevardnadze was elected in April 2000 for a second five-year term "in an election marred by numerous serious irregularities... [which] limited citizens' right to change their government."<sup>6</sup> When Shevardnadze was elected for the first time he was the Head of State

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<sup>1</sup> Pareto, *The Rise and Fall of the Elites*, (New Jersey, 1968).

<sup>2</sup> Mosca. *The Ruling Class*, (New York, 1939).

<sup>3</sup> Schumpeter, *Capitalism, Socialism and Democracy*, New York, 1942.

<sup>4</sup> Keith, *Political Sociology*. (New York, 1999), pp. 32-53.

<sup>5</sup> By our hypothesis, in the post-Soviet space there are countries in which the choice is made for the benefit of pluralism (Baltic countries), and also countries, in which the society is divided by possession/non possession by means of manufacture, and we deal with class/caste system (Turkmenia).

<sup>6</sup> Department of State's annual report about Georgia for the year 2000.

with the rank of the Chairman of the Parliament. From 1972-1985, before his assignment as Minister for Foreign Affairs of the Soviet Union, Shevardnadze was the First Secretary of the Central Committee of the Communist Party of the Georgian Soviet Socialist Republic and the actual governor of the Republic. As the President of Georgia from 1995, Shevardnadze: appointed members of the government (ministers) with the consent of the Parliament; removed them; submitted the draft of the state budget to the Parliament; halted or dismissed the local self-government representatives and/or territorial units if their activities endangered the sovereignty and territorial integrity of the country; signed and issued laws adopted by the Parliament; issued decrees and orders (on the basis of the constitution and the law (Article 73)).

The Parliament of Georgia is the supreme representative body of the country, which exercises legislative power and determines the main directions of domestic and foreign policy (Article 48). Parliament has the right to release the President of his duties for violation of the Constitution, or high treason or other capital crimes (Article 63, Article 75).

The right to initiate legislation is secured for the president, members of parliament, a parliamentary factions, and parliamentary committees. However, a bill submitted by the President may also be considered outside parliamentary terms or via an accelerated process (Article 67). The president has the right of veto, but there is the procedure securing for the parliament a right to overcome a veto (Article 68).

The Georgian parliament, by the majority of the total number of deputies, passes the budget law annually. Only the president has the right to submit the draft budget to the parliament. If parliament cannot pass the budget by the beginning of the new budget year, expenditures needed to cover the state's liabilities are made in accordance with the budget of the prior fiscal year (Article 92, Article 93).

The president is obliged to submit his proposed government structure for ratification by the parliament. In cases where parliament does not ratify the government, the president is authorised to submit the same government for ratification or compile a new one. The same government can thus be submitted twice (Article 77).

Parliament confirms the structures and procedures of activity of the executive branch upon the president's submission of names (Article 78), exercises general control over the cabinet of ministers (Article 48) but, in spite of all of this, members of government are responsible only to the president (Article 79), who heads the government and directs cabinet's meetings. Ministers issue orders on the basis of law (Article 81).

A state minister who directs the chancellery and fulfils separate tasks under the direction of the president is considered to be part of the government (Article 81).

However, the Constitution's serious deficiencies became apparent after its introduction. Most of these occurred due to factors prevalent at the time of its writing in 1995 – and went on to create the ground for the formation of a clan system in Georgia:

Firstly, Shevardnadze, the then head of state, was, during the constitution's preparation and passage, a charismatic figure, and the presidency was given special rights (including a right to initiate legislation and exclusively manage executive authority), causing a bias of a state system towards a hyper-presidential system.

Secondly, in Georgia, there was no steady experience of parliamentarism. During Soviet times, the Supreme Soviet of the Georgian Soviet Socialist Republic existed only formally against a background of management of the Central Committee of the Communist Party of the Republic which in turn was dependent on instructions received from Moscow. Elected in the first multi-party elections in Georgia (autumn 1990), the Supreme Soviet of the Republic of Georgia was dispersed by a Military Council which, in January 1991, took power after a civil war and exile of the first President, Zviad Gamsakhurdia. Between 1992 and 1995, the parliament worked in conditions affected by the Abkhazian conflict and civil war (1992-94) and had little time to organise constitutional affairs. Within the parliament, chaired by Eduard Shevardnadze, conditions of general chaos meant that individuals were more interested in strengthening their

own positions than in forming and strengthening the role of parliament itself

Thirdly, the former communist *nomenklatura* was much stronger (especially economically) than political parties were. This *nomenklatura* filled executive authority almost entirely; partly via their representation in the legislature (the basic unit being the parliamentary faction 'Union of Citizens' together with other deputies) and in regional and local structures.

The serious deficiencies in the institutional design determined by the constitution included the legislative rights of the president; the procedure for accepting the budget; the procedure for approval of the government; etc.

The legislative rights of the president fell in two areas. Firstly, the President was given the right legislative initiative and with this, out of turn or accelerated by, the number of drafts prepared by the Office of the President and other ministries exceeded (in growing tendency) the number initiated by parliamentarians, parliamentary factions and committees. As a result, the parliament was weakened as a body determining policy. The function was reduced to the level of voting.

Secondly, the President was given the right to issue decrees. Sometimes presidential decrees contradicted the legislation accepted by the Parliament. Executive authority became accustomed to being guided by decrees rather than by parliamentary laws, the judicial validity of which exceeded these decrees.

The procedure by which the budget was accepted was also affected. When the parliament did not approve the budget submitted by the president, it did not cause either the dissolution of the parliament nor the resignation of the government; expenditures were simply made under the budget of the previous year. Because of this, the control of the legislature over expenditure was considerably weakened. The parliament did have a body to realise control over state finances - the Chamber of Control – whose chairman was appointed by the Parliament, at the president's nomination, for a term of five years, and whose removal remains only possible by a decision of Parliament (Article 97). In reality, the Chairman of the Chamber of Control was a member of the president's team and in disputes he constantly protected the position of the latter.

Thirdly, the procedure for ensuring parliamentary approval of the government showed parliament's weakness. In reality, governments were created over which parliamentary control was minimal.<sup>7</sup>

Despite rights to the contrary in the constitution, parliamentarians were seldom able to summon members of agencies subordinate to parliament, including members of the government, mayors of cities, governors and/or the executive bodies of territorial units at every level and state institutions, or to receive responses from them to particular questions (Article 59). In fact, the issuing of such requests and subsequent questioning was seldom carried out.

Similarly, the parliament could only pursue the resignation of a government minister by way of impeachment. Impeachment was too complicated a legal procedure to be used to pursue mismanagement by government members.

Problems were similarly caused by the failure of the constitution to define the government as a single team. Separate members of the government could operate outside the control not only of the parliament, but also of each other and, unexpectedly, the president as well<sup>8</sup>.

The participation of citizens in political decision-making was also constrained. A referendum could only be fixed at the request of two hundred thousand electors or on the

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<sup>7</sup> In autumn of 1998 the President Shevardnadze pronounced a phrase, which well expresses essence of the institutional design of Georgia: 'the Union of Citizens is not the ruling Party, but it is the Party, which has won in elections'.

<sup>8</sup> On March 15, 2001 the President Shevardnadze has issued Decree 95 "On some Primary Anticorruption Actions", which was prepared on the basis of the national anticorruption program written in 2000 by a special commission of seven persons. Monitoring the performance of Decree 95 decree made by the nongovernmental organizations revealed that none of the ministers had executed it fully.

initiative of the President, and at the same time, a referendum on the adoption or abrogation of law, or ratification or rejection of treaties and international agreements was prohibited (Article 74). In other words, the political elite (parliament and the president) were considerably insulated from the wishes of the people on many issues.

Finally, the right to initiate legislation is vested only in groupings of (at least) 30,000 citizens (Article 67), the only actors able to initiate such proceedings being the president, members of parliament, parliamentary factions, a parliamentary committees and the supreme representative bodies of Abkhazia and Ajara. The only exception in the constitution which benefits Parliament is Article 76 which states:

In cases where the President is unable to perform his duties or in the case of pre-term expiration, the powers of the President are delegated to the Chairman of Parliament.

This article seriously prevents the weakening of the role of parliament in the political life of the country (and, significantly, was used by Nino Burjanadze as interim President during the 'Rose Revolution' of 2003).

According to the constitution, the parliament consists of one hundred and fifty deputies elected for a term of four years by a proportional system and eighty-five elected by a majoritarian system for a period of four years on the basis of free, universal, equal and direct suffrage by secret ballot (Article 49). Eighty-five deputies<sup>9</sup> are elected in single-mandate majority districts, the geography of which coincides with the basic regional unit of the administrative-territorial structure of Georgia<sup>10</sup>.

It is necessary to note, that despite the existence of a great number of parties, as a result of the proportional representation system, between 1995 and 1999, parliaments sought to limit the number of parties. Seeing a danger in replacing a '*nomenklatura* policy' with a 'party policy' prior to the elections of 1999, the Union of Citizens party used their majority to raise the barrier to parliamentary representation from five to seven per cent of the vote (this also occurred in the Ajaran parliament).<sup>11</sup>

It is possible to conclude that the constitution itself has not determined who is the main subject of policy: political parties (parliament) or the state bureaucracy (the government and regional/local managers). The whole system is based on an uncertain balance between the two and the president is the guarantor. As a consequence, it has led to the blocking of one of the two branches of authority - legislative and executive. Such circumstances strengthened Shevardnadze's position at the expense of the country's stagnation.

Because the president's rights are disproportionately wide in comparison to other subjects of politics, political parties develop poorly and the 'party in power', the Union of Citizens of Georgia, as the basic supporters of the then President, grew with the state bureaucracy.

A symbolic sign of coalescence between the party in power and the state bureaucracy was demonstrated during the governmental crisis of 2001 with the resignation of the chairman of the Union of Citizens party Zurab Zhvania, who was Chairman of the Parliament between 1995 and 2001. Zhvania was replaced by Avtandil Jorbenadze, the State Minister.

### *The Political Elite / Political Parties*

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<sup>9</sup> In fact the total is 73, as places are kept for the Abkhazian deputies who numbered twelve representatives elected from single-mandate majority districts of Abkhazia in 1992 in each new Parliament up to the restoration of the territorial integrity of Georgia.

<sup>10</sup> As stated in the Constitution, the internal territorial arrangement of Georgia shall be determined on the basis of the principle of division of power after the full restoration of the jurisdiction of Georgia over the whole territory of the country (Article 2, paragraph 3).

<sup>11</sup> Amendment of the Constitution N 2221 of July 20, 1999.

In spite of the fact that the political system determined by the constitution failed to provide an opportunity for the successful development of political parties, they gradually took the place of the main movers of this system, and this was caused by the existence of a free media and the changing popularity of politicians.

Due to the free press, political parties that resisted the state bureaucracy created the political agenda of society as a whole. Although to some, the media might be perceived as prejudiced, in general, it provided a full picture of the questions put forward by political parties.

In spite of the fact that since 1992 Shevardnadze had invariably been seen as the only possible head of state and, at the same time, the leader of party in power (the Union of Citizens), some significant opposition political parties grew from the Union of Citizens. Leaders of the National Movement, New Rightists and, to some degree, the United Democrats, at first initiated their political activity inside the Union of Citizens of Georgia.

The characteristics of the eight political parties, which overcame the seven per cent barrier determined by the constitution and/or local elections of 2002 in Tbilisi (where elections used the proportional representation system) overcame the four per cent barrier necessary for passage to city council.

#### *Political Parties - The Union of Citizens of Georgia*

For the reader, the essence of the Union of Citizens of Georgia should be clear from the passages underlining the characteristics of Georgia's political system. Nevertheless, some details demand special attention.

The Union of Citizens of Georgia was created in 1994 and supported President Shevardnadze in Parliament over a number of years. It was never a party of the people united on the basis of any ideology, but rather represented a post-Soviet reflection of the Communist Party and opened the way for interested persons to come to power (at central or local levels). From these persons, only one thing was required - loyalty to President Shevardnadze.

As a consequence, the Union of Citizens ideologically and, by its structure, was rather eclectic. On the one hand, there was a group of people from one of the leaders of the Party - Zurab Zhvania, and also Mikhail Saakashvili (Chairman of the City Council of Tbilisi, November 2002, Minister of Justice in 2000-2001, Chairman of the Constitutional Judicial and Legal Parliamentary Committee and leader of the Parliamentary faction of the Union of Citizens 1995-2000), who were named 'young reformers',<sup>12</sup> and on the other hand, the old communistic *nomenklatura* (members of the government, regional leaders, intelligentsia).

One of the reasons for the disintegration of the Union of Citizens was that people of various foreign policy orientations were present in it (pro-western young reformers as well as anti-westerners, and that did not automatically mean Russophiles or reactionaries) of various ages, careers and mentalities.

The second and, probably, principal reason was an attempt of young reformers to transform the Union of Citizens from being the party that won elections and then supported the executive into the party of power itself, in order to obtain control of the executive authority via the parliamentary majority. For the first time, this policy was concertedly used in July 1998, when, under the pressure of reformers, Minister Niko Lekishvili was removed from office.

Constant pressure created a permanent tension between supporters, on the one hand, of Zhvania and Saakashvili and the Ministers of Internal Affairs and Economics, Kakha Targamadze and Ivane Chkhartishvili, on the other. This ended with the crisis of October 28<sup>th</sup> - November 1<sup>st</sup>

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<sup>12</sup> This name is connected to the reforms started in various sectors of the State system of Georgia, from which the most significant was reform of judicial authority. One of the reasons of the conflict between team Zhvania-Saakashvili and *nomenklatura* of Shevardnadze was also that after reform of judicial system did not follow the reform of Police and the Office of Public Prosecutor (see power structures).

2001 when, in response to student demonstrations in Tbilisi, the government retired among others Targamadze and Chkhartishvili and the Chairman of the Parliament, Zurab Zhvania.

After November 2001, Zurab Zhvania tried to retain his position in the Union of Citizens, leading Shevardnadze to search for a new support, disorganising the state bureaucracy even more.<sup>13</sup> This development led to one of the president's regional supporters, Governor Kvemo Kartli Levan Mamaladze, to struggle to retain the name of the party from Zhvania, and so allow the president's supporters to participate in local elections on June 2<sup>nd</sup> 2002 on the list of the Union of Citizens. At the time of writing, Minister Avtandil Jorbenadze was trying to reanimate the party, and to manoeuvre between the state bureaucracy, regional elites and the Union of Citizens' internal intrigues.

#### *Political Parties - Industry Will Save Georgia*

This Party, whose basic purpose was to protect businesses hurt by the government and lobby groups, was created before the parliamentary elections of 1999 and against a background of criticism of the government, but which overcame the seven per cent electoral barrier. The Party has subsequently softened its criticism of the government and, moreover, and gradually turned into a partner of the authorities. At the beginning of 2003, the Union of Citizens created from several factions a so-called 'thematic majority' for the statement of the state budget. The party of 'industrialists' entered into this association.

#### *Political Parties - Labour Party of Georgia*

In Tbilisi, the local elections are carried out by proportional representation, and in the elections of 1998 and 2002, the Labour Party of Shalva Natelashvili took first place (25% of the votes in 2002). Considering Georgia's social and economic problems at the time, radical criticism of authority from the side of Natelashvili was not unexpected<sup>14</sup>.

In 1998 and 2002, the Party Chairman Shalva Natelashvili did not enter in members of the city council and the Party could not create a majority in the City Council. Moreover, labour party members in the City Council, as a rule, tend to leave a Party and join other parties. For example, in 1988, the Chairman of the City Council, Lado Kakhadze, who passed under the list of the Labour party, ran in the 2002 elections on the list of the Union of Citizens. In the parliamentary elections of 1999, the Labour Party lacked several hundred votes to overcome a seven per cent barrier.

#### *Political Parties - National Movement for Salvation of Georgia*

The forming of the National Movement began in autumn 2001 after its future leader Mikhail Saakashvili, as a sign of a protest, left both his post as Minister of Justice and the government of the President Shevardnadze. In the local elections of 2002 in Tbilisi, the Movement obtained second place (with twenty four per cent of the vote) and was only a few hundred votes behind the

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<sup>13</sup> "Even more" we say, because escalating break-off between Shevardnadze and Zhvania during a number of years has brought the *nomenklatura* in confusion. At that, it is necessary to take into account, that Zurab Zhvania, the Chairman of the Parliament in 1995-2001, the second leader of the Union of Citizens (after the President Shevardnadze) and the Head of the Parliamentary election companies of 1995 and 1999 and the Presidential elections of 2000, has carried out a serious personnel invasion in different circles of executive authority.

<sup>14</sup> In local elections of 2002 his slogan was "we shall remove plunderers of authority". It is necessary to note, that despite of sharp criticism of authority, Natelashvili almost never concerned personally President Shevardnadze. By the way, during last period the American company "AES - Telasi" became the purpose of populist criticism of Natelashvili together with the Georgian democracy.



Labour Party<sup>15</sup>. Saakashvili, previously on the City Council, was able to form the majority to become the Chairman of the Council. The movement had a faction in the Parliament of 1999, uniting with reformers from the Union of Citizens.

#### *Political Parties - The New Right*

The disintegration of the Union of Citizens party began in 2001 with the separation of 'The New Right' from it. The presence of the young, influential businessmen Levan Gachechiladze and David Gamkrelidze on the electoral list of the Union of Citizens in 1999 was an initiative undertaken by Zurab Zhvania and Mikhail Saakashvili, though Gachechiladze and Gamkrelidze left the Party because of their opposition to Zhvania-Saakashvili.

Consisting of eighteen people, New Rights represented as a supportive wing of President Shevardnadze in the Parliament after the Union of Citizens disintegrated and Zhvania left the Party. In local elections of 2002 in Tbilisi, Levan Gachechiladze planned both his victory and that of the presidency over the City Council, however, the party achieved only third place (receiving twelve per cent of votes). Nevertheless, outside Tbilisi, in both the city and rural Councils, the party received a majority of all votes cast. After the local elections, the party directed criticism against the authority of Shevardnadze and gained the image of an opposition party. With the purpose of specifying election lists,<sup>16</sup> the well funded party began an independent registration of voters in January 2003.

#### *Political Parties - The United Democrats*

The disintegration of the Union of Citizens (before its reanimation by Minister Avtandil Jorbenadze) began with Zurab Zhvania's team's separation from it. Because of the fact that in the local elections of 2002, the registration of a new party lagged behind schedule, this group ran under the list of the Christian-Conservative Party and, in Tbilisi, collected eight per cent of the vote. In the Parliament, the party had a faction consisting of twenty two people who rigidly resisted the authorities. The non-*nomenklatura* intelligentsia who were disappointed in Shevardnadze often sympathised with the United Democrats.

#### *Political Parties - Unity*

In the local elections of 2002, *Unity* overcame the four per cent barrier and had two representatives on the City Council. The party was distinguished only by the fact that its leaders were the First Secretary of the Central Committee of the Communist Party of the Georgian Soviet Socialist Republic in 1985-89 Jumber Patiashvili<sup>17</sup> and the political scientist of pro-Russian orientation Alexander Chachia. *Unity* enjoys the sympathies of those voters who remain nostalgic towards the Soviet Union.

#### *Poistions of Influence - The Chairman of the Parliament*

Though influence of the Parliament and, accordingly, the Chairman of the Parliament on the

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<sup>15</sup> As against of labourists, the pre-election slogan of movement is "Tbilisi without Shevardnadze" - was an appeal directed particularly against the President. On February 12, 2003 at the expanded session of the government, Saakashvili has directly declared to Shevardnadze: "I thought, that we (reformers) together with you could get rid of the corrupted officials, who sit in this hall. Now the only way for this purpose is that you should leave and together with you all these officials".

<sup>16</sup> Not specified lists of voters - one of the basic preconditions of falsification of elections.

<sup>17</sup> Personally resists to Shevardnadze since Soviet times. He was his main opponent at Presidential elections of 2000.

government is insignificant, the value of the post of the Chairman of the Parliament itself is given by Article 76 of the constitution, according to which in case of the unscheduled departure the President, the post is to be occupied by the Chairman of the Parliament. Because of this, in autumn 2001, after Zurab Zhvania's resignation from a post of the Chairman of the Parliament, special value was given to elections of new Chairman of the Parliament.

By this time, there were three political forces in the Parliament – supporters of the President Eduard Shevardnadze, the leader of Ajara, Aslan Abashidze and Zurab Zhvania himself - and none of them had enough votes to win the election of the new Chairman of the Parliament. The election revealed which two forces from the three could be united.

Nino Burjanadze's candidature passed after votes by 'traditionalists',<sup>18</sup> even though Nino Burjanadze was a nominee of reformers. Former State Minister Vazha Lortkipanidze was a nominee of the Union of Citizens, and Aslan Abashidze's supporters put forward the candidature of Jemal Gogitidze.

Electing Nino Burjanadze as the speaker of the Parliament showed that unity between Shevardnadze and Abashidze did not occur. Because the Union of Citizens could not pass its nominee, the formation of the new majority of deputies supporting President Shevardnadze was delayed for the whole year.<sup>19</sup>

The unification of the reforming forces in the Parliament, expressed in the candidature of Burjanadze, meant that political struggle was kept within the framework of legitimacy, and not just only in the hopes of street demonstrations.<sup>20</sup>

#### *Positions of Influence - The State Bureaucracy*

Aside from the political elite, the state bureaucracy plays the largest role in the managing the country, the basic kernel of which, at the time of writing, remained the former communist *nomenklatura*.

The *nomenklatura* lost the reins of government as a consequence of the national-democratic liberation movement of 1988-89 and the revenge taken in the civil war of 1990-91, when the President Zviad Gamsakhurdia was expelled from the country and the military council called in Eduard Shevardnadze from Moscow as head of the country<sup>21</sup>.

In 1992-95, when the attention of societal and political activity was busy with ethnic (Abkhazia, 1992-93) and civil (Western Georgia, 1993-94) conflicts, the state bureaucracy carried out two large-scale programmes - introduction of the national coupon and 'voucher-isation' of former state property, strengthening its dominant economic situation acquired in the Communist era.

Like other Soviet republics, documentation of Georgian Communist Party activity between 1989-91 detailing liquidation of local Communist Party and Komsomol property, disappeared. Journalistic investigation proved that property settled in the pockets of influential members of the *nomenklatura*.

During the Presidency of Zviad Gamsakhurdia, the Cabinet of the Ministers created, on August 29<sup>th</sup> 1991, a commission investigate the Communist Party's liquidation. Bakur Gulua was

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<sup>18</sup> The faction "traditionalists" has passed to Parliament under the list of the block of Aslan Abashidze "revival", but gradually its position has come nearer to a position of faction Zhvania-Saakashvili.

<sup>19</sup> At the beginning of 2003 the Union of Citizens has created in the Parliament from several factions so-called "thematic majority" with the purpose of the statement of the state budget.

<sup>20</sup> Chairmen of the Parliament of Georgia after 1990: November 1990 - May 1991 – Zviad Gamsakhurdia; June 1991 - December 1991 – Akaki Asatiani; October 1992 - October 1995 - Eduard Shevardnadze; November 1995 - October 2001 - Zurab Zhvania; November 2001 - up today – Nino Burjanadze.

<sup>21</sup> However, it is impossible to say that the authority of times of Gamsakhurdia was free from representatives of the Soviet *nomenklatura*: decisions accepted at that time (the decision about privatizations of the land, outflow of money from Georgia), obviously specified presence in the government of the Soviet relicts.

made chairman. Gulua was almost the only one to keep a place in the state machinery after the overthrow of the government of Gamsakhurdia. The results of the commission remain unknown to Georgian society, and the question itself has been forgotten.

After 1995, the state bureaucracy stood apart from society and, despite internal disagreements, became one big clan. The small size of the country and lack of resources made the creation of this clan easier. The clannish character of the state bureaucracy is revealed by many examples, but two can be elucidated here: at the time of writing, the brother of the Minister of Transport, Connections and Communications Merab Adeishvili, Gia Adeishvili, is the Deputy Minister of Fuel and Energy; and the brother of former Minister of Economics, Manufacturing and Trade, Ivan Chkhartishvili, Shalva Chkhartishvili, is the Deputy Head of Inspection for Large Tax-Payers. These examples clearly reveal how family interests appear in the various spheres of the economy.

### *Positions of Influence – the State Minister*

Article 81 of the Constitution states that

The State Minister who directs chancellery and fulfils separate tasks under the direction of the President is considered to be part of the government.

Under the legislation, the state minister is not the prime minister of the constitutional French or Russian models, and his rights are limited. The strength of the office holder depends more on personality and trust imparted by the president, than on the rights and duties determined in the legislation.

Even during the most peaceful period of mutual relations between the Union of Citizens party and the government (1995-1998), Zurab Zhvania's (Chairman of the Parliament) opposition to former State Minister Niko Lekishvili (December 1995-August 1998) was obvious.<sup>22</sup> The basis of opposition to Lekishvili was an attempt by reformers to, in some way, limit and/or take economic activity and influence of the state bureaucracy under their own control. With the following State Minister, Vazha Lortkipanidze (August 1998 - May 2000) geopolitical factors added to the same type of political opposition. Before acquiring the position of State Minister, Vazha Lortkipanidze the Ambassador of Georgia in Moscow. As such, Lortkipanidze acquired a pro-Russian image.

In the spring of 2001, after Shevardnadze's unsuccessful attempt to create a prime ministerial post, the position of state minister became identified as a preparatory post for a future President. However, the resignation of the principal candidate, Zhvania, upset the consolidation of a strong presidential party.

### *Positions of Influence - National Security Council*

Article 99 of the Constitution states:

the Council of National Security is created for military construction and organization of the defence of the country, which is headed by the President. The composition, authority and procedures of the Council of National Security are determined by organic law

However, the constitution neither determines the Council's position in the structures of the

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<sup>22</sup> Lekishvili was the originally the secretary of a district committee of Communist Party of the May district of Tbilisi from 1985-89 and, in 1990, became Chairman of the Tbilisi City Council, and was thus well connected within the capital. For a political history of Georgia in the 1990s' see in Gigi Tevzadze "Georgia-returning of authority", Tbilisi, 2003

government nor mechanisms for its control by the Parliament. This fact has transformed it into a separate object in politics. The Council's first secretary, Nugzar Sajaia, who committed suicide in his cabinet in February 2002, had the reputation of a "grey cardinal". Sajaia transformed the Council into a production line for a new generation of state bureaucrats: Sul Khan Papashvili became Head of the Service of Government Protection, Valery Khaburdzania became Minister of Security, Koba Narchemashvili became Minister of Internal Affairs and, Sul Khan Molashvili became Chairman of the Chamber of Control (the main state audit agency).

As the interests of ministers concerned with economic matters gravitated towards the state minister, the heads of the power ministries gravitated towards the security council. Nugzar Sajaia managed to heavily influence the former Minister of Internal Affairs Kakha Targamadze, and never engaged in open conflict with opposition political forces or the reformers in the Union of Citizens. The absence of open conflict was possible because of the specificity and style of work of the security council.

Tedo Japaridze, former Ambassador of Georgia to the United States, succeeded Sajaia. Japaridze's assignment coincided with the beginning of Georgia's US assisted "Train and Equip" (GTEP) programme, whose importance lay in affecting internal rearrangements of the Georgian government and the country's geopolitical choices.

#### *Positions of Influence - The Diplomatic Corps*

The Ministry for Foreign Affairs and its diplomatic corps form a separate part of the bureaucratic elite. For a number of years, Georgian foreign policy was interpreted as one of the successes of the Shevardnadze presidency. However, the economic crisis of 1995-97, economic decline and corruption caused serious harm to the government's political foreign policy successes, which were basically expressed in terms of a deepening of mutual relations with the democratic Western nations.

In terms of the leading positions of Georgia's diplomatic corps, the share of people with an academic background is rather high. Alongside the President and the Union of Citizens party, Zurab Zhvania influenced the diplomatic corps to some degree, as demonstrated by the posting of Revaz Adamia, a member of his team and Chairman of the Parliamentary Committee of Defence and Security in 1995-2001, as Georgia's Ambassador to the United Nations. The good reputation of Adamia in the West and his firm position towards Russia significantly influenced the President's decision-making. It is significant to point out that the son of Kote Gabashvili, Ambassador of Georgia to Germany, Georgi Gabashvili, has become one of the leaders of Zurab Zhvania's party, 'United Democrats'.

The former Minister of Foreign Affairs, Irakli Menagarishvili, belongs to the older *nomenklatura*. From 1986-91 and 1992-93, Menagarishvili was the Minister of Health, and was previously, between 1971-75, secretary of the Komsomol of the Georgian Medical Institute, and (1978-80), chief of a department of the central committee of Komsomol of Georgia. Menagarishvili, who was frequently mentioned as a possible successor to Shevardnadze, is second cousin of the State Minister, Avtandil Jorbenadze.

#### *Positions of Influence - The International Oil Corporation of Georgia*

Together with its economic and political value, the International Oil Corporation of Georgia, retained a significant role in supervising the elite of the country. This was determined by that fact that the political stability and economic welfare of Georgia, to a great extent, remains dependent on the Trans-Caucasus oil pipeline. The President of the corporation, Gia Chanturia, was another figure once mentioned as a possible president.

#### *Positions of Influence – the Governors*

Article 2 of the constitution states that:

The internal territorial arrangement of Georgia is determined by the Constitution on the basis of the principle of division of power after the full restoration of the jurisdiction of Georgia over the whole territory of the country....The citizens of Georgia regulate matters of local importance through local self-government as long as it does not encroach upon national sovereignty. The procedure for the creation of self-governing bodies and their powers and relationship with state bodies, is determined by organic law.

This article enables the President to appoint twelve regional governors, whose responsibilities are minimal but whose rights expansive. In this vein, the internal policy of Georgia, the most critical role belongs to the Service of Regional Management of the Office of the President which coordinates the twelve regional governors who, until 2002, were appointed by the President, and who have since been elected by such a procedure that easily opens the way for former governors to gain legitimacy<sup>23</sup>.

From 1994 until the spring of 2002, Badri Khatidze supervised the service of regional management. From 1981-91, Khatidze was deputy head of an organizational department of the central committee of the Komsomol and through this post supervised regions. Accused of corruption, however, Khatidze became the parliamentary deputy of a majoritarian district. At present, the former governor of Shida Kartli, Irakli Bochoridze supervises over the service of regional management.

The ties of some representatives of regional elites, as of the time of writing, with other groups were indicative of the clan networks operating in Georgia. Zezva Gugunishvili, majoritarian deputy of one of the regions of Tbilisi, the Chugureti region and the Chairman of the Parliamentary Committee of Public Health Services and Social Questions, is the brother in law of Vano Zodelava, the mayor of Tbilisi. Mediko Mezvrishvili, the governor of the Telavi region, was a witness to Nanuli Shevardnadze at her wedding, and her nephew Kakha Datishvili was the Chief Police of Tax in the Kakheti region. Significantly, the majority of regional governors during the communist period worked on *nomenklatura* posts in those areas in which they currently operate.

### *The Economic Elite*

Article 53 of the constitution forbids economic activities by the members of parliament, and Article 80 for the government. At the time of writing, there was no exact data on the widespread economic activities of government members or the “patronage” of parliamentarians by businesses.

In 1998, the Parliament of Georgia passed a law “On the Incompatibility of Interests in Public Service and Corruption”. This law obliged officials to provide information about their property and financial position. Despite this, there were often cases where government officials of a high rank, working on a low salary over many years, accumulated property valued at hundred of thousands or even millions of Laries.

As previously mentioned, in the first half of 1990s, the former communist *nomenklatura* directly, or by means of relatives and clients, maintained a privileged economic position and economic influence by using material resources made available by the state. The economic elite represented a narrow circle of people. However, some groups in particular influenced the

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<sup>23</sup> All regional governors were running for Council of any small village, have passed in it, have been submitted by the council of representatives of the given village in regional council (he is not elected directly), and regional council again approves them as head of regional executive authority - the governor (Gangebeli).

economy and, accordingly, the policy of the country.

*Shevardnadze's Family*<sup>24</sup>

The dominant position of the family members and close relatives of Shevardnadze in the shadow economy was well known at the time of writing. Within this group, there were several subgroups.

The father-in-law Shevardnadze's son Paata, Guram Akhvlediani, was the Chairman of the Chamber of Commerce and the leader of the most influential of the subgroups – the 'clan Akhvlediani'. This subgroup has business interests in mineral oil and aircraft. It also controlled the port of Poti. According to some, the law on the Chamber of Commerce passed by Parliament in 2002 was created specifically for the clan Akhvlediani. In general, this clan tries to give its activities legitimate character and consequently establishes its business on the decrees of the President.

The leading position in telecommunications business was occupied by Shevardnadze's son-in-law, Gia Jokhtaberidze, leader of 'clan Jokhtaberidze'. This clan has had interests in state property, in industrial giants such as Rustavi 'Nitrogen' and Zestafoni factory of non-ferrous metallurgy. Jokhtaberidze obtained contracts for the benefit of the Magti telecommunications company, unsurprising as the interests of the state were at that time "protected" by the Deputy Minister of Transport and Telecommunications Gia Kakuberi – a witness at Jokhtaberidze's wedding.

The third group is represented by Shevardnadze's nephew, Nugzar Shevardnadze. In the first half of 1990s, this group was the strongest clan, but its position weakened as the 'clan Akhvlediani' increased its control of the mineral oil business. The 'clan Nugzar Shevardnadze' had a principal interest in the import of consumer goods. His relatives and friendly links testify to his influence: Kakha Targamadze, Minister of Internal Affairs of Georgia in 1995-2001, was his friend and a witness at his wedding. His son-in-law Merab Tkeshelashvili (whose father Melor Tkeshelashvili remains an old representative of *nomenklatura* elite of Rustavi and a member of parliament) became mayor of Rustavi city, and this naturally gave Nugzar an opportunity to augment his interest in the large state enterprises existing in Rustavi.

Nugzar Shevardnadze with 'Lukoil Georgia' is illustrative.<sup>25</sup> For his protection, the President of Lukoil Georgia, Roland Shonia, transferred to Nugzar Shevardnadze twenty per cent of the company's shares free-of-charge, at a cost of 100,000 Laries. Nugzar Shevardnadze's own company 'Iveria plus' took USD 330,000 worth of petrol from this firm and, at the same time, sold twenty per cent of its shares. Subsequently, Gogi Akhvlediani, son of Guram Akhvlediani, became the President of Lukoil Georgia.

In the sphere of transport, the Shevardnadze's nephew, Avto Baramashvili, controlled ecological checks on motor transport. His brother, Temur Baramashvili, held a high rank in the traffic police. Especially close relations between the Shevardnadze family and the Chairman of Railway Department, Akaki Chkhaidze and the Chairman of the Road Fund Boris Salaridze also assisted their interests.

*The Banking Sector*

The interests of the Georgian economic elite, to a great extent, are concentrated in the banking sector. For younger members of the former *nomenklatura* (former members of the Komsomol), which provided economic support for the authority of Shevardnadze, joining the banking sector was a main goal.

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<sup>24</sup> In this part we base on articles published in the newspaper *New Version* (releases N8, N37 and N38, by Givi Targamadze, a member of anticorruption council created by the President of Georgia.

<sup>25</sup> *Kviris Palitra*, December 10-16, 2001.

The investigations of journalists Lasha Tugushi and Eliso Chapidze provided insight into the banking elite,<sup>26</sup> from which it was made clear that on January 13<sup>th</sup> 1994, a ‘banking revolution’ took place in Georgia. On this day, in five leading state banks, new managers were appointed: in the ‘Industry Bank’, Tamaz Maglakelidze, (who from March-September had worked as the assistant to the then President of the National Bank Demur Dvalishvili<sup>27</sup>); in the ‘Savings Bank’, Ivane Chkhartishvili; in ‘Eximbank’ at first Amiran Khetsuriani, and Zaza Sioridze; the second cousin of Shevardnadze, Vladimir Pateishvili (the maiden name of Eduard Shevardnadze’s mother is Pateishvili), created the ‘Georgia Bank’; and at ‘Agro Industrial Bank’, Andro Devdariani.

These five banks controlled 80% of national bank holdings until presidential decree No. 711995 was issued whereby Industry Bank, Eximbank and the New Georgian Bank (the former "Saving Bank") were combined as the “United Georgian Bank”. In capital terms, the share of the state totalled fifty six per cent: however, the authorized capital was illegally increased and the state was left with only a forty three per cent stake, specifically because the shares the management passed to private persons

The friendship between Chkhartishvili, Sioridze and Maglakelidze originated in the 1980s in a Komsomol cell at the engineering economic faculty of Tbilisi State University, making this another *nomenklatura* network which functioned well in the Shevardnadze era. Between 1998–2001, Ivane Chkhartishvili was Georgia’s Minister of Economics. Tamaz Maglakelidze, close to the Shevardnadze family, and Deputy Secretary of Committee of Komsomol TGU in 1989-90, was Chairman of the Customs Department (1998-2000) and Chairman of Tax Inspection (1998). Zaza Sioridze was been Chairman of the Financial Budgetary Parliamentary Committee since 1995. His brother-in-law, Temur Giorgadze, was the Deputy Chief of Tax Service, and brother, Merab, Head of the Department of the Internal Control of Tax Service.

In the banking sector, TBC Bank still occupies the leading place, the president of which Mamuka Kharadze, thought to be one the original leaders of the social movement ‘New’ (from which political party ‘New Rights’ took its name). TBC group received from the state the exclusive right of bottling Borjomi mineral water, one of Georgia’s largest exports.

### *“Foreign” Investors*

Since 2000–2001, the appearance of two new players reflected changes in the disposition of forces among the economic elite of Georgia. They are those persons who in the 1990s gathered significant wealth in Russia.

Badri Patarkatsishvili, for a number of years, was Boris Berezovsky's right hand man and remains wanted by the law-enforcement bodies of Russia. His name is commonly pronounced in connection with different business projects. There are also different opinions expressed about the political sympathies of Patarkatsishvili. Recently, his TV company “Imedi” began broadcasting.

Bidzina Ivanishvili, operates primarily in the arena of the business of television. Ivanishvili’s “Channel 9” has been on air since 1999. Unlike the connection between Patarkatsishvili and the political elite, the Ivanishvili is unknown.

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<sup>26</sup> *Resonance*, August 11 and 17, 2001.

<sup>27</sup> On September 9, 1994 in a building of the Ministry of Internal Affairs during interrogation has committed suicide then already former President of the National Bank Demur Dvalishvili. Interrogation was made by investigator Kakha Bakuradze, who in 2000-2001 was promoted on a post of the Deputy Minister of Internal Affairs. Investigation case itself was included into the competence of the Central Administrative Board of Struggle Against the Organized Crime, the Head of which was Kakha Targamadze. In 1981-90-s Dvalishvili was the Minister of Finance of the Georgian SSR, and since November 24, 1992 up to October 11, 1993 - the President of National Bank. "The credit form" of political bribery is connected to his name, which was widely applied in Georgia - in 1993-94. During this period 99 % of credits of the National Bank were given on 15-20 firms, which had only a seal and a name.

### *Large Business*

Members of the Shevardnadze family dominate the state's few 'big' businesses. As to the private sector and, especially, local manufacturing, businessmen of a non-*nomenklatura* origin appear, although their "politization" has incrementally taken place.

Levan Gachechiladze, the leading shareholder of the leader of manufacture of wine in Georgia, GWS, and Gogi Topadze, the leading shareholder of beer manufacturer is company "Kazbegi" won seats in parliament in 1999. Gachechiladze is chairman of the New Right party, and Topadze is chairman of the political association "Industry Will Save Georgia".

### *Regional Elites - Abkhazia & South Ossetia*

Due to political developments after independence, central control of South Ossetia and Abkhazia was lost. As a result of ethnic conflicts in these regions, a significant part of the local Georgian population were exiled. These regions are supervised by the local 'ethnocracy', the basic guarantor of which is the Russian peace-making contingent. Negotiations with Tbilisi, remain deadlocked. The power networks do not differ substantially from those in Tbilisi which are familial and friend-centred networks. In Abkhazia and South Ossetia, Russian business holds a stronger position than the rest of Georgia. In these regions, the basic means of payment is the Russian ruble, and the main investors are the private companies or state departments of Russia. In the lives of both enclaves, smuggling plays a serious role, which is indicative of the non-coordination of relations with the central authority of Georgia and uncertain legal status of these regions.

Like the Georgian population expelled from South Ossetia, refugees from Abkhazia have their a government in exile, the so-called 'legitimate government of Abkhazia', structured as they were before the outbreak of war. Despite the absence of the territory, this structure keeps the same ministries, police and even security services which are accountable to the central bodies. The leader of the government of Abkhazia in exile, Tamaz Nadareishvili, is the permanent Chairman of the Supreme Soviet of Abkhazia. Before the Abkhazian war of 1992-1993, Nadareishvili was the Deputy Chairman of a Supreme Soviet of Abkhazia and he took active part in the conflict. According to a number of sources, Nadareishvili belongs to a narrow circle of affluent people from the region.

### *Regional Elites - Ajara*

Ajara was outside central control until May 2004. With a core population being ethnic Georgians, the authorities did not openly express separatist aspirations. Yet, at the same time, under the personal leadership Aslan Abashidze, the region resisted the centre on economic and political questions. Budgetary inter-obligations were unsettled between the centre and Ajara; and the centre refused the aspirations of Abashidze to transform Batumi (capital of Ajara) into a free economic zone.

As for nepotism and the character of the local elite, there were ample indicators of Abashidze's personal network. Abashidze was Chairman of the Supreme Soviet of Ajara; his son Giorgi was mayor of Batumi; his nephew Giorgi Tsintskaladze was Chairman of the Council of Ministers of Ajara; his cousin Antaz Mikava was the second Deputy of the Council of Ministers of Ajara; his brother in law Ilia Tsulukidze was Minister of Security of Ajara; his cousin Minister of Internal Affairs; his son in law Temur Komakhidze Minister of Culture of Ajara; another son in law Nodar Tamazishvili Minister of Communications; another cousin Giorgi Tsintskiladze was the Minister of Health; and his wife's nephew Guram Gogitidze was Head of Tax Service. Half of the members of the local parliament (40 persons) are A. Abashidze's close relatives.



*Other Elite Groupings - Thieves in the law*

“Thieves in the law” represent a significant elite grouping, as part of the relic control mechanisms from the Soviet Union.<sup>28</sup> “Thieves in the law” today also use the aura of heroic, mythological characters. There is a belief that “thieves in the law” play a significant role in the current events not only inside the country, but also outside of its borders.<sup>29 30</sup>

*Other Elite Groupings - Administration of Higher Education*

The administration of higher education utilises special privileges in Georgia. By decree of the President, the Council of Rectors holds a higher position than the Ministry of Education. Except for corruption in higher educational institutions, which was until recently taboo,<sup>31</sup> the administration of some State higher educational institutions and the members of its families play a serious role in State management.

*Other Elite Groupings – The Administration of the Orthodox Church*

The state recognizes the special importance of the Georgian Orthodox Church in Georgian history but, simultaneously, declares complete freedom of religious belief and confessions, as well as independence of the Church from the State.

This article of the Constitution has enabled the Orthodox Church to demand for itself special rights. These rights were formed in 2002 by the special Constitutional Agreement between the Church and the State. Except for legitimate privileges, the members of the Church administration use their status and high trust among the population (approximately 90% of the population) to frequently break the legislation. The representatives of the Church were, at various times, noticed in various illegal acts. For example: bishop Grigol Berbichashvili had been convicted four times in the past and bishop Anton Bulukhua, twice. Both are involved in the business of the smuggling of flour. This case has been investigated by the Office of the Public Prosecutor of Georgia.

The majority of representatives working in the administration of the Orthodox Church started involvement in Soviet times, which reinforces the unofficial information on the exchange and cooperation between members of the church and security services of Russia.

*Conclusion*

It is clear from the preceding analysis that elitism will probably influence policy in the future. Ruling forces, as well as many opposition parties are not disposed to change the existing political and social order.

The way out is probably to be found in the strengthening of civil society, in making it a political force. Only by strengthening and giving civil society real political weight, will it be possible to convince political agents of the poverty of elitist theory for substantive national development.

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<sup>28</sup> See Gigi Tevzadze ‘Georgia - Return of Authority’. Tbilisi, 2003 “the latent forms of the social control”.

<sup>29</sup> *Resonance*, March 20, 2001.

<sup>30</sup> <http://www.traccc.cdn.ge/publications/publication2.html>

<sup>31</sup> In 2002-2003, the taboo was removed under pressure of socially active students.

## Chapter 3

### Deployment of Foreign Forces in Georgia: Status, Prospects, Legitimacy

*Mindia Vashakmadze\**

After Georgia regained her independence in 1991, the presence of foreign military forces on its territory became one of the most crucial political problems facing the young state. During the last decade the question of continued foreign military presence has been inextricably linked with issues of national sovereignty, and now, to some extent - given Georgia's officially declared policy of achieving NATO membership in the near future - with the dilemma of Georgia's foreign policy orientation. Today, when the new Georgian government is considering whether to make concessions to Moscow in terms of providing financial and technical guarantees for military withdrawal, it is appropriate to examine how far the existing legal framework legitimises Russian demands in this respect and how, on the other hand, it obliges Georgia to make any such concessions.

Although the legality of the deployment of foreign forces in Georgia has continually been called into question by the Georgian authorities - especially by Parliament - Georgian policy on military withdrawal has not always been consistent during the last decade. Legal instruments, as a rule, reflect consolidated state policy towards long-term military deployments on the territory of the receiving state. Reviewing the legal instruments that were applied by the Georgian authorities to underpin its military deployments policy could help answer not only the question of the legitimacy and the status of foreign troops, but also the question of how consistent the Georgian government has been towards the siting of Russian military bases in Georgia.

The consistency of state policy in this regard reflects the principle of the free and full consent of the host state to the foreign military deployments. Moreover, inconsistencies in the state's position may have come about as the result of external factors such as the use or threat of force by a foreign power or extensive political and economic pressure. On the other hand, such inconsistency may have been caused by internal factors, and, in particular, by the lack of political consensus-building within the state. In this respect, the exclusion of the principal security sector actors, especially the Parliament, from the formation of the state's military deployments policy, can be pointed to as a contributory factor.

The principle of free and full consent is based on state sovereignty. A state that is able to declare and implement its full and free consent is a sovereign state. Therefore, the host state exercises its sovereign right, domestically and internationally, while allowing the deployment of foreign forces in accordance with the above-mentioned principle. Thus the stationing of troops without the consent of the host state can be qualified as a violation of its sovereignty and, therefore, a breach of fundamental principles of international law.

The free and full consent of the state to the deployment of foreign forces should be declared in a treaty determining the modalities of the consent. Moreover, the law, as declared in a bilateral or multilateral agreement, is evidence of the state's consent to foreign deployments and provides the necessary guidelines for local authorities on how to manage the foreign military presence, and on how to neutralise any threat created by the presence of foreign forces. The absence of explicit consent on the part of the host state might create a legal vacuum that endangers the sovereignty of that host state. As John Woodliffe has stressed in his assessment of the Russian military presence in the Baltic States:

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It is virtually unheard-of for armed forces of one country to be stationed in another country in peacetime unless there is a status of forces agreement that prescribes, inter alia, a system of rules for allocating the respective jurisdictional competencies of the sending and the receiving states over members of the force in civil and criminal matters. In the absence of an agreement of this type, the position of a visiting force under customary international law is not wholly free from doubt.<sup>1</sup>

Moreover, uncontrolled foreign military bases endanger the consolidation of the security sector of the respective country under an effective central Government.

*Legal framework and status of visiting forces in Georgia before 1993*

The government of Zviad Gamsakhurdia viewed the presence of foreign military forces in Georgia as a direct result of the occupation and annexation of Georgia by Soviet Russia in 1921. Accordingly, the Supreme Council of Georgia, elected on 28<sup>th</sup> October 1990 qualified the troops of the Soviet Union deployed in Georgia as “occupant forces”<sup>2</sup>. The Government was authorised by the Supreme Council to start negotiations with the Kremlin on military withdrawal as soon as possible.

The government also addressed the issues of ownership of military property deployed in Georgia and that jurisdiction over foreign forces. In November 1991, Gamsakhurdia ordered the handing over of all military property to Georgia. This was justified by the contribution of Georgian workers to the creation of that military property. Secondly, until the Soviet military withdrawal was completed, foreign troops were to remain under Georgian jurisdiction. These documents constituted formal, unilateral actions of the Georgian government, and were simply ignored by Moscow. There were no bilateral negotiations on the issue. Georgia was still unrecognised internationally, whereas the Soviet Union still existed formally until the end of 1991. Moreover, Soviet Interior Troops were stationed in the breakaway South Ossetia region in an effort to uphold law and order there. When armed confrontation broke out between Gamsakhurdia and his opposition, the Russian military supplied both sides with weapons and munitions<sup>3</sup>.

After Shevardnadze came to power in March 1992 he had to override the political tensions that had sprung up between Georgia and the new focus of international relations - namely, the Russian Federation, which had emerged from the ruins of the Soviet Union and whose President, Boris Yeltsin, had re-cast the Soviet army as Russian military forces by the decree of 7<sup>th</sup> May 1992. Shevardnadze chose a policy of constructive acquiescence. He expressed his desire to co-operate with Russia on the issue and, at the same time, regarded the presence of foreign forces in Georgia as a European security problem. The first bilateral agreement between the Defence Ministries of both sides was signed on 25<sup>th</sup> August 1992 on ‘the Co-ordination of the Activities concerning the Security of Russian Military Forces in Georgia’. According to Article 2 of the inter-governmental agreement, the parties agreed to respect the legal status of Russian military forces in Georgia and to abstain from activities that would hinder the fulfilment of the rights granted to - and the duties imposed on - the soldiers. The agreement, however, did not determine the status of Russian forces in Georgia and the content of their rights and duties mentioned in Article 2. Thus, the agreement was aimed mainly at co-operation in criminal matters and the protection of foreign soldiers and their families from criminals. The agreement was made on a temporary basis, and was to remain in force until such time as bilateral

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<sup>1</sup> John Woodliffe, *The Peacetime Use of Foreign Military Installations Under Modern International Law*, (Dordrecht/Boston: Kluwer, 1992), p. 445.

<sup>2</sup> Resolution of the Supreme Council of Georgia, adopted on 15<sup>th</sup> September 1991.

<sup>3</sup> *Akhali 7 dge*, Georgia’s weekly newspaper N3, 31<sup>st</sup> January – 7<sup>th</sup> February 1992.

relations between the two countries on the issue of the military and the status of deployed forces had been determined. At the time the agreement was signed there was no elected parliament in place in Georgia and, consequently, democratic participation in the formation of the agreement could not be ascertained.

The outbreak of the civil war in Abkhazia made the question of the foreign military presence in Georgia even more crucial. As one of the military bases was located in Abkhazia, the neutrality of Russian troops stationed there in the armed conflict was rightly questioned by the Georgian authorities. Moreover, mercenaries from the Northern Caucasus actively participated in the conflict on the side of the Abkhazians. Thus, in the cease-fire agreement signed in Moscow on 3<sup>rd</sup> September 1992, the parties agreed on the strict neutrality of foreign troops “temporarily deployed” in Georgia. There was a provision explicitly prohibiting the participation of foreign soldiers in the fighting. “All illegal armed groups” were forbidden to enter Abkhazia. After the Abkhazians breached the cease-fire treaty on 1<sup>st</sup> October 1992, the involvement of Russian soldiers and mercenaries in the conflict became obvious. In its letter to the United Nations, the Georgian Parliament stated that it viewed the activities of Russian troops in Abkhazia during the conflict as aggression against Georgia<sup>4</sup>. As a consequence, the Parliament pressed the executive to arrange a withdrawal plan with Russia with the objective of withdrawing foreign troops by the end of 1995. Thereupon Shevardnadze issued a decree on the military withdrawal timetable in April 1993. In 1993, the position of the legislature and executive seemed likely to become the consolidated attitude of the state in this matter. However, Shevardnadze attempted to remain constructive towards officials in Moscow and to regain Russian support in the Abkhazian conflict. In his letter to President Yeltsin, the Georgian President stressed that “thousands of Russian soldiers and military commanders participated in the military activities against Georgia”. Furthermore, he called on Yeltsin to distance himself from the military intervention in Georgia<sup>5</sup>.

With the help of Russian mediation, the next cease-fire agreement was concluded on 27<sup>th</sup> July 1993. This reiterated the neutrality and temporary nature of the Russian troops’ deployment<sup>6</sup>. However, the separatists and their supporters made use of the time following the signing of the cease-fire agreement to ready themselves for a final and decisive assault on the Abkhazian capital on 27<sup>th</sup> September 1993. After his return from Abkhazia, Shevardnadze declared that the capture of Sukhumi had been planned from within the Russian military staff<sup>7</sup>. The United Nations Security Council reaffirmed “its strong condemnation of the grave violation by the Abkhaz side of the Cease-Fire Agreement of 27<sup>th</sup> July 1993 between the Republic of Georgia and forces in Abkhazia, and subsequent actions in violation of the international humanitarian law”<sup>8</sup> and called on all states:

to prevent the provision from their territories or by persons under their jurisdiction of all assistance, other than humanitarian assistance, to the Abkhaz side and in particular to prevent the supply of any weapons and munitions<sup>9</sup>

However, Russian involvement in the Abkhazian conflict was not directly and officially condemned by the UN Security Council, of which Russia is a permanent member with right of veto.

#### *Status of Foreign Forces Agreement of 9<sup>th</sup> November 1993*

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<sup>4</sup> Parliamentis Uzkebebi, 1993 N 5-8, pp. 103-104.

<sup>5</sup> Archiv der Gegenwart, 1993, 37820.

<sup>6</sup> Diplomatischeskij Vestnik, N 15-16 August 1993, p. 22.

<sup>7</sup> Archiv der Gegenwart, 1993, 38370 A.

<sup>8</sup> S/RES/876 (1993).

<sup>9</sup> Ibid.

After the fall of Sukhumi, the situation worsened throughout the whole country. In November 1993, a former military commander of the ousted Gamsakhurdia regime, Eliava, rebelled in western Georgia and succeeded in bringing some of the smaller towns under his control. The state was on the brink of collapse and unable to resist any further armed confrontation. Thus Shevardnadze appealed to the peoples and governments of Russia, Armenia and Azerbaijan to help Georgia "...restore peace and order, to protect its territorial integrity and its choice – democracy and liberty"<sup>10</sup>. He suggested taking collective measures to protect the strategically important railways from western Georgia to Tbilisi and further to Yerevan and Baku, which had been paralysed by "illegal armed units"<sup>11</sup>. Thereby, Shevardnadze in effect confirmed Georgia's readiness to become a CIS member. In the suppression of the revolt, the presence of foreign soldiers played a decisive role even without the use of force. As Shevardnadze later remarked: "although they did not participate in the fighting, I cannot deny that the presence of the Russian soldiers gave us a great psychological boost"<sup>12</sup>.

When the crisis was over, Shevardnadze was ready to compromise with regard to formalising of the Russian hegemonic interest in Georgia by signing respective agreements: Georgia became a member state of the CIS at the end of 1993, even though this measure was opposed by the Georgian Parliament, and also signed the Collective Security Treaty of the CIS. Moreover, the Georgian government accepted the Russian military presence on a temporary basis. On 9<sup>th</sup> October 1993 the first 'Status of Forces Agreement between Russia and Georgia' was concluded<sup>13</sup>, in which the temporary deployment of Russian forces in Georgia was agreed<sup>14</sup>. However, the timetable of military withdrawal had to be elaborated. The Agreement stressed a political partnership between Russia and Georgia. In return for his concessions, Shevardnadze expected a more constructive approach by Russia with regard to the Abkhazian question. The primary task of Russian forces, moreover, was to facilitate the regeneration of the Georgian army by assisting them in weapons-training and instructing them on military techniques. The Status of Forces Agreement was accompanied by certain other agreements that regulated different fields of military co-operation. Among them was the agreement on 'Jurisdiction over Foreign Forces', which, for the first time, determined the division of competencies in civil and criminal jurisdiction over foreign forces. The Agreement was to remain in force until the end of 1995 and could then be prolonged upon the respective decisions of both parties.

The Georgian Parliament adopted a negative stance on the issue of Russian troops even before the signing of the treaty, and, consequently, did not ratify the agreement. Furthermore, during the negotiations, it turned out that the two delegations had differences of opinion on many substantive questions. The Georgian side sought to achieve the withdrawal of foreign troops by the end of 1995 and to enshrine this commitment in the treaty, while the Russians insisted on the deployment of their troops in Georgia without any timetable for military withdrawal. At the same time, Russia exerted political and economic pressure on Georgia. For instance, Russia refused to conclude any economic agreement with Georgia before the Abkhaz conflict was contained. The problem of dividing military property also remained unresolved. On the other hand, Russia insisted on formalising military co-operation via the bilateral treaties as soon as possible. Thus, the legalising of its military deployments in Georgia was a top priority for Moscow officials. The main problem fuelling the mutual suspicion between the parties was the situation in Abkhazia and the involvement of Russian forces in the conflict.<sup>15</sup> For instance, the representatives of the

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<sup>10</sup> Diplotaicheskij Vestnik, N 21-22 November 1993, p. 16.

<sup>11</sup> Ibid.; Interview with Shevardnadze, Der Spiegel, 1993 44, p. 173.

<sup>12</sup> "Georgia Defends Renewed Ties to Ex- Soviet Bloc", The New York Times, 6<sup>th</sup> March 1994.

<sup>13</sup> Diplotaicheskij Vestnik, N 1-2 January 1994, p. 38.

<sup>14</sup> Status of Forces Agreement, Article 6.

<sup>15</sup> *Diplotaicheskij Vestnik*, N 7-8 April 1993, p. 28.

Georgian delegation protested against Russian participation in the bombing of Sukhumi, the regional capital, during negotiations in Moscow.<sup>16</sup>

Despite the refusal of the Georgian Parliament to ratify the Status of Forces Agreement, Shevardnadze attempted to carry out his constructive line in respect of the Russian military presence in the country. He abolished the resolution of the Supreme Council of Georgia, which had been adopted under Gamsakhurdia in 1991 and under which foreign forces qualified as occupants, and ordered the temporary application of the Status of Forces Agreement and other treaties devised to regulate the foreign military presence in Georgia. A dramatic dilemma developed in which, on the one hand, the political leaders of Georgia alleged the involvement of the Russian military in armed activities against Georgia and yet, on the other hand, equally recognised that there was no plausible means of resolving the conflicts in the separatist regions without the help of Moscow officials. A lack of true international support at the time – in addition to Shevardnadze’s confused political line – contributed to the dilemma. The extensive UN role desired as part of the conflict solution failed to come about. Under such circumstances, the Georgian government was left with no real political choice if it wanted to solve the critical problems in the country and to avoid the failure of the new Georgian state. Just before his first visit to Washington as Georgian Head of State, Shevardnadze declared in an interview with the *New York Times* concerning the Russian military deployment in Georgia:

There is no agreement signed, and we must start negotiations in good faith. But the reality is that there is no way that Georgia can resist Russia. If the West does not like Russia’s return to its former colonies, let the West suggest an alternative.<sup>17</sup>

Thus it is evident that the 1993 Status of Forces Agreement was concluded in an atmosphere of political and economic pressure exerted by Russia and, therefore, did not provide any suitable legal basis for further military deployment in Georgia. It was, moreover, a provisional measure designed to neutralise destructive Russian influence in Georgia until 1995. The mistrust between the sides was too great to build an equal contractual relationship, and, equally, there were many controversial questions not resolved during the negotiations and not reflected in the agreement.

*Framework Agreement on ‘Friendship and Good Neighbourhood’ of 3<sup>rd</sup> February 1994*

The next attempt to establish a legal framework for military co-operation with Russia was made in February 1994 when a framework agreement between Russia and Georgia on ‘Friendship and Good Neighbourhood’<sup>18</sup> was concluded. However, this document did not directly regulate the Russian military presence in Georgia. According to it, the parties had to take appropriate measures to guarantee the effectiveness of the treaty on the “temporary” Russian military presence in Georgia. These measures, however, were not determined by the treaty. In addition, the Defence Ministries signed a protocol to legalise the foreign military presence beyond 1995, when the Status of Forces agreement was set to expire, and to avoid a legal vacuum during the period of transition to new legal regulations.

According to the Friendship agreement, Russia and Georgia undertook an obligation not to participate in military alliances that could be ranged against either of the parties.<sup>19</sup> Furthermore, Russia promised to help in reconstructing the Georgian army.<sup>20</sup> One of the crucial

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<sup>16</sup> Ibid.

<sup>17</sup> “Georgia defends renewed Ties to Ex- Soviet Bloc”, *The New York Times*, 6<sup>th</sup> March 1994, in Eduard Shevardnadze, “Georgia’s Security Outlook”, *NATO Review*, Vol. 41, No. 4, August 1993, pp. 7-10.

<sup>18</sup> The phrase may also be translated into English as “Friendly Relations and Neighbourliness”.

<sup>19</sup> Treaty on Friendship and Good Neighbourhood, Article 4.

<sup>20</sup> Ibid., Article 3.

problems during the negotiations was to define the status of national minorities in the framework treaty. At the time, it was an officially declared priority of Russian foreign policy to protect the interests of Russians living in neighbouring countries. In this regard, the stationing of troops was one of the policy measures. This cornerstone of Russian foreign policy in relation to the states of the former Soviet bloc became clear when President Yeltsin expressed his unwillingness to allow military withdrawal from the Baltic states for as long as the rights of ethnic Russians were violated in those countries. After the disaster in Abkhazia, the Georgian political elite, especially within Parliament, was greatly concerned about the future role of Russia in Georgia. Some parliamentarians alleged that the provision on the legal status of national minorities constituted an intervention clause in the internal affairs of Georgia. Following lengthy discussions, the Georgian side succeeded in enshrining a provision in the agreement that also established a duty of national minorities to contribute to the democratic developments in Georgia.<sup>21</sup>

The Abkhazian problem remained a crucial factor during the negotiations. The Georgian Foreign Minister declared that the activities of Russian troops in Abkhazia made the negotiations difficult, and added that it was hard to speak about friendship when the troops of the contracting party were carrying out acts of aggression against its counterpart<sup>22</sup>. Thus the signing parties agreed that final ratification of the framework agreement should take place after the Abkhazian conflict had been resolved. The conservative-dominated Russian Parliament did not ratify the agreement, which formally stipulated the territorial integrity of Georgia: the Georgian legislature ratified it on 17<sup>th</sup> January 1996. According to parliamentarians' arguments<sup>23</sup> and Georgian Foreign Ministry, the ratification of the agreement had to minimise the abuse of power on the part of the Russian side and to bind Russia legally, especially in order to limit Russia's military potential<sup>24</sup>. However, the existing controversies between the parties essentially rendered the Friendly Relations Agreements a dead letter.

#### *Stationing Treaty of 15<sup>th</sup> September 1995*

The next and most significant effort to legalise the Russian military presence in Georgia was made on 15<sup>th</sup> September 1995 when the bilateral Stationing Treaty was signed in Tbilisi by Shevardnadze and the Russian Prime Minister Chernomyrdin. This document contained far-reaching concessions to Russia from the Georgian Government. According to the treaty, foreign troops were to be re-organised into four military bases located in Vasiani, Batumi, Tbilisi and Akhalkalaki, and legitimised for the next twenty-five years. Enhancing the numerical strength of Russian troops in Georgia was not precluded under the treaty. It is worth noting that the military bases were located in areas where the control of Georgian government remained absent or weak. The stationing treaty was an attempt by Russia to secure its strategic interests in the Southern Caucasus through the formal legitimisation of its military deployments. Formally, the treaty provisions stipulated the strategic partnership between Russia and Georgia. The protection of the sovereignty and security of Georgia was declared as a primary goal of the military bases. The treaty norms implicated a potential external threat to Georgia's sovereignty from which the country had to be protected by Russian soldiers. Moreover, foreign troops had to undertake a responsibility to guarantee peace and stability in the Southern Caucasus. Furthermore, they had to strengthen the defence capabilities of both contracting parties. In fact, this was a further stage in the concessions policy of Georgia which entailed the rapprochement of Georgia with the true

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<sup>21</sup> Ibid., Article 9.

<sup>22</sup> The Speech of the Georgian Foreign Minister in the Georgian Parliament on 4<sup>th</sup> March 1993, in the stenographic protocol of the sitting of Parliament of 4<sup>th</sup> March 1993, pp. 62-65 and p. 83.

<sup>23</sup> Stenographic protocol of the Parliamentary sitting of 17th January 1996, pp. 23 - 25.

<sup>24</sup> The Speech of the Foreign Minister of Georgia in the Parliament of Georgia, in: stenographic protocol of the Parliamentary sitting of 4<sup>th</sup> March 1993, p. 59; stenographic protocol of the Parliamentary sitting of 10<sup>th</sup> March 1993, p. 78

source of the then recent threats to its sovereignty. Essentially, it was aimed at the neutralisation of this threat, and, ultimately, at the possible benefits Tbilisi might derive from the potential of Russia in restoring the territorial integrity of Georgia.

The conclusion of the Stationing Treaty by President Shevardnadze, who did not consult Parliament before the document was signed, caused controversies between the president and the legislature. Some parliamentarians accused the president of taking important decisions without any parliamentary consent and deliberation<sup>25</sup>. The reaction of Parliament was triggered by the great public anxiety about the foreign military presence, and by past experience of the Status of Forces Agreement of 1993, when the agreement draft was actively discussed in parliament before being signed by the parties. Moreover, at the time of the treaty's conclusion, the new Georgian Constitution of 24<sup>th</sup> August 1995 was in force which determined the legal status of foreign troops and entrusted parliament with the right of consent to the deployment of foreign forces in the country. During his presentation to Parliament, the President justified his decision by referring to the difficult situation in Abkhazia and pointing out the potential role Russia could play in solving the conflict. By taking this decision, he alleged, he was attempting "to save many lives in Abkhazia and to get guarantees for this purpose" from Russia. At the same time, he stressed the decisive role of the Parliament in the enforcement of the treaty and confirmed that the last word in this case rested with Parliament<sup>26</sup>. Indeed, the enforcement of the Stationing Treaty was conditioned by an additional protocol, which was not to be made public, but according to which Moscow had to assist Georgia in strengthening its army and re-establishing its territorial integrity<sup>27</sup>. Following events showed, however, that Moscow did not have any genuine interest in resolving the Abkhazian conflict, since the continuation of the tensions would enable Russia to be present in Georgia's frozen conflicts in the coming decades. The Georgian Parliament never ratified the Stationing Treaty.

In 1994, the Georgian government started to co-operate with NATO under the PfP programme, which opened up new possibilities for military and defence co-operation with the West. At the same time, Georgia concluded strategic partnerships with certain other CIS countries in which Russia had no involvement. One example of such a partnership was GUUAM. The USA increased its military assistance to Georgia, which, in turn, enabled the country to form its own border guard. Thereupon the Russian border forces were withdrawn from Georgia in 1998. However, the foreign policy line of Shevardnadze still remained unclear; he was trying to balance up Russian hegemonic interests and Western support in the region. However, the first signs of the decreasing Russian hegemony had already begun to appear after 1995.

Until April 1999, Georgia was a member state of the CIS Treaty on Collective Security adopted on 15<sup>th</sup> May 1992. The bilateral Stationing Agreement signed in 1995 determined that the main tasks of foreign soldiers in Georgia must be based on the Collective Security Treaty. This reference, once again, implied an external threat from which Georgia had to be protected by Russia. In fact, Moscow's goal was to keep Georgia within the Russian zone of influence for as long as possible and, thereby, to guarantee Russian hegemony in the region. It soon turned out that the collective security treaty could not become an effective mechanism for Georgia to implement its national interests. The promised military aid from Russia was not delivered. There was no willingness on the part of Russia to reach an agreement on the dissolution of military property. Moreover, Russian peace soldiers deployed in Abkhazia from 1994 were unable to resolve the most urgent problems in the conflict zone and, in the words of the Georgian Foreign Minister, "[in fact] the peacekeepers have established an artificial border between the territory controlled by separatists and the rest of Georgia"<sup>28</sup>. Furthermore, membership of the collective

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<sup>25</sup> The stenographic protocol of the sitting of Parliament of 19th September 1995, pp. 10-11.

<sup>26</sup> Ibid.

<sup>27</sup> These conditions were enshrined in the Appendix to the treaty, adopted on 25<sup>th</sup> March 1995.

<sup>28</sup> The Speech of Foreign Minister of Georgia at the 57th Session of the United Nations General Assembly, September 20, 2002.



security system distanced Georgia from the West. This was clearly not in the Georgian interest, especially throughout the second half of the 1990s, when the negative influence of Russia and unresolved problems within the country were growing more acute and the Georgian Government had recourse to assistance from the wider international community. In April 1999, Georgia suspended its membership of the Collective Security Treaty of the CIS. In fact, given the concessions policy of Shevardnadze, this proved a breakthrough, and signalled a shift in the mood of the Georgian political elite.

*Istanbul Declaration of 17<sup>th</sup> November 1999*

In the context of Georgia's closer co-operation with the West, it became possible to put the question of the foreign military presence in Georgia on the international agenda in 1999. Its participation in the revised treaty on Conventional Armed Forces in Europe enabled the Georgian Government to demand the partial withdrawal of foreign troops from Georgia. On 17<sup>th</sup> November 1999 the parties arrived at a consensus to withdraw two military bases from Vasiani and Gudauta by 1<sup>st</sup> July 2001. This obligation was enshrined in the common declaration of Russia and Georgia annexed to the revised treaty<sup>29</sup> and was seen as a pre-condition for the ratification of the treaty. The declaration granted Russia the right to deploy its military bases in Batumi and Akhalkalaki "temporarily"<sup>30</sup>. The negotiations on the time limit of the deployment and on the status of the remaining Russian military bases in Georgia was to be completed in 2000<sup>31</sup>. Georgia undertook an obligation to create the pre-conditions for the military withdrawal from the country, and the OSCE were ready to help financially in this matter.<sup>32</sup>

However, the withdrawal of foreign soldiers from Gudauta was beset with problems. Russia did not meet the timetable set out in the Istanbul Declaration, which caused political tensions between the two countries. The Georgian Parliament declared, for instance, that the delay in the agreed military withdrawal represented a violation of Georgian sovereignty and, effectively, support to the separatist regime of Abkhazia. Moreover, they ascertained, this was an attempt to legitimise *de facto* occupation and annexation of this part of Georgia<sup>33</sup>. International pressure was also growing on this issue. Although the Russian Government declared on 9<sup>th</sup> November 2001 to have fulfilled the obligation undertaken under the Istanbul Declaration, Georgia nonetheless voiced further concerns. The Georgians were not able to control the withdrawal, while international observers were likewise not allowed to verify whether Moscow was fulfilling the obligations it had undertaken under the treaty. Officials in Moscow justified the delay in the withdrawal, partly by emphasising the resistance of the local population in Abkhazia to their pulling out. Russian Defence Minister Ivanov stressed that he did not want to force the Russian withdrawal.<sup>34</sup> Moreover, the Russian side argued that Georgia had failed to create the pre-conditions for military withdrawal according to the Istanbul agreement. The Georgian Ambassador to the United Nations expressed the concerns of Georgian side as follows:

...Russia illegally maintains military bases in Gudauta, Abkhazia that operates against the consent of Georgia and in contravention to the international commitments undertaken by the Russian Federation during the Istanbul Summit to have it dismantled in 2001. The only explanation given is that the Abkhaz opposed the dismantling of those bases and the withdrawing of their military equipment. This logic will dictate that any sizable group of people could effectively block or

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<sup>29</sup> <http://www.osce.org/docs/english/1990-1999/summits/istadeel99e.htm>.

<sup>30</sup> The Istanbul Declaration of 17<sup>th</sup> November 1999, Par. 3.

<sup>31</sup> Ibid., Par. 5.

<sup>32</sup> Ibid., Par. 4.

<sup>33</sup> The Resolution of the Parliament of Georgia, adopted on 18th July 2001 Par. 7.

<sup>34</sup> "Ivanov speaks on Russian Military Presence in Moldova, Georgia", *Interfax News Agency*, 24<sup>th</sup> July 2001, in: Lexis, Nexis Library.

cease control of military, nuclear installations and armaments among them, provided they are as insistent as the Abkhaz.<sup>35</sup>

Later, in July 2003, the Georgian Ambassador stated at a UN Conference that

...we may declare confidently that these three bases pose a major threat to the security of Georgia in terms of dissemination of arms to destabilizing forces in the country as well as in the region<sup>36</sup>.

The problem of the international inspection of the military withdrawal from Gudauta still remains unresolved.

The negotiations on the “temporary deployment” of Russian military bases in Georgia, which have lasted over eight rounds of talks, are going nowhere. While Georgia demands the closure of military bases and withdrawal of troops within three years, Russia views Georgia’s plans as unrealistic and insists on eleven years for the withdrawal<sup>37</sup>. Yet there has been a negative international reaction to the Russian military bases policy in Georgia. The American Ambassador at the OSCE stated:

Within the OSCE, it is essential that we uphold the principle that military forces can only remain on the territory of another participating State under arrangements which have the complete consent of the host country<sup>38</sup>.

Other states share this approach<sup>39</sup>. However, Russia demands further political, financial and technical guarantees to soften its position on military withdrawal. On this issue Georgia depends greatly on the support of its Western partners. One of the Russian fears is that Russian troops could be replaced by US military forces. The Russian reaction towards the improving American-Georgian military co-operation has also been negative. According to the Russian Parliament, Russia would co-operate with the separatist regions of Georgia if the US military involvement in Georgia were to continue<sup>40</sup>. The Russian Foreign Minister declared in an interview with *The Times* that:

...if the US is making arrangements with sovereign Georgia about the dispatch of military instructors there to combat terrorism, then, taking into account the proximity of that state to Russia and the fact that from the territory of Georgia terrorists are operating against Russia, they should let us know and consult us<sup>41</sup>.

The Russian Defence Minister alleged that the deployment of the US military personnel in Georgia would have a bearing on the pre-conditions for Russian military withdrawal from Georgia<sup>42</sup>. This approach concerned not only the “Train and Equip” programme, but also the

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<sup>35</sup> The Statement of the Permanent Representative of Georgia to the United Nations of 31<sup>st</sup> January 2003 on the situation in Abkhazia.

<sup>36</sup> The Statement made by the Permanent Representative of Georgia to the United Nations at the First Biennial Meeting of States to consider the implementation of the UN Program of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects at the national, regional and global levels, New York July 8 2003.

<sup>37</sup> Bilateral talks held recently on 8<sup>th</sup> January 2004 brought no results (Georgian broadcasting company Rustavi 2, 8 January 2004).

<sup>38</sup> Web page of the Parliament of Georgia, <http://www.parliament.ge>.

<sup>39</sup> Recently, the German Chancellor also confirmed Russia’s obligation to withdraw during the first visit of the newly-elected Georgian President to Germany.

<sup>40</sup> Resolution of the Russian Parliament, 6<sup>th</sup> March 2002.

<sup>41</sup> *The Times*, 13<sup>th</sup> March 2002.

<sup>42</sup> The Statement of the Ministry of Foreign Affairs of Georgia, adopted in response on 29<sup>th</sup> March 2002.

American-Georgian military agreement concluded in March 2003<sup>43</sup>. It is obvious that the foreign military presence has been misused as a means of implementing a destructive hegemonic policy, which, in its turn, has had a negative impact on the consolidation of the Georgian state during the last decade.

### *Constitutional requirements*

The Georgian Constitution, as discussed in the paper on the legal foundations of security sector governance in Georgia, provides the legal pre-conditions for the deployment of foreign military forces in the country in Article 100 paragraph 2 and Article 65, according to which Parliament plays the decisive role in legalising deployments of foreign troops in the country. The constitutional provisions mentioned above establish an essential sovereignty right of Georgia to grant complete consent to foreign military deployments freely and in accordance with the country's independence, territorial integrity and stability interests. In this respect, Parliament, as an indicator of public support for foreign military deployments, plays a crucial role in forming the country's consolidated security interests and legally binding agreements in respect of the stationing of foreign forces.

### *Conclusion*

Some observers regard the issue of military withdrawal as a "litmus test for Georgian-Russian relations"<sup>44</sup>. Therefore, it is crucial to build up these relations on a proper legal footing, where the law does not become a refuge for the smaller country but a means of equal interrelation. Even in the first bilateral agreements regulating the foreign military presence in Georgia, it was stressed explicitly that foreign forces could be deployed in the Georgian territory only temporarily. After the separatist regime established its control in Abkhazia in 1993, the Georgian Government was compelled to make concessions and to allow a Russian military presence in the country.

However, the Status of Forces Agreement concluded in 1993, which was not ratified by the Parliament of Georgia, envisaged only a temporary deployment of Russian troops until the end of 1995. The Stationing Treaty concluded on 15<sup>th</sup> September 1995 was constructed around long-term Russian strategic interests. However, the final ratification of the treaty was conditioned on the resolution of the conflict in Abkhazia in which Russia was to act as a mediator. The further pre-condition for ratification that Russia had to meet was its commitment to render assistance in the re-building of the Georgian army. The last attempt to clarify the legal status of foreign forces in Georgia was made in Istanbul in November 1999 when the parties signed a declaration in which partial military withdrawal was agreed. The Georgian side still harbours misgivings about the complete withdrawal of Russian soldiers from Abkhazia, where it itself has no control. Equally, the fate of other military bases in Batumi and Akhalkalaki remains unclear. The sides continue to negotiate without producing any definitive outcome. Russia attempts to retain its decreasing political influence in Georgia for as long as possible by keeping its troops in the country. However, given the growing international concern, this policy is not likely to be successful in the future.

The legal requirements for foreign military deployment in Georgia, internationally and domestically, are not fulfilled. In looking at the external influence exerted upon Georgia, we must conclude that there is no free consent on the part of the receiving state. On the other hand, if

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<sup>43</sup> "Russia concerned over US-Georgian Military Accord", *Civil Georgia*, 11<sup>th</sup> April 2003. Available at: <http://www.civil.ge/eng/article.php?id=4031>; also referred to in television broadcast on *Rustavi 2*, 16<sup>th</sup> April 2003.

<sup>44</sup> Igor Torbakov, Moscow views military withdrawal as litmus test for Georgian-Russian relations, in: [http://www.eurasianet.org/departments/insight/articles/eav012804\\_pr.shtml](http://www.eurasianet.org/departments/insight/articles/eav012804_pr.shtml).

we examine the exclusion of Parliament from the formation of the deployment policy, which, in effect, ignores the sovereignty of the people, we must likewise conclude that there is no full consent of the receiving state to the stationing of foreign forces. Once again, this makes the legal effect of such consent questionable. There is no explicit consent by the state to the deployments of foreign forces. Moreover, there is no consent by action, or by silence, which could justify the temporary presence of Russian troops. Georgia drew none of the benefits from the presence of troops that it had expected. None of those conditions outlined in bilateral agreements were fulfilled. The mission of foreign troops is still not determined. The foreign forces, moreover, did not enjoy public support, and are seen as a threat to the national security interests of Georgia. They are supported only by those destructive elements working to undermine Georgian sovereignty. Moreover, soldiers and weapons belonging to the military bases remain outside the control of the Georgian administration. Consequently, foreign military bases could yet become a source of instability in the country. Indeed, they are not legitimate in the context of Georgian national security interests. They should be regarded merely as the basis for the waning, but destructive, Russian hegemony in Georgia.

The circumstances under which Shevardnadze declared in 1995 that the presence of foreign troops in Georgia was in the national interest of Georgians<sup>45</sup> have changed. Georgia is not alone vis-à-vis Russia in this matter. After the revolutionary change of November 2003, the new political elite of Georgia made its position clear that it will not tolerate the presence of foreign troops for an unlimited time. This position was, however, softened by the declared constructive approach of the Georgian Government towards Russian vital interests. The visit of the newly-elected Georgian President to Moscow on 11<sup>th</sup> February 2004 shed no light on the future status of the military bases and the modalities of the withdrawal of the troops from Georgia.

After the political cataclysms that occurred in Georgia in November 2003, the international community is now paying more heed to developments in Georgia. Therefore, the new Georgian leadership has an excellent opportunity to mobilise international support on the question of Russian troops on its territory. The presence of Russian troops in Georgia will be regarded by other nations as a violation of an international commitment. Under these circumstances, the task facing the new Georgian leadership, which will have to consolidate the security sector of the country, is to elaborate a consistent position with regard to the inadmissibility of the Russian military presence in Georgia. International support and a consistent position by the Georgian Government might lead to a successful solution to this much-discussed problem, which is hindering the improvement of Russian-Georgian relations and the consolidation of security sector governance in Georgia under an effective and democratically-elected government.

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<sup>45</sup> *Archiv der Gegenwart*, 1995, 40445.

## Chapter 4

### **History, Meaning, and Purpose of Political Mediation by International Organisations and Country Representatives in the Republic of Georgia**

*Heidemaria Gürer<sup>1</sup>*

In order to analyse the history, meaning and purpose of political mediation by International Organisations and Country Representatives in the Republic of Georgia I consider it necessary to give a short historic overview of the different territorial conflict situations in the Southern Caucasus, with a special emphasis on Georgia.

The territorial division of the Southern Caucasus can be described as the most complex one of the former Soviet Union with the exclusion of Russia herself and certain enclave regulations in Central Asia.

Within Georgia one can find:

- the Autonomous Republic of Abkhazia
- the Autonomous Republic of Adjara
- the Autonomous Region of South Ossetia

in a region further split into

- the Autonomous Republic of Nakhichevan, belonging to Azerbaijan, but territorially separated from it, bordering immediately on Armenia and
- the Autonomous Region of Nagornyi Karabakh, belonging to Azerbaijan, but predominantly populated by Armenians, separated from Armenia sometimes only by 10kms

The Soviet territorial division for the Southern Caucasus resulted in three Union Republics (Armenia, Azerbaijan, Georgia – today independent States), three Autonomous Republics (Adjara, Abkhazia, Nakhichevan) and two Autonomous Regions (Nagornyi Karabakh, South-Ossetia). A short description of the three entities within Georgia will give us the following picture:

#### *Abkhazia*

Situated in the north western part of Georgia, bordering the Black Sea and Russia, 8.600km<sup>2</sup> (roughly 1/10 of Georgia's territory), population of about 230.000, but 525.000 before the conflict. The composition of the population as of today is approximately 40% Abkhaz, 22% Russians, 15% Armenians, 5% Georgians. The respective figures before the conflict: 46% Georgians, 18% Abkhaz, 15% Armenians, 14% Russians. The Abkhaz themselves are partly Sunni Moslems, their language belongs to the Caucasian group, but is different from Georgian, as it belongs to a different branch (north western group, closer to e.g. Chechen), and use the Cyrillic alphabet since 1945.

#### *Adjara*

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<sup>1</sup> This article is the personal opinion of the author – an Austrian diplomat - and does not reflect the official position of her home country.

Situated in the south western part of Georgia, bordering the Black Sea and Turkey and the predominantly Armenian populated Akhaltsike region in Georgia; 3.000km<sup>2</sup> (roughly 1/25 of Georgia), population of about 371.000. The population is mostly composed of Sunni Moslem Georgians, the reason for having introduced autonomy thus being predominantly a religious one.

#### *South Ossetia*

Situated in northern Georgia, bordering the Russian Federation/North Ossetia (Alania); 3.900km<sup>2</sup> (roughly 1/20 of Georgia), population of about 85.000 (99.500 before the conflict), the composition of the population is approximately 66% Ossetians, 29% Georgians, 2% Russians, 1% Armenians. The Ossetians are one of the few Iranian peoples in the Caucasus using the Cyrillic alphabet for their Iranian language, and are predominantly Orthodox. It has however also to be mentioned that out of a population of 632.000 in North Ossetia/Alania 55% are Ossetians as well.

In the Abkhaz as well as South Ossetian case it has to be pointed out that a rather high percentage of the respective populations has recently obtained Russian citizenship.

In order to describe the individual conflicts (in alphabetical order) and the different solution mechanisms undertaken by international organizations and the role some countries or group of countries played, I would like to start with Abkhazia and introduce also some glimpses of Abkhaz history which might contribute to a better understanding of at least some features of the ongoing conflict.

#### *Abkhazia*

Abkhazia, christianised in the 6th century, became an independent kingdom in the 9th century and joined Georgia in 978. From the 15th century onwards it was part of the Ottoman Empire, the population being islamised.

In 1810 it became a Russian protectorate, 1864 part of Tsarist Russia, when many people left for the Ottoman Empire. Still today one can find an important percentage of Abkhaz descendants in Turkey. In 1917 Abkhazia joined the Union of the Peoples of the Northern Caucasus, in 1921 the Red Army conquered Abkhazia at the same time as the other parts of the Southern Caucasus. At the beginning Abkhazia had the status of an own Soviet Republic with an own constitution (1925), being as member of the Caucasian Federation also founding member of the Soviet Union. In 1930 Stalin changed her status to the one of an Autonomous Republic within Georgia – a step that many interpreted as a present of the Georgian Stalin to his homeland.

During the more liberal times nearing the end of the Soviet Union under Gorbachev, Abkhazia tried several times already in 1987 and 1988 to secede from Georgia. In August 1990 the Abkhaz Parliament, taking advantage of a moment where the Georgian deputies to the Parliament were not in Abkhazia, declared Abkhazia's independence from Georgia, thus contributing to the aggravation of the already tense situation in Abkhazia. In fall 1991 parliamentary elections on the basis of a system disadvantaging the majority Georgian population took place. After the fall of the Georgian president Gamsakhurdia pro-Gamsakhurdia and anti-Gamsakhurdia factions formed themselves within Abkhazia thus aggravating the already existing Georgian-Abkhaz antagonism.

In July 1992 the Abkhaz Parliament (though with a small majority) reinstated the Abkhaz constitution from 1925 which practically meant secession from Georgia – a fact that was of course not accepted by the Georgian central authorities which decided – after some additional provocations – to send military troops to Abkhazia, which were defeated after heavy fightings in summer 1992 and which led to an exodus of the Georgian population from Abkhazia. It has been widely acknowledged that the victorious Abkhaz troops had been supported by Russian forces.

The first cease-fire was signed in Moscow in September 3 that year. Partner to this cease-fire was not only Russia, but also the – termed illegal by Russia - Confederation of the Caucasian Mountain Peoples (a confederation of about 15 predominantly Moslem mountain peoples in the six Autonomous North Caucasian Republics of Russia, with late Chechen President Dudaev as driving force behind), who also sent mercenaries to Abkhazia to support her in the fight against Georgia. The above mentioned cease-fire as many others in the future was never really respected up to the cease-fire and troops disengagement agreement of May 14, 1994 signed again in Moscow, but under UN chairmanship.

In September 1992 the first mission of the United Nations General Secretary was dispatched to Georgia/Abkhazia, followed by the deployment of the first ever United Nations Peace Keeping Forces on the territory of the former Soviet Union, UNOMIG (United Nations Observer Mission in Georgia). The essential mandate of UNOMIG (180 personnel) is:

- Monitoring of the cease-fire and troop disengagement agreement
- Maintaining relations with the CIS PKF and monitoring of them
- Controlling of the troop withdrawal from the security zone
- Maintaining relations with the conflicting Parties
- Patrols in the Kodori Valley (located in Abkhazia but under Georgian control).

In November 1992 an OSCE long-term Mission started also its operation in Tbilisi. After some time it developed in such a way, that the UN Mission was exclusively tasked with the Abkhaz problem, the OSCE mission, apart from its general Georgian mandate, tasked with conflict solution in South Ossetia.

Since 1993 Georgian-Abkhaz negotiations take place in Geneva (or other places) under UN-umbrella and with Russia as facilitator, the main themes today being economic cooperation, return of IDPs and refugees, political and security matters. The Special Representatives of the UN General Secretary have so far been very often Suisse nationals, with exception of a Rumanian diplomat and the German Boden who was instrumental in elaborating the so called “Boden-paper” – basis for today’s negotiations on the sharing of competences between the Georgian central authorities and the Abkhaz leadership.

Within the United Nations the group of “Friends of the Secretary General of the United Nations” (formerly the “Friends of Georgia”), comprising France, Germany, Great Britain, Russia and the US was established to promote a peaceful conflict solution.

On the NGO level Georgian-Abkhaz discussions take place since 1996 on a more or less regular schedule in Germany or Austria (Peace University Stadtschlaining).

After the 1994 cease-fire the CIS, predominantly Russia, also deployed a PKF (2.500 personnel) to Abkhazia that cooperate in certain aspects with the UN PKF.

In 1996 the UN (High Commissioner for Human Rights) together with the OSCE established a Human Rights Office in Abkhazia/Sukhumi. The long sought for OSCE office in the Gali region could so far not start operation due to security reasons.

Since then Abkhazia declared herself as an independent State with own state structures and the Abkhaz Parliament declared on several occasion its willingness to join the Russian Federation – a desire that could not be realized until to day. On the other hand side Russia granted a high percentage of the Abkhaz population Russian citizenship and visa-free travel to Russia, whereas Georgian citizens have to obtain visas for their visits to Russia.

As of today the most pertinent questions continue to be:

- The Status of Abkhazia: Georgia is not willing to compromise on her territorial integrity. Abkhazia insists on her independence or integration with Russia

- The Return of IDPs: Georgia insists on the return of all the IDPs, which will automatically lead to a new disbalance in the composition of the population disadvantaging the ethnic Abkhaz. Abkhaz offers to let the IDPs return were so far not accepted by Georgia due to security reasons

So far I tried to highlight the historic developments of Abkhazia and her conflict with Georgia, putting a certain emphasis on the international players (UN, OSCE) as well as the traditionally involved States, mainly Russia.

Now I would like to analyse recent events concerning Abkhazia, starting in 1993 and try to scrutinize also the role of other State players or international organisations that could eventually be seen as having to play a role in the region or the conflict solution.

Let me start with the CIS and its individual members. Georgia, as is well known, did not join the CIS after the collapse of the Soviet Union, but was more or less forced to do so in 1993 in connection with the Abkhaz crisis, hoping that an eventual CIS membership would lead to a solution of the Abkhaz crisis respecting also Georgian interests. The assumption that Russia was actually supporting Abkhazia in this conflict and had no interest to solve it in order to be able to continuously exert influence on Georgian developments could not be diffused even after Georgia's CIS membership. Georgia requested on several occasions that the CIS-Russian PKF in Abkhazia should be changed in its composition, but no real adequate changes could be achieved.

Georgia was trying to involve e.g. Ukraine more in Abkhazia, especially after the formation of GUUAM – originally a cooperation of CIS members having all (territorial) conflicts with Russia (Georgia – Abkhazia, South Ossetia; Ukraine – Crimea, Azerbaijan – Nagornyi Karabkah, Moldova – Transnistria). As relations with Russia some times soured under president Shevardnadze, Georgia tried also to involve outer regional powers or to enhance relations with them, foremost with the USA, hoping that the US or eventually NATO – as in other parts of the world - will get involved in support of Georgian aims. Towards the end of Shevardnadze's reign however also relations with the US complicated and the US as well as NATO made it clear that no military involvement from their side would be expected.

So the Russian card was played again more vigorously than in the past. In the Abkhaz context the Sochi meeting of summer 2003 between Shevardnadze, Putin and the Abkhaz "Prime Minister" Gagulia can be considered to be the most important event. In Sochi - at least on paper – was agreed:

- step by step return of IDPs
- Restart of a train connection from Russia to Georgia
- Rehabilitation of hydro power plants on the Inguri river
- CIS/Russian PKF not to be extended every six months, but to be stationed on a continuous basis until one of the parties asks for changes

The international community was surprised by the outcome of the Sochi meetings, as they seemed to imply a second conflict resolution track next to the so far only UN mechanism, either trying to replace the latter one (although Russia is also part of it) or to circumvent it, showing the international community the inefficiency of the UN work and at the same time to impress by bilateral, Russian sponsored solution ideas. After Sochi Shevardnadze praised Russia as being the main guarantor for the post conflict arrangements.

In the context of Georgian Russian relations one should also tackle the question of Russian bases in Georgia – out of the original four two which should have been according to the OSCE Istanbul commitments vacated already (Vaziani and Gudauta in Abkhazia), the later one as being described by Russia as having fulfilled the obligations like Vaziani, which the Georgian



side is contesting. Problems with the closure of the two remaining basis can be at least partially explained by the Russian fear that other countries (NATO) would follow Russia with stationing.

Although the new Georgian government tried to reassure Russia that no foreign country would be allowed to have military stationing in the country, Russia could so far not be convinced of the Georgian sincerity. If neutrality is an option, remains to be seen, the more so as the Saakashvili government is pursuing a very strong NATO membership policy.

The overall Georgian Russian framework agreement, started under Shevardnadze, has so far shown no signs of being completed, although fall 2004 is very often cited today as a possible date.

In this context one may need to analyse the role of some subjects of the Russian Federation and their role in the Abkhaz context. As mentioned above it was mainly Chechnya under Dudaev that was rather supportive of the Abkhaz agenda (due to ethnic reasons, but also trying at the same time to use the Abkhaz-Georgian example for herself in the relationship between Chechnya and the Russian central government). In the course of events things changed in so far that Georgia as a whole was seen more and more by Russia as supporting the Chechen case against the Russian central government by allegedly helping Chechens in their warfare against the Russian central authorities – a fact that led in 2002 to a Russian ultimatum of “invasion” into Georgia if the Georgian side would not declare herself ready to cooperate with Russia in the fight against Chechen terrorism. Also here the new Georgian government is ready to follow a more pragmatic approach towards Russia hoping that this will be rewarded with a more reconciliatory Russian policy towards Georgian territorial conflicts.

The US role, though increasing in Georgia with its “Train and Equip Programme”, was at times also seen as decreasing as corruption in Georgia was increasing and the good relations with Russia - needed for Afghanistan and Iraq purposes – were not to be strained with too much attention to Georgia. The situation changed to a certain extent after the Georgian Rose Revolution – US military support increased, the Georgian topic was more present on the US-Russian agenda, but still no military involvement of the US or NATO can be expected to solve the Abkhaz crisis (an eventual Georgian NATO membership as reward for their Iraq engagement would come too late taking into account the speed of president Saakashvili’s actions and the expected results from his side).

As President Saakashvili has designated the territorial integrity of Georgia as one of the cornerstones of his policies, he is more determined than ever to show progress in conflict solution questions. After the solution of the Adjara crisis (see below) he envisaged as a next step the solution of South Ossetia, recognizing albeit that the Abkhaz problem was harder to solve and that it would take more time, but nevertheless putting forward – for the first time since long – new Georgian proposals how the future of Georgian – Abkhaz relations could look like. The main features being thus:

- Agreement on peaceful solution
- Agreement on power sharing to be changed only by mutual consent, disputes to be solved by constitutional court
- Status of Abkhazia as Parliamentary Republic within Georgia, led by a “president” if population so wishes, to be elected without ethnic discrimination, has to be fluent in Abkhaz and Georgian
- Majority of Parliamentarians to be ethnic Abkhaz, quota for Georgian IDPs after their return, immigration of persons having not lived in Abkhazia before the war to be only 1 to 2% of the Abkhaz population
- Proportionally more Abkhaz in Abkhaz executive
- A certain number of Abkhaz seats reserved in central government, being able to object again anything concerning Abkhazia

- The central Georgian government is to have the only competences in foreign policy, defence, border guards, customs and fight against organized crime
- No own army for Abkhazia, but Abkhaz conscripts for military service only in Abkhazia
- Own Abkhaz police
- Abkhaz inhabitants, that lived in Abkhazia before the war entitled to double citizenship
- Georgian and Abkhaz, but Abkhazia no subject of international law
- No more economic sanctions against Abkhazia, restoration of air and train connections
- Own Abkhaz taxes and budget
- Currency to be Georgian Lari with Abkhaz symbols and Abkhaz and Georgian inscriptions, to be recognized also in other parts of Georgia, own Abkhaz Central Bank

The above proposal was meant to see Abkhazia within Georgia but with more rights than before the war, a kind of federation with confederative elements, an asymmetric federation. In addition to these detailed suggestions from the Georgian side, president Saakashvili also changed the leadership of the “Abkhaz in Exile” (Georgian IDPs from Abkhazia, the leadership of which was since 1993 represented in the Georgian Parliament without ever having to undergo elections and which was lately very much criticized by the IDP community itself due to illegitimate behaviour and corruption).

So far the Abkhaz reaction was nevertheless not a positive one, asking for official distances from the then military Georgian implications and the disbanding of IDP guerrilla formations that every now and then made incursions into Abkhazia.

Having analysed the Russian/CIS and US factors as well as the OSCE and UN in the Abkhaz case it is nevertheless also interesting to see reaction of other players concerning Abkhazia and to scrutinize changes in their attitudes towards the OSCE and the UN. When at the beginning Georgia was of course more than satisfied that the OSCE and the UN got involved in their different territorial problems thus making halt to a continuation of the conflict and insisting – according to international law and OSCE principles – on the territorial integrity of Georgia, a certain change in attitude has been perceptible. As the OSCE seemed to be more successful concerning South Ossetia, a stronger OSCE involvement was also sought for in Abkhazia.

The latest moves from the Saakashvili government show a certain Georgian determination, also to be seen in other cases, to do things more on their own, if the international community seems to be too slow to respond adequately to Georgian views – relying also on the fact that Georgia is stronger (internally and externally) than it has been before the Rose Revolution. Whereas on the other hand side Abkhazia got more and more frustrated with the UN role as apparently the UN was seen as not taking enough into consideration Abkhaz concerns. Interruptions of Abkhaz participation in the Geneva process are direct expressions of these fears – which mean that both sides seem to be more and more reluctant in following the solution models prepared by international organisations.

Besides the international organisations one should also pay attention to some other countries/players concerning Abkhazia. Turkey e.g. is on the one hand side a very close ally of Georgia – also to be seen in her antagonism with Armenia – that also represented at times the NATO interests in Georgia, expressed through strong military cooperation ties, but always had very good relations with Abkhazia (Moslem population) as well. The obvious circumvention by Turkey of the economic blockade of Abkhazia by Turkish ships bringing fuel, food, etc. to Abkhazia was known by Georgia and not intervened against – which testifies of the strong Turkish position in the region and especially Georgia (see below).

Possible other international players like Iran, Armenia, the Council of Europe, the Black Sea Economic Cooperation, etc. do not play a significant role in solving the Abkhaz conflict. Armenia however is due to its economic blockade and the high percentage of Armenians living in

Abkhazia very interested in a solution of the conflict that would also enable her to take advantage of a re-established rail connection between Armenia and Russia going through Abkhazia.

In the framework of the “Group of Friends of the United Nations Secretary General”, Great Britain, which also recently appointed an “Ambassador at large” for Georgia/the Southern Caucasus with emphasis on the conflict solution seems to show the most interest in the situation. At times EU efforts to get more involved in the peace making process through e.g. EU participation in the conflict mechanisms, was regarded unfavourably by Great Britain, eventually fearing competition from the EU as an organisation.

As most of the over all aspects have already been dealt within the chapter on Abkhazia, only basic facts remain for the two other conflicts in Adjara and South Ossetia.

### *Adjara*

In the framework of the conquest of southeast Georgia by the Ottomans, the Christian populations became islamized. In the 19th century Tsarist Russia conquered the place to be partially reoccupied by Turkey in 1921 due to the Kars treaty. The part of this region that stayed with Georgia/the Soviet Union was transformed in 1922 into the Autonomous Republic of Adjara within the Union Republic of Georgia. The main parts of today’s Adjara have been governed until recently for centuries by the Abashidze family.

The conflict between Adjara and the central Georgian government never took a military turn as in the case with Abkhazia or South-Ossetia, though the Autonomous Republic was governed more or less independently from Tbilisi. Expression of this independence was mainly the fact that no contributions from custom intakes at the Georgian/Adjar-Turkish border or the interior Georgian-Adjar border were channelled to the Georgian central budget. “President” Abashidze who ruled the Autonomous Republic as his own private, feudal fiefdom and who sometimes was seeing himself as an eventual successor to Shevardnadze was also a very close friend with Russia hosting one of the originally four Russian bases in Georgia and the Georgian/Adjar border being guarded by Russia. He never went to Tbilisi out of fear being murdered, though his political party, the Renaissance Party, was for quite some time the second strongest party in the Georgian Parliament. In the wake of the Rose Revolution it was Abashidze, as a turn of history, who supported Shevardnadze the most and who tried to act as a kind of mediator between Shevardnadze, Russia and other regional players.

But Abashidze could not survive the second Rose Revolution due to a hitherto very rare coinciding Georgian-Russian move that ended with the ouster of Abashidze who since then lives in Russia untouched by Georgia. So far it is unclear what the exact barter trade between Georgia and Russia has been in the Adjar case: longer stationing, neutrality, no foreign basis, closer cooperation in the fight against (Chechen) terrorism? The parliamentary elections in Adjara brought an overwhelming victory for Saakashvili and on June 25, 2004 a new statute for Adjara:

- Own flag and coat of arms, though smaller than the Georgian one
- Own constitution
- Georgian President has the right to dissolve the Adjar Supreme Council, to dismiss the governor of Adjara and to annul laws adopted by the Supreme Council of Adjara
- Own ministries for economy, finance, tourism, health, social affairs, education, culture, sport, agriculture, but not interior, state security, defence

As the Adjara conflict was the least violent, it was also the first to be solved by the new Georgian government. Beside the role of Russia, it is also noteworthy that the US and Turkey were involved as mediators as was in this case the Council of Europe and the EU through her newly appointed Special Representative for the Southern Caucasus. The US – having been in one way or

another instrumental in bringing about the Rose Revolution – felt of course obliged also to contribute to a peaceful change.

As the Autonomous Republic of Adjara was also a member of the Council of Europe Congress of Local and Regional Authorities the Council of Europe, having its own representative in Georgia, also tried to act as a mediator, calling for a peaceful solution of the crisis and the respect of human rights and democratic principles by all sides – an endeavour that was judged by President Saakashvili as being too one-sided, not enough critical of the Adjarian side and led to lengthy and furious allegations against the Council of Europe Secretary General, Schwimmer.

The Council of Europe however continued its policy of highlighting shortcomings in the democratic development of any member of the Council of Europe and even after the elections in Adjara issued a statement describing the new autonomy of Adjara not as a real autonomy as too many things are still decided by Georgian central authorities.

In the Adjarian context also Turkey has to be mentioned which – as Russia, both as heirs to the Soviet Union respectively the Ottoman Empire, has certain guarantee functions over Adjara contained in the Kars Treaty. Abashidze was also very successful in having the best of relations with the traditional rivals in the Southern Caucasus, Russia/Soviet Union and Turkey/Ottoman Empire. Turkey is also the only country that has a General Consulate in Batumi, the Adjara capital. Both, Russia as well as Turkey, were referring to their guarantee rights during the Adjara crisis without however to explain their details and having been obliged to use any of them.

As mentioned above the EU appointed shortly before the Rose Revolution the Finnish diplomat Talvitie as its Special Representative for the Southern Caucasus. In this function he met Mr. Abashidze several times and acted as mediator from the EU side which, like the OSCE, appealed to both conflicting parties to look for a peaceful solution.

### *South Ossetia*

The Ossetians are said to be descendants of the Iranian Scythians and settled in the 6th century in Ossetia then populated by the Turkic Khazars. Already then they controlled the only land connection between the southern and northern ranges of the Caucasus. In the 17th century many Ossetians were invited by the Georgian nobility to come to Georgia to develop agriculture. The Ossetians that henceforth lived in Georgia were Christianised, the ones staying on the northern side of the Caucasus became Islamized through the Karabadians.

Towards the end of the 18th century North Ossetia has been conquered by Russia. The Georgian-Russian friendship treaty of 1783 foresaw the inclusion of South Ossetia into Georgia. In 1829 the “Georgian Military Road” from Vladikavkas (the capital of North Ossetia) to Tbilisi was built. In 1920 North Ossetia (together with Ingushetia) became an Autonomous Region of the Russian Soviet Socialist Republic, South Ossetia an Autonomous Region of Georgia. Moves for unification of both Ossetian parts have been denied during Soviet Union’s time from Russian as well as Georgian side.

During the more liberal times nearing the end of the Soviet Union under Gorbachev, however South Ossetia declared her independence in November 1991. A referendum in January 1992 showed more than 90% of the Ossetian population being for unification with Russia. This step led to military confrontation between South Ossetia and the Georgian central government, which abolished the status of autonomy for South Ossetia, naming it henceforth “Tskhinvali region”. In the wake of this confrontation a common PKF composed of Russia, Georgia, North and South Ossetia has been established.

Since 1992 the OSCE mainly through its mission in Tbilisi and Tskhinvali (opened in 1997) is tasked to find a lasting conflict solution and to monitor the activities of the PKF. In 1994 so called “contact talks” between Georgia and South Ossetia started and a cease-fire agreement was signed that also implied the creation of a Joint Control Commission (including the OSCE and UNHCR). Sub groups of this Commission deal with questions relating to military, economic and

IDPs problems. An overview of the complex conflict settlement machinery is attached – to which one had still to add the Sochi agreements.

It was always stated that the South Ossetian conflict seems to be much easier to be solved than the Abkhaz one – a view that was supported by comparatively more progress than in the Abkhaz case. It might seem logical, but one always has to ask if South Ossetia will finally be satisfied with a lower degree of autonomy/status than e.g. Abkhazia – and accept such a status before the Abkhaz question is solved.

The Georgian and Adjara Rose Revolutions, judged rather negatively by Abkhazia and South Ossetia brought also new momentum to the South Ossetian conflict, as President Saakashvili seems to have chosen South Ossetia as the next territorial Georgian conflict to be solved according to his policy visions.

As in the case of the two Rose Revolutions Saakashvili tried at the outset to use “soft”, i.e. social, humanitarian (free medical care, Georgian pensions for Ossetians, etc.), personal means to bring change about in South Ossetia. As this maybe moved too slowly and his second political credo after territorial integrity was fight against corruption he moved – against Control Commissions’ and OSCE commitments - under the (correct) pretext of putting an end to the smuggle economy of South Ossetia, forces of the Georgian central government into the conflict zone, accusing at the same time also Russia to deliver military equipment to South Ossetia beyond the needs of the PKF.

June and July 2004 saw therefore heightened tensions in South Ossetia with almost all parties involved in one way or the other disregarding Control Commissions’ and OSCE regulations and military threats from Georgia proper as well as from South Ossetia. Russia’s position seemed to be ambivalent, depending on who from the Russian leadership/decision making circles interpreted the events.

On July 14/15 2004 a meeting of the Joint Control Commission that had been postponed for several times took place in Moscow, where the following was decided:

- to take measures to prevent any use of force
- to take measures for ensuring free delivery of humanitarian aid
- to put the Joint Control Commission on a permanent working regime in Tshkinvali until normalisation
- to call for the mass media to abstain distributing inaccurate information

But the situation nevertheless did not calm down; with Georgia not evacuating their forces from the zone of conflict, South Ossetia undertaking military exercises and Russian representatives making provocative statements.

As the solution of the South Ossetian conflict was to be dealt with primarily by the OSCE, an extraordinary OSCE Permanent Council meeting was held in Vienna that saw heavy Georgian – Russian accusations, blaming each side from its point of view the OSCE for either inactivity or biased approaches.

While the OSCE after the outbreak of the conflict was seen by Georgia as helping her to regain South Ossetia and after a certain time also seen by South Ossetia as a respected partner, things changed with the new Georgian government, the one side (Georgia) - while still respecting OSCE’s engagement in the matter – having recourse to methods not foreseen by any of the agreements concerning the conflict solution, tried to make things happen quicker in its favour than methods by international organisations, the other side blaming the OSCE more than in the past for its one sided approaches of the matter.

Also the Council of Europe and the EU called on both sides to restrain from any use of force and to respect previous agreements in the conflict solution process.

As mentioned above NATO has also increased its attention towards the Southern Caucasus. Besides individual membership interests all three countries have PfP-programmes and two are interested in concluding an Individual Partnership Program with NATO. In the PfP framework one also tries to bring the conflicting parties together through the organisation of conferences, etc. – as do other international actors, also on the NGO level, e.g. *Conciliation Resources* for the above mentioned Georgian-Abkhaz dialogue.

### *Conclusions*

Let me address the EU's role in general concerning the Southern Caucasus/Georgia. All three South Caucasian countries have concluded Partnership and Cooperation agreements with the EU, which for quite some time has been the most important single donor to the region (especially Georgia), that foresee meetings of all three countries with EU representatives on ministerial sometimes presidential level in irregular intervals and so called visits in EU troika format to the region. In such meetings conflict solution matters always figure as one of the topics to be discussed. The Georgian Rose Revolution also brought about the inclusion of the Southern Caucasus into the EU's "New European Neighbourhood Policy" – an instrument that could eventually use also levers/incentives for conflict solutions.

But as in the Adjar and Abkhaz case it seems that exclusive relying of the conflicting parties on conflict solution mechanisms of international organisations seem to become less important if one party to the conflict seems itself in a stronger position than before, thinking to be better able to solve the conflict "alone" or when the impression by at least one of the conflicting parties of an biased approach of the international community seems to prevail.

To sum up: What is the sense of conflict solution mechanisms by international organisations and how successful have they been in the Southern Caucasus? So far their success lies in the fact that any stronger military conflict could be halted – as it was sometimes described, the conflicts have been frozen. But can one characterize these efforts successful if after 12 years no permanent solution is in sight? Or are the conflicting parties themselves often not interested in a permanent solution fearing that they have to compromise too much and would be seen by their population/electorate as too compromising whereas the status quo either gives them the possibility to live their "independence" (Abkhazia, South Ossetia) or to put other negative domestic developments in direct relationship with the unresolved conflicts as a kind of (permanent) excuse? Or will parties rekindle the conflicts and try to solve them themselves in order to turn away attention from other, domestic, problems?

A certain part of truth lies in all these aspects: the international conflict solution machinery is sometimes too slow as it has to respect many facets and no one to-day seems able and (understandingly) willing to put all its efforts into the solution of just one conflict (besides so many others in the world). But on the other hand side conflicting parties have to understand that they finally have to compromise and that a conflict never erupts exclusively because of the fault of just one side. Do we have to change the international conflict solution mechanisms – we only can do this by consensus and I am afraid this will be difficult to reach; the one who needs the help the most to-day might tomorrow already be in a position in which it prefers to have a freer hand. If there is no real sense of compromise on both sides of the conflicting sides it will be difficult to find solutions. Economic carrots could some times have effects – this could be maybe sought of more in depth by the EU who already in the past also contributed to rebuild conflict zones, e.g. in South Ossetia.

## Chapter 5

### **International Military Conflict Prevention, Observer Missions and Military Cooperation (UN, OSCE, CIS-PKF) in Abkhazia**

*Axel Wohlgemuth*

After the breakdown of the Soviet Union, Georgia received its independence but had to carry the heavy load of separatist movements within its borders in different locations. To solve this problem the international community became heavily involved in Georgia. The nature of different institutions' involvement is specified below.

#### *Abkhazia*

During Soviet rule, Abkhazia was an Autonomous Republic within the Socialist Soviet Republic of Georgia, one of the fifteen major constituent parts of the former Soviet Union.

The pre-war population of Abkhazia amounted to c. 530,000 people, of which only some 18 per cent were ethnic Abkhaz. Ethnic Georgians comprised nearly half of the population; Armenian and Russians were the other two most numerous groups.

As the Soviet Union began to crumble, members of the leadership of Abkhazia launched an escalating series of demands for independence from Georgia.

Open conflict began on 14<sup>th</sup> August 1992, when Georgian troops marched into Sukhumi, the capital of Abkhazia, driving the Abkhaz leadership north to Gudauta and launching a year-long armed struggle.

During the course of fighting, much of which was highly localised and personal in nature, at least half of the population of Abkhazia was displaced to other parts of Georgia and abroad. In all, approximately 300,000 people were displaced. In September 1993, the Abkhaz side won the war, with external assistance, by taking back Sukhumi and driving the remaining Georgian forces across the Inguri River out of Abkhazia. The former Autonomous Republic declared its independence. However, the independence of post-war Abkhazia is not recognized by the international community.

#### *United Nations Involvement*

Shortly after the cessation of hostilities, efforts began by the United Nations and the Russian Federation to produce a cease fire agreement. This was achieved, with the signing of the "Agreement on a Ceasefire and Separation of Forces" on 14<sup>th</sup> May 1994.

The UN plays a dual role in the post-conflict situation. The Special Representative of the Secretary-General for Georgia (SRSG) is simultaneously the chairman of the political peace process and the head of the United Nations Observer Force in Georgia (UNOMIG), which monitors the cease-fire on the ground. These activities are based on the premise that the military operations support the overall political effort.

UN engagement rests upon two basic principles for the comprehensive settlement of the conflict: firstly, Georgian sovereignty, independence and territorial integrity; secondly, the safe, secure and dignified return of refugees and Internally Displaced Persons (IDPs) to their places of previous permanent residence in Abkhazia.

For several years after the signing of the cease-fire agreement in May 1994, the UN and the Russian Federation led parallel tracks of negotiations, aimed at achieving a full political settlement. Despite many draft documents, these efforts produced no tangible results. At a meeting held in Geneva in November 1997, all existing peace process efforts were brought

together under the umbrella of the United Nations. The UN assumed the chairmanship of the 'Geneva Peace Process' and the Russian Federation the role of "facilitator". The Group of Friends of the Secretary-General, including its Coordinator, France, Germany, the Russian Federation, the United Kingdom and the United States, have observer status, as well as the OSCE.

The Concluding Statement of the 1997 Geneva meeting set in place several ongoing mechanisms for negotiations and contacts between the two sides. Firstly, a Coordinating Council and three Working Groups, respectively addressing security issues, the return of IDPs and social and economic issues. The Council meets regularly, at prime ministerial level, under the chairmanship of the SRSG. Secondly, in the field of Confidence-Building Measures (CBMs), concrete cooperation projects are underway in a wide variety of fields, which are carried out with the support of the leadership of the two sides. Thirdly, a further element of the peace process is human rights protection. Experience has shown that human rights monitoring can play a crucial part in limiting conflict and creating the trust necessary for the sides to engage in dialogue. Guided by this conviction, since 1997 the UN Human Rights Office in Abkhazia, Georgia (HROAG), with participation of the OSCE, has been functioning as an integral part of UNOMIG in Sukhumi. The day-to-day work of the Office includes visiting inmates in prison and assessing their conditions; capacity-building among local NGOs; monitoring criminal trials and conducting training seminars for officials. These efforts had a setback when the contracted local lawyer was shot dead opposite the UNOMIG HQ in Sukhumi in 2001.

The ultimate goal of the UN-led peace process is a comprehensive political settlement that includes defining the status of Abkhazia within the state of Georgia and bringing about the safe, secure and dignified return of refugees and IDPs. Despite all efforts, no such settlement has as yet been achieved.

#### *UNOMIG's role*

UNOMIG was originally established in August 1993 by Security Council Resolution 858 (1993). Its mandate was revised following the signing, on 14<sup>th</sup> May 1994, of the Moscow Agreement, which established the ceasefire and separation of forces in Abkhazia. In accordance with this Agreement, a Security Zone (SZ) of roughly 12km was created on either side of the Inguri river cease-fire line. Military units are forbidden in this zone. Only personal weapons, (including RPGs) may be carried. On either side of the Security Zone is a broader Restricted Weapons Zone, in which tanks, armoured transport vehicles and artillery and mortars with calibres over 81mm are prohibited.

UNOMIG consists of 103 to 110 military observers (UNMOs) from twenty two different countries. Its mandate is reviewed every six months by the UN Security Council.

UNOMIG maintains mission headquarters in Sukhumi and sector headquarters in Zugdidi and Gali, on the Georgian and Abkhaz side of the cease-fire line respectively. Its primary tools for ensuring compliance with the Moscow Agreement are observation and patrolling, reporting, investigation and close and continuous contact with both sides at all levels. UNOMIG patrolling teams not only observe and conduct liaison; they also promote dialogue between CIS Peacekeeping Forces (CIS-PKF), heads of local administration, security personnel and local residents. A patrol usually consists of four UN military observers (UNMOs) and one interpreter.

The safety and security of unarmed military observers figure high on the list of the mission's concerns. Within the UNOMIG area of responsibility (AOR) UNOMIG personnel face both indirect and direct threats. Indirect threats occur due to mines left over from the war. Insurgents and bandits constitute a direct threat. There have been cases where UNOMIG patrols came under direct fire or were made the target of ambushes. The most common direct threat, however, is hostage taking. There have been seven hostage taking incidents since the beginning



of UNOMIG operations. On all of these occasions the release of UNOMIG military observers taken was arranged after active intervention by the Georgian government.

The local people, the Svan, have mostly been responsible for these incidents. They could all be solved without casualties but created a hostile situation between themselves and UNOMIG. Without confidence building by a routine and secure UNOMIG presence, no NGOs have projects running in the valley the Svan inhabit.

These incidents created concern about the actions of some troop contributing countries. Whilst most were thoroughly supportive and contributed to the overall positive outcome, others avoided the normal channels of communication with UNOMIG to enter the negotiations from a different angle. This at times immensely complicated an already fraught situation and could have endangered the individuals caught up in these incidents. Support from UN-HQ, sending on requests for a professional negotiator from UN-Vienna within hours to Sukhumi, was crucial.

There have been several attempts by the Georgian government to query UNOMIG's authority in the Kodori Valley and the Kulevi training area, causing considerable disquiet in the mission, and which, if left unresolved, could have led to a spiralling negative effect on the authority and legality exercised by UNOMIG.

The most serious incident UNOMIG suffered from was when a UN helicopter was downed October 2001 in Kodori Valley by a rocket with the Deputy Chief Military Observer, four UNMOs, the Ukrainian flight-crew and a local interpreter killed.

UNOMIG, with its unarmed observers, has a deserved reputation in the area for impartiality. The mission's ability to intercede and resolve problems is fully recognised and the UNMOs on the ground are generally held in high regard. In short, UNOMIG's credibility is high. A stable environment has been provided signs of an improving security situation in the AoR. The general security situation is as good as can be expected under the prevailing circumstances. The locally brokered separation of forces agreement has proved effective. Concerning the local police and militia there is to state that the area would need an effective law enforcement presence to prevent illegal crossings and to exchange information. It is apparent to all parties that the criminal element, operating freely in the Security Zone, is the common enemy.

UNOMIG established a Joint Fact-Finding Group to investigate all criminal incidents with a political connection. This group, consisting of personnel from UNOMIG, CIS-PKF, local militia, and lawyers from both sides, plays an increasingly important part in the administration of local justice. Their activities formalise investigations and encourages mutual confidence through greater bilateral contacts across the cease fire line and amongst local commanders.

The mandate tasks UNOMIG to monitor and verify compliance with the Moscow Agreement and to observe the operations of the CIS-PKF as stipulated in the Moscow Agreement.

#### *The CIS Peace-Keeping Force (CIS-PKF)*

The CIS-PKF maintains stationary checkpoints along both sides of the cease-fire line. CIS-PKF comprise of some 1,500 officers and soldiers from the Russian Federation.

The relationship between UNOMIG and the CIS PKF is excellent. In the area of formal liaison and on a more personal basis at the checkpoints, cooperation has been remarkably good. The CIS PKF has involved itself in local assistance projects and in providing security assistance to UNOMIG and NGOs.

They share information of mutual interest and have shown a willingness to involve themselves in joint investigations. However, CIS PKF could be involved even more actively in allaying local concerns and in gaining locals' confidence, especially with the Georgians.

The strongest weapon of UNOMIG is the fact that the officers are unarmed which implicates that they are in no way a threat to the local population. CIS PKF soldiers are armed so

they could provide security assistance to UNOMIG on special missions. Since both organisations commenced their duties, UNOMIG has lost nine members in action, the CIS PKF more than 100.

However, their performance as peacekeepers is linked to their mandate. Whenever they have a current mandate from the Executive Council of the CIS States, it is clear that their motivation is much stronger than at times when they lack one. Understandably, in view of their casualty toll, their role is at times cautious and reactive. It is essential for their political credibility that a real CIS orientation is given to the structure of the force by the inclusion of other participating countries. Their effectiveness would also be considerably enhanced if their manning levels were raised to the mandated 3,000 with commensurate resource support and backing by the CIS members.

Additionally, the Russians are run military bases in Georgia in Gudauta (in Abkhazia), in Batumi, Akhalkalaki and an airfield in Vaziani totalling approximately 1,500 soldiers.

### *Challenges to the Peace Process*

UNOMIG's work is based on one of the most extensive mandates of all UN peace missions ranging from the observation of the ceasefire to a comprehensive political settlement of the conflict. Indisputably, there has been progress in some areas. The situation on the ground has become more stable over time despite recurrent incidents in the area of responsibility. This has helped to lay the groundwork for a solid peace process. On the other hand, there is little significant progress on the central political issue of defining the future status of Abkhazia within the state of Georgia.

The major challenges to UNOMIG's work are the following. First, further stabilisation of the situation in the conflict zone on both sides of the cease-fire line remains a prerequisite for any serious effort in the political arena. Both sides have committed themselves to the non-use of force. Within the Coordinating Council framework a network of security arrangements has been worked out. The full implementation of these agreements is most urgently needed, along with visibly improved cooperation between the law enforcement bodies of both sides.

Second, the safe, secure and dignified return of all refugees and IDPs to their places of origin is one of the basic goals of the peace process. This applies, as a matter of priority, to those IDPs who have already returned to the Gali district. The Gali district, located along the northern side of the cease-fire line, is the southernmost region of Abkhazia. Almost all of its 90,000 residents before the war were ethnic Georgians. The majority have chosen to return to their home villages, where they continue to live in precarious security conditions. Seeking mechanisms to ensure their security is a still unresolved component of the peace settlement efforts.

Third, the deepening and widening of an atmosphere of mutual confidence and reconciliation between the Georgian and Abkhaz sides is of utmost importance. Without mutual trust any lasting peace effort is bound to fail. The Conferences of Confidence Building Measures have produced a number of concrete recommendations which have now to be implemented.

Fourth, as the peace process moves forward, economic cooperation between the two sides should be enhanced. Following the war of 1992 – 1993 much of the housing and physical infrastructure of Abkhazia remains in shatters. It is in the interest of both sides to reconstruct war damages.

Lastly but most importantly, unless meaningful negotiations between the two sides on the issue of the future status of Abkhazia within the state of Georgia are opened, the entire peace process remains in jeopardy. To this end, the UN Mission has worked out a political framework document which, after consultation with the Group of Friends, is designed to be submitted to both sides.

All major components of the peace process, including the status issue, should be pursued in parallel. Despite shortcomings the peace process has evolved. Specifically, the two sides now communicate directly and frequently at all levels and concerning a wide variety of issues. This

was not the case several years ago. Furthermore, all the necessary mechanisms to affect change are at hand. What is now required is sufficient political will on the part of the two sides to make the best use of these instruments and to move toward a full settlement of the conflict.

*Problems to be Addressed*

UNOMIG finds itself in a situation where both sides have been content to ignore their obligation to move forward in the peace process. Both believe that time is on their side. Georgia does so on the basis that, provided they adopt a pro-western and particularly a pro US stance, their new-found friends will bail them out. The Abkhazians, of course, are content with the status quo as it enables their quasi- independence to gain greater legitimacy. Certain key players involved in the region also have reason to consider a stalemate an advantage as it aids their particular geo-strategic or geo-political preferences. Their proper influence is sometimes not felt where it should be and their approach to resolving Georgia's problems is very low key.

There have been attempts to take away or even 'hijack' the management of the peace process from the UN's auspices have occurred, particularly by Russia and the OSCE. Troop contributing countries have also constrained UNOMIG's effectiveness by limiting the amount of time spent on the ground by UNMOs. The lack of continuity that this creates is a considerable concern. One year should be the minimum tour for all UNMOs. Additionally, some countries have at times applied pressure on the CMO to employ their officers in a particular manner, affecting UNOMIG's cohesion.

There is also an apparent disconnect in communication between the representatives of the troop contributors in New York, their diplomatic representatives in Tbilisi and their own UNMOs in the mission. Occasionally it could be seen that the national views of some participants, particularly the nations in the Group of Friends of the Secretary General, varied due to parallel channels of reporting and lack of sharing information (however, it should be noted that the mission has successfully brought together professional officers of armies from around the world).

The single greatest destabilizing influence in the UNOMIG AoR is the Abkhazian Government-in-Exile. They have partisan links (with or without Georgian blessing). As long as this group remain a militant force on the Georgian side it is unlikely that a scaling down of violent incidents will occur. Their existence is necessary for the internal politics of Georgia only, not for an overall settlement of the conflict.

There are also enduring humanitarian concerns. In the Gali region which is the main focus of UNOMIG operations there is a correlation of expectation between the humanitarian organisations and UNOMIG amongst the local people. IDPs are in a difficult situation and have a dependency on external assistance and reassurance. It makes no difference to them whether they are making demands on UNHCR or UNOMIG. While UNHCR has funding UNOMIG has no money to help the locals. That endangers the situation for the military. Frustration and resentment from poor people, and, from their perspective, unrecognised situation leads to an attitude of blame, which tends to focus on the frontline internationals represented by UNOMIG patrols. The situation created is a risk to the security of the patrols. This issue is not only demoralising for the UNMOs, it also creates conditions ideal for exploitation by extreme elements.

The respect in which UNOMIG is held in and around the ceasefire line has occasionally led to higher expectations than the mandate allows. But the UNMOs have capitalised on their status, have adequately filled the vacuum of responsible security activity and government left by both parties.

It would be naïve hope for a quick end to the mission. All the confrontational elements remain and small military successes do not make a solution. Hopes for progress still lie on the shoulders of the Abkhaz administration and the new Georgian president.

## Chapter 6

### The Legal Framework of Security Sector Governance in Georgia

*Mindia Vashakmadze\**

#### *Introduction*

Following the break-up of Soviet Union in 1991 Georgia became an independent state, and was compelled to build up its security sector from nothing. Under the 'Law on the Transitional Period' adopted on 20<sup>th</sup> December 1990, the National Guard of Georgia was formed, followed by the creation of the Ministry of Defence in 1991<sup>1</sup>. However, Zviad Gamsakhurdia, the first elected President of Georgia, did not succeed in bringing the paramilitaries under the control of the central government, and was equally unable to consolidate the security sector. The political confrontation between the President and his opponents led to an armed conflict in which the officers of the National Guard were actively involved on the side of the opposition.

A military coup brought an end to the presidency of Gamsakhurdia in January 1992. The Military Council that took over state power declared the Constitution of the first Georgian Republic (1918-1921) as the supreme law of the country. This document stipulated parliamentary supremacy in security sector governance<sup>2</sup>, but this was far from the reality in Georgia in 1992. In March 1992, after Shevardnadze returned to Georgia, the Military Council was transformed into a civilian body called the State Council. Representatives of Georgian society were invited to participate in its activities in order to provide a degree of legitimacy for the next six months. A new parliament, elected in October 1992, adopted a 'Law on State Power' on 10<sup>th</sup> November 1992, which formally established a strong legislature. However, the Head of State was at the same time the Speaker of the Parliament, directly elected by people. Thus, the legislature came under the *de facto* control of Shevardnadze for the next three years.

The outbreak of the bloody conflict in Abkhazia (1992-93) between Georgia's armed forces and local separatists, who were supported by Russian soldiers and mercenaries, brought Georgia's emerging statehood to the brink of collapse. It was not until 1995 that Shevardnadze was able to consolidate state power as he captured uncontrolled military commanders and strengthened the control of the central Government over Georgian paramilitaries<sup>3</sup>. Between 1992 and 1995 Georgia was a parliamentary republic. The presidential system of government had been discredited by the Gamsakhurdia regime of 1991-1992, but as the parliament elected in 1992 proved just as weak and politically unreliable institution, the opinion gradually prevailed that only a strong president would be able to lead the country out of the chaos.

The adoption of a new constitution in August 1995, which established a presidential system, marked a significant step towards the development of proper legal tools in respect of security sector governance. Consequently, between 1995 and 1999, the Georgian Parliament elected in October 1995 passed the vast majority of laws regulating security sector governance

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\* I would like to thank Mr. Stephen Murphy for his help and suggestions in revising this article.

<sup>1</sup> The Law on the Ministry of Defence adopted on 15th September 1991.

<sup>2</sup> According to Article 54 of the Constitution, adopted on 21<sup>st</sup> February 1921, armed forces and other military forces were under the control of the Parliament.

<sup>3</sup> Jürgen Gerber, *Georgian: Nationale Opposition und kommunistische Herrschaft seit 1956*, (Nomos: Baden-Baden, 1997), p 231.

*Institutional Framework of Security Sector Governance*

The Georgian constitution contains a special chapter (Chapter VII) on ‘State Defence’ and several provisions related to security sector governance. The framers undertook the first serious attempt to introduce a separation of power in security sector governance, and to establish a balance between the democratisation and effectiveness of the military based on the rule of law. However, as the following practice showed, some fundamental provisions of the constitution remained at odds with reality. Three main state actors shared responsibility for security sector governance in the country: the legislature, the executive and the judiciary. Their work in this respect was to be supported by state advisory bodies set up in the main by the president, who is head of state.

*Recent Re-Arrangement of Constitutional Checks and Balances*

The adoption of constitutional amendments on 6<sup>th</sup> February 2004 re-moulded the existing system of checks and balances to a significant extent. The post of prime minister, which was abolished with the adoption of the 1995 constitution, is to be introduced and a two-headed executive is to be established. According to the new amendments, the government is responsible for the implementation of domestic and foreign policy. The prime minister will determine the direction of governmental activities; he discusses the candidature of prospective ministers with the president before their approval by parliament and, likewise, has the power to relieve ministers of their duty. The resignation of the prime minister would be followed by the resignation of the entire government<sup>5</sup>. The prime minister, furthermore, will be responsible for the economic activities of the government and the implementation of law. However, the president may abolish unlawful acts of the government<sup>6</sup>. This was an exclusive prerogative of the constitutional court before the amendments were adopted. The defence, interior and security ministers will be directly subordinated to the president<sup>7</sup>, but, at the same time, will constitute members of the cabinet, which will be co-ordinated by the prime minister. The president concentrates power in his hands while imposing the responsibility for the activities of the government on his prime minister. Yet it is not clear exactly how great the prime minister’s reach will be in terms of security sector governance.

Consequently, in this respect the division of competencies between the president and prime minister is not clear. What is clear, however, is that the president has become stronger in his relations with parliament. He may dismiss the parliament if the legislature does not approve

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<sup>4</sup> The following laws, adopted by Parliament since 1995, formed the hierarchy of norms directly or indirectly related to the security sector: Law on Defence of Georgia, adopted on 31<sup>st</sup> October 1997; on National Security Council (24<sup>th</sup> January 1996); On State Secrecy (29<sup>th</sup> October 1996); on Special Service of State Protection (20<sup>th</sup> February 1996); on the State of Emergency (31<sup>st</sup> October .1997); on Non-Military, Alternative Labour Activity (28<sup>th</sup> October .1997); on Interior Ministry Troops (30<sup>th</sup> April 1998); on the State Border of Georgia (17<sup>th</sup> July .1998); on State Security Service (18<sup>th</sup> February 1998); on the Status of Military Personnel (25<sup>th</sup> June 1998); on Intelligence Activity (19<sup>th</sup> March 1999); on Operative-Investigative Activities (30<sup>th</sup> April 1999); on Mobilisation (23<sup>rd</sup> June 1999); on Participation of Armed Forces of Georgia in Peacekeeping Operations (22<sup>nd</sup> July 1999); on Arms, Military Material and on Export Control on the Production of Double Destination (28<sup>th</sup> April 1998); on Martial Law (31<sup>st</sup> October 1997); on Military Duty and Military Service (17<sup>th</sup> September 1997); on the Pension of the Retired Military Personnel and Personnel of the Interior Troops (16<sup>th</sup> October 1996); on the Social Security of the Families of Soldiers who died in War for the Territorial Integrity and Independence of Georgia (27<sup>th</sup> December 1996); on Collections for Call-up Deferment to this legislation (21<sup>st</sup> June 2002); Criminal Code (22<sup>nd</sup> July 1999); Administrative Code (25<sup>th</sup> May 1999).

<sup>5</sup> The Constitutional Amendments, adopted on 6<sup>th</sup> February, Article 18.

<sup>6</sup> Ibid., Article 14, Par. 3.

<sup>7</sup> Ibid., Par. 1.

the government<sup>8</sup> or if it rejects the budget three times. Furthermore, the president will have the power to dismiss parliament or the government if a simple majority of parliamentarians votes for the resignation of the government. In view of the fact that the government is essentially the president's 'team', the pressure on parliament will grow, and an imbalance will be created. Nonetheless, the president may not dismiss parliament during a period of martial law, if an impeachment procedure is underway in parliament, or for six months following presidential elections or, indeed, for six months before the end of the president's term of office. The agreement of one-third of parliamentary members is necessary to initiate a vote of non-confidence. Parliament is able to dismiss the government with three-fifths of the vote. If parliament fails to reach this threshold, it will not be allowed to debate this question for the following six months. However, it is questionable whether the allocation of power among the executive would be compensated by this regulation.

The constitutional amendments caused strong disquiet within Georgian civil society. The arguments expressed against these amendments may be summed up as follows. Firstly, there was criticism of the procedures, especially in respect of the lack of public discussion on the drafting of the constitutional amendments. Concern was also voiced about the very limited time given over to reviewing and adopting the amendments and, equally, about the dubious political legitimacy of the current parliament to pass them<sup>9</sup>. Secondly, criticism was directed towards the material outcome of the amendments in so far as the constitutional position of the parliament will be weakened. Likewise, the division of competencies between the president and prime minister is still unclear.

Additionally, there were certain misgivings about whether the amendments had been designed to satisfy the ambitions for power of certain political leaders. The arguments of the official political elite for the amendments might be listed as follows. Firstly, a strong president elected on 4<sup>th</sup> January 2004 requires a greater measure of power to consolidate the country and to overcome the corruption and economic problems facing Georgia. Secondly, flexible governance is needed, which will be guaranteed by the division of competencies between the president and prime minister and the principle of collective responsibility of the government. This, in turn, will lead to improved crisis management. Under the former regulations the president was not entitled to dismiss parliament. On the other hand, the only means of dismissing ministers or the president was to impeach them<sup>10</sup> if they violated the constitution or committed a crime<sup>11</sup>. However, the impeachment procedure is very complicated. Thus the system of checks and balances established by the constitution was based on the ability of the legislature and executive to reach political consensus.

Thus, it can be stated that the adoption of the constitutional amendments does not represent a good example of a democratic change in the constitutional framework. Doubtless, the current reform causes a shift of responsibilities with regard to security sector governance. However, it should be stressed that the constitutional framework for the division of competencies between the president and prime minister in this respect remains unclear, which effectively enables the president to manipulate either his government or the parliament.

### *The Role of the President*

Within the current constitutional framework the president plays a decisive role in the implementation of the security, defence and foreign policy of Georgia. He is Supreme Commander-in-Chief and thereby guarantees the independence and territorial integrity of the

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<sup>8</sup> Ibid., Article 18.

<sup>9</sup> The new parliamentary elections took place on 28<sup>th</sup> March 2004.

<sup>10</sup> The Constitution of Georgia, Article 64, Par. 1.

<sup>11</sup> Ibid., Article 63-64.

country. In addition, he possesses the following powers: enacts laws related to the security policy of the state; appoints and dismisses the Chief of General Staff and his principal commanders<sup>12</sup>, the Defence, Security and Interior Ministers; appoints the members of the National Security Council and presides over its sittings; bestows all higher military ranks; submits the candidature of the General Prosecutor to the parliament for approval<sup>13</sup>; undersigns international treaties and agreements on security policy issues; determines the structure of the armed forces; decides on referenda; declares states of emergency, martial law and decides on the mobilisation of armed forces.

Special legislation with regard to security sector governance broadens the president's competencies even further. The president submits the military doctrine and other conceptual documents concerning military re-structuring to parliament for approval<sup>14</sup>; confirms the military-operative plans for the territory; dislocation of the armed forces and military installations; weapons programmes and military technology<sup>15</sup>; confirms the structure of the interior forces<sup>16</sup>; approves the state programme on the activities of the security service<sup>17</sup>; confirms the statute and structure of the special service for state protection<sup>18</sup>; plays an important role in the implementation of state policy on state secrecy; confirms the list of information containing state secrecy and the list of state officials who are authorised to issue permits on access to state secrecy or who are authorised to classify the information as a state secrecy; determines other regulations concerning the classification and marking of information<sup>19</sup>; has important competencies with regard to the import and export of military arms and materials of double destination<sup>20</sup>. The president has to issue further decrees to facilitate the implementation of the laws adopted by parliament. Thus the implementation of the security policy remains out of formal parliamentary control to a significant extent. It is not clear how the president and the prime minister will share the responsibilities in the implementation of the special legislation on security sector governance. There are loopholes for further inconsistency within the Georgian constitutional system that could cause further undemocratic developments or personalisation of decision-making.

### *The Role of the Parliament*

The Georgian Parliament is elected by universal adult suffrage for a term of four years and will consist of two chambers when the territorial integrity of Georgia has been restored. The Upper Chamber of the Parliament, the Senate, will be made up of representatives from the regions<sup>21</sup>. Under the Georgian Constitution, Defence and Security are prerogatives of the Central Government of Georgia<sup>22</sup>, and, as such, the territorial entities do not maintain any independent armed forces. This constitutional provision, however, is not effective since two regions of Georgia that are currently the focus of separatist conflicts and are not, in effect, under the control of the central government<sup>23</sup>.

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<sup>12</sup> The Constitutional Amendments, adopted on 6<sup>th</sup> February, Article 14, Par. 4.

<sup>13</sup> Ibid., Article 16.

<sup>14</sup> The Law on State Defence, adopted on 31<sup>st</sup> October 1997.

<sup>15</sup> The Law on State Defence, Article 5.

<sup>16</sup> The Law on the Interior Forces, Article 7.

<sup>17</sup> The Law on State Security Service, Article 19.

<sup>18</sup> The Law on Special Service of State Protection.

<sup>19</sup> The Law on State Secrecy, Article 4, Par. 2.

<sup>20</sup> The Law on Arms, Military Material and on Export Control on the Production of Double Destination, adopted on 28<sup>th</sup> April 1998, Article 6.

<sup>21</sup> The Constitution of Georgia, Article 4.

<sup>22</sup> Ibid., Article 3.

<sup>23</sup> For example, the separatist regimes in Abkhazia and South Ossetia recently decided to hold collective military training exercises to guarantee military readiness for possible military attack by the Government of Georgia, in: <http://www.sakartvelo.info>, 29<sup>th</sup> January 2004.

On the basis of the constitution, parliament determines the foreign and security policy priorities of the country. During the drafting process of the constitution some experts were rather pessimistic about the policy-setting function of the parliament. They regarded the norm as a relic from Soviet times, when the Supreme Councils of Soviets had only formal, but constitutionally declared power, while the true power rested with the Communist Party elite<sup>24</sup>. It turned out that these expectations were not groundless. A lack of true debate in the parliament on issues of security sector governance is evident. Moreover, the practice of parliamentary control over the security sector is not stable. Indeed, owing to the instability of the political landscape and the persistent economic crises, there can be no long-term parliamentary control since Parliament itself faces great difficulty in employing and retaining highly-qualified and expert staff. Furthermore, the bridge function of the parliament with regard to the improvement of civil-military relations is not being implemented.

The primary function of the parliament remains the passing of legislation on security and defence policy issues. In this respect, the legislature determines the structure and activities of the executive branch of government, defines the numerical strength of the armed forces by passing a respective law yearly, and adopts the defence budget. However, the influence of the parliament on the executive in drafting the budget is weak, since it is not able to participate in the elaboration of the budget or to change the budget draft by means of parliamentary deliberation. According to the new amendments to the constitution, the legislative function of the parliament could be weakened. The prime minister may call for a vote of confidence in parliament with regard to the State Budget, Tax Code and the Law on the Structure and Activities of the Executive<sup>25</sup>. Moreover, the parliament may adopt a law leading to changes in state revenues or which envisages new financial obligations of the state, only after the government consents to it<sup>26</sup>.

Nonetheless, the parliament approves major appointments within the security sector, even though some important appointments were made without parliamentary approval before the structural reform of 11<sup>th</sup> February 2004 took place. The parliament consents to deployments of foreign forces in Georgia and the deployment of the Georgian military abroad, ratifies international treaties on military issues and joining international security or defence organisations, approves declarations of emergency, martial law and the mobilisation of troops. In these respects, parliament possesses a 'war and peace' power. Parliamentary deliberations are public and, therefore, the main instrument for transparency with regard to security sector governance.

The Georgian legislature can control the implementation of security and defence policy through various means provided under the constitution. For example, it can hold hearings and ask questions<sup>27</sup>; set up any number of special parliamentary committees on a permanent basis to scrutinise parliamentary control of the government and prepare security policy issues for the plenary discussion<sup>28</sup>; set up an investigative commission<sup>29</sup> able to hold respective public officers accountable for their financial and political wrongdoing. The special legislation adds further competencies to parliament in security sector governance. The legislature determines state policy in respect of state secrecy<sup>30</sup>, can form a 'Trust Group' that may have access to classified information<sup>31</sup> and, through the Committee on Defence and Security, oversees the activities of the Intelligence Department<sup>32</sup> and State Security Service<sup>33</sup>. However, those mechanisms are lacking

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<sup>24</sup> Gaul Wolfgang, *Verfassungsgebung in Georgien: Ergebnisse internationaler rechtlicher Beratung in einem Transformationsstaat*, (Berlin 2001) (Georgische Übersetzung), p. 147.

<sup>25</sup> The Constitutional Amendments, adopted on 6<sup>th</sup> February, Article 18.

<sup>26</sup> Ibid.

<sup>27</sup> The Constitutional Amendments, adopted on 6<sup>th</sup> February 2004, Article 7.

<sup>28</sup> The Constitution of Georgia, Article 56, Par. 1.

<sup>29</sup> Ibid., Par. 2.

<sup>30</sup> The Law on State Secrecy, adopted on 29<sup>th</sup> October 1996, Article 3, Par. 1.

<sup>31</sup> The Law on the Trust Group, adopted on 4<sup>th</sup> March 1998.

<sup>32</sup> The Law on Intelligence Service, adopted on 19<sup>th</sup> March 1999, Article 16.

<sup>33</sup> The Law on the State Security Service, adopted on 18<sup>th</sup> February 1998, Article 18.



which would truly facilitate the implementation of democratic control over the security sector. Moreover, the legal power of the above-mentioned bodies is extremely limited.

### *The Role of the Government*

The Georgian Government, together with the president, implements security policy. The Cabinet proposes laws and budget drafts, and is responsible for conducting international negotiations on security policy matters and arms procurement. The key ministries with regard to security sector governance are the defence, security and interior ministries. The Ministry of Defence represents a state agency overseeing the armed forces, and is thus responsible for defending the state from outside threats, as well as for the proper training and development of the Georgian armed forces and the fulfilment of defence tasks facing the country<sup>34</sup>. New constitutional amendments could weaken the parliamentary accountability of the defence ministry, which is set to be transformed into a civilian institution<sup>35</sup>. The principle of collective responsibility of the government lessens the possibility of differentiating between the ministers. Their political fate depends on the position of the prime minister. There is no place for an effective parliamentary intervention in this respect. Though the parliament can raise the question of the responsibility of the ministers, the final decision rests with the prime minister<sup>36</sup>.

Other state agencies participating in the implementation of Georgian security policy are the Ministry of Foreign Affairs, the State Department for Border Guards, the Intelligence Department and the Special Service for State Protection. The parliament approved the structural reforms of the executive on 11<sup>th</sup> February 2004 as a result of which the Intelligence Department will be subordinated to the Security Ministry and the Border Guards Department will be merged into the Interior Ministry.

Special legislation regulates the further division of competencies between the main operational components of the security sector and determines the functions of the respective ministries accordingly. Georgian military forces include armed, border and interior forces. The armed forces are made up of Land, Air and Naval Forces. However, the Law on Defence does not exclude the creation of any other military forces by way of laws passed by Parliament<sup>37</sup>. Georgia has armed forces for the defence of the independence, sovereignty and territorial integrity of the country and for the fulfilment of international obligations<sup>38</sup>. The constitution forbids a merger of the army, police and the state security service<sup>39</sup>. However, the armed forces may be charged with keeping law and order within the country. This regulation constitutes an *ultima ratio* – only a subsidiary rule. In this case, parliamentary approval will be needed. Moreover, according to the Military Doctrine adopted in 1997, armed forces may be used for the restoration of public order within the state if the international community consents to this action. Although this is difficult to implement in practice, the concern of the Georgian authorities to adhere to international standards in this respect is evident.

Georgian Interior Forces, according to the Law on Interior Forces adopted on 30<sup>th</sup> April 1998, provide security within the state. They protect public order, the rule of law and human rights against crime and violence; in this respect they assist the Interior Ministry and Ministry of Security. Interior forces are charged with fighting terrorism and organized crime. Moreover, they participate in the defence of the country in wartime. The law does not detail, however, how

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<sup>34</sup> Amendments to the Law on State Defence, adopted on 26<sup>th</sup> October 2001.

<sup>35</sup> Thereafter the Chief of General Staff will undertake the operational command of military forces and become a military advisor to the President. The civilian Defence Minister will be charged with the budget, procurements and international relations.

<sup>36</sup> The Constitutional Amendments, adopted on 6<sup>th</sup> February 2004, Article 7.

<sup>37</sup> The Law on State Defence, Article 4.

<sup>38</sup> The Constitution of Georgia, Article 98.

<sup>39</sup> *Ibid.*, Article 78, Par. 2.

the interior troops would be involved, or which role they would play, in wartime. During peacetime the Interior Forces are subordinated to the Interior Ministry, which, under the NATO action plan, is to be transformed into a civilian and border control state agency. The Law on Interior Forces must consequently be redefined: the Interior Troops should be demilitarised, and their military and police functions should be clearly determined in the new regulations adopted by Parliament to meet the norm outlined in Article 78 of the Constitution.

The activities of the State Security Service are regulated by the Special Law adopted on 18<sup>th</sup> February 1998. The State Security Service provides external and internal security for the country. It represents a politically neutral state agency gathering and analysing information pertaining to external and internal threats. In situations of crisis, the Security Service acts in coordination with other state agencies. However, in this respect, the clear division of competencies is still outstanding and in need of clarification. The State Security Ministry, which co-ordinates the activities of various security units, is to be transformed into a security service without the power of investigation into economic crimes.

The restriction of human rights, when this is not controlled by democratic institutions, is a grave problem in Georgia. When limiting human rights in the security interest of the community, the state authorities must observe the principles of legality and proportionality. In all cases of restriction, the Parliament should have some control over the respective state agency. According to the Law on State Secrecy adopted on 29<sup>th</sup> October 1996, no information may be qualified as a state secret if this endangers human rights or public health and safety. However, the greater share of information related to defence and security is nonetheless qualified as such. The actual legislation on state secrets should be amended in line with the interests of civil society and of human rights under the proviso of the NATO action plan. All laws and international treaties related to human rights protection must be published and made accessible to ordinary citizens. In practice, citizens' awareness of the existing and not systemically published laws and international treaties involving Georgia (i.e. those which may be applied directly within the state) is very low, which makes security sector governance less effective.

It must be stressed that parliamentary control over the respective Ministries still remains incomplete. While there are some general tools provided under the constitution, the special legislation does not specify these rules and does not establish any clearly-defined mechanisms of control. Furthermore, the ongoing reforms within the security sector require professional and responsible ministers with expanded competencies to take independent decisions. Under the current constitutional amendments, which establish centralised state power, ministers' individual responsibility is diminished.

### *The National Security Council*

The National Security Council established under the constitution<sup>40</sup> has a wide range of competencies in terms of security sector governance. The activities of the NSC are regulated by the law on the National Security Council of Georgia adopted on 24<sup>th</sup> January 1996. The National Security Council is an analysing, advisory, and co-ordinating state body charged with the organisation of state defence and military strengthening. The Council decides on the strategic questions of foreign and domestic policy, stability and public order. The NSC is involved in the elaboration of the National Security Concept; debates state programmes on state defence and security, and makes proposals on Georgian co-operation with International Organisations. For example, the Council coordinates the implementation of the Action Plan that will facilitate the fulfilment of the pre-conditions for Georgia's future membership of NATO. Furthermore, the NSC discusses the stationing of foreign troops in Georgia; elaborates draft laws and submits staffing levels for the Armed Forces to Parliament for approval; co-ordinates inter-agency co-

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<sup>40</sup> The Constitution of Georgia, Article 99.

operation through its permanent commissions and organises this cooperation during states of emergency and periods of martial law. However, the NSC is not accountable to Parliament for its activities and may therefore be regarded as an undemocratic state body<sup>41</sup>. Some experts, moreover, view the NSC as a ‘small cabinet’ because of its broad competencies and side functions<sup>42</sup>. The decisions of the NSC do not formally bind the President, but still bear considerable weight in the shaping of state security policy. Generally, the NSC strengthens the position of the President within the constitutional framework.

The Constitution stipulates certain other independent institutions that may control the activities of the Executive and Legislature in the security sector. The *Constitutional Court*<sup>43</sup> has jurisdiction over constitutional claims and disputes. The *Public Defender* oversees the state of affairs with regard to the implementation of human rights. The *Audit Chamber* controls the use of governmental revenues in the security sector<sup>44</sup> and is accountable to the Parliament. The Chairman of the Audit Chamber will be elected by the Parliament<sup>45</sup>. Additionally, there exists the *General Prosecutor’s Office*<sup>46</sup>, to whom the *Military Prosecutor* is subordinated. The Constitutional Court and Public Defender represent two new institutions established under the Constitution in 1995. The Constitutional Court may resolve disputes between state agencies on the division of competencies in the security sector, decide on individual claims in respect of human rights’ violations by state authorities, and rule on the constitutionality of signed international agreements prior to their ratification by Parliament. In addition, the Court enjoys certain other competencies provided under the Constitution<sup>47</sup>.

The Constitutional Court recently started proceedings in connection with one of the first cases directly related to the constitutional division of competences between the centre and regions in the security sector. The Court needs more time to prove how far it might involve itself in the shaping of democratic governance of the security sector. General courts have jurisdiction over legal disputes arising from the implementation of the legislation on social security, call-up deferment, conscription, the legal status of the military, and crimes stipulated by the Criminal Code of Georgia. They may, furthermore, facilitate the implementation of fundamental human rights enshrined in both the Constitution and internationally recognised standards of human rights protection in the security sector that are drawn from the European Convention on Human Rights. There are no special courts within the Georgian court system. However, the Parliament can establish military courts during a state of war. The investigation into a crime committed within the military forces constitutes a competence of the Military Prosecutor’s Office of Georgia.

It is a parliamentary prerogative to appoint a Public Defender. There is no military ombudsman in Georgia, and, therefore, human rights’ violations within the military are assigned to the competencies of the Public Defender. He can enter military installations and bases to investigate the facts and to obtain information from those involved or suspected of involvement in any alleged violation<sup>48</sup>. State authorities are obliged to help the Public Defender in exercising his functions. As a result of his activities, the Public Defender may propose amendments to the legislation in order to close any existing loopholes, recommend state agencies to act properly, or initiate criminal or constitutional proceedings in respective courts. As a subsidiary rule, he can approach the President or report to Parliament on actual human rights’ violations. The Public

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<sup>41</sup> Gaul, Wolfgang, p. 241.

<sup>42</sup> Archil Osidze & Ivlian Haindrava, ‘Civil-Military and Interagency Cooperation in the Security Sector Reform in Georgia’, in Philipp H. Fluri & Velizar Shalamanov (eds.), *Security Sector Reform, Does it Work?*, (? : Sofia, 2003), p. 195.

<sup>43</sup> The Constitution of Georgia, Article 83, Par. 1.

<sup>44</sup> Ibid., Article 97.

<sup>45</sup> The Constitutional Amendments, adopted on 6<sup>th</sup> February, Article 23.

<sup>46</sup> Ibid., Article 91.

<sup>47</sup> Ibid., Article 89.

<sup>48</sup> The Law on Public Defender, adopted on 16<sup>th</sup> May 1996.

Defender can contribute to the transparency and public discussion in respect of the security sector by informing the public through the mass media about the results of his activities. However, his decisions are not legally binding and are often simply ignored. For example, in 2001, the Public Defender submitted a recommendation to the Parliament that a Parliamentary Commission be set up to investigate and study the reasons behind instances of homicide and suicide in the armed forces. However, this recommendation did not lead to the creation of the respective commission<sup>49</sup>.

### *Civil Society Involvement*

In Georgia, the constitutional right to political participation, which entitles civil society to be permanently involved in security sector governance, already has procedural and substantive outlets. The procedures establish several forms of popular participation. Substantive political participation, on the other hand, means that the range of subjects involved in security sector governance reflects the whole spectrum of interests within society, i.e. those of independent researchers and ordinary citizens, national, religious and any other minorities, NGOs, independent educational institutions, and the free media.

Several procedural forms of political participation are guaranteed under the Georgian Constitution: election, referendum, plebiscite, human rights. However, the general trend in Georgian society shows that these norms do not materialise in practice. Formally, free elections constitute a core element of political participation in security sector governance. According to the Georgian Constitution, the people are the source of state power<sup>50</sup>, and have the right to be kept informed about the plans of politicians in this context. Since it is their security that ultimately depends on the material outcome of their leaders' proposals, information is key in their decision on whether or not to elect them. Political parties and politicians involved in election campaigns should make the people aware of how they will guarantee security for ordinary citizens. Because of the critical economic and social problems in the country, Georgians are, in reality, much more interested in getting their unpaid salaries and the minimal social guarantees from the state in time than in particular problems of security sector governance. Furthermore, the younger generation is not interested in the military profession. As the Public Defender of Georgia noted, in her report on the situation within the army, "the government itself is pushing soldiers into desertion".

Moreover, the military is beset with problems of social discrimination, as it is mainly young people from impoverished families, who can not afford a payment for call-up deferments, who serve in the army. The Law on Alternative Labour Service adopted in 1997 was not implemented till 2002. The politicians mainly ignore this whole issue in their election hustings because of its unpopularity. In most cases, they do not have any detailed programme for the resolution of those national problems which undermine the people's sovereignty as guaranteed under the Constitution.

From the inability of the state to manage the problems of the people stems the necessity to build up alternative channels for political expression and consensus-building. In this respect, the growing interest in – and activities in relation to - security sector governance from Western-backed NGO's and the independent media must be stressed. These organisations form a most active and qualified part of the Georgian civil community by endeavouring to keep a watchful eye on the activities of the Georgian Government on security and defence policy issues. This has contributed to the strengthening of political awareness among ordinary citizens.

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<sup>49</sup> Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia, Second Half of 2001, p. 34, in:  
[http://www.ecoi.net/pub/mv170\\_publicdefender-geo.pdf](http://www.ecoi.net/pub/mv170_publicdefender-geo.pdf)

<sup>50</sup> The Constitution of Georgia, Article 5, Par. 1.

By using the political rights granted to them under the Constitution the citizens signal their concerns about actual developments in the security sector. Strong public interest and a consolidated civil society could become effective instruments in holding the Government accountable. When, in November 2001, the State Security Service occupied the offices of an independent Georgian broadcasting company, Rustavi 2, and unlawfully demanded its financial documentation, there was a fierce public backlash, as NGO's, student associations, and ordinary people demonstrated for a free mass media. This led to a political crisis in the country, which forced Shevardnadze to dismiss his government. The recent developments in Georgia, and the international reaction to it, demonstrate once again that the right to political participation is gaining more international relevance. The conditionality of international organisations in this respect will be strengthened. The establishing of the institutional, social and economic pre-conditions for the implementation of the constitutional provisions on political participation would make the Georgian Constitution more agreeable to international law and thereby facilitate Georgia's political and legal integration into the North Atlantic Community. Furthermore, the implementation of these principles is essential for the effectiveness of security sector governance itself.

### *Social Security and the Legal Status of the Military*

Civilian, democratic control over the Armed Forces and other military forces constitutes a two-way relationship: not only is the civil society entitled to control over the military, but, equally, members of the military have the right to contribute to democratisation and to consider themselves an integral part of society. The Constitution of Georgia provides for military duty for every Georgian citizen<sup>51</sup>. According to the Law on the Status of Military Personnel adopted on 25<sup>th</sup> July 1998, the state guarantees the social and legal protection of military servicemen and their families. The state also has to guarantee the equality of all members of the military. Thus, the authorities are obliged to prevent corruption and other forms of discrimination within the security sector. It turns out, however, that the state has hitherto been unwilling to fight corruption and has been fully unable to provide elementary living conditions for the military. Several mutinies within the armed and interior forces that took place between 2001 and 2003 stemmed from widespread discontent about the social circumstances for military personnel. In May 2001, a battalion disobeyed orders and took over an Interior Ministry Forces' base in Mukhrovani; in May 2002, Interior Ministry Forces mutinied; in July 2002, 100 young army officers resigned, accusing the Ministry of Defence of corruption; in March 2003 army officers entered the Isani military base and demanded their wages.

After the Mukhrovani insurgency of May 2001, as the insurgents advanced demands for improved social conditions (the payment of wage arrears, and the distribution of adequate kit), President Shevardnadze told journalists that he had given the Guards his "word as the President and Commander-in-Chief that none of them would be troubled by an investigator because the state itself is no less guilty for what has happened". He continued, "if our servicemen lived in normal conditions, there would have been no mutiny". Shevardnadze stressed that the country's leaders "bear moral responsibility for the incident" and that "the authorities and the country's population should pay more attention to the army"<sup>52</sup>. In resolving these problems, the Georgian government depends on the financial and technical support of its partners. In Spring 2002, the USA started the 'Train and Equip' programme in Georgia which led to the formation of elite

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<sup>51</sup> The Constitution of Georgia, Article 101.

<sup>52</sup> Pravda online, <http://english.pravda.ru/cis/2001/05/26/5985.html>, CNN "Georgia mutiny troops return to base", May 26, 2001, in: <http://www.cnn.com/2001/WORLD/europe/05/26/georgia.army/index.html>.

battalions within the Georgian army, which came to enjoy relatively normal service conditions. For most soldiers, however, the situation remains critical.

### *Security Sector Governance in Action*

#### *a) State of Emergency*

A state of emergency can be declared in cases of war, mass disorder, violation of national territorial integrity, military coup, armed insurrection, environmental disaster or epidemic or in other cases where state agencies are unable to exercise their functions properly. The decision of the President to declare a state of emergency or to impose martial law must be submitted to the Parliament within 48 hours for approval<sup>53</sup>. During a state of emergency or a period of martial law, the President of Georgia is authorised to restrict the exercise of certain rights and freedoms enshrined in the Constitution. These deal with the detention of an individual, the right to privacy, property rights, freedom of movement, freedom of information and the mass media, the right to public assembly, labour rights, the right to strike, and the protection of private information. If the parliament does not consent to the declaration of the state of emergency or the imposition of martial law, the presidential decision will have no legal effect. Furthermore, parliament must give its consent to any prolongation of the state of emergency. If parliament comes to the conclusion that there are no longer any lawful grounds for upholding a state of emergency, it can cancel it by passing a relevant law. According to the new constitutional amendments, the parliament, which has been dismissed by the president, convenes to approve or to prolong the state of emergency or state of war. If the parliament does not convene or does not approve the presidential decision on the state of emergency within five days, it will be abolished. The state of war must be abolished if the Parliament does not confirm it within 48 hours<sup>54</sup>.

The constitution does not provide to which extent respective human rights can be restricted and does not specify any system of control over these restrictions. The parliament may convene on its own initiative and sit until the end of a particular situation. This regulation aims at the prevention of power abuse by state agencies in an emergency situation. However, it does not provide any concrete mechanisms in this respect for how parliament might continue to oversee the activities of state authorities during the state of emergency. In addition to human rights' restrictions, the use of military force during the state of emergency is prohibited without a parliamentary agreement. Thus, Georgian law establishes the formal supremacy of the Georgian Parliament in the declaration and abolition of a state of emergency. However, during the state of emergency itself, the President possesses superior power. He issues binding decrees and is ultimately responsible for state defence, security and public order.

The Constitution does not explicitly envisage a parliamentary agreement *a posteriori*. Given that a state of emergency, in most cases, represents an immediate danger to the community that must be avoided rapidly and that parliamentary deliberations may prove time-consuming, it seems problematic to tag an *a priori* approval of the Parliament onto an ongoing crisis situation. Furthermore, the reasons for which the legislature might not agree to the use of force in an emergency situation, or to the declaration of the state of emergency by the Executive, may owe to a lack of information or to simple incompetence. It is, on the other hand, self-evident that the declaration of a state of emergency can be abused by an undemocratic regime if there is no parliamentary control in place. Georgia has suffered from such an instance of abuse in one of its regions, where the local leader recently declared a state of emergency and restricted political rights disproportionately. A professional Parliament and an Executive guided by a democratic

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<sup>53</sup> The Constitution of Georgia, Article 73, Par. 1.

<sup>54</sup> The Constitutional Amendments, adopted on 6<sup>th</sup> February 2004, Article 5.

mindset would help avoid most complications in this respect. Some examples from the practice of the Georgian State will help to shed more light on practical questions arising from this context.

Eliava, a former General of the ousted President Gamsakhurdia, started a military insurgence in West Georgia on 18<sup>th</sup> October 1998, and marched towards Kutaisi, the second largest city in Georgia. Thereupon President Shevardnadze ordered the use of armed forces without a formal *a priori* agreement of the Parliament. However, a session of the Parliament was held on October 19<sup>th</sup>, at which Zhvania, Chairman of the Parliament, presented a report on the events unfolding in the West of the country. The Chairman regarded the revolt as "... an attempt at a *coup d'état* and at establishing chaos in the country". The session of the Parliament, held on October 20<sup>th</sup>, was dedicated to discussing the same events. The Chairman of the Parliament gave the Members new information on the latest developments. It became clear that the Parliament supported the action of the President without adopting a formal resolution on suppressing the revolt or granting an *a priori* consent to the Government that would limit the room for manoeuvre of the officials in charge. Therefore, the activities of the Parliament in this respect could be qualified as consent by action.

On the morning of 25<sup>th</sup> May 2001, a unit of the Georgian Defence Ministry numbering roughly 400 servicemen refused to obey the orders of their Command and moved, without permission, to the area of the Mukhrovani settlement outside Tbilisi, where they occupied the territory of the dislocation of Georgia's interior troops. The non-payment of wages and other social problems were raised as one of the reasons for their disobedience. The forces of the Defence Ministry had blocked the base. President Shevardnadze called on the insurgents to surrender. The Georgian legislature reacted immediately to the crisis. Parliament interrupted its plenary session for the second closed-door emergency session of the parliamentary bureau, which constitutes the supreme administrative body of the Parliament, representing all groups and committees without having significant legal power. After the session, the members of parliament declared that the force of arms was not to be used against the insurgents, unless the situation had come to an impasse. Thus, parliament entrusted the executive with defining how the situation could be assessed as having come to an impasse. The parliament called on the government to do everything to bring the crisis to a peaceful end as soon as possible. Eventually President Shevardnadze negotiated personally with the insurgents, and the battalion returned to its place of dislocation. Herewith, the parliament supported the effectiveness of the Executive by not restricting its power of discretion to use force.

Just before his resignation in November 2003, President Shevardnadze declared a state of emergency. At that time there was no effective parliament in place which could endorse this decision. After his resignation, the president declared that he wanted to avoid the bloodshed that might take place if force were used against the demonstrators. What action should be taken in a situation where the Parliament is paralysed or directly attacked? It is evident that there is no place for an *a priori* consent. In this case, we can speak of the presumable consent of the democratically elected Parliament. Therefore, massive ballot fraud and undemocratic elections deprive the Parliament of its legitimacy and its right to consent to various human rights' restrictions initiated by the Executive. In this case the principle of democracy prevails over the principle of the effectiveness of the government.

Generally speaking, the executive should be able to order armed operations in situations of immediate danger and, thereafter, seek parliamentary approval as soon as possible. If parliament afterwards establishes that the executive acted unlawfully, the question of political responsibility can arise. Therefore, the executive will have to meet the pre-conditions of legality and proportionality in its operations during a state of emergency. It must be stressed, however, that the new constitutional amendments will weaken the position of parliament in this respect. The presidential power on the use of force will be strengthened. According to the new amendments to the Constitution, the president takes a decision on the use of force and submits it

to the parliament for approval within 48 hours<sup>55</sup>. Contrary to the former wording of Article 100 Par. 1, which envisaged the use of force during the state of emergency, new amendments generally speak about the use of force. Moreover, the Parliament confirms the presidential decision. According to the former wording, the use of force was forbidden without parliamentary consent.

*b) International Peacekeeping*

The decision of the President on the use of armed forces for the fulfilment of international commitments becomes obligatory following parliamentary agreement. All International agreements on the participation of Georgian troops in peacekeeping, peace enforcement and all other peace operations must be ratified by Parliament in accordance with the law on the Participation of Georgian Armed Forces in Peacekeeping Operations adopted on 22<sup>nd</sup> July 1999. The main responsibilities for decision-making and the co-ordination of the participation of Georgian soldiers in international peacekeeping are divided between the President, Parliament, the Foreign Affairs Ministry and the Defence Ministry. If the Georgian Government plans to participate in peacekeeping operations that may include the use of force, the Foreign Affairs Ministry must negotiate a draft agreement with that respective country, which determines the number of deployed troops, their dislocation, tasks, readiness and means of participation. This widens the scope for parliamentary consent. It must be assumed that the legal power over ongoing operations does not pass to Parliament, but instead rests with the Executive. Interestingly, Parliament does not have the right to recall the deployed troops. Therefore, the question of what Parliament can do when, for example, there is unreasonable causality for the deployment, or if the military mission fails, remains open to debate. Nonetheless, Parliament can exercise limited political pressure.

There are, additionally, some other legally relevant points. The Constitution of Georgia and the Special Law do not explicitly regulate the participation of Georgian troops in operations that do not by necessity include the use of force - for example, in peace-building, relief or other humanitarian operations. In practice, there is no clear difference between those cases where general parliamentary consent is necessary and those where the Executive is obliged simply to inform Parliament about an ongoing operation and its changing modalities, e.g. about the numerical strength of deployed troops. There is no special regulation for situations of immediate danger, for example where troops undertake a rescue operation abroad.

Once a year, the Foreign and Defence Ministries of Georgia submit a report to Parliament concerning the participation of Georgian forces in peacekeeping, peace-enforcement and other peace operations<sup>56</sup>. However, the Parliament should be kept informed about any ongoing peace operation on a regular basis by means of its Defence or Foreign Relations Committee. Equally, parliamentarians who are experts in that field should also be included in any delegations sent to visit deployed forces. Georgia's capabilities in peacekeeping operations are limited; for the time being the Parliamentarians are unlikely to have any urgent interest in controlling them.

*c) Other Forms of International Military Co-operation*

According to Article 100 Par. 2 of the Constitution, for the purpose of state defence, in special cases, or cases envisaged by law, the decision to permit entry into and the use and movement of military forces of other countries on Georgian territory is taken by the President. The decision is immediately submitted to Parliament for approval and enters into force upon its consent. The

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<sup>55</sup> Ibid., Article 24.

<sup>56</sup> The Law on the Participation of Armed Forces of Georgia in Peacekeeping Operations, adopted on 22<sup>nd</sup> July 1999, Article 10.



Constitution does not differentiate between the interventions of foreign troops upon invitation, time-limited interventions, (for example, rescue operations), interventions on the basis of restoring legal order, counter-terrorist operations and the stationing of foreign military bases on Georgian soil for a relatively long time aiming at, for instance, the strengthening of a strategic and defence partnership. There is no special law on the stationing of foreign troops in Georgia by means of which this issue might be regulated. Therefore, in all cases of foreign deployment or transit in Georgia, parliamentary approval would be necessary. Because this provision was based on the historical experience that Georgia has had with regard to the stationing of Russian troops in the country, the Constitution provided for an explicit parliamentary agreement *a priori*. However, the foreign troops were already deployed in Georgia when the Constitution was adopted in August 1995. With respect to time-limited foreign interventions upon invitation, the same problematic rule can arise with regard to *a priori* consent, as already discussed above.

Furthermore, the Constitution determines the form of parliamentary authorisation. According to the Constitution<sup>57</sup>, international treaties with any military content must be ratified by Parliament. Thus, entrance into and use of foreign armed forces within the country also must be regulated by an international treaty ratified by Parliament. There are various international military agreements – from important military arrangements to treaties that regulate technical issues of military co-operation. The Georgian Constitution does not differentiate between them. The Parliament ratifies the treaties, concluded in different forms: agreements, mutual understanding memorandums, note exchanges. Thus, the scope of the international treaty on military issues, which must gain parliamentary approval, seems to be open to broad interpretation within the Georgian legal system. In addition, it must be stressed that international treaties involving Georgia, if they do not contravene the Constitution, prevail over domestic laws and other normative acts.

*The fight against terrorism* has represented one of the most crucial security challenges for Georgia in the last few years. After the attacks of September 11<sup>th</sup> 2001, the issue of terrorism is now discussed in terms of state sovereignty. A terrorist attack can instigate not only criminal proceedings conducted by the state authorities, but can lead to the involvement in an asymmetrical war based on interests of self-defence. Through the new legislation to be enacted soon, state authorities should be deprived of the opportunity to misinterpret terrorism in their own political interest, which would endanger democratic constitutional values. In this respect, a new role for Parliament in controlling the activities of state authorities, which bear the responsibility for fighting terrorism, must be defined and founded on a clear constitutional basis. According to the recent practice with regard to the deployment of US military experts in Georgia, co-operation with other countries to fight international terrorism must also be placed under the Georgian Constitution and approved by Parliament. This practice should become consistent and be improved in the future.

### *Conclusion*

During the last decade Georgia has been undergoing almost continual changes in its political system, which has effectively hindered the establishment of a consolidated security sector. The Parliament, whose primary function is to control the Government, has been dominated mainly by the Executive. This was very much the case under Gamsakhurdia and Shevardnadze until 1995. Shevardnadze abandoned the presidential system discredited by Gamsakhurdia in 1992 and established a formally stronger Parliament, which proved equally as unreliable and unconsolidated an institution. The result was a return to a Presidential Republic in 1995. The institutional and procedural framework of the Constitution provided for a strong President. The adoption of the Constitution had to guarantee the stability of the political system on the one hand,

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<sup>57</sup> Article 65.

and establish a stronger Parliament on the other. However, the Executive keep parliamentary involvement in security sector governance to a minimum. Likewise, the suitability of the political system based on the Constitution adopted in 1995 had already been brought into question by 2001, when the President announced plans to introduce a cabinet system and consolidate his power. After the revolutionary change in 2003 the new political leaders of the country strengthened the Presidency through the establishment of a Cabinet to be headed by the Prime minister. Thus the syndrome of constitutional inconsistency and Executive domination seems set to persist.

It is highly questionable whether the new system can better prevent political crises in the country or foster effective solutions to them. A sound institutional framework may facilitate the improvement of the political culture, yet it does not guarantee such progress. Nonetheless, it is still necessary. It will be difficult to balance the self-contained and unaccountable Executive if democratic control is not institutionalised through an effective Parliament. Moreover, the preventive and controlling function of parliamentary consent to the activities of the Executive with regard to security sector governance could be extremely weakened within the new system. Parliament will come under pressure to consent to the respective decisions of the President and Government. As a result, parliamentary involvement in security sector governance could be marginalised. Past experience teaches that the personal and unilateral decisions in this respect during the last decade in Georgia have led to many acute problems in state-building, the establishment of democracy, conflict prevention, the promotion of human rights and dealing with external threats. In view of this, an optimal balance between the branches of government, and between democracy and effectiveness, must be maintained and improved through the institutional practice and civil society's involvement in such a way that the people's sovereignty, as guaranteed under the Georgian Constitution, is not undermined.

## Chapter 7

### **Civilians in National Security Structures and Civil-Military Relations in Georgia**

*Tamara Pataraiia*

This article considers the role and functions of civilian persons in the structures of the defence and security of Georgia. Its purpose is to estimate to what extent the existing system of the State government contributes to the realization of the democratic control over the military, what problems are shown in the functioning of those structures and finally, how the function of the control of the military and militarized departments is entrusted constitutionally. This article also represents an attempt to define how democratic the Georgian model of military-civil inter-relations is; how greatly the country's military-civil inter-relations and methods of management of defensive resources meet western standards, and what role is allocated to civil persons in these processes.

As experience shows, countries with effective and democratic systems of security are concerned very little with the corruption and weakness of the state institutes or with problems of unlawful accumulation and consumption of resources. Democratic countries successfully carry out protection of the interests and security of both the State and society.

In the second half of the 1990s, after the development of intensive inter-relations between Georgia and the Euro-Atlantic Institutes, the problem of strengthening democratic control over the law-enforcement and military structures of Georgia was put on the agenda. In light of the inefficiency of the existing system of security in Georgia, the State, with the help of the western democratic countries began to introduce the mechanisms of civil democratic control.

On the one hand, this assistance meant the transfer of the legislative base and executive structures of defence onto a democratic model. This meant the development of a corresponding legislative base, the strengthening of the role of civil persons in the management of a national policy of security to promote short-term and long-term policy planning in the area of security formation and the enabling of internal motivational systems and financial transparency in State institutions. On the other hand, the assistance of the West assumed increased professionalism among the military, the introduction of NATO standards in defence forces, and society's active participation in discussions of safety and the formation of democratic military-civil relations.

A brief review of the legislative base is given in the first part of this article. Authors describe the main principles of the role and differentiation of the responsibility of civil employees in the system of security. It represents an estimation of how democratic the legislation in Georgia is and to what extent military-civil inter-relations meet the norms and standards adopted by developed democratic countries.

The discussion given in the following chapters basically concerns the analysis of problems at the point of execution of the law. In the discussion, special attention is given to definition of the actual role and functions of civil persons in the institutes of the President, Council of Security, and also to reforms conducted in other structures of security. Special chapters are devoted to the description of conformity of practice and the law in legislative and judicial systems, and also to the interest and participation in various public sectors (nongovernmental sector, mass media) in formation of military-civil inter-relations.

#### *Normative Base: Democratic Decisions and Problems*

The structure of security existing today in Georgia leans on the legislative base established in the country together with adoption of the Constitution after 1995. From the point of view of military-civil inter-relations and civil control, there are a number of worthy points. So, for example, the Constitution of Georgia does not recognize the uniqueness or privileges of the military.

According to the Constitution, protection of the country and performance of a compulsory military service is the duty of each capable citizen.

The legislation determines that the functioning of power structures involves maintenance of order and legality inside the country and suppression of possible external threats. The direct purpose of military forces is the protection of the sovereignty and territorial integrity and independence of the country. Thus, the Constitution of Georgia pays special attention to the universal rights and freedoms of the person.

The Constitution emphasizes the independence of the judicial system. In the Constitution, there are instruments for the establishment of the civil democratic control of power structures. So, for example, the Parliament is the body adopting the budget and determining the basic directions of external and internal policy. The Parliament establishes the number of armed forces. Any international contract or agreement of a military character is subject to necessary parliamentary ratification. The President, who is the Supreme Commander-in-Chief of the Military Forces of Georgia, without the consent of the Parliament, has no right to involve military forces in a state of emergency or for performance of international obligations.

Laws on defence, police, internal armies and state security relate to the laws regulating assignment, place and actions of power departments. The Law on Operational-Investigation Activity is particularly worthy of mention, according to which a number of special measures in the rank of the State secret (latent shadowing after suspected and gathering of the information, creation of secret organizations and a secret-service network) can manage seven departments. Four of them directly concern militarized, power structures, one of them is merely an investigation agency and the remaining two departments are of more civil character, responsible for the financial-economic order in the country.<sup>1</sup> The laws adopted in 1997 on Conscription and Military Service and on Non-Military Alternative (Labour) Service, which determine the relation of citizens to military service, are significant.

The mentioned law and a number of other special laws (for example, the Law on Frontier of Georgia, on the State Secret, on Special Service of the State Protection, on the Status of the Military Man) contribute to the construction of the legal, democratic State. Changes, in 2000, in the Law on Defence contributed to the differentiation of the roles of the Ministry and the General Headquarter of the Armed Forces, which has been dictated by the experience of the system of defence among developed democracies. In parallel, the principles of leadership of the law and democratic reporting have introduced such general basic acts of the political system as the general administration code.

The legislation of Georgia limits the rights of commercial activity for the employees of power structures, and this is also coordinated with principles of democratic military-civil inter-relations. Enforcement departments can hand over or sell unnecessary property, which is on departmental balance. Some departments, in particular, the Special Service of the State Protection or Department of Police Guards of the Ministry of Internal Affairs have the right to conclude contracts on the security service of organizations and departments. However, such actions demand the sanction of bodies of civil authority, either through legislative frameworks or the order of the President. Power departments own a number of economic objects, but the income received from them or from the above-listed activity should be used for departmental needs and

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<sup>1</sup> Among the law-enforcement bodies, it is necessary to mention the Ministries of Internal Affairs and Security, Special Service of the State Protection and the State Department of Protection of the Border. The above-mentioned intelligence department is Department of Secret Service of Georgia, and other two – the customs department and tax inspection. (The Law on Operative and Investigation Activity, April 30, 1999, the Legislative Messenger of Georgia, N14, 1993). It is necessary to note, that one of the main structural departments of the Ministry of Internal Affairs, Department of Police, according to the corresponding law, represents the law-enforcement militarized state body (The Law on Police, article 1). At that, the Internal Armies, which are considered by the legislation as a part of the Armed Forces (The Law on Defence, October 31, 1997), submit to the Ministry of Internal Affairs.

not for the needs of personalities. Employees of the enforcement services should not work in the departmental enterprises, and the profit should be reflected in the State budget. Legal barriers to the uncontrolled commercialization of the enforcement bodies are treated by the law in terms of the incompatibility of interests of public service and corruption. According to the law, an official has no right to conclude a commercial deal with close relatives.

The legislation puts limitations on the political activity of the representatives of the military, police and special services. For example, the fifth article of the Law on the Status of the Military Man passed in 1998 forbids political activity of the military man. Police are forbidden to create a political organization or to become members in their own department. This represents a certain compensation to liberal-democratic ideals for differentiation of the military and political spheres.

Together with the Constitution and the mentioned laws, the laws on budgetary systems and budgetary competence, on parliamentary committees, on the provisional committee of inquiry of the Parliament and on the group of trust serve civil control over the power sector. The group of trust is created in the Parliament with the purpose of control over special programs and confidential activity in the sphere of defence and security.

One of the most effective mechanisms of the civil control of power departments is the role of the President. As the Supreme Commander-in-Chief and the Chairman of Council of the National Security, the President practically has the right to supervise over power departments and to play a main role in completion of their leadership.

In the actions of the enforcement bodies and in the normative acts regulating the political and judicial control over them, it is possible to mention also other interesting grounds of democracy building. The result of these or other laws, however, does not provide an opportunity to reveal the liberal-democratic law and order in the country or the high degree of national or personal safety. The constitutional provision that without the consent of the Parliament, the President has no right to use the armed forces during the state of emergency<sup>2</sup> is declarative and intended for infringement, especially because the internal troops of the Ministry of Internal Affairs are included under the armed forces.

According to Article 98 of the Constitution, the structure of military forces is determined by the President, and their quantity, by majority of payroll structure of the Parliament. Accordingly, the legal way out is not clear in cases in which between the Parliament and the President there exists a difference of opinion on the structure of the military forces. The 1997 Law on Defence contradicts to this constitutional provision. In it, it is written that the law should determine the structure of military forces. The Law on Defence also contradicts the Constitution on other points. According to Article 78 of the Constitution, unification or any association between military forces, departments of State security and police is forbidden. The law says that the internal armies of the Ministry of Internal Affairs are part of the military force.<sup>3</sup>

The lawful borders of the state secret are not clear or, at least, are incompatible with a principle of transparency. According to Article 28 of the Administrative Code, information is made accessible if it poses no harm to national security. Concealment is possible only in cases where "there is a proved assumption, that its disclosure will threaten fulfilment of planned military, intelligence or diplomatic actions (or actions being in the process of fulfilment) and to physical safety of their participants".

The Law on the State Secret contradicts the above-mentioned provisions of the Code. According to Article 7 of the Law, in the sphere of defence, the information on operative and strategic plans, on military readiness, on programs of development of arms and technical equipment is secret. It might be understood as a prohibition of detailed elaboration of the military budget. Thus, according to the law, the President approves the list of data, concerning the state

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<sup>2</sup> David Darchiashvili 'Politicians, Soldiers, Citizens', Tbilisi, 2000, p. 310.

<sup>3</sup> Ibid.

secret. According to that list, practically everything concerning military forces is secret. There is not enough space for transparency of a defensive policy.

The law on the Council of National Security raises a number of questions. There is the element of amalgamation between executive and legislative structures. The Chairman of the Parliament, as well as the Chairmen of Autonomous Republics of Ajara and Abkhazia directly take part in the work of the Council. The law does not specify the difference between the status of a member of the Council and "direct participants." The Council is an advisory body of the President but, at the same time, coordinates and supervises over the activities of departments in the sphere of defence and security. There is nothing said in the Law about the procedure of work of the Council. It is necessary to mention also that the Secretary of the Council, which should supervise over technical and administrative activity, itself is a member of the Council.

The problem is also that basically the procedure details that the functioning of departments and institutes are specified by legal acts, mainly decrees of the President. This fact restrains the real legislature power of the Parliament, which is an irreplaceable attribute of the democratic civil control.

In the activities of the police and other law-enforcement bodies, changes need to be made, particularly in terms of observance of and respect for human rights and impartiality. The prevailing opinion is that assigning the right of struggle against economic crimes to the Ministry of Internal Affairs and the Ministry of Security is a Soviet norm. It provides possibilities for misappropriation in of tax and customs departments, and opportunities for fraud and corruption among department employees. The Georgian law-enforcement organizations have also considered that the Code of the Criminal Law and Remedial Code of the Criminal Law do not precisely determine the responsibility of employees on the facts of tortures of arrested persons. Firstly, the reference point of "detention" is unclear and secondly, the citizen has no right to hire a lawyer at the moment of detention.

According to the members of the "Provisional interdepartmental commission on the development of offers of the institutional reforms of bodies of the system of security and legal assistance" created in 2001 at the Council of National Security, attention should be given to the Remedial Code. In today's existing codes, the forms of investigation and the rights and duties of participants are not described clearly. Some of the stages of investigation (inquiry, preliminary investigation) are separated artificially. Inquiry is in the competence of many superfluous law-enforcement and power structures. At the first session of the Commission, it was also mentioned that normative changes in the functions of the police force and its internal management are necessary for its decentralization.

There is another system shortcoming that is adding to the imperfection and purely declarative tone of the Constitution, laws, codes and highlighting the contradictions between the provisions of normative acts. It also has a direct impact on the execution of the security policy and on the political supervision of power structures. It concerns the difficult search for a third way, in case of a potential opposition or split, between the President and the Parliament.

According to the Constitution of Georgia, the President cannot dissolve the Parliament. It is almost unimaginable to install a procedure of impeachment of the President in the Georgian political and legal system. It is conceivable, however, only by consensus, if the President and the Parliament do not share the competence within the borders of the above-listed or other disputable and contradictory provisions of the Constitution and the legislation; or alternatively, if one of branches of the supreme authority should involve others under its political influence.

It is known from corresponding research, that no less problematic, than military dictatorship, are the realities of circumstance, when the differentiation of the functions of political bodies is imprecise or when one body of authority or its representative tries to subordinate the army for its own purposes to gain advantages over other parts of the political corps. In such cases, the military is involved in political game-playing, which is hardly coordinated by a principle of

indifference towards politics of the army and thus represents a risk for democracy. Samuel Huntington has termed such a style of control as subjective.

The subjectivity of this model is more inclined to the side of the executive authority. With the help of a range of normative and political instruments, the President possesses an actual advantage in comparison with the legislative and judicial authority, and the control over enforcement bodies passes into his hands.<sup>4</sup>

In terms of the assignment of leadership among enforcement bodies, the role of the President is decisive. The President, upon his own will and desire, can enforce the resignation of Ministers, and as for the Parliament, there are highly complex mechanisms of impeachment involved. Shortcomings of the legislative base are also essential.

Shortcomings concern the tendency to make pronouncements for effect of some laws and/or their ambiguity. In a number of cases, laws are contradictory. Separate items of respective laws do not necessarily correspond to tasks of the introduction of democracy and social justice. All this negatively influences the organization, activity, management and control of spheres of security and legal assistance. The constitutional provisions that the Parliament "determines the basic directions of internal and foreign policy of the country", and the President "directs and carries out external<sup>5</sup> and internal policy of the State" to control the Heads of the enforcement departments: the Parliament does not approve the Heads of independent executive bodies with the status below the Ministry. Among special services, such departments include: the Department of Frontier Guards, Service of the State Protection and Department of Intelligence. The control over the staff of Security Council also does not concern the Parliament, though it plays a significant role in the development and carrying out of a policy of security and legal assistance.

Imperfection of the laws is only one side of a problem. Shadow inter-relations in Georgia are based on violation of the laws and the problems connected to them.

The discussion quoted in the following chapters basically concerns the analysis of problems arising during performance of the law.

#### *Control over Armed Forces by Executive Authority of Georgia: The President of Georgia*

All heads of power bodies are accountable uprightly to the Supreme Commander-in-Chief, to the President. In spite of the fact that the first persons of all power institutes (the ministries, departments and special services) have supreme military ranks or have special, militarized rank, in Georgia these institutes cannot be considered as masters of the country, as an uncontrolled force, which transform into the simple property of other components of the political and legal system. The President preserves certain influence and control over them.

As previously mentioned, it is underlined in the Constitution, that the President formally retains control over the military forces integrated into the state structure, though actually in Georgia the state structures frequently deal with acting in the territory of uncontrolled armed forces. This means that for the power structures, which are under the direction of the President, it would be difficult to provide order and legality inside the country. There are cases when the President has had problems from the point of view of monitoring of the military; the separate armed units on the basis of personal or social requirements have declared insubordination to the military leadership and, moreover, to all civil authority.

In 1998, there was situation of political insubordination by part of a unit integrated into the military forces. Essentially, the circumstances were that a battalion dislocated in Senaki opposed the chief authority and declared insubordination. The President, in response and without the consent of the Parliament, made the decision to use the armed forces of the Ministry of Defence to suppress the revolt. Fortunately, military actions stopped shortly thereafter.

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<sup>4</sup> Interview with David Darchiashvili, June 2003.

<sup>5</sup> Ibid.

Nevertheless, it is necessary to mention that the President's actions violated the article of the Constitution that forbids the Commander-in-Chief to make an independent decision to employ the army. In spite of the fact that there was little sharp reaction from the general public, the reality of the inflexibility of the constitutional requirements (in this case reception of the consent of the Parliament would entail the loss of precious time) was made clear.

A similar incident occurred on May 25, 2001 when on the grounds of social problems, the Guards unit of the Georgian army under the direction of a group of officers protested against military leadership over the existing heavy social conditions of the army. The so-called 'Mukhrovani incident' ended in one day. In the following months, the initiators of the incident left military service

It is possible to say that in these cases, the President was both successful in preventing widespread opposition and aggravation and in maintaining control over military forces. Despite this, however, little has been done to alleviate the arduous social conditions in the armed forces.

It is also necessary to note that the armed groups which are not controlled by the power structures subordinate to the President and which represent a serious threat to the Georgian statehood, exist in the zones of conflicts of South Ossetia and Abkhazia. The military bases of Russia (Akhalkalaki and Batumi) are located in Georgian territory that is under the control of the central powers, control over which the government of Georgia is unable to perform. In some cases, the government has not been given the right to sanction manoeuvres of the Russian military units. At other times, the government has not even been informed of Russian military activity<sup>6</sup>.

Since 1999, as a result of the second Chechen war, the problem of the neutralization of the dangers caused by the transition of territory to Chechen fighters<sup>7</sup> was put before the government of Georgia, in particular, before the President. According to the statement of the Minister of Security, in Pankisi gorge there were 800 Chechens and about 100 fighters of Arab nationality. Along with the Georgian military departments, a share of responsibility for this threat lay with the military and boundary departments of Russia, which could not protect the border with Georgia.

As a consequence of the international response, the government of Georgia on August 25, 2002 was forced to plan and undertake a military operation in Pankisi gorge. As a result, the gorge was released from the hold of the basic part of Chechen armed groups. According to official data, about 60 fighters remain, and the Ministry of Internal Affairs has opened approximately 10 check-points in the gorge as large as 44 square kilometers.. This fact specifies the persistent acuteness of this problem.

#### *Control over Armed Forces by the Executive Authorities of Georgia - The National Security Council*

The President carries out duties in the military sphere of security with the help of an advisory body, the Council of National Security. The Council of National Security represents the general advisory body of military and civil authorities, which has been created according to Article 99 of the Constitution. The President of Georgia supervises over the Council of National Security. The purpose of the Council of National Security is to maintain law and order in the country and, to discuss problems connected with internal and foreign policy. According to the Constitution, the Security Council coordinates and supervises the work of the ministries and departments, other corresponding state organizations, which provide for the safety of the country, and also the actions of autonomous republics and bodies of local management. Under the Constitution and the

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<sup>6</sup> The events of August 20, 2001 near the administrative border of Ajara. *Alia*, N 106, August 28-29, 2001, *Resonance* N 221, August 29, 2001.

<sup>7</sup> 'Georgia's Key Security Concerns: Pankisi and Abkhazia', discussion with Valeri Khaburdzania, Georgian Minister of the State Security, January 30, 2003. The Nixon Center, Washington, DC



law "On the Council of National Security" (passed on January 24, 1996), the Council is an advisory body of the President. The control over the performance of orders of the President is charged to the Secretary of the Council. According to the Law, as "advisory body", the Council is not accountable to the Parliament.

By established practice, the military, or officers of special militarized ranks, lead the law-enforcement structures in Georgia, and the first persons of the Ministries of Defence, Internal Affairs and Security are Generals. Because of participation of the military, the Security Council represents a mixed body of military-civil persons. Within the structure of the Security Council there are the following: the State Minister, the Minister of Foreign Affairs, the Minister of Finance, the President of National Bank, Mayor of the city Tbilisi, etc. According to the law, the Heads of autonomous units and the Chairman of the Parliament take part in the work of the Council. Assignment of other members of the Security Council from the representatives of the Parliament or the staff of the President is a prerogative of the President.

By tradition, the serving personnel of the Security Council are militarily trained. Accordingly, the Secretary of the Security Council, his deputies and the department heads have officer ranks. The Deputy to the Secretary of Security Council working in the sphere of protection of human rights, was once a university lecturer and has become military personnel. At the same time, civil persons also are taken for work in the Security Council, though each of them has a personal motivation to become military, because officers with militarized rank have considerably higher salaries, than civil persons. The above-mentioned has determined that today the staff of the Security Council is almost entirely with military rank, officials of security and police. The Secretary of the Council also holds a rank of General.

It is, however, possible to say, that the majority of those working in the Security Council have formal military ranks, because, on the one hand, their professional/military qualification is not high (if to take into account their length of service by military speciality and mechanisms of reception of ranks). On the other hand, the Secretary of the Security Council and the majority of his deputies, proceeding from their service duties, do not require to take upon themselves the military professional responsibility, because they have taken other responsibilities in relation to society (the Secretary of the Security Council, his deputies came from the diplomatic service). In this situation, their values and behaviour should differ essentially from professional officers.

Proceeding from his post, the Secretary of the Security Council has a real influence on the manpower policy of the President and actively participates in the development of government resources. This concerns the proposal and assignment on the posts of first persons in law-enforcement structures and persons in political management. The Minister of Defence, appointed in 1998, worked earlier at the Security Council as Chief Military Inspector. With the renewed government in November 2001, the President of Georgia appointed on the supreme posts of power ministries, internal affairs and security, persons with experience in the Security Council recommended by the then Secretary of Security Council. The specified candidates enjoyed the special trust of the Secretary of Security Council.

Though, as experience shows, the value of the personal factor, to a small degree, determines the institutional influence of the Security Council on the enforcement body and on the creation of democratic supervising mechanisms. In the past, the Security Council under the direction of the Secretary did not provide the planning of the actions directed towards the effectiveness of the militarized ministries and departments and other corresponding state organizations of the country. During the whole period of its existence, the Security Council could not develop an effective strategy for the solution of problems facing law-enforcement institutes. This testifies that the Security Council did not use in full measure the rights given to it by the law and the Constitution. The above-stated concerns the improvement of the process of management of the structures which provide internal security; Police, Office of the Public Prosecutor and the Ministry of Security (which have been incompatible with the principles of governing of the

democratic country and now remain the same). The main structures providing external safety are the Ministry of Defence, Intelligence Service and boundary institutes.

The Secretary of the Security Council having real rights does not carry out the obligations of the law concerning fulfillment of the orders of the President. This fact is shown particularly in the inactivity of numerous orders signed by the President. The Secretary of the State Anticorruption Council declared this several times in both the press and television.

Among problems connected to the activity of the Security Council it must be emphasized that decisions adopted by the Council have, at times, obviously overstepped the limits of responsibility borders determined by the law. In support of this fact, it is necessary to mention events that occurred in the Parliament in October 2002 concerning a document developed by the Security Council and evaluated by the government representatives as 'the secret document.'<sup>8</sup>

On the basis of the existing legislation for Georgian parliamentarians, the gaining of irrefragable information on the work of the Security Council does not represent a problem. The Parliamentary session of September 24, 2002 was devoted to 'the secret document' developed in the Security Council "on the settlement of the Russian - Georgian mutual relations". The Chairman of the Parliament was acquainted with some details of a government action plan mentioned in this document; the existence of the document was deemed by the Members of the Parliament, to be exceeding the rights and duties of the Security Council and an attempt of unconstitutional action from the part of the Council in relation to the Members of the Parliament.

The Security Council, under the direction of its Secretary, several times made an attempt of protection - carrying out of personal, in fact, corrupt interests of the first persons of the State, entailing fierce interference in the national political processes by means of a distortion of results of the Parliamentary Elections in 1999 and, especially, in the Presidential Elections of 2000, the share of responsibility is carried by the then Secretary of Security Council. As a result, the Party in power and the President kept their positions, though the results of elections were very far from a real legitimization of the victorious Party. It is known also that during the elections, the police and other law enforcement bodies promoted the victory of party in power.

It is thus possible to come to the conclusion that the Security Council is not working as an adviser for state interests on problems of security, but instead without clear frameworks and according to the personal interests of political management.

It is necessary also to mention that in spring 2002 after an assignment of the new Secretary of Security Council, aimed at eradication of existing shortcomings in the activity of security structures the need for reform became very clear. With the help and financing of the United States government, after December 2002, the independent program of reforming of the Council prioritized, as the basic purpose, an increase in the efficiency of the Service of Security Council.

The program involved Council reform within the limits of the existing legislation. The reform would enable the Security Council to facilitate State policy formation in the sphere of security. As the Secretary of Security Council declared, for Georgian leadership, the model of the US Security Council and its principles for achievement of the aforementioned purpose was acceptable for achievement of the aforementioned purpose. This did not imply its exact copying<sup>9</sup>. The program scheduled the reorganization of the Security Council of Georgia and the forming of a significant role and functions of the system of security.

Reform of the Council sets as its purpose, the development and formation of all systems of security, the constant monitoring of the condition of internal security and an estimation, in which special value will be given to non-military aspects: economic, social, ecological, information, etc. The competence of the Council, as the coordination body, includes the forming

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<sup>8</sup> 24 Hours, September 25, 2002.

<sup>9</sup> Interview with a leading specialist on the project, May 15, 2003.

of internal and foreign policy, their coordination, and identification of security problems, search of additional resources and the recommendation for the effective realization of its projects.

Under the program of reform, great value is given to the structural reform of the staff of the Security Council and strengthening of its opportunities. This implies the following: 1) the structural reorganization of the staff and personnel changes; 2) strengthening of analytical service in forming of political decisions.<sup>10</sup>

It is early to assess the results of reform taking place in the Security Council. By taking into consideration the recent planning and realization of reforms in other institutes of the security sector (this question will be considered in the following chapter), it is possible to say, that society remains rather skeptically disposed and does not place big expectations on the matter.

*Control over Armed Forces by the Executive Authorities of Georgia - A Role for Civilian Persons in the Power Structures, the Planned Reforms and the Commissions*

In recent years, because of unsatisfactory work of security sectors and law-enforcement structures, several groups were created in the supreme echelons of power, which were entrusted with the development of necessary changes in the programs on power structures. The authority repeatedly declared that the so-called power departments, which are executive instruments of security and legal assistance, are moving towards reorganization and democratization. It is possible to say, that on the one hand, the first persons of the government have openly started talking about reform of the security sector of Georgia and about perspectives of development of cooperation between Georgia and NATO. On the other hand, based on the facts, it becomes clear, that the real policy carried out by the government is not coordinated with declarative principles, which entails the subsequent improvement and strengthening of the system of security. As specified at the Parliamentary press-conference of March 29, 2003 by the members of the Council of the international experts (ISAB)<sup>11</sup>, the reforming of the security system of Georgia moves at a slow pace, and a unified national program of reforming of the system has not yet been developed.

Actually, reforms in Georgia's separate power departments are planned independently from each other and are realized very slowly. Work on the concepts of power department reform is carried out with the help of different countries and NATO members and is often developed in the absence of a unified national concept of security.

Reforms of the structures of Georgia's defence commenced in 1998. The United States has been an active participant in this process, working within the framework of the bilateral program of security sector assistance. Other member States of NATO have similarly been involved: Great Britain, Germany, Turkey, etc. From the listed countries only two, the United States and Turkey have agreed (in 2002) to coordinate their assistance programs. Though, how this approach develops in practice, is largely unknown to society.

As experts and journalists say, Georgian armed forces have experienced serious changes. There were structural changes to the Ministry, with continuing preparation of the officer staff in foreign military schools.<sup>12</sup> In 2001, the Ministry of Defence, for the first time, tried to bring into the Parliament the so-called budget program prepared with the help of American experts. This should have increased the quality of planning and transparency of defensive expenses. However, the new approach was unsuccessful. For the budgetary office of the Ministry of Defence, coordinating details of the program draft with the Ministry of Finance became an insuperable obstacle. It is necessary to note that other law-enforcement departments (the Ministry of Internal

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<sup>10</sup> Ibid.

<sup>11</sup> ISAB - International Security Advisory Board - the international council of experts on security issues existing at the Council of National Security - is created in 1998.

<sup>12</sup> In the 'White Book' issued by the Ministry of Defence in 2002 the following data is given about vocational training of the military: during the period after 1995 the Georgian militaries have received education in Germany, Greece, Turkey, the Great Britain and the USA, and also in Russia and in Ukraine.

Affairs, the Ministry of Security, etc.) were not ready for reform, and even at present the budgets of the departments of defence and security are viewed by the Ministry of Finance by the old form and structure.

From 2002 and with the help of the United States, the program of training and equipment was initiated with which 4 battalions were created as military professional units (consisting of approximately 2000 militaries), armed and trained for carrying out antiterrorist operations. Simultaneously, there was a planned decrease in the army number with the aim to free additional means.

With the carrying out of reforms in the Ministry of Defence after 1998, the formal improvement in the structure of the defensive department became a significant event, taking into account defensive structural standards of western NATO member States. The defence department was divided, basically, along military and civil lines: between the General Headquarters and the Ministry of Defence. The names of departments in submission to both structures were changed. Though it is necessary to note that formal changes in the Ministry did not entailed significant reductions in the number of service personnel, a re-understanding of their responsibility and their rights and duties, new redistribution, or the quantitative growth of civil persons.<sup>13</sup>

At present, only one Deputy Minister of Defence (the Head of Policy of Planning and External Relations) is the civil person under supervision of which the civil personnel are managed. It is necessary to note that the staff working in the Ministry are less interested in preservation of the civil status, because their earnings are much less than the salary of the military working on corresponding posts. According to "the white book" of the Ministry of Defence of 2002, the complete transfer of the Ministry into the civil structure is planned for the future, though what period is meant under "for the future" is unclear.

A small number of civil persons, in the opinion of foreign experts (ISAB), does not promote the further development of a policy of defence and resource management. Employees of the Ministry see today's lack of policy development as resulting from the absence of a concept of national security. It is possible to explain with similar reason, the non-purpose planning and expenditure of defence resources by the external workings of the military system and by the State's financial crisis. In these circumstances, some responsibility rests with the financial and economic department, which is assigned to military staff and incapable concluding an agreement with the civil financial institutions.

In July 2001, the President issued a decree "On top-priority urgent measures on improvement of the situation existing in the Ministry of Defence of Georgia". The shortcomings in the sphere of maintenance of the armed forces, necessity to improve the management of defence resources and laws regulating this sphere are mentioned. Those in the Ministry of Defence working on the program of defence pin big hopes on it. With the purpose of studying and improving the legislation in the military sphere, the President created a temporary interdepartmental commission headed by the then Minister of Justice. Significant changes in this direction, however, have not taken place. After the issuing of the Law, the Minister of Justice resigned and under new management, the work of the commission was unsuccessful.

Some representatives of the Ministry of Defence name caution as the reason for the slow course of reforms. In their opinion, a fast change of the functions and roles of the structural elements as well as a replacement of staff can sabotage special containment of reform and other difficulties.<sup>14</sup> In their opinion, the management of the Ministry of Defence tries to avoid specific

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<sup>13</sup> At present time there are 1299 employees in the Ministry of Defence, and in the East Europe in the countries-candidates for membership to NATO, geographical - demographic data of which are similar with Georgia, in particular, in Baltic countries, in a result of carrying out of reforms a number of employees of the Ministry of Defence is from 200 up to 300. Interview with the employee of the Ministry of Defence of Lithuania, May 2003.

<sup>14</sup> Seminar Materials, Bulletin No. 4, *Army and Society in Georgia*, CIPDD, 2001, p. 18.

opposition by slowing down the pace of reform. As a result, it has been impossible to reduce the number of defence forces, a reduction which has been planned for 4 years and yet failed to find reflection in the budget. The realization of changes made in the law on conscription concerning a transfer of its terms and rules, adopted by the Parliament in 2000, was inefficient. This law gave the recruit the right to defer service in the army by payment of a fixed tax. As a result, an accumulation of additional incomes in the budget was expected. However, the majority of recruits still try to avoid service by illegal means.

It is necessary to mention also, that in the Georgian army insubordination continues. On March 23, 2003 a military incident took place among the former operative guards regiment of the Ministry of Defence, when 10 organizers of a military putsch captured the unit's light and heavy military armaments. Among them, were several acting and also former military persons. Fortunately, by force of police and the "Commandos" battalion prepared within the framework of the "US program of training and equipment," the participants of the incident were disarmed and detained without struggle within a few hours.

While taking into consideration the above-mentioned problems, it is nevertheless possible to say, that Georgia's Ministry of Defence is the leader in power structure reform. In spite of the fact that the creation of boundary forces became possible in 1999 with the help of the United States, as distinct from the Ministry of Defence, the decision to reform boundary armies remains officially unwelcome and the policy of reform uncertain. Western partners, with the aim of strengthening the service of border protection and trying to assist Georgia's boundary armies. On March 4, 2003 on a visit to Georgia, the Minister of Internal Affairs of Germany gave the project of boundary forces reform to his colleague, the Head of Department of Protection of Border Valery Chheidze, which the German side developed independently.<sup>15</sup> According to the German model, the reform of Department of Protection of the Border assumes granting of police functions to frontier guards.

According to the statement of Chairman Valery Chheidze, the concept of reform was acceptable for Georgia, and its realization had already been achieved. Though, in his opinion, the basic difficulty in carrying out reforms was a lack of financing.<sup>16</sup>

The project of the concept of reform of other power structures - the Ministry of Security and the Ministry of Internal Affairs, was prepared by the interdepartmental commission on reform of the bodies of the security service and law-enforcement, created under the order of the President. On December 2001, the second decree of the President, which concerned the entire spectrum of the security service and law-enforcement was issued. The Decree was named "On creation at the National Security Council the provisional interdepartmental commission developing questions of the institutional reform of the bodies of security system and the law and order". The chairmanship of the commission was entrusted to the Chairman of the Supreme Court.

The presentation of the document developed by the commission took place in the Committee of Defence and Security of the Parliament at the end of March 2003. Here it is mentioned that "on the basis of the Decree of the President of Georgia No. 499 of December 2001, the commission at the first stage of its work has set as the purpose, by means of consultations with foreign experts, to study the practice of the developed countries in order to develop such concept, which would correspond to the international standards and at the same time would reflect the reality in Georgia."<sup>17</sup> From the first day of the creation of the commission, the support of the European Community and European Commission was very active. The positive

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<sup>15</sup> *24 Hours*, March 5, 2003.

<sup>16</sup> Interview with Minister Valery Chkheidze, *24 Hours*, March 5, 2003.

<sup>17</sup> 'The concept of reforms of bodies of the system of security and law enforcement bodies'. Full text of the document can be seen on the website of the Georgian Supreme Court: <http://www.supremecourt.ge>. June 14, 2003

opinion on the experience of the member States of the European Union determined to a great extent the basic directions of work on reforms.

On April 4, 2003 at the extended session of the staff of the Council of National Security the Minister of Security presented the concept and the new draft created in its frameworks. According to his statement, among the decisions adopted by the working group, the most significant was an agreement that the status of the Ministry of Security should be replaced with the status of the department, which, in the opinion of the Minister, would have a significant influence on the stability of the system providing state security, on its political neutrality and on the independence of political processes. By this, the Minister negatively estimated that constitutional norm which demands the obligatory approval of the Heads of the Ministries by the Parliament. With this, the Head of the security structure will no longer depend on the tastes of the political elite but become a rather independent component of the executive authority.<sup>18</sup>

Several months earlier, the Minister of Internal Affairs, Koba Narchemashvili made comments about the reforms planned in the Ministry of Internal Affairs. In the interview given to a newspaper, Narchemashvili marked out some important questions concerning the concept of reforms, such as the issue of Ministry employees and the difference between the signs of decoration of a rank of a policeman and non police civil rank (investigating body); clear definition of the responsibility of the Ministry of Internal Affairs and its restriction as an institute determining State policy. One of the main decisions of the concept is that the law on police would henceforth regulate police operative- investigating measures of a preventive character. The definition of problems of police in the future only by preventive functions entirely corresponded to the strategy of investigation reform. On the basis of abolition of the institute of inquiry and the right of repressive means i.e., further criminal prosecution would be taken away from police<sup>19</sup>.

A little earlier in the press conference of November 21, 2002, the Minister commented on the strategy of reforms, their significance and declared the commencement of reforms in the Ministry of Internal Affairs. He named several structural changes, which were carried out in the Ministry, in particular, noting the fact of assignment of the civil person to the post of the Head of the Material-Technical Department (the first civil employee in the Ministry of Internal Affairs). According to the statement of the Minister, future changes were also to involve the completion of legal and passport departments by civil persons, and the creation of a department of interdepartmental inspection. The Minister named one of the most significant elements of reforms, i.e., a transfer of internal troops of special relations, inferring the creation of professional para-military divisions and improvements of their social conditions.

One of the main requirements for reform of the Ministry of Internal Affairs is differentiation between police work and investigation, i.e. repressive functions. Under this concept, investigation should be undertaken by non-police. Presumably, the criminal police should also enter into the department of investigation. Under the plan of reforms, the police department of the Ministry of Internal Affairs was to be united with other departments in submission to the Ministry. It was also decided that other departments of the Ministry of Internal Affairs, except for the police, would become civil services. Employees would not have police ranks. Correspondingly, in Georgia the number of policemen was to be reduced. In the final stage of reforms, the civil person, i.e., Civil Minister of Internal Affairs would supervise over the police force<sup>20</sup>

In April 2003, and in spite of far-reaching and intensive plans for reform, the first persons of the State advocated a slowing down of reform in the law-enforcement institutes. An insufficient will by the Heads of those structures subject to reforms was determined as a possible reason for the delay. In the law-enforcement structures themselves, the non-preparation

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<sup>18</sup> *24 Hours*, April 5, 2003

<sup>19</sup> *Sakartvelos Respublika*, 8<sup>th</sup> December 2002. Interview with the Minister of Interior Narchemashvili.

<sup>20</sup> Interview with the Deputy Minister of Internal Affairs Shota Asatiani, *24 Hours*, April 14, 2003

of legislative acts was explained by objective reality. For example: supervising persons of the Ministry of Internal Affairs argued that before the termination of work on the new remedial legislation, it was impossible to finalize the draft on the bodies of internal affairs<sup>21</sup>.

Though, in the opinion of independent experts, the plan of reform in the Ministry of Internal Affairs demanded further development, because it did not take into account modern requirements, and the submitted concept had many weak points. In particular:

- a) In the concept nothing was said of how the principle of objectivity and transparency in the Ministry of Internal Affairs should be protected. In the law, the nature of control by foreign experts, media, nongovernmental organizations and society in this reform process was not discussed;
- b) In the concept nothing was said about an updating of the program of training of policemen, subject-matter of which would be based on the main democratic values and protection of fundamental rights of the person;
- c) In the opinion of experts, the tough legal regulation of rules of employment of policemen and their career and protection of these rules is also necessary from the point of view of its performance.

In law-enforcement departments, reform will be a rather difficult task because of a shortage of budgetary funds, and also for the reason, that in Georgia there is no long-term program of financial planning.

#### *Control over Armed Forces and the Parliament of Georgia*

Development of the basic direction of a policy around the military and the question of defence, and also passing of the laws under the Constitution is carried out by the Parliament of Georgia. A prerogative of the Parliament is also the statement of the first persons of the executive authority, candidatures of Ministers submitted by the President, among them also the Heads of the law-enforcement structures.

The Parliament is obliged to consider the question of the presence of foreign forces in Georgia. It also carries out the ratification, denunciation and cancellation of the international agreements and contracts of military character (the Constitution, article 65). In spite of the fact that the President alone decides on the movement and use of the military forces of the other side (article 100, par. 2), the order comes into force only when it is authorized and adopted by the Parliament.

The Constitution and a number of laws passed in 1995-2002 (on defence, committees, budgetary rights, the group of trust, the commission of inquiry, etc.) give to the Parliament the right of control the activity of structures of defence and security.

The Parliament of Georgia supervises the military by means of the Committee of Defence and Security. Supervision means active participation in the monitoring of the definition and performance of security policy carried out by the sector, as well as realization by the Parliament of the budgetary control over power departments on the basis of the existing legislation.

The law "On the Group of Trust" gives the special mandate of trust on defence and security in secret questions and on the classified programs of the Group of Trust created in the Parliament, for which any closed information should be acceptable. Under the law, the Group of

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<sup>21</sup> The Deputy Minister of Internal Affairs declared that the basic provisions of the draft of the bodies of Internal Affairs are available, though its completion is impossible for the time being without finishing up of the remedial legislation.

Trust has the right to appeal to the President against an illegal decision and to demand the removal of a stamp of secrecy from any document, which does not correspond to norms determined by the law, or in case of an infringement of interests of State security to bring into the Parliament a proposal on the creation of a commission of inquiry. The right of realization of the mentioned procedures emphasizes the significant role of the Parliament, especially on questions of defence and security.

During the work of the Parliament, a number of problems emerged from the point of view of the settlement of military-civil inter-relations.

The law on the Group of Trust, for instance, works inefficiently. According to the existing situation, activity of the Group of Trust in Parliament is insufficient and also seems to be the unused reserve. Under the law, one of the main duties of the Group of Trust is the creation of the budgetary control of the military and other departments, though, as experts mention, the details of the budget of defence were not disclosed. The Chairman of the Group of Trust declared that in financial questions, the level of information was low.<sup>22</sup> Upon consideration of the project of the budget of 2003, the structure of the Group of Trust in general was not staffed because of a competition existing among parliamentary forces as well as an absence of understanding.

Realization of the rights and duties of the Committee on Defence and Security and, as a whole, of the Parliament does not prevent infringements of the law and corruption in the military departments. Corruption against a background of insufficient financing is a tool of existence for many in the military. Against a background of complex social conditions, infringements of human rights in the army and the inefficient and nonprofessional performance of military duties are common. The Parliament has not failed to react to these and similar problems.

Society ties improvement of the situation with reforms in the sphere of security, which are carried out on the basis of bilateral relations, with western democratic countries and the programs of NATO. From the part of the Georgian members of the Parliament, only formal support is rendered to this process. Eradication of the roots of corruption and the struggle against it is hampered. Parliamentary control over the military sphere is accordingly poor:

- as shown, there is an ingrained practice, occasionally undertaken by the President, from which an unambiguously negative attitude opposes reforms. At the same time, service in the staff of the Council of National Security continued. The Parliament never demanded explanations concerning such decisions.
- despite repeated newspaper publications about the intolerable situation of soldiers and corruption in the defence department, there were no subsequent hearings by the Minister in Parliament;
- as employees of the Committee of Defence and Security testify, up to today, the reception of official information from the state institutes of security takes place at the level of personal acquaintance and with the help of friends. Military departments either ignore the official written requirements about reception of the additional information, or answer with such delay that value of the received information is lost.<sup>23</sup>
- Despite the reception from year to year of imperfect defence budget proposals, deputies have never declined.

It is necessary to mention that the executive authority's disregard for Parliament's practical defence and security policies is typical, especially, in the planning and performance of special

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<sup>22</sup> Seminar at the Parliamentary Committee of Defence and Security on Security Issues and Civil Education, March 21, 2000.

<sup>23</sup> Personal interview to the Head of the Staff of the Committee of Defence and Security Akaki Chkhenkeli. 6<sup>th</sup> January 2002: 'in general, the information from the bulletins I receive more with the help of personal friends'.



actions. On the one hand, it is a very sensitive operative sphere and even in democratic countries it is the prerogative of the executive authority. Only here should precise procedural frameworks exist. The parliamentary members should be convinced that everything is within the limits of the Constitution and the declarative political course of the country and that behind special actions there is no hidden illegality or anti-State action. In other cases, the supreme legislature body is authorized to know the details of ongoing operations and, within the strictness of the law, to question criminals. Unfortunately Georgian legislation did not acquaint itself enough with these questions. The reality has been somewhat different, revealing the weakness of the Parliament against the control of the executive authority:

- The Parliament did not officially react to that fact, that in October 1998 the President alone decided to use armed forces against the Senaki brigade in revolt. The operations were made without the announcement of a state of emergency;
- In May 1998, no one took responsibility for the military operations that had taken place in the Gali region. Explanations to the Parliament were not made as to how or why military action eventuated. Neither the plan of the Georgian army nor reasons for the very heavy clash were discussed. Essentially, the parliamentary commission of inquiry was apathetic towards this matter, as was the Group of Trust;
- On May 25, 2001 a rebellion transpired among a battalion of national guards. Fortunately, it was quickly subdued. The concern about rebel forces was discussed in Parliament on the session of the Committee of Defence and Security, creating an interesting precedent for democratic control. However, the hearing of the Committee was limited to conversations about the financial needs of army..
- Much activity of the Parliament has followed after one more mysterious military stories of autumn 2001. The matter concerned the organized movement of Chechen fighters in Georgia, which led to military actions within a zone of the Georgian-Abkhazian conflict. From its inception, this operation was an example of the total ignorance of civil democratic control. Gradually, after the dramatization of events and a mounting media uproar, the Parliament became involved. Contradictory to the official statements made by the authorities, adventurism of the enforcement bodies and complete lawlessness were in full swing. Though it is necessary to say that the Ministers were not discharged because of the Pankisi story or corruption in power departments, their resignation occurred later.
- In November 2001, the President dismissed the government, and behind this, the negative attitude of society and of the most part of the members of the Parliament towards a number of the law-enforcement bodies, in particular, the Ministers of the Ministry of Internal Affairs and Security was carefully concealed. The incorrect statements, which were made publicly by enforcement bodies, and requirement of the employees of Security to present financial documentation from an independent broadcasting company, did however provoke changes.<sup>24</sup> The speaker of the Parliament, who withdrew Presidential support, declared that these events represented a threat to democracy. He concentrated attention on the general inefficiency and corruption of the Georgian political system, but did not directly accuse law enforcement management of corruption. There was, however, the requirement of their resignation, which was a sign of the final breaking-off with the President. Subsequently, the speaker left his post.<sup>25</sup> The Parliament

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<sup>24</sup> On the same wave the General Public Prosecutor, which was accused of bringing a lawsuit against a broadcasting company, was forced to resign.

<sup>25</sup> The President has defused a situation by the resignation of the government, after what the resignation of a number of the power officials has followed. But against former ones the question on the criminal liability did not posed. On a number of data, they, especially former Minister of Internal Affairs Kakha Targamadze, which before that was considered almost as the second person in the State, keeps an informal influence on the law-enforcement system. Therefore, it is early to speak, that personnel changes do not represent the next

was powerless to react to the activity of the executive authority or to demand answers for its illegal actions. This was confirmed by the fact that, after the dismissal of the Ministers, there was no call for answers. A parliamentary investigation of these events has never taken place. The Chairman of the Committee of Defence and Security who promised to carry out an investigation was re-elected.

The essential reason for the superficiality of parliamentary control over the development of military forces and defence involves a deficit of political will. The Parliament did not and is not applying effectively the mechanisms of the deputy request and hearing of the Ministers.

It is difficult to imagine full democratic civil control over the armed forces without granting to Parliament real instruments of budgetary and investigative competence. An absence of effective legal mechanisms and procedures and of political rights and will is obvious. From this perspective, Georgia is only beginning to establish a practice of democratic military-civil inter-relations. Although it is not a classical authoritative State, its problem rests with poor statehood.

However, if the country is going to confirm to a democratic system, then the means for reinforcement is necessary in the search for the imperishable principles and mechanisms of democracy and superiority of the law. Otherwise, in the machinery of State, serious grounds for corruption and criminality will be sustained. The proof of this is the Georgian practice of defence and security budgeting.

#### *The Process of Budgeting in the Defence and Security Spheres*

For an estimation of the civil control and general military-civil inter-relations, one worthy question concerns the process of budgeting in this sphere. All those achievements and serious shortcomings, which accompany the system of Georgian security and citizenry participation, are reflected in it.

The role of the civil authority in the control of the budget of the military sphere and, accordingly, the spheres of defence and security, is determined by the Constitution of Georgia.

Under the Constitution of Georgia, only the President is capable of presenting budget policy to the Parliament. After the presentation by the President, the Parliament of Georgia approves the budget, as a result of which the draft of the state budget receives legal force. The budgets of the spheres of defence and security similarly apply. The right of the approval of the budget enables the Parliament of Georgia to influence military policy.

In democratic countries, definition of a long-term military policy in the military sphere is the prerogative of civil persons. The institutionalization of this process in Georgia has not yet taken place. In Georgia, there is no balanced national policy of security, which would be created with a long-term perspective of the stable development of the country. Objective estimations of military, political, economic and social factors, which will clarify the means and opportunities of protection of statehood should, necessarily, precede the existence of such long-term strategy.

Thus, for the public of Georgia it remains unclear, as to at what stage, the government and President determine long-term directions in the security policy of the country. Because of the transformations taking place a great deal remains uncertain; including reaction to everyday military-political problems, who is responsible for short-term plans and, accordingly, who bears responsibility for taking of military-political decisions.

For example, during the preparation of the budgetary draft for optimal distribution of resources of defence it is necessary to be guided by existing political estimations and, it is clear that purely political grounds should stipulate how expenditures of the state budget are distributed

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“release of a steam”, and are the precondition of a serious attack of authority on the shadow state and its power elements.

between power departments and what activity or program will be taken into account in the budget of the law-enforcement structures.

Proceeding from the existing reality, the only document, with which it is possible to be guided by for definition of the priorities of the country in the sphere of security, is the law of the State budget. As officials of the Ministry of Finance have declared, yearly priorities are reflected, in particular, by the priority of the sphere of security. Such definition is not clear for society, because it is not supported by an openly declared executive authority of the state policy, even only at a formal level. The existing reality is reflected in the parameters of the budget, and this gives us an absolutely different picture.

For example, beginning in 1999, the allocated financing for the budget of the Ministry of Defence fluctuated around 0.5 % of the common internal product. This was occurring, when in other countries, in which security represented a priority, expenditures for defence equalled no less than 1% of the common internal product (for example, among NATO countries). Thus, that only document, which might reflect the future development of the country, failed to regard the sphere of defence favourably, not to mention other law-enforcement structures. This confirmed the contradiction between the declarative statements of the government and real-life circumstances.

By a procedural rule existing today, primary frameworks of the budget of power structures are prepared by the financial structures of the corresponding department, where requirements pass financial transformation or are described as costs. On the interdepartmental stage of budget formation only the representatives of the department participate, though later. The project of the budget requires coordination with civil structures, in particular, with the Ministry of Finance.

The Ministry of Finance, prepares the current offers for the draft of the annual State budget on the basis of the annual detecting plan passed and authorized by the Ministry of Economics.

Thus, based on existing experience, it is possible to say, that, as a rule, requirements of power ministries exceed the sum determined by the Ministry of Finance. By a procedural rule, the agreement should take place in the budgetary department of the Ministry of Finance, where corresponding departments should present an amount of required expenditures. In the specified department, a protection of interests of each department should take place. Only after such an agreement the proposals on the state budget should be sent to the President of the country. Usually, the specified agreement between power and financial departments does not occur and, as a consequence, the opposition between two governmental departments takes place in the Parliament.

The budgetary proposals submitted to the Parliament and uncoordinated with the corresponding departments represent the individual decision adopted by one of the parties, in which the second party (in this case, power ministries) does not take part. The established practice makes for a possible opposition of the Georgian militaries to civil institutions, in particular, to the Ministry of Finance.

After discussion in the corresponding committees of the Parliament, conclusions on budgetary proposals are taken. Under the law, after consideration of the draft of the budget by the President together with the Security Council, it is sent for approval in the Parliament.

### *Stages of Parliamentary Discussion*

According to the Law, the President of Georgia presents for discussion to the Parliament of Georgia the draft of the State budget three months prior to the beginning of the next fiscal year. At this stage, the Parliamentary Committee of Defence and Security and the Group of Trust appear as defenders of the interests of security structures. In fact, these terms are broken, because until the last moment the admissible limit of the budgetary parameters are not clear. Submission by the President is accompanied with tough deadlines, and the Parliament is incapable to consider

it in due time. As a result, the stage of parliamentary discussion frequently continues into the beginning of the next year. In this case, if the Parliament has postponed the process of approval of the budget, according to the Constitution, the Ministry of Finance makes monthly financial operations according to the budget of the previous year – by its 1/12 part until the annual budget is authorized.

Overcoming the contradictions between power and financial institutions in the Parliament is not customary. Power ministries are incapable of protecting their interests, as between 1998-2002. The President submits the project in its final form to the Parliament, which basically is developed by the Ministry of Finance and not the military. A reason for this might be clarified by an opinion of the international Council of Advisers (which is fixed in the document adopted ISAB), which discerns that the shortage of civil persons in the Ministry of Defence makes for a poor management of defence and complicates the preparation of the budget.

From the point of view of an improvement of resource management, the years 2001-2002 were positive. They were marked by attempt to introduce budgeting into the defence system in the area of programming. In 2000, the service of defence resource management was founded, the purpose of which was to establish a budget program according to modern requirements. In the following years, in particular in the Ministry, the project of the 2002 budget was composed by separate programs, where the financial and material parameters of different programs were advanced. The structure of the Ministry of Defence and the General Headquarters, the visa of the armed forces and service of management–maintenance were taken as the main principles of program financing.<sup>26</sup> However, the sum required by the Ministry of Defence was considerably reduced, because of what in the opinion of its composers, was deemed senseless to preserve the structure of the program budget. It was later passed in a way similar to the approvals of previous years.

At present, the defence budget is considered in the Parliament by way of old, common economic categories, which, as a rule, are outlined on 1-2 pages, instead of in a program form, as it was meant to have been.

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<sup>26</sup> And nevertheless, change over to program budgeting and, accordingly, qualitative improvement of a degree of the democratic control has not taken place at this time also. The above-stated defence budget project of 2002, developed in summer 2001 by the Ministry of Defence, caused some unreciprocated questions: a) It was mentioned in it, that re-structuring of the armed forces is necessary, but it has not been said, in particular, which ones; b) in spite of the fact that the Ministry of Defence declared a course on reducing of the staff, the schedule of reduction and its financial effect in the project is not submitted; c) it has not been proved, why the budget is divided into 8 programs; what were criteria of the definition of programs; d) the project demanded 71 million Laries (approximately 33 million dollars), and nothing has been said about what program and in what form was cut off, if this amount of assignments would not be authorized. e) the program presented enough common and non-uniform units - directly the Ministry of Defence, land forces, logistics etc. They have not been developed at a level of program elements (for example, battalions or even brigades); f) the project did not explain how many generals, officers, sergeants or private soldiers there are in the armed forces and why; g) The project say nothing about the prices for purchase of foodstuff, though for years the Ministry was accused just of presenting of inadequately excessive expenditures for these goods; h) it was not explained, why the General Headquarter demanded 5,3 million Laries for the personnel staff, and for all land forces only 12,4 million; i) it has not been proved, why in the immediate Ministry was registered about 1300 employees, and in the General Headquarter it is much more, whereas in all land forces served 8897 persons in all; j) in the program of logistic the question was about 6 million Laries for the special program, the essence of which was not concretized in any way.

In general, from the project it is not visible the binding of expenses of defence to fighting tasks, which should be the basic purpose of the program budget and that should lean on the stage of planning - programming carried out earlier. The project said nothing about not budgetary incomes of the Ministry and foreign grants received and expected. Without the answer on the set forth above questions, the project cannot help realization of full value democratic civil control. But Deputies, which have received the project of the Ministry of Defence, did not concern the certain part of these questions at its consideration, and as for the rest of the questions, they have not received the full value answer, and the budget nevertheless has not failed.

One of the reasons complicating the adoption of an adequate model of defence resource management in the Ministry of Defence is the fact that it is very difficult to carry out reforms in a separate department. Performance of such tasks is especially difficult, if it should be carried out on the principles of long-term planning and if similar and adequate approaches, from the point of view of improvement of a financial system, have not taken root in other State departments.

Though, it is necessary to say that other supervising departments having army formations, the lack of reform hampers the complex development of power departments, system reorganization and improvements in the sphere of State resource management. Because of an existing problem, the Parliamentary Committees of Defence and Security and the Parliament is facing a problem to speed up and promote reform of the resource management process in the sector of defence and security of the country.

The stage following budgeting is connected to the functioning of power executive bodies and the work of mechanisms of civil control over budget expenses.

In the Ministry of Defence of Georgia and in other power departments, which are created similarly to structures of the former Soviet Union, fiscal accounting adequate to perfect universal requirements is unfulfilled. Because of this, financial control over actions carried out by the military departments is complicated. Independent experts and employees of departments working with the problems of financing in military departments confirm this opinion. In the package of existing reforms, there is a requirement of switching the ministries to the bookkeeping accounting, which corresponds to the absolute requirements and, accordingly, all separate departments aim to do it in the near future. Although, as the experts mention, systems of budgeting in these departments remain to be put in the order.

The process of reform taking place in the Ministry of Defence, has not touched the ordering of the process of budget performance. The structural differentiation of persons participating in the process of the redistribution of defensive expenses from management has, however, been possible in the competence of which the planning, performance and control over operations carried out in the Ministry of Finance have been included. In 2000, the central administrative board of planning of defensive resources was separated from the financial and economic department, which was placed under the authority of the General Headquarters.<sup>27</sup> At present, expenditure planning is implemented in the newly-created department, though actual expenditures are retained by the old structure. The financial and control management in the Ministry of Defence is accountable to the Deputy Minister.<sup>28</sup> Naturally, in the existing situation when one department is under the responsibility of another, there is a certain alienation of financial control. Corruption and the menace of non-purpose expenditures in the Ministry of Defence are not excluded.

Similar problems exist in other law-enforcement departments, for example, in the Ministry of Internal Affairs, where the requirements of structural reorganization and financial transparency are reflected in the recommendations of the Anti-Corruption Council<sup>29</sup>.

In 2002, however, in the Ministry of Internal Affairs, it became possible only to appoint a civil person as the Head of the Material and Technical Department and Department of Financial Maintenance. The first persons of the Ministry of Internal Affairs argued that the transition of this department into a civil mode was the beginning of a significant reorganization, which should be carried out in the structure.

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<sup>27</sup> Seminar Materials, Bulletin No. 4, *Army and Society in Georgia*, CIPDD, 2001, p. 18.; *The White Book on Defence* (2002).

<sup>28</sup> 'The Georgian Army between the Law and Reality' pamphlet published by 'Justice and Liberty' NGO, Tbilisi, 2001, p. 132

<sup>29</sup> Anticorruption Council in 2001 has presented to the President the project of reorganization of executive authority, on the basis of which afterwards the interdepartmental commission has written the concept of reforms, see: <http://www.anticorruption.ge>

No less significant are the unsolved problems that exist in the execution of the budgetary law, i.e. the law was not in force for years and the State frequently met the new fiscal year with the previous year's debts. It concerns also articles protected from the sequestration, i.e. the State funds. At the end of each year, a realization by the President of the sequestration became ordinary practice, i.e. practice of reduction of the sums in the budgetary law.

According to the official data, the Ministry of Defence in 1998 received only 77% of the sum authorized by the budget law; in 1999, 69%, and in 2000, 56%. Some improvement in financing was noticeable in 2001-2002, though here already it was necessary to note that the State hitherto does not carry out obligations and from the sum allocated to the power departments by the law, only 2/3 is fulfilled.

Due to the poor financial system, the issuing of the budgetary sum passes with great delay. It is unplanned and unsystematic. It is impossible to estimate, how the listed budgetary sum is used within the limits of the law (it concerns not only spheres of defence, but also other power institutes). At this point, it is necessary to mention that the operational methods adopted by the Ministry of Finance are caused by the shortcomings of the national financial system and the deficits of the budget. It is necessary to search for corruption of the governmental structures. This shows the strong crisis of the State management system in general. In essence, the State has no effective financial and budget mechanism of monitoring the sphere of defence and safety.

It is difficult to think about a significant reduction of the armed forces, because at the beginning of the process additional expenses are necessary, for payment of indemnities to discharged personnel. According to the recommendations received from international experts and in light of existing financial resources, Georgia can sustain an army of between 12-15 000. The Ministry of Defence has explained that over a number of years, it restrained from significantly reducing the army. Today, the number reaches 20 000.

The problem of financing the military sphere, in the opinion of some military experts, can be solved by searching for alternative sources of financing. It does not concern budgetary profits, which would temporarily facilitate the financial needs of the military.

Activities suggested by foreign experts are unconnected to the non-professional (economic) activity of the military. Such experts suggest receiving additional means for the defence budget by delivery of military property. The international council of advisers on security issues (ISAB) shares their opinion: it is desirable to find additional sums for the Ministry of Defence from its own resources, for example, by leasing land or private property. Foreign experts recommend that the government gives consent to the Ministry to reserve for itself the greater part of the profit, and to the Parliament, to supervise the expenditure of specified means. It is also desirable, that the government issues instructions to the Ministry on the authorization of incomes and, furthermore, to make it well known by entering it into the White Book.

In reply to the specified recommendation, according to the Law on the State Budget of Georgia of 2001, "to the Ministry of Defence was given the right" to use the profit received from the realization of non-military unused state property, granting to lease or let, the corresponding sums should enter in the budget as special means, though, also from this side significant problems emerge.

According to the statement of reliable persons in the Ministry of Defence, estimates of disposable stock and real estate in the property of the Ministry of Defence are indeterminate. The Ministry of Defence cannot find the means to compensate audit services.<sup>30</sup> Non-accountability makes for the attainment of uncontrolled profits by defence officials. Despite this, in the last few years non budgetary profits, that is, the amount of special means according to the budget of the

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<sup>30</sup> The Head of the central administrative board of planning of strength and resources, Mrs. Maia Chiabrashvli. A seminar 'reform of a system of management of resources of defence of Georgia. Forming of the program budget of defence of 2002 and connected to it procedural innovations', 26<sup>th</sup> July 2001. Tbilisi "Army and society in Georgia" bulletin N4, is issued by the Caucasian Institute of Peace, Democracy and Development; Tbilisi, 2001, p. 20.

Ministry of Defence, varied within the limits of 2.5 million Laries.<sup>31</sup> In conditions of non-accountability, such explanations prompt many questions and exclude opportunities to control sums. The fact that the Ministry failed to take available real estate into account, exposes the inferiority of the supervising system: there is no mechanism of control of the accounting and efficiency of profits.

*Budget Transparency and Its Supervising Bodies*

Today in Georgia, budgetary control of security institutions may be carried out by the Chamber of Control, which is competent to check twice a year the purposeful expenditure of budgetary funds, and once every two years to carry out a documentary audit of financial and economic activity.

The main military inspections of the Supreme Commander-in-Chief of the military forces existing in the Presidential service involves the pertinence of military and economic questions and is accountable to the President and Security Council.

Among the various supervising bodies, the Chamber of Control is given special roles and rights. It has powers to verify the conformity of real expenditures of all law-enforcement departments with the voted budget, to check the degree of efficiency of their application, and to present to the President received estimations for further reaction. The Chamber of Control is incapable of carrying out full value control of power departments. For example, in the 1999 report of the Chamber of Control, the defence reserved a significant place, though the report concerned only the performance of the articles of the budget and the efficiency of expenses from the point of view of military preparation and contributions to structural reorganization.<sup>32</sup> Remarks on no-purpose expenditures of the budgetary sums were outlined by the Chamber of Control on the basis of the data of 2000-2001, from which several criminal cases were instituted.<sup>33</sup> Though based on the data, the estimations were not made from the point of view of exerting influence on the efficiency of activity of the military department.

All this weakens the mechanisms of civil control of the military system. It especially highlights the need for control of received special means, for planning, structural reorganization, studying, training and efficiency associated with the fulfilled work.

*Judicial system and so-called judicial control of the law-enforcement bodies*

In Georgia, there is judicial control, which is declared as independent and subordinate only to the Constitution and the Law. The question of the conformity of power departments with the Constitution and the law exists in the field of vision of the Court.

The Constitution especially highlights the inviolability of judges. The Constitutional Court takes its decisions in conformity with the law, the normative acts of the President and the Constitution and considers disputes on the competence between the State bodies. On the basis of the lawsuit of the citizen, it considers the constitutionality of those normative acts, which have connection with the fundamental rights and freedoms of the person formulated in the second chapter of the Constitution. As a result, the question of conformity of the activity of power departments with the Constitution is to be found in the Constitutional Court's field of vision.

Individual complaints on discrepancies in the law and on questions of the institutional structure of the State are not accepted in the Constitutional Court, particularly if these complaints directly do not restrain the individual rights and freedoms of the individual who has made a complaint. The governmental structures should wish to solve such questions themselves. (For

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<sup>31</sup> Ibid., p. 20.

<sup>32</sup> It is necessary to note that under the law on the Chamber of Control, this latter is in charge also of the control of efficiency of expenses.

<sup>33</sup> 'The Georgian Army between the Law and Reality', p. 110.

example, the citizen will achieve nothing in connection with the following: the law of 1997 on Defence contradicts the Constitution. According to Article 78, the Defence is forbidden to amalgamate the departments of military forces, state security and police or their other associations. As for the law, it declares that internal armies of the Ministry of Internal Affairs are a part of military forces).

As for the General Courts and Offices of the Public Prosecutor, which is a part of judicial system, their competence is defined by the laws passed in 1997 on the General Courts and the Office of the Public Prosecutor. In the first, it is said that legal proceedings are carried out on the basis of equality. Debates on the parties and influence on the judge is punishable by law. The candidate applying for the position of a judge is required to pass promotion examinations organized by the Council of Justice. This body was created to prepare offers on judicial system reform. It consists of 12 members. It includes the Chairmen of the Supreme Court and the Supreme Courts of Autonomies. Four members are appointed by the President, four are selected by the Parliament and one is appointed by the Chairman of the Supreme Court. Reform of the judicial system started in the second half of 1990s.' Except for the passing of the mentioned laws, according to which a number of changes were made in the judicial structures to increase independence and efficiency of the Court (definition of appellate cycle, introduction of the institute of disciplinary prosecution of judges consisted of judges themselves), one of the main elements of reform commenced in 1988 with the initiation of the promotion examinations.

The Office of Public Prosecutor, while in charge of criminal prosecution, and, in some cases, full investigations, as well as making statements in the Court as the State Prosecutor, is also entrusted with the supervision of fulfilment of the law by bodies of inquiry and operative, investigational bodies. It carries out supervision over the performance of the law in places of execution of a sentence and imprisonment before trial. Thus, the Office of the Public Prosecutor is occupied directly with the control of legality over actions of power departments. Employees of the Office of Public Prosecutor cannot freely familiarize themselves with the technical details of the operative activity of the bodies of police and security. The General Public Prosecutor, which is appointed by the Parliament on presentation of the President, has direct access to this information together with an assistants. The military Office of Public Prosecutor is a part of the Office of Public Prosecutor and submits to the General Public Prosecutor.

Infringements of the law, made by the representatives of power departments, become known to society with the help of both the Office of Public Prosecutor and the Court. This shows that not everything is non-punishable and that "shadow relations" also have weak points. The independent press is active enough in revealing departmental shortcomings. An interesting precedent of cooperation between the two components of legal and civil society in revealing the lawlessness of the enforcement bodies has been emerging. On the air of an independent broadcasting company, the General Military Public Prosecutor accused the Ministry of Internal Affairs of attempts to prevent the investigation of a specific criminal case.

Objective investigations and verdicts of the judicial system concerning the criminal behaviour of representatives of enforcement bodies, is very uncommon. Criminal cases against officials of power structures are not brought to the end,. In the system of the Offices of Public Prosecutor, a number of accusatory materials of parliamentary investigations and information connected to the Abkhazian conflict have been "lost".

Between the Office of Public Prosecutor and power structures or between different departments of the power sector itself there is certain opposition. However, private interest and competition of groupings is also present. Positions and criticism in such cases have a unilateral character and frequently end by a deal or scapegoat. Recently, signs of political and direct corruption have been incorporated into judiciary practice.

In the opinion of a few members of the above-stated "provisional interdepartmental commission at the bodies of system of legal assistance and security developing proposals on institutional reforms" at the Council of National Security, attention should be given to remedial



codes. In remedial codes, the Office of Public Prosecutor is presented not by a part of Court as considered by the Constitution, but as a working remedial body within the limits of the executive authority. (It is necessary to note, that in the opinion of a number of lawyers, the same impression leaves the organic law on Office of Public Prosecutor. There is a record in it that Office of Public Prosecutor is a part of the Court, but it is a declarative point).<sup>34</sup>

Between those lawyers who are interested in the democratization of the law-enforcement system and in a deepening of its impartiality, there is a popular opinion concerning the relief of the Office of Public Prosecutor from purely investigative cases, and also in relation to the introduction of the institute of judicial investigation. Without it, the court resembles a notary office, which classifies volumes brought by the Office of Public Prosecutor. In today's procedural frameworks, the competitive spirit of the judicial process is lost. To remedy the situation, it is necessary to pass the law to a private detective.<sup>35</sup> It is argued also that judicial reform is not consecutive, because the institute of jurymen has not been entered, which would make for active participation of the public in the legal proceedings and, essentially, would promote an increase of the degree of trust to the system in general.

*The Attitude of a Society and Media to Questions of State Security and Realization of the Democratic Control over Armed Forces*

Together with the creation and development of the legislation in the sphere of defence and security, nongovernmental organizations and the mass media have an opportunity, without restriction, to join debates and discussions on questions of national security, to cover and assess the effectiveness of assistance programs carried out by foreign countries in Georgia from the perspective of military-civil inter-relations.

In light of the fact that the tradition of institution-building was very weak for a long time in Georgia, the lack of corresponding professionalism and self-examination, which stipulated a prevalence of idealistic views in debates in a society, was deeply felt in the country.

With the support of the West, the number of nongovernmental organizations involved in security and democratic military and civil inter-relations greatly increased after 1995. The professionalism of persons working on questions of security also increased. The relations between independent experts and local military departments became more and more developed.

The first international conference in Georgia devoted to the concept of national security development, organized by the Caucasian Institute of Peace, Democracy and Development with support of the agency of the information and press of the NATO, took place in 1996. It led to a more intensive and open dialogue between the government and nongovernmental sector on security issues and defence. Although, it is necessary to note that the public sector even nowadays poorly influences a policy carried out by the government.

In spite of the opening of discussions on the concept of security, the creation and adoption of a document of national security has yet to be successful. As experience has shown, the government views specification and the open statements of national interest as a restriction to its decision-making capacity. This fact reduces trust in the government, from the part of society, as well as from the countries-members of the international community and alliances. This situation testifies to the fragility and poor development of Georgia's institutions.

The method of definition of a policy of national security tested and introduced by democratic countries cannot be considered as a panacea in Georgia's case, though the fact of the absence of such a document repeatedly reminds Georgian society of its value. It has confirmed opinions, that other ways of management public control is much more difficult and largely unsuccessful.

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<sup>34</sup> Interview with Otar Zoidze, February 2002.

<sup>35</sup> Interviews with David Usupashvili, Tinatin Khidasheli, Georgi Getsadze, March - April 2002.

The following facts can be considered as resulting from an absence of a precise formulation of strategic priorities:

- In recent years, the government repeatedly changed the declared course of the peaceful settlement of conflicts (Gali events of 1999, a number of the Chechen fighters in Abkhazia in 2001. Both incidents occurred with the support of representatives of the government's power departments, and some parts of the governmental armed divisions were involved in these processes).
- In the period preceding the Parliamentary elections of 2003, the government completed a sale of the most significant electro-distributive sectors to the Russian State structures, which the society determined as a change of foreign policy and an alliance of the government with Russia.

In spite of the fact that in relation to such facts, the public opinion was entirely negative, in all specified cases uncertainty of the state interests and the lack of development of strategy has given to the government another instrument for manoeuvring and too much freedom of action. Accordingly, mechanisms of putting pressure upon the executive government from the part of society, including the Parliament, became rather limited. Though, this fact has clearly shown how development and the strategy of national security are significant today in Georgia.

No less problematic is the introduction in Georgia of mechanisms of public control over the military forces, though the recent processes obviously are a step forward in comparison with of the events of the early 1990s. Before 1997, public control over the military structures was practically unseen. The introduction of a democratic model of military-civil relations was not clear for both society and for the government and representatives of the army. This situation had essentially changed by the end of 1990s.

During this period, a number of nongovernmental organizations with the purpose of formation of democratic military-civil inter-relations, has stirred up the work of the representatives of executive and legislature bodies. At the first stage, these relations were focused on familiarization with the new theme, with the discipline of social science and the introduction of mechanisms of settlement of military-civil inter-relations. Though, at specified meetings, representatives of authority in nongovernmental organizations were often personal acquaintances. It is necessary to note that in the trainings and seminars within the framework of the project with the help of the western funds and western countries, which were carried out also for military men and representatives of mass media, selection of the basic participants took place among friends.

At the same time, on the basis of western experts and cooperation with the military between 1996-2002, a policy of defence and security was issued in Georgian. Some nongovernmental organizations issued a number of bulletins, the subject of which was devoted to important questions on military-civil inter-relations, such as the details of the development of a policy of state security, protection of the rights of soldiers and management of defence resources.<sup>36</sup>

It is necessary also to note that, as a result of the work of the local and western nongovernmental sectors, the examination of independent Georgian researchers was considerably raised, as was the professional level of representatives. There was an upsurge in the number of media reports and scale of public information, particularly in the number of published materials on military-civil questions. The Georgian newspapers and magazines widely covered and

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<sup>36</sup> Civil-military relation in Georgia, textbook, CIPDD 2001; Georgia Army: Between The Law and Reality, Association "Justice and Liberty" 2001; Mechanisms of Civilian Control, Gori Centra for the protection of former and active military servicemen, Gori, 2002. CIPDD publications in 1998-2001; Bilingual bulletin Army and Society in Georgia (in Georgian and in English). Other monthly Bulletin has been published by the Georgian Center for Strategic Research and Development in 2001-2002.

frequently criticized the deficiencies in the state system caused by a general weakness and the inefficiency of power departments.

Taking the above into consideration, it is possible to say that society painfully experienced non-professionalism and non-preparation of the military forces coupled with frequent infringements of the rights of the soldier. Nongovernmental organizations and mass media have the potential to play a significant role by reviewing critical situations in the Army and introducing civil values into the military, thereby eradicating non authorized relations and reducing the infringements of human rights. Some nongovernmental organizations continue to work to this end. For example, "The Right and the Freedom" actively opposed drafts created under the initiative of the defence department and severely criticized drafts made under the initiative of the military establishment. Some cases have brought results. In the spring of 2003, the Parliament did not ratify the submitted draft, which assumed a tax increase for recruits by three times, with the purpose of a delay of service in the Army. Public organizations also sharply criticize procedures in the military service that are connected to disciplinary punishment and actively included in the process of development of the new legislative frameworks.

Attention should also be directed towards the purchasing policy of the defence departments. Despite financing difficulties, the department has attempted to buy arms from Eastern European countries that happen to be NATO member candidates. It causes regret among experts working in sphere of defence and journalists. Georgian journalists have negatively assessed such decisions because armament is frequently out of order and accountable to none. There have been frequent cases of abduction and theft of arms directly from military units (cases of 2002).<sup>37</sup> Against this background, journalists address the government with one question: would it not be better for defence departments to put already purchased weapons in order, by using the budget allocated for purchasing arms. Only after this, should the department consider purchasing new arms.<sup>38</sup> (It is necessary to note that in 2002 and 2003, budgetary funds were not allocated for arms purchasing, and the department of defence carried out these operations only through the account of special means). On this question, society has not yet received a qualified answer from the military. Taking into account the scale of corruption, it is possible to assume that in terms of arms purchases, the government in the future should reckon with public opinion.

According to an estimation of military - civil inter-relations existing in Georgia, it is possible to add, that representatives of the nongovernmental sector working today in Georgia, independent experts and the media share the opinion, that with the realization of reforms taking place in the structures of security, state institutions should promote the development of closer cooperation with political structures and structures of security of the European and Euro-Atlantic space. For an effective realization of reforms, the expansion of bilateral military cooperation with the assistance of democratic western countries and strengthening of the civil control is also significant. It will provide the possibility for a reorganization of security with the introduction of democratic military-civil relations.

In May 2002, Georgia, within the framework of the military cooperation of the United States, commenced its programs of training and equipment of special-purpose divisions, the purpose of which was to create Georgia's first professional military divisions. The specified program had the potential to become a significant element of structural reform in other institutions of Georgian defence and security.

Interests of a society in this case coincide with the requirements of the State security of Georgia, which consist of the following: forming of the first Georgian professional divisions should be carried out successfully and unhindered, so that the program might promote the development of military-civil inter-relations and effective professional military units, with the aim of forming a unified Georgian professional army. At the same time, establishing the norms of

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<sup>37</sup> 'On a Military Issue', *Kvirirs Palitra* February 24 - March 2, 2003, p. 8.

<sup>38</sup> Ibid.

military responsibility and corporate spirit, a unified code of behaviour and other corresponding norms in all Georgian military units, was significant.

It is worthy as well that this last task necessarily demanded an active inclusion of society in the development and formation of military morals, in order that the Georgian mentality, historical experience and traditions has been taken into account. Up to now an open discussion on this question has not started, and meanwhile the problem is ambitious and difficult to fulfill. For the creation of an efficient professional military division, the participation of the public should promote development of a certain methodology and technology, which would serve the education of worthy Georgian military professionals.

From the part of the State, at a declarative level, some steps have been made. In the White Book issued in 2002, the direct and active participation of society in questions of military construction and the decision of strategy was discussed.

It would be desirable for this declarative policy to be carried out. Efforts from the part of society and foreign experts should encompass activities, which might become preconditions for the formation of military-civil inter-relations of a democratic type.

This process needs time and its solution is a matter not only for military departments. The responsibility includes civil Heads of authority. In Georgia, for the further development in a democratic direction of military-civil inter-relations, it will be necessary to make joint efforts between civil power and society.

### *Conclusion*

As mentioned, the laws working in Georgia are characterized by two, less compatible tendencies: on the one hand, they contribute to the construction of a lawful state and to the strengthening of the democratic civil control of the power sector. However, simultaneously, there are holes in the legislation, which are filled in basically at the will of representatives of the executive authority. For the most part, it is the will of the President that controls this process.

Upon forming Georgia's power structures, a significant role was played by the structure and non-democratic style of the institutions of State security from Soviet times. According to the Soviet tradition, today the Heads of law-enforcement military structures and structures of security of Georgia are appointed by the first person of the country, which basically chooses his candidate not from the professionals, but among persons close to him personally. At the same time, these persons carry military or special ranks. The majority of their employees, as well as the staff of the Security Council are not civil persons, and by this fact alone, the area of civil control is effectively narrowed.

Corruption has increased in the security sector and there are often cases of no-purpose expenditure of budgetary funds, taking place against a background of persistent budgetary crisis. Accordingly, no less problematic is its organizational weakness, worker inefficiency and the low vocational training of staff of military departments. Due to inexperience and non-professionalism of this staff, problems continue without serious parliamentary reaction. Participation of the legislative structure in this process has a basically formal character.

Certainly, in order to master these problems, changes in the laws are necessary. It is obviously necessary to establish a more precise differentiation of competences and the responsibility of the Parliament and the President for reducing the grounds of subjectivity in its policy of security. The most important is an increase in the degree of transparency of the actions of the law-enforcement bodies. Successful judicial reform should ensure this. In this respect, it is necessary to create public councils in the power ministries provided with the right to receive sensitive information.

It is possible to say that today Georgian society suffers from the existence of low professional military forces and a widespread practice of infringement of the rights of the soldier.

The nongovernmental organizations and mass media can perform a significant role from the point of view of correction of a situation in the army and introduction of civil values among the military. Thereafter, eradication of non-authorized relations in the army might be possible.

It is necessary to pay serious attention to the general educational system, as well as to the forming of law-enforcement forces and military persons. Civil education in military-civil relations should be strengthened and corruption stamped out in the fight to end cultural violence

There is no guarantee that following the evolutionary way is the only opportunity for change. Opposition can cause destabilization, in which there is undeniably an interest in military-political circles of the former mother country. For this purpose, it is necessary for the legitimate government to build a society on trust and to find support in the democratic West.

## Chapter 8

### The Military Service Appeals System in Georgia

*Irakli Seshiashvili*

The basic principle of the Georgian armed forces' structure is determined by Chapter 101 of the Constitution of Georgia, according to which "defence of the State and performance of conscription is a duty of all capable citizens of the country". Hence, the armed forces are based on universal military service. In the same chapter of the Constitution, it is stated "the forms of performance of military service are determined by the law". On the basis of this norm, the Law on Conscription and Military Service was passed on September 17, 1997.

This law has undergone significant changes. It is especially important to note amendments made to the law on July 21, 2002, which concern the system of appeal. Prior to January 1, 2003 an appeal on urgent military service was carried out by the military commissariats (the Soviet model) on behalf of the Ministry of Defence. As a result of the changes, the registration of recruits and appeals against military service were handed over to the bodies of local self-government, specifically to their military departments. The resolution of reservist problems was entrusted to a mobilization department of the Ministry of Defence. It was a first step in the direction of transferring the 'formation' of the armed forces to the civilian sector.

For the first time in Georgia, the so-called 'military tax' was created. In particular, recruits unable or not wishing to serve in the army received the right of delay from an appeal on military service in case of payment of the corresponding tax.

These and other innovations will be discussed in detail below. The current legislation about conscription and military service will also be discussed. In conclusion, the lack of legislation and the negative aspects of the call-up process will be discussed.

#### *The Framework of Obligatory Military Service*

According to the Law on Conscription and Military Service, all able-bodied citizens of Georgia are obliged to perform military service. Military service is even extended to permanent residents in Georgia who do not have citizenship. Citizens of other states can be called up for military service at their own will and on the basis of the corresponding order of the President of Georgia. Performance of military service is divided into four stages:

1. Primary military registration
2. Preparation for military service
3. Urgent military service
4. Transfer to a reserve of the armed forces and service in a reserve unit

Accepted on December 29, 1992 (since cancelled), the Law on Universal Military Service and the Law on Conscription and Military Service of 1997 divided military service into obligatory and contracted (professional) service and reserve service. In 2001, regular military service was added to the above-mentioned types of military service. The fact that the law determined contracted (professional) service as one of forms of military service was considered a necessary condition for any transfer from universal, obligatory military service to a wholly contracted, professional service.

However, economic difficulties and unfulfilled reforms in this field did provide an opportunity for this norm to be fully realised. Since 2002, with the help of the United States via

the Train-and-Equip Programme (GTEP), it became possible to take on the contracted service of a large number of military men, and this has played a positive role in construction of the Georgian armed forces.

For an increase in the prestige and affinity of military service, and also with the aim of increasing the responsibility of civil servants, the law places some restrictions on the acceptance into public service of citizens who have not completed their military service. For example, this norm has found reflection in the Law on Diplomatic Service, according to which citizens who have not served in the army cannot be accepted into the diplomatic service. Service in the armed forces is one of the necessary conditions for work in so-called power structures (for example, the police and security service.)

In connection with the management of military service and performance of conscription, serious responsibility is assigned to certain officials in government and in the local self-government. Bodies concerned include the Ministry of Internal Affairs, civil registration departments, judicial bodies and the commission of medical-social examination. The competence of the state structures and bodies of local self-government also examines the financial maintenance of actions connected to the passage of military service.

According to Chapter 9 of the Law on Conscription and Military Service, persons liable for military registration/call-up are citizens between 18 to 27 years of age and those who have no legal grounds for delay or release from military service. Evasion is punished by the law.

#### *Military Registration*

The primary military registration of citizens is carried out by the military departments of regional and municipal bodies of local self-government annually, between January 1 and March 31, attended by citizens who have reached 15 years of age. After the primary military registration the citizen is considered to be a recruit. For registration, citizens are obliged to come to military departments of regional and municipal bodies of local self-government in a place of their permanent (more than three months) or temporary residence. In cases where the residence has changed, the citizen (within a two-week term) is obliged to undertake military registration in the regional or municipal military commissariat of the new place of residence. Citizens abroad are obliged, within the same term, to appear at an embassy or other official mission. At the demand of the military departments of the bodies of local self-government, citizens are obliged, within a two-week term, to present references as to their marital status, place of residence, place of work and for any changes in post and education.

The Code of Administrative Infringements details the responsibilities of recruits evading military registration and personnel organising military registration. Those guilty of infringements are subject to fines.

Citizens called by a military department of local self-government for military registration pass checks in the commission on the military registration, as approved by the local self-government head. The commission is structured as follows:

- a) Chairman of the Commission – the head of regional or municipal body of local self-government
- b) The Deputy Chairman of the Commission – the chief of a military department of regional or municipal body of local self-government
- c) Members of the Commission:
  - the representative of regional or municipal bodies of internal affairs
  - the representative of local bodies of public health services
  - the representative of regional or municipal bodies of national education
  - the doctors - experts conducting medical inspection of citizens
- d) The Secretary of the Commission

The commission on military registration is obliged:

- a) To carry out a medical inspection of citizens to assess their suitability for military service
- b) To take a decision on the citizen's potential for military registration and to release him from military duty in light of an unsatisfactory state of health
- c) To carry out professional and psychological reports of citizens for assessment of the sphere of their use in military service.

At the initial military registration, citizens are obliged to pass a medical inspection with a surgeon, therapist, neuropathologist, ophthalmologist, otolaryngologist, stomatologist, psychiatrist, and an expert in narcotics, and in case of need, other specialists. In cases where a medical conclusion about the suitability of the citizen to military service cannot be made immediately, the commission on military registration can direct the citizen to the nearest medical institution. A list of such medical institutions is made by the Ministry of Health of Georgia.

Medical inspection costs and the payment of specialists is covered at the expense of the local budgets of corresponding territorial units, according to the programmes authorized by the Ministries of Defence and Public Health Services of Georgia. This means that the medical inspection of citizens in these medical institutions is carried out free-of-charge.

At the next stage, the commission on military registration makes a decision. The chairman of the commission on military registration is obliged to familiarize the citizen with the conclusion of the commission and with his duties connected to the military registration. Citizens have the right to demand a copy of the conclusion of the commission on the military registration.

#### *Types of Obligatory Military Service*

Georgian citizens and persons without citizenship are called-up to serve in the armed forces on the basis of the decree of the President on an appeal to citizens of call-up age and the reserves of military men when urgent military service is required.

Appeals against obligatory military service are carried out twice yearly – in spring and autumn. Service in the armed forces of Georgia means three possible terms of service depending on a category of recruits:

- 18 months – urgent military service
- 12 months – urgent military service for persons with higher education
- not less than 24 months – military service for officers called from a reserve
- not less than 10 years – military service for regular officers.

Decisions about appeals are taken only after the individual concerned is 18 years old. Citizens who are 27 years old are not subject to conscription and are enlisted in a reserve. Citizens who have passed military training in a military faculty of one of the higher educational institutions, received a military rank and enlisted in a reserve, can be called up for voluntary military service, or, in special cases, before 30 years of age, by the decree of the President of Georgia.

#### *Enforcement*

The call-up papers for those who are enlisted and for those who have reached 18 years of age are sent from a military department of local self-government institutions. After signing the call-up papers, the citizen is obliged to appear in a military commissariat specified in the call-up papers.



According to paragraph 197 of the Code of Administrative Infringements, non-appearance at a commission of appeal on obligatory military service without a respective excuse is punished by a fine of 1000 Laries. Non-payment of the fine, by the set date, results in 30 days detention. After payment of the penalty, the recruit again receives the same call-up papers. Repeated non-appearances entail serious consequences. The military department of the appropriate body of local self-government carries out an inquiry and sends the necessary materials to the corresponding regional public prosecutor's office, which, in turn, is obliged to take a decision about instigating criminal proceedings within 20 days. After punishment, evasion of obligatory military service is punished by penalty or imprisonment up to a three year term (Criminal Code of Georgia, Point 1, Article 356).

For an appeal on obligatory military service, the regional or municipal draft commission, which is approved by the head of the corresponding body of local self-government, is created. The structure of the commission includes the same persons as the commission on the military registration.

Recruits have the right to appeal against a decision of the draft commission in a 10-day term at the central draft commission of Georgia or in the court. In this case, the decision of the draft commission is suspended up to the announcement of the decision of the central draft commission or before coming into force as a decision of the court.

#### *Medical Assessments*

The draft commission is entrusted to carry out medical inspections of citizens subject to an appeal. The medical board has been created for this specific purpose. Depending on the results of the medical inspection of the recruits, the commission makes a conclusion about an individual's suitability to military service in accordance with the following categories (the list of diseases, on the basis of which the suitability of recruits and military men is determined is given in the appendix to the order of Minister of Defence No. 360):

- a) valid for military service / valid for study in military school – the health of the recruit corresponds to requirements of military service;
- b) valid for military service with insignificant restrictions – the health of the recruit meets the certain requirements of military service; the place and the order of service are determined according to a state of health;
- c) valid for military service with restrictions –the health of the recruit does not meet requirements of military service in peacetime; the recruit is enlisted in a reserve and can be called up for military service only in case of mobilization for performance of light service according to the state of their health;
- d) temporarily invalid for military service – the health of the recruit at the moment of an appeal does not meet the requirements of military service and demands treatment; the recruit receives a delay from an appeal on military service before recovery
- e) not valid for military service – the health of the recruit does not meet requirements of military service; recruits of the given category completely are removed from the military registration process.

In case doctors are unable to complete municipal or regional medical boards by doctors, the inspection of recruits is carried out by a military-expert commission of the central draft commission. The medical board informs the draft commission about its conclusion, on the basis of which the draft commission, within the limits of its competence, takes one of the above-stated decisions.

The draft commission only takes decisions on a legal basis. Its decisions should not contradict the conclusions of the medical board. The draft commission has no right to change or

cancel the conclusion of a medical board. The chairman of the draft commission declares the decision of the commission to recruits. On the demand of the recruit, the Chairman of the commission should provide an extract from the decision of the commission.

#### *Central Draft Commission*

The central draft commission created on the basis of a Presidential decree is the supervisory body intended to control the work of the regional and municipal draft commissions. Here the permanent military–expert commission functions, the organization and rules of work are determined by regulations concerning the military-medical examination, as approved by the President.

The value of the military–expert commission is that it actually verifies the accuracy of the final decisions of the regional and municipal draft commissions. The commission checks the competency of the conclusions of doctors on the soundness of assigning recruits to military service.

#### *Legal Rights*

The right for delay or release of an appeal on military service are determined in law. This measure in the legislative order provides for a lessening of corruption on an appeal on obligatory military service.

#### *Numbers Serving*

In total, the number of citizens of call-up age in Georgia is between 170,000 – 190,000 persons, while each year it is usually necessary only to call up 13,000 – 15,000. At the same time, as a result of the established privileges, the total number of citizens subject to an appeal does not exceed 50,000. However, after the introduction of military tax, some privileges were abolished in order to increase a contingent of citizens subject to an appeal. As result of it, many recruits have paid military tax.

#### *Delays, Appeals, Exemptions*

In Chapters 29 and 30 of the Law on Conscription and Military Service circumstances that can form the basis for a delay or releasing of an appeal on military service are listed.

From an appeal on military service are released:

- a) Citizens declared invalid for military service for health reasons
- b) Citizens who have completed military service in the armed forces of other state – that is, persons who were, at an earlier time, citizens of another state and have since completed military service their; those of call-up age; those who have naturalized or have moved to a permanent residence in Georgia, are released from an appeal on obligatory military service in the armed forces of Georgia
- c) Persons condemned for perpetration of heavy or especially heavy criminal offences – that is, citizens who have served a term of imprisonment for the perpetration of crimes, the maximum punishment for which by the Criminal Code of Georgia provides imprisonment for a period of 10 years (not so heavy crimes) or condemned for a term of more than 10 years (heavy crimes)
- d) Persons involved in non-military alternative labour service – that is, persons called on for non military alternative labour service, on the basis of a freedom of worship, belief and

- creed, and according to the decision of the draft commission and the order of Minister of Labour, Public Health Services and Social Security
- e) Post-graduate students – that is the persons enlisted in postgraduate study after completion of a full course of study in a higher educational institution and continuing study for reception of a scientific degree
  - f) The persons who have received a scientific degree and are engaged in pedagogical or scientific work – that is teachers and scientific employees with a scientific degree
  - g) Families with one son, where one member was lost in fights to preserve the territorial integrity of Georgia or during military service.

The President of Georgia has the right to release from performance of conscription especially gifted citizens of call-up age (Chapter 29, point 2). For example, if the recruit has had exclusive successes in sports, science, culture or arts, the management of corresponding establishments can request the recruit's release from obligatory military service. If recommendations are expediently recognized, the recruit is released from conscription by the Decree of the President of Georgia.

The following recruits have the right of delay from an appeal on military service:

- a) Recognized temporarily invalid for military service for health reasons – for the period of one year;
- b) Persons against which a criminal case is brought until a decision on prosecution by the law enforcement bodies concerned;
- c) The students of high or secondary special educational institutions involved in military preparation in military faculties – up to the end of study: that is, the students of high or secondary special educational institutions involved military preparation in military faculties are enlisted in a reserve of the armed forces upon termination of study;
- d) Persons who have paid tax at a rate established by the Law on the Tax for Delay of an Appeal on Obligatory Military Service – that is, recruits not wishing or unable to pass military service should pay tax annually at a rate of 200 Laries or a lump sum of 2000 Laries;
- e) Pupils of general educational, primary professional or general educational special schools – before reaching 20 years of age: pupils of schools, professional and technical schools (colleges) are permitted to delay appeals of military service before reaching 20 years of age; upon reaching a specified age they are obliged to interrupt study and to undertake obligatory military service;
- f) Persons caring for an invalid grandmother or grandfather in their support, if there are no other legal tutors capable of supporting them – that is, persons recognized as invalids by the Ministry of Labour, Public Health Services and Social Security and requiring permanent care and attention, – the delay of an appeal on military service operates until circumstances change;
- g) Recruits having two or more children;
- h) Persons having dependent invalid members of families requiring permanent care and attention, if there are no other persons capable of caring for them – that is, if the recruit is the only source of financial support for invalid members of their family;
- i) Recruits having dependent minors and/or orphan sisters/brothers, that is, if the recruit has a dependent brother or sister under 18 years of age, or, if the recruit has dependent adult orphan siblings;
- j) Church employees of call-up age and pupils of spiritual schools;
- k) Only sons – that is, the only son from a marriage;
- l) Teachers of rural schools and rural doctors of call-up age;

- m) Recruits receiving a delay from an appeal on military service by decree of the President of Georgia –the President has the right to defer an appeal on military service for recruits;
- n) Recruits with one child who is under three years of age;

If on the day of an appeal, the recruit in the legal order is registered as the Candidate for the Member of Parliament of Georgia, he receives a delay from an appeal up until approved election results. In the case of elections as Member of the Parliament of Georgia, the recruit is released from the performance of conscription (Chapter 30).

After the central draft, the commission will make a decision on an appeal of a citizen on obligatory military service. The recruit is instructed to a distributive point, at which point he is enlisted in the structure of one of the below-mentioned military departments:

- subdivisions and units of the Ministry of Defence
- internal forces of the Ministry of Internal Affairs
- boundary forces of the State Department of Protection of Frontier
- subdivisions of Special Service of the Governmental Protection
- subdivisions of the Ministry of State Security

#### Something about Practice of an Appeal on Obligatory Military Service and the Lacks of the Law

It is necessary to note that the existing system of conscription in the armed forces of Georgia is inherited from Soviet times. The State is not capable of providing for the activity of a military contingent. In such a society, people perceive the military call-up as an inevitable necessity and frequently try to avoid it. The reason primarily being the heavy social and economic situation of the Georgian army coupled with the unworthy, frequently humiliating treatment of soldiers. The normative acts regulating an appeal on obligatory military service generally do not work in practice. The mass infringements of the rights of recruits in military departments and the draft commissions add to this fact. The current legislation is broken by the military departments, the draft commissions and by citizens who, in every possible way, try to evade military service.

In the next part working practice of an appeal is considered in two stages:

- 1) until January 1, 2003 and
- 2) against a background of changes brought into the legislation on July 21, 2002.

#### *Appeals on Obligatory Military Service until 2003*

Against a background of corruption in the country, the Law on conscription and military service was broken, in most cases, by citizens at the stage of primary military registration and also during appeals on obligatory military service. The draft commissions abused the rules of release and delays of an appeal on military service. From the very beginning of an appeal, military commissariats knew precisely how many recruits should be called up for military service, i.e. there was a so-called plan of appeal. During the appeal, only a small number of recruits appeared in corresponding establishments – 20 - 30 %. Here, it is necessary to note that there is the possibility that the data does not correspond to real figures, as there was often a private agreement between the recruit and commissariat, according to which the recruit was not called in the commissariat and his data was not fixed in the general statistics. The difference between the total number of recruits and number of the recruits required under the plan, was so huge, that it created ground for bias, social injustice and corruption, especially as the salary of civil servants is less than living wage.

The plan of an appeal, in which there was a predetermined number of recruits, created a fertile field for the blossoming of corruption in the call-up system. Absolutely healthy recruits

could be released or defer military service with the help of a bribe. Even those unfit for service necessarily paid money to have their physical defect recorded. The question could also be solved without money, through the interference of influential patrons. Sons of the country's various important officials or businessmen never served in army. Unwritten "tariffs" were given by military commissariats of a delay of an appeal for 6 months costing between 100 - 200 dollars. The release of individuals from military service for reasons of ill health with reception of the military card, costing between 1000 - 1500 dollars. An actual release from military service was far more expensive, with a formal transfer of the recruit from the military unit and a guarantee of reception of the military card upon termination of service term.

As shown, fallaciousness of the given system stems not only from the unfair actions of those in the military commissariats, but also by an absence of control over them. Besides, any measures of punishment against them really were not applied. The Ministry of Defence did not deny that bribery existed in the military commissariats and tried to find a way out through the legalization of bribes.

Representatives of the military commissariats explain the widespread departure from service in the army by the social and economic situation existing in the armed forces. Besides, as argued, there are many ways to evade military service. For instance, recruits enter higher education institutions to avoid conscription (until July 21, 2002 a delay from an appeal was given to students of those high schools where there was no military faculty; the number of such students was between 70 000 -80 000). At the same time, the military cited an absence of recruit registration as the main problem of the draft process. Military registration and enlistment offices were dissatisfied by the elimination of the system of residence permits, as it became impossible to find citizens who were subject to an appeal. However, it was possible to gauge whether or not the registration of recruits was well organized. This argument was deemed one of the reasons for the failure of the appeal plan. Employees of law-enforcement bodies who gave military commissariats the informal information on recruits actively participated in this process, i.e. informing of a place of stay of those citizens who were not registered in the corresponding police branches with the hope of receiving a certain share of the bribe paid for by the recruit.

As mentioned, the appeal of citizens is preceded with the registration of recruits from where infringement of the corresponding legislation begins. During the primary military registration, enlistment offices do not carry out detailed medical inspections of recruits, though the rules of medical inspection and procedures, which are necessary for admitting recruits, are specified in the Law on Conscription and Military Service, as well as in the regulations concerning the military-medical examination. Instead of observing the rules and procedures, military commissariats tried to take on as many recruits as possible, despite the fact that many among them were patients with enuresis, flat-foot, tuberculosis, nephritis, diseases of the stomach, anxiety and mental disorders. Medical inspections should be financed from the local budget, however this requirement is compromised because of a lack of a resources. The allocated scanty means are insufficient for a full medical examination. The military-medical commissions have developed a rather original method, i.e., a superficial, visual survey of recruits as opposed to a necessary thorough inspection.

A similar situation took place also during an appeal on obligatory military service. There were cases where the police accompanied by those from the military registration and enlistment offices 'recruited' people of call-up age directly from the street. The nongovernmental organization association "Justice and freedom," has carried out investigations among military men,<sup>1</sup> concluding that 43% of those recruited for military service were brought in through violent means, 31% from their homes, 5% from the street and 7% from educational institutions. Military

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<sup>1</sup> In total 890 military men were questioned. Here we note that each mention of interviews with military personnel in this article is based on this figure.

commissioners do not deny such facts. During the investigations,<sup>2</sup> in response to the question “How frequently you had to bring recruits in a military registration and enlistment office by force?” only one military commissioner answered negatively.

Medical inspection of recruits had a formal character both in the regional draft commissions and in the central draft commission.

Only 54% of the interrogated military men passed the medical inspection in the regional draft commission, and 26 % in the central draft commission.

Upon revealing serious diseases at the formal inspection, members of the draft commission, military registration and enlistment offices frequently promised recruits that there would be corresponding treatment carried out in the armed forces. By "involving" them in military service in such fraudulent way, it was necessary for the fulfilment of the plan on an appeal.

Another problematic question, which was also of great importance for the fair carrying out of an appeal, was the procedure of lodging a complaint against the medical boards. If the recruit did not agree with the conclusion of a military medical board and demanded an appeal, workers of a military registration and enlistment office directed him to the stationary medical inspection only in strictly certain medical institutions (for example, in the central republican hospital). As practice has shown, doctors and specialists working in these establishments always tried to uphold the conclusions of the draft commissions and, as a rule, to leave them in force. Despite the fact that according to Chapter 44 of the Law on the Rights of the Patient, “military men of urgent service, recruits and employees of the armed forces on a contracted basis have the right to independent medical examination for definition of the state of their health,” this norm was not put into practice. In response to the question “Have recruits an opportunity to choose medical institution for stationary inspection?”, the responses were documented as six stating “yes” and 29 stating “no.”

A separate problem is when an appeal in the armed forces is undertaken by an ethnic minority. Local recruits frequently do not speak the state language and do not understand Russian. This fact "made easier" infringement of the law in such areas – as a rule, recruits were brought into military registration and enlistment offices by force. In most cases, medical inspections were not carried out and frequently the army even took on family recruits.

Another problem concerned the low level of civil education among recruits and their families. As a rule, recruits have little or no knowledge of their rights, and the workers of the draft bodies withheld this information to meet their own interests. Intimidation and the threatening of recruits and their families was not uncommon.

One of problematic questions is the delivery of documents and references from military registration and enlistment offices to recruits, which are necessary for the authorisation of identification cards and passports upon entering higher educational institutions or working. If a recruit should receive call-up papers in the nearest appeal, he could be refused documents, even if the appeal had not yet started. This could occur under the pretext that, in some months, he would be called to the armed forces. In such cases, recruits had to pay, as a rule, a bribe to workers of the military registration and enlistment offices for documents to which they had a legitimate right.

In addition, the majority of recruits did not know their legitimate rights. According to the investigation, 68% of the interviewed military personnel did not know recruits’ rights, and 68% declared that neither the military registration nor the enlistment offices had explained their rights for the following principal reasons:

- the majority of them are from socially unprotected families and have insufficient education

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<sup>2</sup> In total 18 military commissioners and 17 chiefs of mobilization departments have been interrogated..

- to the recruits living in regions, it is difficult to receive the legal information or consultation of competent experts

Workers of military registration and enlistment offices used these lacks in their purposes, in result of which the legislation was frequently violated.

It is necessary to emphasise the question of the completion of the draft commissions. As practice revealed, in spite of the fact that these commissions were not permanent, they were completed with the same people, which automatically led to the forming of the mechanism of corruption. Illegal incomes have taken root in the system and, in this business, practically everything that excluded a principle of fairness in the system was involved.

*Appeal on Obligatory Military Service on a Background of Changes Brought in the Legislation on July 21, 2002*

As previously mentioned, as a result of the changes in the Law on Conscription and Military Service (July 21, 2002), organization for the process of appeal on obligatory military service was handed from military commissariats to the military departments of local self-government bodies. The law went into force at the beginning of 2003. Taking democratic principles into consideration, it is necessary to welcome the fact that the process of appeal will be carried out by civil services. However, the current processes testify that for the meantime, the appeal is carried out by the same military persons dressed in civilian clothes. Thus, from the viewpoint of results, practically nothing changes. In light of the fact that changes have been declared beforehand, the 2002 plan of appeal has failed. Having understood that after 2003 there position of supervision over the system of appeal was coming to an end, the workers of the military registration and enlistment offices seized every last chance to obtain bribes from recruits. As a consequence, the plan of an appeal has been fulfilled 26% and this has seriously undermined the feasible defence of the country.

The second serious innovation was that privileges for students of high schools without military faculties were abolished (earlier they had the legitimate right for a delay from an appeal), and in their place "military tax" has been established. In other words, the number of recruits subject to an appeal has considerably grown (only one out of each ten recruits is subject to an appeal), and for other recruits (who were not called-up and for whom it was not necessary) the tax was established. If earlier military registration and enlistment offices extorted bribes from recruits for a delay from an appeal then, according to changes in the legislation, "bribery" has been legalized, but it should be paid from the State budget. The delay for one year informally cost the recruit 400 Laries. The Law on the tax for a delay from obligatory military service was 200 Laries. According to the same law, the significant part of the paid tax was transferred to the special account of military departments and intended for social and economic repair of the army and reform of the professional army. However, the facts determine that these sums were spent for other tasks and this was clear for the simple reason that there was no evidence documenting the creation of a professional Georgian army.

Besides, the law brought with it a certain ambiguity. In particular, for a delay of one year, a recruit is required to pay 200 Laries. With a payment of 2000 Laries, an appeal can be deferred for 10 years. However, it does mean a delay, but moreover, a release from an appeal. Such a situation theoretically is very possible, when all recruits will be expected to pay the tax and when there will be nobody to call up for military service. This fact alone puts the defence of the country under threat.

In my opinion, the form of an imposed military tax in contemporary Georgia causes social discrimination, dividing recruits into two groups between solvent and insolvent. Under the current legislation, those recruits who wish to serve (about 1%) are called into the army as are those who cannot pay 200 Laries, i.e. those who face the most dire social and economic situation.

The result is on the one hand, a poor army, with the lowest physical and intellectual level and, on the other hand, a layer of citizens who, for 200 Laries per year, manage to evade performance of a military duty, i.e. required by Chapter 101 of the Constitution.

The legislative changes of July 2002 urged the provision of additional finances to military departments. Financial problems should be solved not at the expense of citizens, but at the expense of the State budget. If the State cannot find the means for defence, this does not mean that citizens should be required to pay additional taxes.

In fact, the failure of the plan on appeals has exposed the fact that within Georgia there is an insufficient contingent of recruits. Privileges aimed at increasing their number have been abolished and, against this background, recruits have been forced to pay taxes. With the military tax and having increased a contingent of recruits subject to an appeal, the State has found alternative sources of financing. It means that the State "will feel a taste" for additional financing on the basis of conscription and will never agree to establish a professional army. The State will do everything possible to sustain the system of appeal without changes and, accordingly, to receive additional funding from its citizens through compulsory military service.

After the first appeal of the newly introduced military tax, the service of regional management and the President of Georgia prepared changes in the law. Military tax was increased from 200 to 1000 Laries. The Parliament, quite fairly, did not ratify the amendment. If the military tax was to increase, the system of appeal would return to one based on bribery. Citizens, on the whole, could not or would not wish to pay 1000 Laries and instead of this "would agree" on a negotiated sum with the military departments. Taking into account that the number of citizens subject to an appeal has increased to 100 000 persons, dozens of millions Laries every year would settle in the pockets of corrupt officials in the military departments.

However, as the current processes have shown, the new tax has not eradicated corruption. It has simply lowered "rates". It is possible to say that the current system seriously undermines the defence of the country for the following reasons:

- introduction of the tax will cause social discrimination and recruits called up for military service, taking into account their physical and intellectual level, will not be able to meet requirements of military service
- if it is the transition of the Georgian army into a professional army is planned and put into action and the military tax is intended for its funding, responsibility for the defence and security of the country should not be given to recruits alone. It concerns all citizens, irrespective of age and sex. Thus, if the ways for the creation of a professional army are found and funding accounted for, it might be expedient to, increase income tax by a certain percentage and only for the term necessary for its creation in place of introducing a separate tax for recruits.
- the basic lack of a system of appeal meant that a high degree of non-professionalism and corruption in the corresponding structures overwhelmed the system for many years. The military consistently showed its discontent with respect to the shortage of recruits and corruption. The reality was that corruption was rife in their departments. The military criticised the absence of appropriate control over the system. It is, therefore, firstly necessary to strengthen the mechanisms of control and to involve those measures of punishment, which are already stipulated by the legislation
- and finally, as a whole, it is necessary to note that the long-term practice of the violent call-up of recruits makes the system privy to potential criminals. The military manoeuvres carried out recently with the United States and the forming of highly paid professional divisions have shown that Georgia should go in this direction. The appeal on military service should be carried out only according to the personal desire of citizens. This circumstance specifies that it is time to transfer, in a practical way, the deliberations



## After Shevardnadze: Georgian Security Sector Governance

about the forming of professional army in Georgia into a reality through the formation of a concrete document, which will determine the required actions and means necessary for this purpose.

## Chapter 9

### Domestic and International NGOs and Security Sector Governance in Georgia

*Duncan Hiscock*

This is an interesting, but in some ways inopportune time to consider the role of non-government organisations (NGOs) in security sector governance in Georgia, as the country is currently undergoing huge changes and it is difficult to predict exactly how things will look once the dust has settled. The ‘Rose Revolution’ of November 2003 and the subsequent election of Mikhail Saakashvili as President on 4<sup>th</sup> January 2004 has already led to a large number of new appointments at both ministerial and senior official level. Many of those who have recently entered government have very close links to civil society actors; indeed, a lot of them previously worked for NGOs themselves. On the one hand, this means that the role and influence of civil society actors has suddenly greatly increased; on the other hand, some have already expressed fears that the closeness of many NGOs to the new government will limit their ability to act as a truly independent, constructively critical third sector.

It is too early to say whether these fears are justified, but improved co-operation between the state and civil society is clearly very desirable in a period of large-scale reform. It is expected that the new administration will initiate such reforms to the Ministries of the Interior (MOI), Defence (MOD) and State Security (MSS), significantly altering the form and quality of governance in the security sector. Several NGO representatives have been very active in (both formally and informally) advising those who are designing and implementing the reforms. Some are from organisations that have in some way focused on military and security matters in the past. Others are from organisations that may not have worked specifically on such issues but are concerned to see that reforms promoting democracy, good governance and the rule of law apply to the security sector as well.

This paper will thus attempt to provide the reader with a brief overview of what local NGOs have so far done in the field of security sector governance. This does not claim to be comprehensive, but to give a general impression of the direction in which the field is moving, and to identify some of those who are currently involved in advising on or monitoring the emerging reforms. Since the national growth in interest in security sector reform is being echoed at the international and donor level, it may be anticipated that the number of organisations wishing to work in this field will increase. This, combined with the current state of flux in Georgia, means that it is quite possible that there will be a rapid development in the manner of NGO involvement in the security sector, and thus it may be necessary to revisit this topic soon. The focus of this paper will be largely on the interaction between the national government and civil society in Tbilisi. However, it will also briefly comment on the situation in three other areas which have specific security dynamics: the autonomous region of Ajara, and the separatist regions of Abkhazia and South Ossetia (Tskhinvali region). This is done in order to acquaint the reader with the situation across the territory that is formally recognised as Georgia, and should not be taken to indicate any political views on the part of the author.

*NGOs and Security Sector Governance: What Roles can they Play?*<sup>1</sup>

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<sup>1</sup> This topic is considered in more detail in Duncan Hiscock, ‘The Role of Civil Society in Security Sector Governance in the South Caucasus’, Paper presented at the At the 1<sup>st</sup> Joint Workshop on “Security Sector Governance in Southern Caucasus – Challenges and Visions”, held in Reichenau, Austria 21<sup>st</sup>-24<sup>th</sup> November 2003. Available at: [http://www.dcaf.ch/news/PfP\\_Reichenau1103/Papers/Hiscock.pdf](http://www.dcaf.ch/news/PfP_Reichenau1103/Papers/Hiscock.pdf)

Before surveying the field of play in Georgia at the moment, it may be beneficial to clarify the roles which civil society<sup>2</sup> can play in security sector governance. As Heiner Hänggi has noted in his article “Making Sense of Security Sector Governance”, there are still no agreed definitions of exactly what constitutes ‘security sector governance’ or even the ‘security sector’.<sup>3</sup> As the concept of security has expanded to include a range of paramilitary and non-military threats, so too has the range of actors deemed to have an influence in security matters. This has led to the identification of three groups of state actors (organisations authorised to use force, civil management and oversight bodies, and justice and law enforcement institutions) and two non-state actors (non-statutory security forces and civil society groups) which together form a wider ‘security community’.<sup>4</sup> The recent interest in security sector governance is mostly concerned with how successful these actors are in ensuring ‘good’ or ‘democratic’ governance of the security sector. It appears that consensus is gradually forming on certain ‘best practices’, including the existence of:

a constitutional and legal framework which...clearly defines the tasks, rights and obligations of the security sector’, civilian governmental control and parliamentary control and oversight over the sector. There should also be ‘a kind of ‘public control’ of the security sector through the existence of a security community representing civil society...and nurturing an informed national debate on security issues.’<sup>5</sup>

Expanding on the notion of ‘public control’, it may be argued that NGOs have three main functions in regard to the security sector. The first is to act as a public watchdog, monitoring the actions of the government and security developments more broadly. This is likely to be either from a security perspective – analysing whether government actions in a specific field (e.g. defence procurement, military strategy, or gun control policies) are effectively improving national and human security – or from a human rights and rule of law perspective, highlighting cases in which security sector institutions or individuals have violated commitments to national or international law. Secondly, NGOs can act as a pool of resources and expertise which both the government and the public can draw upon. Thirdly, NGOs also provide an alternative source of skilled civilian professionals which the state may be able to draw upon. The latter two functions may be particularly significant in periods of rapid change, as recent developments in Georgia have shown.

It is generally expected that the more effective civil society is in performing its monitoring role, the higher the standard of governance is likely to be. It is thus important to stress that although NGOs may often be critical of governments, they should not automatically be seen as a threat; rather, their aim is usually to ensure that the security sector acts in a transparent and democratic fashion, which would actually boost the legitimacy and strength of the state.

### *Georgian NGOs working on Security Sector Issues*

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<sup>2</sup> Though the phrase ‘civil society’ is often used interchangeably with ‘NGOs’, civil society actually comprises a broad range of non-state actors, including the media, academic institutions, political parties and local interest groups. However, for reasons of space this paper will limit its focus to a consideration of the actions of NGOs.

<sup>3</sup> Heiner Hänggi, “Making Sense of Security Sector Governance”, in Heiner Hänggi and Theodor H. Winkler (eds.), *Challenges of Security Sector Governance*, (Münster: LIT, 2003) p. 17. Available at: [http://www.dcaf.ch/publications/e-publications/Sec\\_Gov/Chapter1.pdf](http://www.dcaf.ch/publications/e-publications/Sec_Gov/Chapter1.pdf)

<sup>4</sup> Hänggi, “Making Sense of Security Sector Governance”, p 10. See also UNDP, *Human Development Report 2002*, (New York, NY: Oxford University Press, 2002) p. 87; and Nicole Ball, “Democratic Governance in the Security Sector”, Paper prepared for UNDP Workshop on “Learning from Experience for Afghanistan”, 5<sup>th</sup> February 2002. Available at: [http://www.undp.org/eo/documents/afghanistan-workshop/Nicole\\_Ball.pdf](http://www.undp.org/eo/documents/afghanistan-workshop/Nicole_Ball.pdf)

<sup>5</sup> Hänggi, “Making Sense of Security Sector Governance”, pp. 16-17.

The potential roles of NGOs outlined above represent an 'ideal type' for good governance of the security sector. To what extent, and with what efficiency, NGOs are able to perform these functions is of course another matter. This is true even in 'developed' Western democracies, which are also in the process of adapting to the post-Cold War (and post-9/11) security agenda. Hence no one should expect to find a strong, sustainable security community in a country like Georgia, which has experienced three violent conflicts, has less than fifteen years of independent statehood, and still suffers from weak government institutions. Indeed, there are few organisations in the country that work expressly on security matters; those that do exist often have their roots in (and continue to focus on) conflict resolution, reflecting both Georgia's legacy of conflict and international donor priorities, which were particularly concerned with boosting 'track two' diplomacy (i.e. outside the formal peace process) once it became clear that official negotiations were stalling. Nonetheless, there are a number of other organisations whose interests also extend to military and policing affairs. These tend to approach such matters from a human rights or rule of law perspective, in effect responding to the widening of the concept of security to include justice and law-enforcement institutions.<sup>6</sup> Many of these groups are already active in advising the new administration on reforms, and it may be expected that their engagement in the security sector (and co-operation with each other) will deepen as the reform agenda develops. This section seeks to list some of the most well-known and influential of these NGOs, and to outline briefly relevant activities they have so far carried out. It will also consider the involvement of a few international NGOs that work on these issues.

### *Security and Conflict NGOs*

One of the most well-established NGOs in Georgia is the Georgian Foundation for Strategic and International Studies (GFSIS)<sup>7</sup>, a think tank run by a number of senior academics, most also with experience as government officials. GFSIS's interests span a wide range of issues, from foreign policy analysis through to economic reforms. Alexander Rondeli, Temuri Yakobashvili and Archil Gegeshidze all regularly publish articles on conflict and security issues and are often interviewed by both the national and international media. GFSIS is thus one of the key organisations promoting public awareness of security matters. However, GFSIS also directly contributes to attempts to improve security sector governance through evening training courses for state officials and civil society representatives. Since 2001 over 50 people have been trained in public policy, economics, foreign policy and international security. In February 2004 a two-week course was also held for fifteen young professionals from Armenia, Azerbaijan and Georgia that included work on small states in search of security. A new one-year training programme in international relations and national security, financially supported by the US government, will begin in May 2004.

Another well-known Georgian NGO interested in security issues is the Caucasus Institute for Peace, Democracy and Development (CIPDD).<sup>8</sup> Gia Nodia and David Darchiashvili are both prominent academics who have published widely and participated in and organised numerous conferences on the armed forces, security, conflict, democracy and other related issues. A subdivision of CIPDD is the Centre for Civil-Military Relations and Security Studies, which has carried out a number of research projects. In addition, the Centre used to release a monthly bulletin (quarterly in Georgian) entitled 'The Army and Society in Georgia', which combined new analytical articles and a summary of relevant stories from the national press. This was

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<sup>6</sup> Just as many security organisations have a strong affiliation with conflict resolution initiatives, it may be argued that these human rights and rule of law organizations stem from another donor priority throughout the 1990s, democratisation.

<sup>7</sup> <http://www.gfsis.org>

<sup>8</sup> <http://www.cipdd.org>

funded as part of an EU TACIS project on civil control over military and security policy. Sadly, this bulletin has not been published since late 2001.

As there are strict standards of security governance for members of NATO, this is a topic of great interest to Georgia for NATO<sup>9</sup>, one of three organisations in Tbilisi working to promote and enhance Georgia-NATO co-operation. It has recently begun a project entitled Civilian Control of the Armed Forces, which aims to develop model legislation for the Georgian Armed Forces in the field of security sector governance.

Other smaller organisations working in the general field of international relations and security include the Centre for Development Cooperation (CDC) and the Centre for Peace and International Relations Studies (CPIRS).<sup>10</sup> Both of these NGOs have limited organisational capacity but have well-respected and experienced chairmen – Ivliane Khaindrava (CDC) and Irakli Mchedlishvili (CPIRS) – who are well-respected analysts of political and security affairs.

The activities of a couple of other NGOs should be noted that are more focused on conflict resolution and have not so far worked directly on security sector governance. The International Centre on Conflict and Negotiation (ICCN),<sup>11</sup> run by Giorgi Khutsishvili, is one of the largest and most well-known organisations in the country, and has been working on conflict resolution and peacebuilding since 1994. Projects include peace and conflict management training for young political leaders and an early warning/early response network. The Tbilisi-based South Caucasus Institute for Regional Stability (SCIRS)<sup>12</sup> aims to bring together experts from across the South Caucasus to build confidence between the sides, reduce conflict and ultimately to establish a system of regional security. The SCIRS has close links to the Helsinki Citizens' Assembly Georgian National Committee (hCa GNC), the Georgian branch of an umbrella group of organisations working to ensure that the human rights provisions of the 1975 Helsinki Final Act are respected. The hCa was involved in the international campaign to ban landmines.

### *Human Rights and Rule of Law NGOs*

In the aftermath of the 'Rose Revolution', Western analysts and journalists highlighted the role that NGOs had played in the overthrow of Eduard Shevardnadze. Attention was focused on radical student movement Kmara and its connections with George Soros's Open Society Georgia Foundation and Serbian resistance movement Otpor. This has obscured the role played by several other organisations, in particular the Liberty Institute and the Georgian Young Lawyers' Association, in terms of both public criticism of election fraud and behind-the-scenes co-ordination and support of the protests. Though these organisations do not place security affairs at the centre of their work, they have an interest in ensuring that their efforts to improve governance and the rule of law in Georgia also extends to the security sector. Furthermore, being among the most well-known and influential organisations in the country, they may have more impact – being perhaps better connected both with those at the top and with the public at large – than some of the NGOs who come at security sector governance from a security or conflict perspective.

As its name suggests, the Liberty Institute<sup>13</sup> is primarily concerned with the protection of civil liberties across Georgian society. Liberty's programmes are thus very broad in scope, from press freedom and freedom of expression through to public accountability in the energy sector. Liberty's involvement in security affairs began with the case of Amiran Meskheli, who despite being physically unwell found himself suddenly drafted into the army after he published a controversial interview with several soldiers. It then began raising concerns that conscription was

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<sup>9</sup> <http://www.nato.ge/en/>

<sup>10</sup> <http://www.cpirs.org.ge>

<sup>11</sup> <http://www.iccn.ge>

<sup>12</sup> <http://www.scirs.org.ge>

<sup>13</sup> <http://www.liberty.ge>

a 'tax on the poor' (as anyone who can afford to avoid conscription through bribery), and highlighting other cases where sick or underage people were drafted illegally. The Liberty Institute also receives complaints about police abuse, and has promoted pilot schemes to set up civic oversight councils in a number of cities. It has also assessed laws relating to police and penal reform. The Liberty Institute has been accused on more than one occasion of being too close to Saakashvili,<sup>14</sup> but denies that this will weaken its ability to act as an independent monitor of individual liberties. It can be expected, however, that its close links to government will give it significant influence over anticipated reforms to the security and justice sectors wherever it chooses to comment, officially or unofficially.

The Georgian Young Lawyers' Association (GYLA)<sup>15</sup> has focused on promoting the rule of law, raising public legal awareness, protecting human rights (including in cases of police brutality or corruption) and the development of the legal profession. As such, they currently do little work on governance of the security sector, except where it touches on other wider justice reforms. However, given the GYLA's important public standing and legal expertise, it could also play a key role in campaigning for and advising on reform security sector reform, should it so desire.

One legally-orientated organisation that has worked directly on the security sector is the Association 'Justice and Liberty', which campaigns for the protection of the rights of conscripts and soldiers. Following protracted discussions, it persuaded the military that the public had a legal right to monitor the army, and agreed to let them into certain military facilities. This led to the publication in 2001 of a book entitled 'The Georgian Army between Law and Reality' which looked at the situation in the army and highlighted certain abuses. This was well read within the army and led to the removal of several corrupt officers. The Association continues to campaign for the rights of conscripts and soldiers.

Finally, the Association for Legal and Public Education (ALPE) is running an awareness raising campaign to promote behavioural change among the public and the police forces of Georgia, supported by the European Union.

#### *International NGOs working in Georgia*

In the field of security sector reform, the most important international organisation working in Georgia is probably the International Security Advisory Board (ISAB). Founded in 1995 under the chairmanship of Gen (ret.) Sir Garry Johnson of the United Kingdom, ISAB initially worked in Estonia, Latvia and Lithuania, advising these governments on security sector reform, before setting up a similar programme in 1999 at the request of the Government of Georgia. The Board has gathered together very experienced members from the UK, the US, Germany and the three Baltic States, and provides strategic policy advice directly to the highest levels of government. In particular, it has reported to the National Security Council on the key directions in which reform of the entire security sector should take and advised it on the drafting of a National Security Concept. ISAB expects its project in Georgia to run until early 2005, after which time it will likely continue to liaise with the government as necessary.

There are a number of international NGOs working together with local partners on various conflict and security matters in Georgia. These include International Alert<sup>16</sup>, Conciliation

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<sup>14</sup> See for example Subeliani, Sozar, 'NGOs Ready To Tackle Government's Failings', *Institute for War and Peace Reporting Caucasus Reporting Service*, No. 12, 23<sup>rd</sup> December 99. Available at: [http://www.iwpr.net/archive/cau/cau\\_199912\\_12\\_04\\_eng.txt](http://www.iwpr.net/archive/cau/cau_199912_12_04_eng.txt); and: "IAGJ Protests Against the Liberty Institute Insolently Interfering in the Activities of the Free Press", *IAGJ Press Release*, 3<sup>rd</sup> April 2003. Available at: <http://www.iagj.org.ge/article2.htm>

<sup>15</sup> <http://www.gyla.ge>

<sup>16</sup> <http://www.international-alert.org>

Resources<sup>17</sup>, the London Information Network on Conflicts and State-Building<sup>18</sup> (LINKS), and the Heinrich-Böll-Stiftung<sup>19</sup>; International Alert also supports the Caucasus NGO Forum, which brings together non-governmental representatives from across the North and South Caucasus. However, their work has been mostly linked to conflict resolution and other dialogue and peace-building initiatives, and so do not deal directly with security sector governance; thus they will not be considered in detail here. London-based Saferworld<sup>20</sup> published a briefing paper on security sector reform in Georgia in September 2002<sup>21</sup>, and the International Institute for Democracy and Electoral Assistance<sup>22</sup> (International IDEA) has also expressed an interest in working on security sector reform.

### *Opportunities and Challenges for Georgian NGOs*

The previous section has listed some of the main organisations that may be said to have an impact over security sector governance in Georgia. This part will look broadly at some of the challenges to their efficiency. Until recently, most observers had been cynical about the strength and sustainability of NGOs in Georgia. Though it was acknowledged, even celebrated, that Tbilisi was a cauldron of activity in comparison to much of the Caucasus, the organisational weakness, donor dependency, and low public awareness of virtually all Georgian NGOs were frequently underlined. The prominent role played by certain organisations in the Rose Revolution has led to a reassessment of civil society, highlighting some of its previously overlooked strengths. Yet how much has really changed? Though this paper is specifically about the security sector, this section will consider the state of NGOs more generally, since those NGOs listed above are in no way separate from the broader trends affecting the development of civil society in the country.

### *Organisational Capacity*

Where organisational capacity is concerned it is of course the case that the same problems remain, as structures and resources cannot change that quickly. Though civil society has certainly grown and developed since the early 1990s, it is still a relatively new phenomenon. Not only does it take time for institutions to form, skills to develop and funding streams to be found, it is also a social, political and psychological challenge to understand NGOs for a country that had no real concept of a 'third sector' during Soviet times. This is a challenge for outsiders as well, however, as it is too easy to dismiss those institutions that do not conform to the Western understanding of what an NGO should ideally look like.

There are in fact very few NGOs that resemble established Western organisations with defined boards, management structures, permanent staff, and well-equipped offices. The number of registered NGOs in Georgia apparently stands at over 4,000<sup>23</sup>, though estimates of how many of these are genuinely active range from an optimistic 500<sup>24</sup> to a more pessimistic figure of 60 to 70.<sup>25</sup> One of the main reasons is funding. Georgia's economy is in a parlous state, and even those that are wealthy have not been philanthropically inclined. Georgian NGOs are thus

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<sup>17</sup> <http://www.c-r.org>

<sup>18</sup> <http://www.links-london.org>

<sup>19</sup> <http://www.boell.de>

<sup>20</sup> <http://www.saferworld.org.uk>

<sup>21</sup> Shukuko Koyama, "Security Sector Reform in Georgia", *Saferworld Research Report*, (London: Saferworld, 2002).

<sup>22</sup> <http://www.idea.int>

<sup>23</sup> Levan Berdzenishvili, 'Networking and Cooperation of NGOs', 28<sup>th</sup> December 2001, <http://www.cipddd.org/gdiscuss/room01/disc1/00000010.htm>

<sup>24</sup> "Women NGOs in Georgia", Women's Initiative for Equality, November 1999. Available at: [http://www.osgf.ge/wie/2\\_1.html](http://www.osgf.ge/wie/2_1.html)

<sup>25</sup> Interview with Levan Ramishvili, 4<sup>th</sup> February 2004.

overwhelmingly dependent on Western donors for support. The issue, however, is less the lack of money than the fact that donors tend to finance NGOs on a tightly defined project basis, leaving little left over for administrative or organisational costs. Furthermore, few can rely on getting projects regularly enough to commit to hiring regular salaried staff, beyond those that are traditionally trusted and favoured by donors. As a result, many NGOs are either made up of several individuals who each have several jobs and co-operate under the umbrella of their NGO when they feel it to be beneficial, or are little more than one-man shows.<sup>26</sup> Many registered NGOs were either set up to work on one specific project (or in the hope of getting funding for a project) or, regretfully, without even the intention of doing much at all.

### *Perceptions of NGOs*

One effect of this situation has been that few NGOs can really claim to have much of a constituency. This is true even of many of the more active ones, that are sometimes well-known and respected within the right circles but are not known by the public at large. At times, this has led to public scepticism over the effectiveness and motives of NGOs. Given that money from foreign donors represents a significant source of income in a state with limited opportunities, there are often suspicions that these groups are little more than ‘*grantichamia*’ (grant-eaters, ‘*grantoyedy*’ in Russian) and that they respond more to the needs of the donor hand that feeds them than to the real needs of the public. For example, in a survey of public attitudes towards human rights in 2002, 49.8 per cent of Georgians believed that human rights organisations “engage mostly in self-advertising and receiving foreign grants, and their real assistance to people is insignificant.”<sup>27</sup>

It seems, however, that attitudes towards NGOs may have changed in the wake of the Rose Revolution. Not only did several organisations campaigning on issues such as fair elections, democracy and the rule of law (including the Liberty Institute and GYLA, as discussed above) gain genuine public support and currently enjoy high recognition, the Revolution has kindled a pride among nearly all Georgians in the relative health of their country’s awareness of democratic and civic values.

### *NGOs and Government*

If relations between NGOs and the broader public have altered since the Revolution, this is as nothing in comparison to the changes that are taking place to the relationship between NGOs and the government. Given the sensitive nature of military and security issues, a shift in this relationship is of particular significance to the success or otherwise of attempts to improve security sector governance.

As observed in the introduction, there has been a rapid changeover of staff across government, as many of the new political leaders have close links to some of the most prominent NGOs, and have invited a number of former NGO members to work for them. Though this process appears at the time of writing to be happening less quickly in the ‘power ministries’ (Ministry of Defence (MOD), Ministry of Interior (MOI), and Ministry of State Security (MSS)) – perhaps because the new president is particularly careful to ensure that he will have control over them – young but experienced professionals are joining these services and planning sweeping

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<sup>26</sup> This section echoes much of what is written in Anna Matveeva, “The Conflict Prevention Capacities of Local NGOs in the Caucasus”, in EastWest Institute/Forum on Early Warning and Early Response Survey, *Conflict Prevention in the Caucasus: Actors, Response Capacities and Planning Processes*, (London: EWI (New York) & FEWER, December 2001). Available at: <http://www.fewer.org/caucasus/studcap.pdf>

<sup>27</sup> Regional Project “South Caucasus Network for Civil Accord”, ‘Situation with Human Rights in Countries of South Caucasus: Results of sociological surveys 2002’, Armenian Sociological Association, Yerevan 2003.



reforms to improve civilian control over these organisations and increase their efficiency. One particularly positive sign is the establishment of a ‘reform group’ within the MOI. This is chaired by the Minister of the Interior, and brings together nine non-governmental experts from some of the organisations listed above, as well as other academics and lawyers (it is co-ordinated by a secretary from within the ministry). The group discusses the paths that reforms should take and provides suitable recommendations to the ministry. As the group is headed by the Minister, it can be expected that many of these recommendations already have approval from the top, but it remains to be seen how seriously they will be implemented. Furthermore, the group apparently works on an *ad hoc* basis, rather than being an institutionalised consultation process, which may lead to fears that its influence will either diminish or that the group will simply no longer be convened.

In the months since Shevardnadze’s resignation, however, informal links and dialogue have been crucial, and are probably of much greater significance than the few formal co-operation mechanisms. Not only do many of the young reformers have close friendships and ideological common ground with prominent civil society leaders, a lot have also been lectured or trained at some point by some of the academics working on security matters for NGOs. On the other hand, it should not be forgotten that ‘civil society’ is not homogeneous and not all NGOs agree on any given issue, nor do they all have equal levels of access to government.

### *The Security Sector Beyond Tbilisi*

This report has so far focused largely on the relationship between Tbilisi-based NGOs and the security sector and central government. This is because security sector governance is primarily a national issue.<sup>28</sup> Furthermore, the topic is specific enough that (as has been shown) there are few NGOs working directly on this matter even in the capital. There are occasional examples of organisations that have touched on security sector governance as part of their other work; for example, Intercultural Bridge (MOST), is planning to hold meetings on civil-police relations in Kvemo Kartli as part of a joint project on small arms in the area. However, there appears to have been no co-ordinated efforts to look at governance of the security sector (particularly the police) across the rest of Georgia.

This report will now consider three regions within the boundaries of the internationally recognised territory of the Georgia which have significantly different security dynamics, to the extent that they are in effect different security sectors. As noted in the introduction, this should not be seen to indicate any political views on the part of the author regarding the status of these areas. Firstly, Ajara. Since the early 1990s, the autonomous region of Ajara often deliberately isolated itself from Tbilisi rule. It had, until May 2004, its own MOI and MSS, and at times ‘closed’ the administrative border with the rest of the country. It was run in an authoritarian fashion by Aslan Abashidze, who allowed virtually no political space for anyone else, either in terms of local opposition or in other Georgian parties. There have been few NGOs active in Ajara, and it has been almost unthinkable that any should try to criticise or even communicate with the security sector.

Secondly, Abkhazia. Since expelling Georgian troops in 1993, Abkhazia has operated as an unrecognised state with its own organs of government. Peace negotiations have not so far succeeded in making any major breakthrough, and there have been sporadic outbreaks of violence around the zone of conflict. As a result, the Army holds a particular place in Abkhaz society, as there is an understanding that it has won them ‘independence’ and protects them against further violence. This, combined with the small population of Abkhazia, means that security sector governance is not a topic that has received much attention as yet (there are fewer than fifty NGOs, many of which are part-time, though the capacity of civil society is slowly developing)

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<sup>28</sup> Heiner Hänggi, “Making Sense of Security Sector Governance”, pp. 5-6.

though some NGOs meet regularly with government officials to address areas of concern, and the security sector is probably touched on during other work on human rights and law-enforcement. It is worth noting that the veterans' organisation, Amtsakhara, a strong political force in opposition to the ruling regime, does not have a clear agenda for army reform beyond ensuring that servicemen are well provided for.

Finally, South Ossetia (Tskhinvali region). Like Abkhazia, South Ossetia (often referred to as the Tskhinvali region by Tbilisi), also broke away from Tbilisi's rule, and has also functioned as an unrecognised state since July 1992. Though relations between Tskhinval(i) and Tbilisi are better than those between Tbilisi and Sukhum(i), a final settlement still appears out of reach. The main question for security sector governance in such circumstances is 'who governs?', and joint peacekeeping forces and police co-ordination initiatives, supported by the OSCE (the main international organisation involved in mediating the conflict), have been central to reducing tensions between the sides. There has been little civil society involvement in the security sector, however. South Ossetia has a very small population (well under 100,000), and thus few active NGOs. The main focus has been on poverty reduction, economic development, and support for internally displaced persons and veterans of the conflict, though some of these do effective work on areas such as human rights and democracy. The OSCE supports this work as part of its 'human dimension' activities.

### *Conclusion*

This paper has attempted to briefly outline some of the activities that NGOs are doing in the field of security sector governance, as well as discussing some of the social and structural factors that may affect the development of this work. Though ideas of democratic control over the armed forces and civilian oversight of and interaction with the police have a long history, even in more developed countries the crucial role that NGOs can play in improving security sector governance has only recently been recognised. It is thus not surprising that there are few NGOs in Georgia working specifically on this topic. Yet as has been shown, there are already a number of organisations in the country whose work includes monitoring and advising on the development of the security sector. In the last fifteen years, a core of skilled intellectuals and professionals has developed that has had some success in building understanding on the nature of the post-Soviet security sector and in highlighting certain problems stemming from this. The state can now take advantage of this expertise, both through recruitment of some of these individuals, and by consultation and co-operation with NGOs, helping to boost the quality of the dialogue on reform; it is likely that the Saakashvili government, which understands civil society much better than Shevardnadze ever did, will be more prepared to work with NGOs in order to achieve its aims.

Once the promised large-scale reforms of the security sector get underway, it will be important to ensure that civil society organisations are able to play the bridging and monitoring role that has strengthened security sector governance in most Western countries. From the government, this will require acknowledgement that NGO participation in security matters ultimately strengthens the security of the state, and a commitment to continue this co-operation. Realistically, however, much of the responsibility for supporting and developing civil society in Georgia will continue to fall on international donors. The number of professionals with sufficient knowledge of civilian management of the security sector is low even in government, and donors should not expect to find many skilled or experienced NGOs – though many organisations may be interested in developing these skills. A key issue therefore will be to train NGOs to raise awareness and understanding of security sector governance issues (which could potentially be done alongside government officials). Given the politically sensitive nature of security issues, donors should be careful to support only those who can be trusted to be independent and objective, rather than excessively pro- or anti-government. Efforts should also be made to ensure that this support is spread across the country, rather than being either too capital-city focused or

heaping excessive resources on high-profile conflict (or potential conflict) regions, since trust in the security sector is a key issue for citizens all around Georgia.

Lastly, the international community may want to consider the possibility of expanding such activities to Abkhazia and South Ossetia. There are strong arguments to suggest that mistrust of each other's security sector impedes conflict resolution between Tbilisi and Sukhum(i) and Tskhinval(i) respectively. The populations of both sides would have considerably more trust in reformed, democratically controlled forces. Yet as the international community wishes to avoid being perceived as acknowledging the legality of these unrecognised states, formal support to their governments for security sector reform activities would be highly problematic. It may however be possible to sponsor reform indirectly through building the capacity of civil society in these areas. If this does indeed lead to more accountable security forces, it will be a significant contribution to peace-building across the region.

## Chapter 10

### Emerging Security Sector Governance in Georgia: Problems and Prospects

*Dov Lynch*

#### *Introduction*

Even if the Republic of Georgia has existed independently since 1992, it remains logical to discuss security sector governance as an *emerging* question. For much of the early 1990s, applying the notion of ‘security sector governance’ to a state at war and barely on its feet stretched the concept too far. The Georgian state embarked on a process of consolidation from 1995 onwards, initiated with the approval of a Constitution, and Georgia experienced thereafter several years of growth and relative political stability. In the late 1990s and early 2000s, the main lines of security sector reform were formulated on paper, and limited changes were effected in the Ministry of Defence and the armed forces. However, as a whole, security sector reform remains an emerging concern in so far as most of the work remains ahead for the new Georgian leadership in terms of addressing a distorted legacy, clarifying the scope of problems and prioritising amongst them, sketching out a coherent programme and implementing it. A tall order.

Two points should be noted from the outset. The first concerns the security sector in Georgia, the number of the agents involved and the nature of their interaction. Many have argued that the notion of ‘security sector reform’ is useful in drawing attention away from more limited understandings of military reform. Traditional discussions of civil-military relations tended to focus on the dyadic relationship between civilian political structures and a professional military agency. By contrast, reforming the security sector entails a more complex understanding of these two poles and adds new actors to the picture.<sup>1</sup> The concept takes in all of the state bodies that are authorised to use force legitimately, including not only the armed forces but the Border Guards, ‘third forces’ such as the Gendarmerie, and also the intelligence and security agencies. The concept encompasses all of the civilian management and oversight bodies, the judiciary, as well as relevant sectors of civil society. The concept addresses complex relations between a wide range of agents.<sup>2</sup>

The Georgian security sector is all the more complex. The subject concerns first the security sector of the Republic of Georgia, that is the armed forces, the border services, the interior troops of the Ministry of Interior and the Ministry’s special purpose forces, the Ministry of Security, the State Intelligence Department, and the State Safety Service, as well as the relevant parliament committees, the structures of executive office and the judiciary. Second, a comprehensive view of the security sector must include the structures under the control of the separatist authorities in Abkhazia and South Ossetia as well as the force structures of the Autonomous Republic of Ajara. Third, one should include also the paramilitary forces that have been active on Georgian territory, mostly near and in the Gali region and in limited numbers in the Pankisi Valley. Fourth, a full picture should take account of the presence of foreign security

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<sup>1</sup> See, for example, the *Security Sector Reform Policy Brief*, put out by the British Government, (jointly by DFID, the Foreign Office and the Ministry of Defence: 2003). Available at: [http://www.gfn-ssr.org/edocs/gfn027\\_ssr\\_policy\\_brief.pdf](http://www.gfn-ssr.org/edocs/gfn027_ssr_policy_brief.pdf)

<sup>2</sup> On general considerations of security sector reform and questions of governance, see Michael Brzoska, *Development Donors and the Concept of Security Sector Reform* (DCAF: November 2003); Dylan Hendrickson, *A Review of Security Sector Reform* (Conflict, Security and Development Group, Working Paper, Centre for Defence Studies: London, September 1999) <http://csdg.kcl.ac.uk/Publications/assets/PDF%20files/Working%20paper%20number%201.pdf> ; and Neil Cooper and Michael Pugh, *Security Sector Transformation in Post-Conflict Societies* (Conflict, Security and Development Group, Working Paper, Centre for Defence Studies: London, February, 2002). <http://csdg.kcl.ac.uk/Publications/assets/PDF%20files/Working%20paper%20number%205.pdf>

forces that impact on the functioning of Georgia's security sector: the presence of Russian armed forces in bases on Georgian territory, the CIS peacekeeping operation along the Inguri River, the limited presence of US forces in the Georgia Train and Equip Programme (GTEP), and also the deployments by the UN and the OSCE in Abkhazia, South Ossetia and on Georgia's border with Chechnya. Viewed from this perspective, the complexity of the security sector in Georgia seems nightmarish, resembling less a bipolar world and more a shattered universe.

A second point concerns the nature of 'governance' regulating relations between agents in this security sector. It has become accepted that traditional civil-military relations are never fixed once and for all but fluctuate; this is all the more true for governance in a complex and fragmented security sector. Relations resemble more a game, with a set of actors that is more or less clearly defined and regulated by rules that are more implicit than explicit, which may evolve rapidly and in such a way that the nature of the game changes and new actors are included. As will be discussed, Mikheil Saakashvili is struggling with a particularly distorted game that emerged under Shevardnadze, characterised by fragmented and deeply under-funded power agencies, subjective forms of control over these agents, weak civilian oversight, intense corruption, no legitimacy in society at large, and the absence of a concept of overall reform.

This chapter will not examine the state of each of Georgia's power agencies, nor the role of elites and civil society, as these questions have been addressed in previous chapters. The focus of this chapter is four-fold. First, the chapter will delineate the objective difficulties that affected Georgia's security sector since 1992 in order to clarify general dilemmas. A second part examines the nature of the security sector game as it had crystallised by the last years of the Shevardnadze presidency. Third, the chapter explores the strengths and weaknesses of the first steps taken by the new leadership in 2004 to change the rules of the game. The last section proposes some general principles for reforming the Georgian security sector.

### *Difficulties and Dilemmas*

The new Georgian state, and its leaders, has faced a number of objective obstacles that render security sector reform inherently difficult. It is worth examining these before turning to subjective factors that impacted on security sector governance by the late years of Shevardnadze's leadership.

First, Georgia has been undergoing a process of multiple transformations since 1992. The principal intellectual and policy prism for understanding developments in Georgia (as in the former Soviet Union as a whole) has been that of 'transition.'<sup>3</sup> According to Thomas Carothers, the transition paradigm was based on several core assumptions.<sup>4</sup> The first is that a country is, indeed, in transition from dictatorial rule to democracy. In this approach, the process of transition itself is considered more important for the outcome of change than the structural factors of a particular state – previous experience with democracy, ethnic homogeneity, level of economic development. In this perspective, *democracy* building – a focus on the nature of ruling regimes – is given more importance than *state* building.

In fact, the notion of transition is too light to characterise the overwhelming process of *transformation* thrust on Georgia after the Soviet collapse.<sup>5</sup> Many of the assumptions underpinning the notion of a transition are misleading in the Georgian case. Georgia's transformation has encompassed the building of new institutions, new state institutions, new

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<sup>3</sup> This idea is developed in the author's 'A Regional Insecurity Dynamic,' in Dov Lynch (ed.), 'The South Caucasus: A Challenge for the EU', *Chaillot Papers*, No. 65, December 2003), p. 10-12. Available at: <http://www.iss-eu.org/chaillot/chaill65e.pdf>

<sup>4</sup> Thomas Carothers, 'The End of the Transition Paradigm,' *Journal of Democracy* Vol. 13, No. 1, 2002, p. 5-21. Available at: <http://www.journalofdemocracy.org/articles/Carothers-13-1.pdf>

<sup>5</sup> Archie Brown develops this argument in his book *The Gorbachev Factor* (Oxford University Press: Oxford, 1997).

borders, new identities, new foreign policies, and new military systems. Change has occurred at the economic, political, external policy and national levels on a scale that is far greater than the ‘transitions’ that occurred in southern Europe in the 1980s or in Latin America at various periods since the 1960s.

Moreover, Georgia may not be moving towards democracy. In Carothers’ words, states such as Georgia ‘have entered a political grey zone. They have some of the attributes of democratic political life [...] Yet they suffer from serious democratic deficits, often including poor representation of citizens’ interests, low levels of political participation beyond voting, frequent abuse of the law by government officials, elections of uncertain legitimacy, very low levels of public confidence in state institutions and persistently poor institutional performance by the state.’<sup>6</sup> The problems that affect democratic standards in Georgia may not be transitory but enduring features. Georgia has developed bits and pieces of the institutional façade of democracy but its substance is not fully realised.

Viewing developments as ‘transformation’ and not ‘transition,’ places the challenge facing the Georgian leadership in the correct perspective. Far more than a simple ‘transition,’ Georgia has experienced a transformation from its previous embodiment as a Soviet Socialist Republic inside the USSR – in economic terms, from a command economy to a market-led economy; in politics, from one-party authoritarian system to multi-party pluralist politics; in security thinking, from the defence of the proletarian revolution to the defence of an emerging state; and in federal terms, from a multi-national Soviet federation to new relations between Georgia’s regions and republics. In these circumstances, security sector reform is but one priority amongst many pressing challenges.

Second, the Georgia that emerged in 1992 inherited a mixed legacy from the Soviet Union with regard to its security sector. In some respects, Georgia started from a blank slate. Tbilisi had no armed forces and, thus, faced the challenge of building forces from scratch, including a General Staff structure and ministerial organisation. The new leadership in Tbilisi was also missing other components of force that would have allowed it to ensure control over its borders and air space – Tbilisi had no border forces and no air defence structures. What’s more, the new Georgia lacked indigenous training institutions with which to build a new officer corps. The Georgian economy also only inherited minimal and incomplete parts of the integrated Soviet military-industrial complex.

The new leadership in Tbilisi also inherited a heavy Soviet legacy that continues to weigh over it. The later years of Mikhail Gorbachev’s leadership saw the collapse of the prestige and legitimacy of service in the armed forces throughout most of Soviet society. The conditions of service, combined with budding nationalism in many parts of the USSR, eroded the foundations of popular support to what had been a key Soviet institution since the Second World War. There was an initial brief period of nationalist euphoria in Georgia in 1991-1992, during which a number of young Georgian men volunteered for service in the new National Guard structure. Thereafter, very quickly, the lack of prestige and legitimacy associated with military service re-emerged throughout Georgian society. Difficult conditions of service explain much in the high figures of draft evasion and desertion throughout the 1990s. These figures also highlight a more profound de-legitimising process that occurred in Georgian society with regard to the new state as it emerged under Shevardnadze.

In addition, Tbilisi inherited a number of former Soviet structures and large numbers of Soviet-trained personnel. The Georgian Ministry of Interior was created on the basis of the previous Soviet structure, and thereby inherited a bloated, largely inefficient and heavily corrupt staff, as well as the worst of Soviet recruitment practices in terms of nepotism and personal

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<sup>6</sup> *Ibid.*, pp. 9-10.

connections.<sup>7</sup> The Ministry of State Security was formed on the basis of the former Soviet KGB staff and structures. These legacies created distorted structures that were resistant to change. The heavy Soviet connection also meant a predominant Russian influence in the Georgian power ministries, especially in the first years of their existence.<sup>8</sup>

The third objective factor conditioning the Georgian security sector has been the experience of war in the early 1990s and the enduring possibility of renewed conflict. In the early 1990s, nascent Georgian forces were involved in a small-scale conflict in South Ossetia, a war in Abkhazia and recurrent episodes of civil war. Without established force structures at the time, the government in Tbilisi improvised in a hodgepodge manner. The war in Abkhazia was fought not only by Georgian National Guard units, then led by Tengiz Kitovani, but also by the paramilitary forces of the *Mkhedrioni*, commanded by the convicted criminal Jaba Ioseliani. The chaotic make-up of forces deployed in the conflicts distorted the ends of Georgian policy, undermining in fact the notion there was a 'Georgian' state policy at all in a cocktail of crime, improvisation and confusion.

The experience impacted on the Georgian security sector in a number of ways. Certainly, defeat in the conflicts in South Ossetia and Abkhazia has not had a positive or stimulating effect on Georgia's security forces. For the most part, defeats on the battlefield have been attributed to Russian intervention and not to the core weaknesses of Georgia's forces, their tactics and operational doctrines and failings of command and control. As a result, there has been no systematic learning process undertaken within the security sector on the reasons for the failures of the early 1990s and how to address these failings. Moreover, the battlefield defeats have done nothing to increase the prestige of the security forces in the eyes of Georgian society, exacerbating their crisis of legitimacy.

In addition, none of the conflicts has been settled. Throughout his leadership, Shevardnadze was always careful to retain the use of force as a policy option towards settling these conflicts. Tbilisi never ruled out the choice of renewed war.<sup>9</sup> Even for a well-organised government with the best of intentions, security sector reform in conditions of active or imminent conflict is a challenge. Not least, because Georgian defeats in these conflicts has left large swathes of territory beyond Tbilisi's control.

A last factor impacting on security sector governance concerns Georgia's geopolitical environment and the role of foreign states and the international community. Put bluntly, Georgia's security environment is not conducive to coherent and poised reform. Internally, Tbilisi inherited a weak federal structure that contained ethnic minorities with their own autonomous agencies of representation as well as regions beyond Tbilisi's control, such as the Autonomous Republic of Ajara. These internal security challenges cross over with porous and weakly controlled borders to render Georgia vulnerable to wider Caucasian security challenges. The spill over of the second conflict in Chechnya into Georgia's Pankisi Valley is a case in point. On a seemingly more positive side, the exploitation and transportation of the energy reserves of the Caspian Sea has also complicated Georgia's security position, by attracting significant and conflicting external attention.

Since 1992, Russian-Georgian relations have gone from bad to worse back to bad again.

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<sup>7</sup> See the discussion of David Darchiashvili, 'Georgia: A Hostage to Arms,' in Anna Matveeva and Duncan Hiscock (eds.), *The Caucasus: Armed and Divided: Small Arms and Light Weapons Proliferation and Humanitarian Consequences in the Caucasus*, (Saferworld: London, April 2003), p. 69-102.

<sup>8</sup> Russian influence was especially heavy with the Ministry for State Security led by Igor Gongadze, and with the Ministry of Defence led by Vardiko Nadibaidze, in the early and mid 1990s.

<sup>9</sup> For example, Shevardnadze's last Minister for State Security, Valeri Khaburdzania declared that Tbilisi had made contingency plans for the use of force to resolve the conflict with Abkhazia if the separatist region exported terrorism and organised crime into Georgia proper; see 'Georgian State Security Minister says Use of Force in Abkhazia "Theoretically Possible"', *Civil Georgia* (26<sup>th</sup> June 2003). Available at <http://www.civil.ge/eng/article.php?id=4454>

All governments in Moscow have stressed Russia's interests in Georgia, and many of them have made use of a range of policy tools at their disposal to advance these interests. These tools of leverage include Russian military bases, the Russian peacekeeping operations in Abkhazia and South Ossetia, as well as control of strategic sectors of the Georgian economy. At the same time, since 2001, Georgia has welcomed U.S. troops engaged in GTEP and also heavy Turkish military engagement. Shevardnadze's attempt to balance Georgia's *foreign* policy direction through a policy of ambiguity and multiple approaches has become reflected *inside* the country itself, embodied in the presence of foreign troops from states with different, sometimes openly conflicting, interests.

Moreover, the focus of foreign actors engaged in security sector reform in Georgia has been narrow. As Georgia's most important foreign partner, the U.S. has provided assistance since 1998, in its 'Border Security and Law Enforcement Programme,' to the Georgian border and law enforcement agencies. However, Washington has dedicated most of its attention and resources since 2002 to the reform of the Ministry of Defence and armed forces. Patterns of security sector assistance by members of the North Atlantic Treaty Organisation (NATO) have also concentrated on the traditional military structures. As a result, international assistance has left aside arguably more important security forces, which have not received the same levels of assistance nor benefited from the similar attention to push through reform. These circumstances highlight the point also that security sector reform has been left to the purview of individual states. Some actors of the international community, such as the United Nations (UN), have no mandate for such activities, whereas others, such as the EU, has been very reluctant to assume such responsibilities. A gap has emerged in international assistance to security sector reform in Georgia.

At a wider level, pressures on Georgia from the international community have been contradictory. Shevardnadze declared a desire to join NATO at some point in the future. In addition to healthy security sector governance, NATO membership requires that a 2% of GDP be devoted to the security sector spending. While Georgian membership of NATO is very far off, Tbilisi has consistently received the message that it would have to increase spending in order to reform its security sector. At the same time, Georgia has faced constant pressure, especially from the late 1990s onwards, to reduce government spending as a whole, and defence expenditure in particular. For good reason, one might argue: defence spending is not a high priority in a country with such levels of poverty and such development needs. For example, the International Monetary Fund (IMF) Mission in July 2003 recommended that Tbilisi cut spending by USD44 million, of which security expenditure represented USD4.6 million.<sup>10</sup> While reducing government spending makes sense for economic reasons, the cuts reinforced a vicious circle in already chronically under-financed security agencies.

Three dilemmas stem from the objective challenges affecting security sector reform in Georgia.<sup>11</sup> First, how can a state undertake coherent and fitting security sector reform in circumstances of transformation, when under-financing is a chronic condition? Second, how can security sector reform be undertaken in a state where renewed conflict is a constant possibility? Third, how can security sector reform be pushed through coherently in a state without control over all of its territory? These dilemmas have plagued security sector governance in Georgia since 1992.

### *Rules of the Game under Shevardnadze*

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<sup>10</sup> 'Government to Cut Defence Funding,' *Civil Georgia*, 9<sup>th</sup> July 2003. Available at: <http://www.civil.ge/eng/article.php?id=4535>

<sup>11</sup> See also the discussion of S. Neil MacFarlane, 'Visions of the Caucasus,' in *Security Sector Governance in the South Caucasus: Challenges and Visions* (DCAF Conference Proceedings: Reichenau, 21-24 November 2003).



In addition to the objective difficulties, a number of subjective factors came to determine the nature of security sector governance under Shevardnadze. The rules of the security sector game as they emerged under Shevardnadze included both internal and external security actors with the overall implicit objective of retaining the regime in power. The main lines of security sector governance - if the term is appropriate - were determined by the single objective of protecting the Shevardnadze leadership from either internal or external challenges. At periods when the Georgian president was himself associated with the country's future, such as after the civil war in 1992 and during the Abkhaz conflict in 1993, the objective of retaining personal power coincided with the public good of protecting the Georgian state. By the early 2000s, however, the objectives leading much of government policy and the generic public good of the Georgian state was dis-articulated. There was no explicit agreement between the main actors under Shevardnadze's leadership on rules of conduct. Rather, the game was a diffuse and implicit universe of actors and expectations, which was based by on four unwritten rules.

First, the distinction between formal structures and informal realities must be made. Under Shevardnadze's leadership, Georgia acquired formal structures for security sector governance in terms of the constitutional definition of the roles of the executive and the legislature in determining and monitoring policy. From 2001 onwards, the Georgian government undertook a number of policies to reform different parts of the security sector. For the Ministry of Defence, the process had started earlier in 1999 with the creation of the International Security Advisory Board (ISAB) to provide strategic guidance to the reform of the armed forces (but not only).<sup>12</sup> In late 2001, Shevardnadze sacked the top leadership of the deeply corrupt Ministry of the Interior and the Ministry for State Security, and in December decreed the creation of a Inter-Agency Commission, under the National Security Council, for the purpose of formulating reform concepts for the whole security sector, and especially the Ministry of Interior and the state security services.<sup>13</sup> In 2001, the Georgian government also adopted the 'Programme Project Budgeting System' to establish a more clear and transparent defence budgeting process.

In practice, Georgia's security sector remained unreformed. As previous chapters in this volume make clear, the Ministry of Interior and the Ministry of State Security, despite having new and supposedly reformist ministers, went untouched. The Inter-Agency Commission produced reform concepts by 2003 but they were not officially endorsed.<sup>14</sup> Changes did occur in the Ministry of Defence and the Border Guards service, but mainly at the persistent insistence of foreign states. The result in the armed forces was an institution on two tracks: the great bulk of the armed forces remained largely unreformed, under-financed and untrained, while small parts of the armed forces received specialist attention from foreign states, and started operating on new recruitment standards and operational doctrines. Moreover, despite having recognised the need for a comprehensive Georgian Security Concept since 1996, Shevardnadze never pushed the policy beyond the declarative stage.<sup>15</sup> As discussed in other chapters of this volume, the Shevardnadze leadership had become a system of rule by the early 2000s that was based on the crossover of public and private interests and the cooption of powerful groups of elites. Serious reform of Georgia's security sector was never envisaged, as it would have challenged the

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<sup>12</sup> *Report to the National Security Council of the Republic of Georgia*, drafted by Sir Garry Johnson (ISAB: April 1999).

<sup>13</sup> See the discussion by David Darchiashvili and Ghia Nodia, *Power Structures – The Weak State Syndrome and Corruption in Georgia* (Discussion Paper, No. 5, 'Building Democracy in Georgia,' IDEA: May 2003).

<sup>14</sup> See *The Concept of Reform of the Security and Law Enforcement Services of Georgia* <http://www.supremecourt.ge/english/Conception.pdf> and *The Concept of Reform of the Ministry for State Security for Georgia*, which were made public in 2003. Available at: <http://www.supremecourt.ge/english/Annex12.pdf>

<sup>15</sup> See the discussion of Robert L. Larsson, *Georgia's Search for Security: An Analysis of Georgia's National Security Structures and International Cooperation* (Georgian Foundation for Strategic and International Studies, Discussion Paper No. 1: Tbilisi, 2003), and Robert L. Larsson, 'Georgia's Missing Security Compass,' *Central Asia and Caucasus Analyst* (July 2, 2003).

foundations of the ruling order.

Moreover, given multiple assassination attempts on Shevardnadze's life and the political role that bits and pieces of the power ministries had played, President Shevardnadze saw good reason for not challenging the security structures that had emerged and for not seeking to clarify lines of duplication, in order to fragment and divide the security sector. Different parts of the security sector moved in and out of presidential favour over the course of Shevardnadze's rule.

A second implicit rule to the game concerned finances. Under Shevardnadze, the power ministries were consistently under-financed. This under-financing was firstly a response to the needs of transformation, where security spending is not a high priority, and also from the pressures of the IMF. Under-financing also highlighted a decision taken by Shevardnadze not to attribute significant amounts of money to the power ministries to avoid building more coherent and combat-capable structures for fear of the role they may acquire on the domestic stage. The blind eye turned by Shevardnadze to endemic corruption throughout the security sector offset deliberate under-financing. Endemic corruption was a predictable result of these circumstances, as the lower levels of security bodies developed survival tactics to offset pittance salaries that were never paid on time. At the higher level, however, corruption symbolised the cooption of powerful elites into a regime that was itself segmented and corrupt.

A third unwritten rule of the game concerned the settlement of the conflicts in South Ossetia and Abkhazia. After the failure to achieve the restoration of territorial control by force in the early 1990s, the Georgian leadership developed a *non-policy* to the settlement of the conflicts. The non-policy had several dimensions. First, President Shevardnadze was never willing to grasp the nettle of defeat suffered on the battlefield or to entertain the possibilities of serious compromise with Abkhazia or South Ossetia. In addition, Shevardnadze remained fixated on the notion of an external *deus ex machina* to solve the conflicts on Georgian terms. The external saviour of choice varied at different points over the 1990s. In 1994, faced with very limited options, Shevardnadze favoured Russia – the Georgian president approved the deployment of Russian peacekeeping operations and allowed Russia to retain four military bases in 1994 with the implicit understanding that Russia would not only stop providing support to the Abkhaz but help Tbilisi restore control over its lost territory.<sup>16</sup> Later in the 1990s, Shevardnadze's hopes fixed on military assistance by the U.S. and other members of NATO. The launch of GTEP was presented by Tbilisi as a first step to the restoration of Georgian territorial integrity. The fixation on an external saviour attenuated any urgency in Tbilisi to accept compromise in order to settle the conflicts.

At the same time, Tbilisi sought to isolate the separatist region of Abkhazia through 1996 trade restrictions by the Commonwealth of Independent States (CIS) and to pressure the separatist authorities through tacit support to the activities of the paramilitary groups, the *White Legion* and the *Forest Brothers*. The objective was to delay until the Georgian government was strong enough to restore control by force or until it had secured an external source of support willing to do so. Certainly, comprehensive settlement of the conflict with Abkhazia was never seriously envisaged by Tbilisi, despite years of Georgian participation in the negotiations under the UN-led 'Geneva Process.' Shevardnadze's support to the Abkhaz government-in-exile, led by Tamaz Nadareishvili, was another facet of the non-policy of settlement. These structures were created by Shevardnadze to offset pressures *inside* Georgian politics and not to advance conflict settlement, which their existence in fact undermined.

A fourth rule of the game concerned the absence of the Georgian Security Concept. Despite internal and external pressures to clarify Georgia's main foreign policy direction, the main threats to Georgian security and responses to these, Shevardnadze avoided approving a Georgian Security Concept. A first reason for this avoidance was the former president's desire to

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<sup>16</sup> On the misunderstood bargain between Moscow and Tbilisi, see the author's *The Conflict in Abkhazia: Dilemmas in Russian 'Peacekeeping' Policy* (Chatham House Discussion Paper No. 77: London, 1998).

avoid clarifying the shape of Georgia's security sector and undertaking comprehensive reform. Secondly, Shevardnadze sought to avoid clarifying definitively Georgia's foreign policy orientation in order to not create external threats that might challenge his domestic hold on political power. As a result, Shevardnadze never fully engaged Georgia either on a pro-Western direction, on the lines followed by the Baltic states, or on a pro-Russian direction, on the lines that Armenia has taken. As analysed in this volume, Shevardnadze's policy towards Russian basing rights fluctuated according to calculations of the need to sustain the foundations of power.

The results of this distorted game were four fold. First, by 2004, Georgia's security sector remains largely unreformed. The sector is fragmented, institutions have overlapping responsibilities, and subjective forms of political control predominate. Second, corruption has become endemic throughout the security sector. Although his words must be understood in the right political context, the description by Saakashvili's new Minister of Interior, Giorgi Baramidze, of state of affairs he inherited is telling: 'The system was 100% built on corruption. Every single relationship inside this ministry and all relations between the ministry and the public were based on corruption. This ministry was involved in the drug business, weapons smuggling, extortion, and kidnapping.'<sup>17</sup> Third, as a whole, the security agencies had poor legitimacy in Georgian society. The conditions of service were terrible for young conscripts, thereby increasing draft evasion, and many security agencies had developed predatory relations with society as a whole. Finally, the ambiguity of Georgia's external direction was being played out internally through the presence of foreign security forces and the non-settlement of Georgia's conflicts.

### *Saakashvili's First Steps*

In January 2004, Mikhail Saakashvili did not inherit a blank slate but an enfeebled state with a distorted, unreformed and heavily corrupt security sector and a disenchanting and impoverished society. The new leadership has sought to redraw the game as it emerged under Shevardnadze. The wave of high-level arrest and the countrywide crackdown on criminal groups has been the most visible sign of new ambitions. With regard to security sector governance, Saakashvili has taken steps at three levels.

First, both Saakashvili and Zurab Zhvania, the new Prime Minister, have declared security reform a priority of the new government.<sup>18</sup> Tbilisi has made clear its determination to implement the reform of the security sector, which had remained declaratory under Shevardnadze. Personnel changes have 'civilianised' the leadership of the power ministries, and substantial reductions are planned in each of them. Lines of duplication will be eased through the incorporation of the Border Guard service into the Ministry of Interior and its reform to assume a greater policing role in a Ministry, which is itself moving towards more preventive and policing functions. As such, the Interior Troops will come under the control of the Ministry of Defence. Moreover, the widespread crackdown on illegal groups signals Tbilisi's will to restore a legitimate monopoly on the use of force throughout the country. So far so good.

However, these steps have also raised doubts. The personnel changes occurred quickly and with some fanfare. However, the timeframe for the comprehensive reform of the power ministries is unclear; certainly, it will be a lengthy and painful process. In addition, despite an early pledge by Zhvania to increase security expenditure to 2% of GDP, the 2004 budget saw no

<sup>17</sup> Interview of Baramidze by Ken Stier, *Eurasia Insight* (December 19, 2003) on <http://www.eurasianet.org> 'Behind a desk, Georgian Official Promises War on Corruption' [http://www.eurasianet.org/departments/qanda/articles/eav121903\\_pr.shtml](http://www.eurasianet.org/departments/qanda/articles/eav121903_pr.shtml)

<sup>18</sup> See Mikhail Saakashvili's speech at the Johns Hopkins University, SAIS, Washington DC, February 24, 2004, reproduced by *Central Asia and Caucasus Analyst*; and 'Zhvania outlines Cabinet Priorities,' *Civil Georgia* (February 17, 2004), <http://www.civil.ge/eng/article.php?id=6242>

increase in defence spending. Even with foreign assistance to support salary and maintenance costs in the security agencies, the new government will face great difficulty in increasing defence spending in a quasi-bankrupt state.<sup>19</sup> Comprehensive reform remains therefore in some doubt, as it is always a costly process. Moreover, the constitutional changes rushed through the previous parliament in early February 2004 muddy the picture in terms of security sector governance. The strengthening of executive power in budgetary questions has weakened the overall place of the parliament in Georgian politics. The vital role of parliamentary security sector oversight and accountability is certain to be affected.

Second, Saakashvili has made Georgia's external destiny clear: it lies in the closest ties possible with NATO and the EU. The appointment of the former Defence Minister, David Tevzadze, as Ambassador to NATO, presages an increased focus on formulating a credible – however long-term the plan remains at present – Membership Action Plan by the new government. Salome Zourabishvili's designation as Foreign Minister, after a distinguished career in the French Foreign Ministry, is another sign of a heavy European focus in foreign policy, in particular with the aim of developing closer ties to the EU and the possible inclusion of Georgia in the its *New Neighbourhood Initiative*.<sup>20</sup>

This new thrust to Georgian foreign policy has not excluded the development of ties with Russia. Saakashvili's first foreign visit was to Russia, and he has made concerted efforts to lay out lines of concord with the Russian leadership. Most visibly, Saakashvili reversed Shevardnadze's policy to protecting the Georgian-Russian border. Shevardnadze's policy to the question of ensuring the non-passage of Chechen fighters across this border and into the Pankisi Valley was a mess; Tbilisi first refused to acknowledge the presence of Chechen fighters in Georgia or to countenance the idea of legitimate Russian concerns; then, it became clear that parts of the Georgian security forces had relations with Chechen groups in Pankisi. Saakashvili is intent on cleaning up the criminal groups active in Pankisi and cutting their links with Georgian law enforcement. Moreover, the new president has accepted the notion of joint Russian-Georgian border patrols to monitor the border, on the basis that 'terrorism is a common threat' to both countries.<sup>21</sup> Addressing a major Russian concern, Saakashvili stated in late January that 'from now on, all armed people who try to get into Georgia will be arrested and handed over to the countries they are citizens of.'<sup>22</sup>

Yet, uncertainties remain over key questions affecting Georgian security: how will Saakashvili address the question of the withdrawal of Russia's remaining bases? What policy does the new government have towards Russian peacekeeping in Abkhazia and South Ossetia? Answers to these questions will provide signs as to the future direction of Georgian foreign policy: either towards sustained ambiguity or towards genuine certainty of choice.

This leads to the third dimension: Saakashvili's policy towards the territories and regions that are beyond Tbilisi's control. Thus far, Saakashvili has adopted contradictory approaches to the question of Tbilisi's relationship to South Ossetia, Abkhazia and Ajara. The new president has presented the conflict with South Ossetia as a criminal problem, which can be resolved

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<sup>19</sup> Saakashvili has openly admitted the budgetary constraints on the new government: 'The treasury is absolutely empty. That is why we won't be able to improve the situation in just one day,' *Civil Georgia* (January 24, 2004), [www.civil.ge](http://www.civil.ge) Saakashvili vows improvements with drastic measures <http://www.civil.ge/eng/article.php?id=6090>

<sup>20</sup> *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbour* (Commission Communication COM(2003) 104 final: Brussels, 11.3.2003). The idea of including the three South Caucasus states in the new initiative in the medium term was given wings by the 'Rose Revolution' and demand from the region itself. The Irish Presidency will deliver an opinion on the question by the end of June 2004.

<sup>21</sup> Saakashvili cited in 'Georgia, Russia to Sign Border Guard Accord,' *Civil Georgia* (February 11, 2004), <http://www.civil.ge/eng/article.php?id=6207>

<sup>22</sup> *Agence France Presse*, January 27, 2004.

through law enforcement methods.<sup>23</sup> Tbilisi has ruled out the use of force in Abkhazia, reined in the *Forest Brothers* and the *White Legion*, and forced out the deeply corrupt Tamaz Nadareishvili from Abkhazia-in-exile. While positive, these policies do not alter the essence of Georgia's past policy of delay and non-compromise. Saakashvili hopes that the installation of a more effective blockade against Abkhazia, by cracking down on Georgian criminal groups involved in smuggling in Gali and by enforcing strict control over trade by sea, will alter Sukhumi's policy and force the separatists to compromise. On the central question of political status, the new president has only repeated Shevardnadze's previous offer of the 'broadest possible autonomy' – an offer that the Abkhaz have consistently rejected.

Moreover, Saakashvili has chosen the restoration of central control over the Autonomous Republic of Ajara as the first major test of his presidency. The government instituted a blockade against region in the run-up to the March 2004 parliamentary elections, with an ultimatum calling for the conduct of free elections and the disarming of Aslan Abashidze's paramilitary forces, including Georgia's 25<sup>th</sup> Brigade, deployed in the regional capital of Batumi, which refused to obey the president's orders. In May, Saakashvili renewed the ultimatum for disarming forces and returning the region to Georgia's constitutional order, under the threat of dissolving the current leadership and calling for new elections.

On the one hand, Saakashvili is correct in seeking to restore the unity of the Georgia's constitutional space and the central authorities' monopoly of the organised use of violence. Under Abashidze, Ajara has been independent from the rest of Georgia in almost all dimensions except name. However, the use of ultimatums carrying the implicit threat of military intervention are likely to prove counter-productive not only in Ajara - where it could backfire - but also in future dealings with Abkhazia and South Ossetia. Saakashvili is driven by the notion of unifying the Georgian state and nation: 'I will do my best to strengthen our country and restore its territorial integrity. This is the supreme goal of my life. The Georgian nation deserves a better future.'<sup>24</sup> The conflation of the Georgian nation with territorial integrity and of the *state of Georgia* with the *Georgian nation* is worrying. In the traditional sense, Georgia is a multi-national country, with a number of important national minorities, some of which have declared independence from Tbilisi. The insistence on the Georgian nation as the defining attribute of the Georgian state was one of the causes of the conflicts that ravaged Georgia in the early 1990s.

Underlying these considerations resides more profound questions: is Ajar autonomy the greatest priority of the new leadership? Was this the reason for the overwhelming support provided to Saakashvili in January 2004? Certainly not. The handling of the Ajar crisis raises doubts about the new government's ability to satisfy popular expectations over the short term. It also throws light on the reckless gene at the heart of the new leadership – this may have been a source of strength in that it led to the 'Rose Revolution' but it may also become a fatal weakness.

### *Principles for Moving Ahead*

The principles for moving towards healthy reform of Georgia's security sector may be divided into two categories.

#### i) Principles for the Georgian Government

- 1) The new government must sustain its push to fashion a more healthy security sector governance and move away from reliance on external support to drive reform. Reform

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<sup>23</sup> The Georgian government have developed plans to cut off the smuggling routes through South Ossetia and place pressure on the criminal interests that underpin the separatist region.

<sup>24</sup> Cited in 'New Leader Vows to hold next Inauguration in Abkhazia,' *Civil Georgia* (January 24, 2004), <http://www.civil.ge/eng/article.php?id=6088>

- must be comprehensive, taking in all parts of the security sector, and be driven internally. Much more than personnel changes and police arrests, this process must be root and branch in its scope.
- 2) The new government should clarify for internal and external audiences its vision of Georgia's future, its interpretation of the main security threats and how to respond to these, in a publicly debated Security Concept.<sup>25</sup> This Concept will eliminate counter-productive ambiguity and make a new universe of expectations for Georgian policy in the future clear for all domestic and external actors.
  - 3) The new government must pick the right battles for its first year in power in order to sustain popular support and avoid social disenchantment. The main challenges that concern Georgian society are those of welfare, education, healthcare and stability. Settlement of the question of territorial control will be easier when Georgia proper is able to stand on its own.

ii) Principles for the International Community

- 1) International actors must check and balance the policy directions taken by the new government, in order to retain a focus on reform and the main priority of strengthening the institutions of state.
- 2) The international community must rethink the concept of security sector governance to include those elements that are beyond Tbilisi's control – in Abkhazia, Ajara and South Ossetia. Some consideration must be given to supporting more healthy security sector governance within these regions.
- 3) International actors must coordinate their actions amongst themselves in assisting Georgian security sector, in order to achieve a better synergy of effort.<sup>26</sup> In order to push for comprehensive reform, beyond the armed forces, new international actors should be encouraged to provide assistance to the Georgian internal security bodies. The EU can play a positive role in this respect.<sup>27</sup>

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<sup>25</sup> Tbilisi should avoid using the term *national* security, an Americanism that is not appropriate for a multi-national country. Hence, one should refer to Georgia's Security Council and Security Concept.

<sup>26</sup> The US-led 'South Caucasus Clearing House,' launched by EUCOM in December 2003, is a good start towards greater coordination of international security assistance.

<sup>27</sup> At the level of policy declaration, the EU has recognised the need to play a role in security sector reform: the EU Commission's Communication on Conflict Prevention, of April 2001, attributes importance to security sector reform as a key part of a conflict prevention strategy, see *Communication from the Commission on Conflict Prevention* (COM 2001 211 Final: Brussels, 11.04.2001). However, the EU must move towards acting on these statements.

## Chapter 11

### Security Sector Governance in Georgia: Status and Perspectives

*Antje Fritz*

Security Sector Governance in Georgia is a topic which is certainly not easy to explore. First of all there is no up-to-date literature, at least none which considers the entire complexity of the relevant aspects and elements influencing security sector governance and security sector reform (SSR) in the country. Second research work on security sector governance relevant issues looks like a patch-work quilt. There is no comprehensive evaluation of the standing of security sector reform: Studies mainly focus on singled-out aspects and the various threads are not brought together, at least not in a way which would allow an evaluation of the overall situation of security sector governance in Georgia. The closest to those needs comes the Center for Civil Military Relations and Security Studies (CCMRSS) in Tbilisi. The research work of David Darchiashvili and Tamara Pataraiia provides crucial insights and profound background information on security sector relevant issues.<sup>1</sup>

In order to bring the threads together and to gain a basic overview on the current state of security sector reform in Georgia, a stock taking, based on expert interviews was launched in September 2002. Up-dates have been made continuously, the latest in January 2004.

In the overall 24 interviews have been carried out with Georgian experts, involved in security sector related issues, working within the Georgian Ministry of Defence (MoD), the Ministry of Foreign Affairs (MFA), the Ministry of Internal Affairs (MIA), the Georgian Military Academy, furthermore with parliamentary staffers including members of the Parliamentary Committee on Defence and Security, with members of Non-Governmental Organizations (NGO's) and with Military Journalists. Most of the interviews (13) have been carried out in Tbilisi, in September 2002, some (5) in Zürich, Switzerland during the 5<sup>th</sup> International Security Forum in October 2002, furthermore one interview during a Conference on Border Management in March 2003 in Geneva, Switzerland, two interviews at the Workshop on "Security Sector Governance in Southern Caucasus – Challenges and Visions", held in Reichenau/Rax, 21-24 November 2003. And finally three interviews have been carried out by e-mail communication in January 2004 in order to get an up-to-date picture of the situation after the "velvet revolution" and the January 4 presidential election.

Basis of the interviews have been several questionnaires used as frameworks for assessing SSR. The evaluation, presented within this paper is based on a small selection of broad and general questions on the current state of SSR in Georgia, prospects for the upcoming years and also on recommendations and priorities seen by the experts in view of the reform process.<sup>2</sup> The objective was, to get a broad overview on the assessment of the state and prospects of Security Sector Reform in Georgia by local experts, working within the field of security policy. The picture given is deliberately focused on those factors and aspects of SSR, which are – according to the interviewees – currently relevant and therefore have an impact on the ongoing developments.

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<sup>1</sup> Recent contributions are for example: David Darchiashvili, Implementation of Parliamentary Control over the Armed Forces: The Georgian Case. In: H. Born, M. Caparini, K. Haltiner, J. Kuhlmann (eds.): Democratic Governance of Civil-Military Relations in Europe: Learning from Crisis and Institutional Change. Berlin: Lit-Verlag 2004 (forthcoming). And: Tamara Pataraiia: Civilians in National Security Structures in Georgia. Paper Presented at the Working Group Meeting: Civilians in National Security Policy, Geneva, November 2-4, 2002.

<sup>2</sup> Please find questionnaire: "General Assessment SSR in Georgia" attached to this article.

It is not the aim of this paper to give a comprehensive overview on the state of all security sector institutions in Georgia and neither on the history of Security Sector Reform and the process of building up the Georgian Armed Forces. Details on state security services and institutions might be found within the White Paper of the MoD<sup>3</sup>. A profound background on developments in view of the reform of the security sector and the building up of the Georgian Armed Forces can be found in the research work of David Darchiashvili and Tamara Pataraiia, without whose support and encouragement this project would not have been possible.

### *1. Problems, Challenges and Obstacles*

Given the current situation in Georgia there is an overwhelmingly long list of aspects, which can be seen as major challenges to SSR. The interviewees name most various and different obstacles. Angles and perspectives of those assessments are quite different, but in the main points agreements are obvious. The various aspects can be structured into three categories:

- 1) Basic problems: The broader context of SSR and Armed Forces reform,
- 2) General Problems in view of Security Sector Reform,
- 3) Specific problems in view of Reforming the Armed and other Security Forces.

#### *1.1. Basic problems: The broader context of SSR and Armed Forces reform*

As widely accepted the reform of the security sector can not be seen without the frame of general democratization within a country. This is why we have to look first into basic problems of democracy-building in Georgia before going over to general problems of SSR in section 1.2.

##### *1.1.1. Democratic structures and national mentality*

“The problem lies within the system”<sup>4</sup>

More than 12 years after the breakdown of the soviet system, democratic structures have still not been sufficiently implemented in Georgia. The situation is quite similar to those in other transition countries: Legislation seems to be principally sufficient and is formally based on Western models, whereas the real challenge lies in implementing and enforcing the law.

The implementation of democratic structures becomes even more difficult, since the whole system is determined by personal relationships rather than by well defined democratic procedures. (For details on this phenomenon see section below). The majority of the interviewees stressed, that the mentality and with it the whole climate in the country has to change before it might become possible to built up sustainable democratic structures.<sup>5</sup>

Another factor is the general weakness of state management culture which makes the situation considerably worse: Those in power have basic problems to properly manage the system.<sup>6</sup> State

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<sup>3</sup> White Paper of the MoD, Georgian Ministry of Defence, Tbilisi 2002.

<sup>4</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>5</sup> Referring to an interview with a member of a Georgian NGO.

<sup>6</sup> Referring to an interview with a member of a Georgian NGO.



structures support corruption, i.e. the existence of only one account for each ministry makes management and control of revenues and expenditures extremely difficult.

### *1.1.2. Clientelism and corruption*

“The legacy of clannish thinking is one of the most significant obstacles to development.”<sup>7</sup>  
“If there wouldn’t be any corruption, Georgia would be fine within 10 years”.<sup>8</sup>

Most crucial elements which prevent a continuous transition to democracy are certainly clientelism and the widespread corruption, both phenomena which are running like red threads through the entire Georgian state sector, political system and society. Since those structures are not only contra-productive to any democratization, but also determine the broader context of security sector reform, those phenomena merit to be looked at closer:

In Georgia the soviet totalitarianism produced a bizarre symbiosis of the specific bureaucratic system mixed with traditional values and a certain *modus vivendi* in the population, which is determined by traditional clannish relationships. As a result, the interdependence of social mentality – mirrored especially in the way of thinking and behaving of the public officials, but also the society at large – and the institutional development of the state system becomes a crucial dilemma.<sup>9</sup> The relationships between the officials and their subordinates determine the state structures as well as the state authority.<sup>10</sup> Those “...clientele relationships in Georgia ... still play the most important role both in everyday life and in the political processes of the country.”<sup>11</sup> As a result, policy objectives rather support the development of oligarchic groups than encourage national development and as follows the political system is profaned and restricted.<sup>12</sup>

The primary problem, resulting from clientelism is corruption, which has an obvious systemic character and is in Georgia generally seen as “the rule of the game”.<sup>13</sup> Whereas corruption has been grown significantly since the end of the Cold War<sup>14</sup>, the phenomenon is well known already since the first years of soviet rule and grasped at the latest from the beginning of the 1960s all levels of Georgian society, especially the ruling “*nomenklatura*” and the “red directors” of the state enterprises.<sup>15</sup>

The clientele and corruptive structures may most illustratively be described as a pyramid, with a very small level at its top which is formed by the president and his family clan and then the biggest and broadest levels at its bottom which are formed by those elements of the society which have the least power and authority. “Money making” depends on the level within the pyramid: The higher the level, the more authority and the more money can be made. Those in power are depending on this pyramid, since this societal structure is helping them to stabilize their position. Therefore it seems understandable that a real intention to fight corruption can not be stated yet. Deeply rooted corrupted interests throughout the political and societal structure prevent serious and effective measures.<sup>16</sup> Whereas some state, that there is hope to fight corruption, since the

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<sup>7</sup> Koba Liklikadze, David Losaberidze, Institutionalism and Clientelism in Georgia. Unpublished article. Tbilisi, 2002, page 2.

<sup>8</sup> Quotation from an interview with a member of the Georgian Ministry of Internal Affairs (MIA).

<sup>9</sup> Liklikadze, Losaberidze 2002, op. cit., p. 2.

<sup>10</sup> Ibid., p. 3.

<sup>11</sup> Ibid., p. 20.

<sup>12</sup> Ibid., pp. 7-8.

<sup>13</sup> Ibid., pp. 4 and 7.

<sup>14</sup> Ibid., p. 7.

<sup>15</sup> Alexandre Kukhianidze, Criminalization and Cross-Border Issues: The Case of Georgia. Paper presented at the Workshop “Managing International and Inter-Agency Cooperation at the Border”, held in Geneva, March 13-15 2003, p. 2.

<sup>16</sup> Referring an interview with a member of a Georgian NGO.

pyramid seems to get “holes”<sup>17</sup>, others say, that there is no way to fight it at the current stage and that the only way is, to wait for an alternation of generations.<sup>18</sup> There is no doubt that only a long term process may see first positive results.<sup>19</sup>

### *1.1.3. Public involvement in the democratization process*

“They don’t clearly understand what democracy means”<sup>20</sup>

Within the last 12 years “democracy” is tiptoeing around Georgia like a shy and obscure ghost, who does not want to come in, sit down and make himself visible. At least for Georgians this picture may arise. The golden word “democracy” has been repeated by western advisors like magic formulas and still it is not clear what is behind this abstract phenomenon, which sneaks around and still is hiding carefully behind quite obvious and self confident co-visitors: economic crisis, corruption and political chaos. No wonder, that something which is as vague and obscure, and which does not bring any obvious incentive nor benefit, is clearly seen as something which one might easily do without. With other words: the tiptoeing ghostly visitor may – in the eyes of the one or the other Georgian - easily stay outside.

After the hardships of the last decade it seems to be understandable that society-at-large sees “democracy” as failure and “democratic values” as nothing which is worth to strive for. Even if those values would be accepted and understood as something valuable, the citizens would not feel that their involvement could help implementing those values in societal life.<sup>21</sup> This mentality is a part of the soviet legacy which still has not been overcome.

Furthermore it seems to be quite understandable that in their fight to survive economic and political crises people look first of all after their own needs and requirements, are generally oriented towards family, relatives, and friends rather than towards public life.<sup>22</sup> As follows the society is quite “nuclearized” and as a result there is a weak socialization of citizens in terms of understanding “community”.<sup>23</sup>

Another reason for public’s retreat from involvement into any reform and democratization processes, is to be found in the general lack of the rule of law in the country which is going along with a widespread mistrust in the government<sup>24</sup>. For those, not being already totally indifferent to political developments, the government is mainly seen as direct enemy to the general public.<sup>25</sup>

Civil-Society is still hardly developed and only very marginal involved in democratization and reform processes. One of the main problems is, that a “disorganized NGO community”<sup>26</sup> and mostly incompetent and still insufficiently developed media<sup>27</sup> lack necessary

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<sup>17</sup> Referring to an interview with a member of a Georgian NGO.

<sup>18</sup> These prognoses are referring to “lessons” from history, i.e. on the transition of states towards capitalism. The US is an example in the 20<sup>th</sup> and 30<sup>th</sup> of last century. According to these prognosis, the only hope is offered by the time passing by: The mafia-members are increasingly investing their money in “clean” and legal businesses, which help to create new and legal jobs. They send their children to renowned universities abroad. The children get accustomed to another “style” of living and behaving and of “making money”. Later on they bring this “style” back home and the mafia-structures slowly recede.

<sup>19</sup> Referring to interviews with several members of Georgian NGOs.

<sup>20</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>21</sup> Referring to an interview with a member of a Georgian NGO.

<sup>22</sup> Kukhianidze 2003, op. cit., p. 3.

<sup>23</sup> Referring to an interview with a member of a Georgian NGO.

<sup>24</sup> The United States Information Agency (USIA) carried out opinion polls, showing the dramatic increase of public mistrust towards the government during the last few years.

<sup>25</sup> Referring to an interview with a member of a Georgian NGO.

<sup>26</sup> “There are some 5,000 civilian associations and 500 foundations registered in Georgia, however, only 10 to 15% can be considered true Non-Governmental Organizations (NGOs).” See NATO PA: Background Document to the Rose-Roth Seminar, Tbilisi, Georgia, 27-29 September 2002, p. 6. “Only 50-60 of them are

resources to exercise decisive influence over the government.”<sup>28</sup> Furthermore, the society ignores the reform process, since “reforms are, as a rule, launched and implemented by upper echelons or nomenklatura. The society is not much involved in this process and perceives any change as an action directed against it.”<sup>29</sup>

Civil-society building, a task which has been taken up by several NGO’s, has to suffer from a lack of cooperation, coordination and continuity within NGO involvement.<sup>30</sup>

The enhancement of public involvement within the democratization process is a Sisyphean task, which has to deal with the major challenge to explain to society-at-large, that “democracy”, which is perceived as failing on a day-to-day base is nevertheless in the long run no failure, but a crucial value to strive for.

#### *1.1.4. Influence of the security environment*

Beside the above mentioned internal aspects, also external threats and influences by the security environment determine the broader context of security sector reform in Georgia: Those threats, most of all the Russian threat to Georgian territory, but also the frozen conflicts in the autonomous regions are seen as basic negative factors to SSR in Georgia. The permanent pressure most of all prevents that enough capacities and energies are left available for reforms.<sup>31</sup>

On the other hand those factors may imply a certain ambivalence: incidents, like the Russian bombing of the Pankisi gorge, also seemed to have enforced Georgian will to further cooperate with the West and to come as close to NATO integration as possible, which is for the time being the most important incentive for the Georgian government to implement required reforms.

Furthermore the security threats enforce the longing for general security and for a strong and professional army. Therefore they also positively influence the will to reform the Armed Forces, but at the same time hinder a consequent reduction to their natural size. A negative influence is certainly, that the one-sided focus on a reform of the Armed Forces prevents a necessary reform of other security forces, i.e. border guards and police forces. (*see section 1.3.*)

#### *1.2. General problems in view of Security Sector Reform*

After having had a look on the broader context, we may shift towards general problems of security sector reform itself. The following section reflects the most vehemently and repeatedly stressed aspects:

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active. Most often they are very small.” Quotation by member of a Georgian NGO. Even the most well-established and powerful organizations face financial problems, and depend entirely upon foreign grants or donations. Most NGOs are based in the capital while outlying regions are often ignored. Despite these weaknesses, the NGO sector in Georgia has gained influence both over policymaking and public opinion in the past few years.” NATO PA 2002, op. cit., p. 6.

<sup>27</sup> “There are approximately 200 independent print outlets nationwide, some eight TV stations in the capital and more than 45 regional TV stations, 17 of which offer daily news. Radio and a few daily newspapers remain the major source of information for peripheral regions that lack electricity. Poor finances force most print outlets to labour under the influence of political ‘sponsors’ while television is the most popular source for news broadcasts.” NATO PA 2002, op. cit., p. 7.

“Georgian media operate with a greater level of freedom compared to counterparts in most post-Soviet countries. However, there are cases of state-sponsored breaches of freedom of speech as well as incidents of violence against journalists.” NATO PA 2002, op. cit., p.7.

<sup>28</sup> Archil Gegeshidze, Security Strategies for Georgia. A Georgian Perspective. Remarks to the AGBC Forth Annual Conference “Development Strategies for Georgia”. Washington: 2001, page 3.

<sup>29</sup> Liklikadze, Losaberidze 2002, op. cit., p. 34.

<sup>30</sup> Referring to an interview with a Member of a Georgian NGO.

<sup>31</sup> Referring to an interview with a member of the Georgian Mission to NATO within the Ministry of Foreign Affairs.

*1.2.1. Lack of a security strategy and a reform concept*

The biggest problem is, that the reform process is not well understood. There is no consensus what SSR would mean for Georgia and there is no precise programme for reforms. Only recommendations from foreign experts.<sup>32</sup>

The lack of a national security strategy and a precise concept for SSR in Georgia is probably the most fundamental obstacle to any effective reform. Whereas some exceptional statements<sup>33</sup> allude to an internal, not yet published long-term plan for reforms, most of the interviewees<sup>34</sup> insist, that there is still no concrete reform-programme and only recommendations of foreign experts i.e. from the International Security Advisory Board (ISAB)<sup>35</sup> available.<sup>36</sup>

Nevertheless, first tentative steps towards a reform plan have been taken: The White Paper of the Ministry of Defence<sup>37</sup> includes brief outlines on Georgian defence policy, defence structures, personnel policy, logistics, defence budget and the relation between Armed Forces and society. Furthermore it contains information on roles of the Armed Forces, military co-operation, the various defence and security forces, the general staff, civilian personnel, the military service and education system, information on defence planning, defence finance and military legislation. It takes stock of the current state of institutional changes, and gives a very broad idea in which direction a general reform should go. However, the White Paper is far from being precise enough to provide clear guidelines and priorities. The Paper has obviously been drafted in order to demonstrate a certain transparency in giving an overview of the current state of the security sector. It obviously lacks a national vision and concrete information how the very broad defined goals should be transferred into missions.<sup>38</sup> Georgia's strategic interests are set out briefly on only one page and are vaguely, partially and rather inconsistently mentioned within the introduction of the paper. Following the White Paper, interests are to be found in regional stability and cooperation, a modernization of its Armed Forces and an interest in "moving Georgia closer to the Euro-Atlantic community of nations"<sup>39</sup>. Merely stating that the Georgian Armed Forces should be "NATO-compatible" leaves open how this will affect the allocation of scarce fiscal resources or the priority of reforms. The rest of the White Paper is descriptive and does not provide guidance for further reforms. According to an expert the "White Paper 'puts the cart before the horse'. Without the delineation of Georgia's strategic interests and objectives the paper is void of any indication of where Armed Forces reform should be heading."<sup>40</sup>

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<sup>32</sup> Quotation from interview with a member of the Defence and Security Committee of the Georgian Parliament.

<sup>33</sup> Referring to interviews i.e. with a member of the Georgian Defence Academy and a member of a Georgian NGO.

<sup>34</sup> Referring to interviews with a member of the Defence and Security Committee of the Georgian Parliament and a member of the Georgian Ministry of Defence (MoD).

<sup>35</sup> "The International Security Advisory Board (ISAB) was established by a memorandum of Understanding dated 14 April 1998. ISAB is an independent body, working directly to the Government of Georgia. In accordance with the MOU, ISAB submitted a draft Report, with recommendations, to the national Security Council at the six-month point. After out-of-committee consideration the Secretary of the National Security Council informed ISAB that the content and recommendations of the draft Report were broadly acceptable. He also requested ISAB to elaborate an outline schedule for implementation of the recommendations, and to submit the final Report at the twelve month point." See: <http://www.cpirs.org.ge/Archive/ISAB.html>; 06.04.2003. The report is to be found at: <http://www.cpirs.org.ge/Archive/ISAB.pdf>

<sup>36</sup> Referring to an interview with a member of the Defence and Security Committee of the Georgian Parliament.

<sup>37</sup> White Paper of the MoD, Ministry of Defence Georgia, Tbilisi 2002.

<sup>38</sup> Referring to an interview with a member of the Defence and Security Committee of the Georgian Parliament

<sup>39</sup> See White Paper of the Georgian Ministry of Defence, Tbilisi 2002, page 3.

<sup>40</sup> An assessment by Marina Caparina, Senior Fellow at the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, Switzerland.

Another effort towards the conceptualization of SSR has been taken in view of the elaboration of a reform of the Security and Law Enforcement Services of Georgia. Problems and challenges are different here, (*see in section: 1.3.2*) but also enforce the impression of the creation of a patchwork quilt rather than a strategic implementation of a clear national security strategy.

Bringing it to the point one could put it like that: Georgia has a lot of general recommendations in view of SSR, provided by international advisors. What Georgia does not have is an adaptation of these recommendations to the country's situation and background and it also lacks concrete directives in view of a practical implementation of the reform.

Nevertheless there are signs for improvements<sup>41</sup>: A member of the International Security Advisory Board recently<sup>42</sup> confirmed that a draft of the National Security Strategy is finalized. However it is not published yet and one can not tell if the new government will agree on the current version.

For those involved in the reform process it is still extremely difficult to understand what SSR should mean for Georgia and how an implementation could look like. For those, having at least a broad idea, what a reform could or should imply, there is an obvious lack of consensus. Taking for example the Armed Forces: On the one hand it is an accepted fact, that the reform should imply a downsizing to its natural size. On the other hand, taking the current security threats into account, the readiness should be increased.<sup>43</sup>

As a next step it is of crucial importance to agree on a common concept which is based on a broad consensus within the country, having in mind that "SSR implies that the national leadership has gone through a process by which the strategic interests of the country have been assessed, and implications identified for key sectors of the state. That is, there is an understanding and consensus on which areas need to be tackled for reform that flows from the highest levels of the political leadership, based on a comprehensive view of the strategic and national interests of the state."<sup>44</sup>

A consistent guideline in view of security structures and institutions as well as in view of goals and missions would be a basic starting point to SSR in Georgia. As long as those guidelines and directions are absent, effective reforms will remain a crucial challenge.<sup>45</sup>

Most of the experts agreed that it is not a lack of expertise or experience but the absence of political will which prevents the implementation of a national security strategy<sup>46</sup>.

### *1.2.2. Lack of political will of the executive power*

"The most important obstacle is the lack of political will"<sup>47</sup>

"Certain people don't have any interest in a concept"<sup>48</sup>

Following the views of some interviewees, it was clearly the lack of political will of the former government that hindered a serious progress of the reforms.<sup>49</sup> The experts explicitly stressed the negative role, the president himself was playing in that aspect. Whereas Shevardnadze officially

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<sup>41</sup> See also section 2 on achievements and positive trends.

<sup>42</sup> At the Workshop on Security Sector Governance in Southern Caucasus in Reichenau/Rax, November 21-24 2003.

<sup>43</sup> Referring to an interview with a member of the Defence and Security Committee of the Georgian Parliament.

<sup>44</sup> An assessment by Marina Caparina, Senior Fellow at the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, Switzerland.

<sup>45</sup> Referring to an interview with a member of a Georgian NGO.

<sup>46</sup> Referring to an interview with a member of the Defence and Security Committee of the Georgian Parliament.

<sup>47</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>48</sup> Quotation from an interview with a member of the Defence and Security Committee of the Georgian Parliament.

<sup>49</sup> Referring to an interview with a military journalist and several members of Georgian NGOs.

pushed the reforms in view of meeting the MAP requirements, he was obviously not in a rush to give consistent directives to implement them.

This leads to another factor: the role of the president in defence and security issues versus the role of the parliament: The head of the executive power clearly dominated political life in Georgia. The parliament was much weaker than the presidential power:

...The President can and does ignore the opinion of parliamentarians concerning various issues of security and defence policy.<sup>50</sup>

Whereas legislation speaks for parliamentary control of the security sector, reality shows a different picture, for example in view of the oversight on defence spending:

The parliament hardly fulfils its main obligation in security and defence policy: budgetary control<sup>51</sup>

Two reasons for the neglect of this obligation might be mentioned: At first there is still little knowledge and understanding on how defence resources are allocated and spent.<sup>52</sup> A second reason is, that the “Parliament does not have the right to amend the budget without the consent of the president, who is the only person authorised to submit official budgetary drafts or amendments. The legislature has only two options – to agree the overall figures or to reject the entire draft. To reject the draft would require enormous political effort and compliance with numerous conditions, and so far legislators have not resorted to such measures. Nor was any action taken on the many occasions when the parliamentary taskforce responsible for reviewing the power ministries’<sup>53</sup> spending on classified activities found that it knew no more than the other deputies.”<sup>54</sup>

Generally it can be stated that the authoritarian style of Shevardnadze’s leadership definitely played a considerable and negative role in security sector governance in Georgia. The crucial importance of the presidential elections on January 4<sup>th</sup> as well as of the very role the new Georgian president will play in security sector governance does not need to be stressed.

Furthermore the “Parliament’s weak role is one indication that democratic control is still incomplete. The civilian element of control is also underdeveloped, as the Ministers of the Interior and of Defence, and the heads of the security departments are all generals<sup>55</sup>. The President and the Secretary of the National Security Council are almost the only civilians with any real power at the top levels of the executive.”<sup>56</sup> It can be stated that one of the basic pre-conditions of a democratic oversight of the security sector<sup>57</sup>, a “dividing line” between the political and military leaders, is not existing in Georgia.

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<sup>50</sup> Hans Born, Recipients’ Views on Interparliamentary Assistance: A Short Report on the Czech Republic, Ukraine, Georgia – Three Case Studies; In: Hans Born/Marina Caparini/Philipp Fluri (eds.), Security Sector Reform and Democracy in Transitional Societies. Proceedings of the Democratic Control of Armed Forces Workshops at the 4<sup>th</sup> International Security Forum, Geneva, November 15-17, 2000. Baden-Baden: Nomos 2002, p. 61-67; p. 65.

<sup>51</sup> Ibid., p. 65.

<sup>52</sup> Ibid.

<sup>53</sup> The defense ministry, ministry of internal affairs and the ministry of state security are the so called “power ministries”.

<sup>54</sup> Darchiashvili David, 'Georgia: A Hostage to Arms' in Matveeva, Anna & Duncan Hiscock (eds.), 'The Caucasus: Armed and Divided - Small arms and light weapons proliferation and humanitarian consequences in the Caucasus', London: Saferworld, 2003, p. 86.

<sup>55</sup> Until recently, the first exception to this rule was the new Minister of State Security Valery Khaburdzhania.

<sup>56</sup> Darchiashvili 2003, Op. cit., p. 86.

<sup>57</sup> For background information on the theory of civil-military relations, see i.e. the classical works of Samuel Huntington, The Soldier and the State: the Theory and Politics of Civil-Military Relations. New York:

### 1.2.3. Lack of civilian expertise

The above stated lack of civilian oversight was not only caused by the strong authoritative role of the president and the partly militarized leadership. A second reason is also to be found in the lack of civilian expertise on security and defence related issues. This holds true for civilians in the 'power ministries' as well as for the Members of Parliament. As example might be mentioned the apparent lack of knowledge on defence resources allocation by Members of the Parliamentary Defence and Security Committee which hinders to fulfill their oversight and control functions. This absence of knowledge and expertise on security sector related issues is deeply rooted in former soviet times, when there have not been any civilian experts on defence issues at all. Like in most transitional countries it is still a basic challenge to built up the necessary expertise from scratch.<sup>58</sup>

### 1.2.4. Problems in defence budgeting

It goes without saying that the lack of adequate financial means forms a major obstacle to SSR. Nevertheless some of the interviewees clearly see financial problems as painful but as secondary compared to other factors, which have been mentioned above, i.e. the lack of political consensus and will to implement the reforms.<sup>59</sup>

In view of the Defence Resources Management Department within the MoD, the lack of adequate resources forms of course a continuous hardship within the budgetary process. However it is only one in a long row of various problems: "It is hard to argument for funds if they don't have a basis"<sup>60</sup>

A first basic challenge to determine a clear defence budget is caused by the above mentioned lack of a clear and binding security concept. Therefore those, working on the budget within the MoD state the urgent need of a clear security strategy and a binding concept in order to be able to argument for funds and to get a guideline how to set defence resources priorities.

A second problem in defence budgeting is, that there are no clear and reliable figures on the state income, microeconomic prognosis and socio-economic parameters available. This is why it is extremely challenging to set a frame for the budget. Generally military expenditures only take a very small proportion of the rather vaguely calculated Gross Domestic Product (GDP).<sup>61</sup>

A third challenging factor is, that the Georgian state has only one main treasury, one account for all ministries. This makes transparency extremely difficult and gives free way to corruption.

Furthermore a fourth obstacle is that personal influences within the Defence Resources Management department negatively affect the budgetary process: "Personal influence is the disease of the moment"<sup>62</sup>

The budgeting process is still influenced by problems of mental interoperability amongst those in charge. Some people in the MoD understood how inconvenient the increase of

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58 Vintage books 1964, 1<sup>st</sup> edition 1957 and Morris Janowitz, *The Professional Soldier: A Social and Political Portrait*. New York: Free Press of Glencoe 1960.

59 Referring to an interview with a member of the Georgian Mission to NATO within the Ministry of Foreign Affairs and with a member of a Georgian NGO.

60 Referring to an interview with a member of a Georgian NGO.

61 Quotation from an interview with a member of the Georgian Ministry of Defence (MoD).

62 0,2-0,3 percent in comparison to the average 2-3 percent of NATO states.

62 Quotation from an interview with a member of the Georgian Ministry of Defence (MoD).

transparency might become and started to fight a new and more transparent budgeting system.<sup>63</sup> Personal influences are currently a major problem not only in view of defence budgeting but generally a widespread phenomenon within the country.<sup>64</sup>

Nevertheless some signs for improvements could be found in the introduction of the new budgetary system:

The Programme Project Budgeting System (PPBS) has been implemented in 2001. It can be seen as a first step towards more transparency on defence spending. Until 2001 defence budgeting contained only figures without any explanations. In 2001 for the first time exact and clear defined categories for expenditures have been introduced. The MoD has been one of the first ministries, introducing the system and counts on positive experiences made within other countries with the new system, i.e. within the Baltic States. During 2003 British advisors supported the Georgian MoD in implementing the PPBS system.

When talking to an MoD official in September 2002, the assessments on the prospects of the new system have been quite positive: Despite having a strong opposition within the own department and ministry the new system was generally seen as irreversible. “There is no way back, the implementation will continuously proceed.”<sup>65</sup>

One year later the situation proved much less euphemistic: The Parliament didn’t adopt the programming budget, because of a row between the MoD and the Ministry of Finance. The Ministry of Finance cut the budget, which had been prepared according to the new system in a way that it had to be drafted from scratch. The 2003 budget which had been proposed as 129 million Georgian Lari by the MoD was finally adopted with 78 million Lari. After these severe cuts, the MoD failed to prepare a revised budget applicable to the PPBS approach. The defence expenditures are currently spent according to the old procedures. The development is obviously in the interest of MoD officials not to change the established soviet type procedures and therefore not to help reducing the level of corruption.<sup>66</sup>

#### *1.2.5. Misuse of international assistance*

“50% of EU funds simply vanished in Georgia”<sup>67</sup>

Whereas international aid is supposed to have a quite positive influence on SSR, it is on the other hand confronted by major obstacles and problems: The apparent misuse of international assistance and an obvious lack of coordination in those programmes can be considered as crucial draw-backs in view of a reform of the Georgian security sector. Just as a small example of the disastrous dimensions of the above described corruption in the country, it might be mentioned, that about 50% of international donor’s contributions tend to vanish in private pockets instead of being used for the sake of democratization and development of the country.<sup>68</sup> Ammunition and equipment, originating from international assistance programmes, have for example been found quite often on bazaars rather than in the barracks; Trucks and special transport equipment have been used by the general staff instead of units within which they were needed and originally supposed to be used. Coordination problems also hindered efficient results: Ammunition and equipment has been delivered, but there was no infrastructure to store it properly.<sup>69</sup>

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<sup>63</sup> The PPBS (Programme Process Budget System) has been implemented in 2001 and gives hope for more transparency in defence spendings. See details in following section on achievements.

<sup>64</sup> Referring to an interview with a member of the Georgian Ministry of Defence (MoD).

<sup>65</sup> Referring to an interview with a member of the Georgian Ministry of Defence (MoD).

<sup>66</sup> Referring to a recent assessment by a member of a Georgian NGO.

<sup>67</sup> Quotation from an interview with a member of the Georgian Ministry of Internal Affairs (MIA).

<sup>68</sup> Referring to an interview with a member of the Georgian Ministry of Internal Affairs (MIA).

<sup>69</sup> Referring to an interview with a parliamentary staff member.



As a cause of misuse and lack of proper results the interviewees stated a continuous fear that international assistance would break off and leave a chaotic and hopeless situation behind.

### *1.3. Specific problems in view of reforming Armed as well as other Security Forces*

Since it is not possible to look within this paper at all developments in view of building up as well as reforming security forces in Georgia, just some glimpses on three main actors: the Armed Forces, Police Forces and Border Guards.

Generally the picture in Georgia is quite similar to those which are well-known from other transitional countries: The personnel size of security forces is twice or thrice as high as necessary and useful, effectiveness at the same time thrice as low as you even can imagine. The last aspect is a result of various issues, i.e. the lack of discipline, and professionalism<sup>70</sup> along with the absence of appropriate education and training<sup>71</sup>, extremely low salaries and a rather high demoralization. Low payments and the lack of basic social securities encourages personnel of law enforcement bodies to abuse their power positions for private income generation by bribery, corruption and other illegal activities.<sup>72</sup> This is why society-at-large is far away from even considering to trust or to respect the country's security forces.

Given the long list of challenges, the question arises where exactly to start with a reform. When looking at western models or lets say, when checking out security sector success stories, one might rather get depressed: How should this gap be bridged? To overstress the point: It is hard to imagine how Georgian security forces may become strong, disciplined, smart, wealthy and respected in one go. Starting with the reforms step by step might sound a little bit more realistic but is – at the same time not possible. There is no strength without discipline and education, no discipline and motivation without appropriate salaries and no respect without all the other aspects taken together.

#### *1.3.1. Armed Forces*

The reform process of the Georgian Armed Forces (GAF) gives - most of all because of the immense international assistance – some reason for hope in prospective positive results (*see also section 2 on achievements*).

Nevertheless still fundamental problems have to be overcome: The absence of a national security strategy as well as the lack of professional experience negatively influence the reform process: “The current military still lacks both professional experience and a coherent strategy addressing national threads.”<sup>73</sup>

Furthermore the formation of the military did not follow any strategic considerations but rather personal influences: “...The Georgian army has been developing according to individual politician's or the military commandment's ambitions rather than to a state programme.”<sup>74</sup> Furthermore the “army suffers from frequent structural and staff changes. Finally, what is currently built up follows yesterday's, in particular the Soviet army's, model in miniature.”<sup>75</sup> Furthermore, “Today's Georgian army is not ready to check possible threats to the country's national security.”<sup>76</sup>

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<sup>70</sup> Referring to interviews with several members of Georgian NGOs.

<sup>71</sup> Referring to an interview with a military journalist.

<sup>72</sup> See also section 1.3.2 on police forces.

<sup>73</sup> Shukuko Koyama, Security sector reform in Georgia. Saferworld, London, 2002, p. 7.

<sup>74</sup> David Darchiashvili, The Army-Building and Security Problems in Georgia. Tbilisi 1997, p. 3.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

The combat readiness of the Armed Forces is quite low and given the lack of professionalism and strength, the public at large has little respect for the Georgian military.”<sup>77</sup>

Financial problems still crucially effect the restructuring process of the Armed Forces. Downsizing implies financial and social impacts, which can't be properly addressed yet. Retired militaries' integration into civilian life often fails and results in their participation in corruption and other illegal activities. Beside the lack of financial resources, the absence of motivated and educated officers is also seen as a major problem to a reform.<sup>78</sup> As an interviewee stated: “A hungry, untrained army cannot defend its country.”<sup>79</sup>

The financial situation aggravated in a way that not only the reform process is affected but also very basic aspects of maintaining the army. Desertion rates increase tremendously since conscript soldiers face chronic hunger. The families of the conscripts have to organize food supply in order to prevent their sons from starving. Those who don't get any help from at home have to steal food in order to supplement their meager rations.

Hunger is certainly one of the main reasons – but not the only one – for the high level of desertion within the Georgian Armed Forces. Soldiers face poor nourishment, shortage of uniforms and medical supplies, low wages and unsafe accommodation.

Under those circumstances military units can no longer afford to be fully manned. Even in conflict prone and security priority regions like the Pankisi Gorge units are manned to only thirty or forty per cent of the required strength. In 2002 the military recruited just one third of the conscripts in need. Young Georgians on their part try to avoid military service by all means, i.e. by buying an official 12-month deferral.<sup>80</sup>

A member of a Georgian NGO brings it to the point when stating that the military leadership recognizes that an army which is manned by starving soldiers cannot fight effectively. “So they never train them...As a consequence, the army is not battle-trained. A hungry, untrained army cannot defend its country.”<sup>81</sup>

### 1.3.2. Police Forces

“Why die for nothing”?<sup>82</sup>

According to statements of the deputy minister of the Interior, there are currently up to 60 000 police officers in Georgia. Other estimations range about at least 40 000 policemen.<sup>83</sup> An urgent necessary reduction of the personnel implies the same financial and social impacts as mentioned above in view of the Armed Forces.

Since the official salaries of police officers are extremely low it is widely accepted that they make money by bribery and corruption and that they are carrying out extortion and racketeering against individuals and small business.<sup>84</sup>

Options for private income-generation make the profession of a police-officer quite attractive and since there are no major restrictions to become a police officer (usually by bribing the officials in charge), the number of police personnel is still growing. It seems to be self evident, that a

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<sup>77</sup> Ibid.

<sup>78</sup> Referring to an interview with a military journalist.

<sup>79</sup> Irakli Seshiashvili, director of the Georgian NGO “Rights and Freedom”. Quoted after Maia Chitaia and Nino Zhvania: Hunger, Desertion plague Georgian Army. Georgia's national security at stake as conscript soldiers face chronic hunger. In: Institute for War & Peace Reporting IWPR's Caucasus Reporting Service, No. 176, April 25, 2003, p. 3.

<sup>80</sup> See Chitaia, Zhvania 2003, op. cit., p.2.

<sup>81</sup> Irakly Seshiashvili quoted after ibid.

<sup>82</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>83</sup> Referring to an interview with a member of a Georgian NGO.

<sup>84</sup> Darchiashvili 2003, op. cit., p. 76.

policeman, who does not even earn enough to support his own family, would not start fighting corruption or illegal mafia activities, following the motto: “Why dying for nothing?”. Economic problems are therefore closely related to a basic absence of a professional ethic and also a crucial lack of motivation. Result is a quite high demoralization of Georgian police.<sup>85</sup>

The lack of appropriate access-restriction to the profession also determines the absence of adequate training and education.<sup>86</sup> Foreign assistance programmes started to offer training courses for Georgian police officers. Most of the courses focus on Human Rights related aspects. OSCE Training Programms started to broaden the perspective and offer training courses on specific issues, i.e. domestic and gender-based violence.<sup>87</sup> Human rights training courses for police officers have been organized by the Swedish government in cooperation with the United Nationals Development Programme and the Public Defender’s Office. Donors and human rights oriented non-governmental organizations promoted human rights issues among police officers. But still, police academy classes on human rights are not compulsory for graduation or promotion in the police organizations.<sup>88</sup>

Basic results of the lack of professionalism and education, along with frequent criminal activities is, the crucial absence of a trustful and respectful relationship between citizens and police. Lack of professionalism and corruption among police officers is named as one of the major reasons, why government lacks legitimization, respect and reliability from the general public.<sup>89</sup> For many Georgians, police forces mainly exist in order to support the state authority and those in power rather than the citizens.<sup>90</sup> Since the state law enforcement bodies fail to establish the rule of law within the country, the clan system and other mafia structures started to provide their own informal justice mechanisms.<sup>91</sup>

Since they range among the most important supporters of the ruling elite, police forces are consequently excluded from any serious reform attempts.<sup>92</sup> “For many years, the MOI was the stronghold of the ruling elite and enjoyed the unofficial right to engage in ... illegal activities.”<sup>93</sup> “Until very recently, the state leadership took no effective measures to stamp out such practices. The Council for Anti-Corruption Policy set up by the president had little impact.”<sup>94</sup>

An effort towards an improvement of the situation has been finally taken in February 2002, when the Georgian president established an Interagency-Commission (based on a presidential decree, issued on 6<sup>th</sup> December 2001), which had to elaborate a concept for a reform of the Security and Law Enforcement Services of Georgia. The current version of the reform concept has been put online along with a series of recommendations by foreign experts and institutions (i.e. recommendations by the Committee of Ministers of the Council of Europe). The concept is publicly available via the website of the Georgian supreme court<sup>95</sup> and starts with the promising insight that “The process of democratization and reforms of the Police in Georgia can

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<sup>85</sup> “Violations of human rights, torture, illegal arrests, extortion of money from business people, drivers and criminals, bribery, falsification of the results of investigations, involvement in crimes and assassinations became the usual practice of the police forces.” Kukhianidze 2003, op. cit., p. 6-7.

<sup>86</sup> Referring to an interview with a member of a Georgian NGO

<sup>87</sup> See: OSCE begins training for Georgian Police Officers on combating domestic violence. To be found at: [http://www.osce.org/news/show\\_news.php?id=3330](http://www.osce.org/news/show_news.php?id=3330)

<sup>88</sup> Koyama 2002, op. cit., p.13.

<sup>89</sup> Referring to an interview with a Member of a Georgian NGO.

<sup>90</sup> Koyama 2002, op cit, p.8.

<sup>91</sup> UNDP Human Development Report: Georgia 2000, UNDP Country Office, Tbilisi, p. 72, cited after Koyama 2002, op cit, p. 9.

<sup>92</sup> Refer to Koyama, op cit, page 8.

<sup>93</sup> Darchiashvili 2003, op. cit., p. 76.

<sup>94</sup> Ibid., p. 77.

<sup>95</sup> See: <http://www.supremecourt.ge/english/About.htm> → Public Information --> Reform Commission of the Law Enforcement and Security Agencies → Concept of the reform of the Security and Law Enforcement Services of Georgia.

only be based on firm political will”<sup>96</sup> and furthermore states that “The police should comply with the demands of democratic society in order to represent the institution – the guarantor of the democratic state.”<sup>97</sup>

On the one hand the concept is much more precise in giving measures to improve the performance of Georgian law enforcement agencies than any other paper before, on the other hand, it has not been adopted yet as formal document. It still has to be approved and signed by the president in order to become a binding and official guideline. Even if the concept will be adopted, it won't guarantee a successful reform process, since the power ministries as well as the procurator's office are reluctant to any reforms within their agencies.<sup>98</sup>

Nevertheless, statements of the minister of Internal Affairs Narchemashvili on the need for reform raise some hopes. “Narchemashvili argues that he belongs to a new generation of lawyer-reformers and would like to leave a positive legacy. Some district police officers were dismissed. However it is difficult to say whether the reforms are genuine or if this is merely a tactical move by the police.”<sup>99</sup>

### 1.3.3. Border Guards

The Pankisi Gorge incidents showed how much border incidents and a lack of efficient border controlling is affecting national, transnational and international security.<sup>100</sup>

Generally it can be stated that poorly equipped, hardly trained and meagerly paid Georgian Border Guards are not able to sufficiently and effectively control the country's borders<sup>101</sup>. Failures in border-management had in recent times major impacts on the country's security: Chechen rebels crossed the borders, entered the Georgian territory and found refuge in the Pankisi Gorge. Russia, accusing Georgia of supporting Chechen rebels and terrorists, started bombing Georgian territory. The incident has shown how much failures in border-management and -controlling may affect national as well as international security.<sup>102</sup>

Smuggling and trafficking at Georgian borders forms an additional and general problem, especially since Georgia does not confirm the secessionist territories Abchasia and Ossetia as external territories. Georgian authorities do not employ Border Guards at these borders, because if they would do so it would be considered as a recognition of the independence of the secessionist territories. Therefore those borders are not controlled as inter-state borders and especially prone to any trafficking, drug and weapon smuggling activities: “Corruption, organized crime, trafficking in drugs and weapons, terrorist acts and participation in smuggling through their territories became a profitable business for all sides of conflicts: Russian, Georgian and Ossetian criminals, peacekeepers, law enforcement bodies, and Georgian partisans in Abkhazia.”<sup>103</sup> It has been clearly stated that “smuggling and organized crime through Abkhazia

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<sup>96</sup> See concept of the Georgian Police Reform, page 1. Annex XI to the Concept of the reform of the Security and Law Enforcement Services of Georgia. To be found at: <http://www.supremecourt.ge/english/About.htm> →Public Information --> Reform Commission of the Law Enforcement and Security Agencies → Concept of the reform of the Security and Law Enforcement Services of Georgia.

<sup>97</sup> See Concept of the reform of the Security and Law Enforcement Services of Georgia, page 13. To be found at: <http://www.supremecourt.ge/english/About.htm> →Public Information --> Reform Commission of the Law Enforcement and Security Agencies → Concept of the reform of the Security and Law Enforcement Services of Georgia.

<sup>98</sup> Quotation of an interview with a member of a Georgian NGO.

<sup>99</sup> Darchiashvili 2003, op. cit., p. 77.

<sup>100</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>101</sup> Referring to an interview with a member of a Georgian NGO.

<sup>102</sup> Referring to an interview with a member of a Georgian NGO.

<sup>103</sup> Kukhianidze 2003, op. cit. p. 8.

and South Ossetia can be minimized only in close cooperation between Georgian, Abkhaz and Ossetian law enforcement bodies.”<sup>104</sup>

In 1999 the OSCE Mission to Georgia was mandated to observe and report on movements across the Chechen segment of the Georgian-Russian border. The mandate was enlarged to further segments in 2001 and 2003. Within the cooperation programme the OSCE border monitors are accompanying Georgian Border Guards while fulfilling their daily duties.

In June 2003 a 100 000 euro grant from the European Union was used to purchase equipment for Georgian border guards in order to improve the joint border monitoring of the department of the Georgian State Border Protection and the OSCE Border Monitoring Operation.

However those grants and aid programmes seem to be a drop in the ocean in view of the tremendous amount of illegal activities along mostly unprotected Georgian borders.

## 2. *Achievements and Positive Trends*

Despite major challenges and obstacles, there have been positive developments and considerable steps into the right direction. A focus will be set on four relevant trends: an apparent tendency towards transparency enhancement, a positive and ongoing process in training and professionalisation of the Armed Forces, general promising signs for a slow but continuous system change and efforts to adapt and coordinate international assistance. After all, “The threats are at least transparent.”<sup>105</sup>

As a crucial positive starting point one might state that none of the mentioned challenges to SSR are seen as absolute or insoluble problems and in comparison to the still vivid soviet past, an extremely important step has already been taken: The threats and challenges are transparent<sup>106</sup> and therefore have a chance to be addressed and tackled. The pressure to further elaborate a national security concept as well as to adopt a binding SSR-concept is increasing and coming from all kind of political actors: NGOs, parliamentary staffers as well as various members of the MoD demand a transparent and precise programme, as well as binding and reliable directives and guidelines: “In general I would be optimistic about the reform process... If we conduct reforms effectively we would be able to join MAP.”<sup>107</sup>

The decision of the National Security Council to elaborate the cooperation with NATO seems to give hope for an acceleration of the process. The government is well aware, that the reforms are a crucial condition for entering the preparatory phase to join MAP.<sup>108</sup> It is clearly seen, that the quite powerful incentive of joining MAP can’t be reached without a quite swift and effective implementation of necessary standards.<sup>109</sup>

Therefore we may state a starting point which is not as bad as might have been assumed: There is a general will to proceed with the reforms and a concrete knowledge on the traps which are to be found on the way.

### 2.1. *First signs of system improvement*

“The pyramid is getting holes.”<sup>110</sup>

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<sup>104</sup> Ibid.

<sup>105</sup> Quotation from an interview with a member of the Defence and Security Committee of the Georgian Parliament.

<sup>106</sup> Referring to an interview with a member of the Defence and Security Committee of the Georgian Parliament.

<sup>107</sup> Quotation from an interview with a member of the Georgian Mission to NATO within the Ministry of Foreign Affairs.

<sup>108</sup> NATO Membership Action Plan

<sup>109</sup> Referring to an interview with a member of the Georgian Mission to NATO within the Ministry of Foreign Affairs.

<sup>110</sup> Quotation from an interview with a member of a Georgian NGO.

According to some interviewees there are first signs of a general system improvement. They state a general societal transformation process, which is irreversible and also affects the security sector relevant structures. They are positive that the transition process towards a democratic society will successfully proceed.<sup>111</sup>

It has been stated, that first “holes” have been occurred within the “corruption-pyramid”, mainly caused by the dismissal of highly corruptive personnel and their replacement by members of a “new generation”. Ministers as well as head of units within the Ministry of Internal Affairs and the Ministry of State Security became exchanged after having been heavily involved in criminal activities.<sup>112</sup> The new appointed officials in charge seem not to be involved in illegal processes and obviously try to stay out of the usual mafia-pyramid. The leadership of the Ministry of Internal Affairs is said to be dedicated to reforms. Those examples for transformation and an alternation of political generations are made public and seem to give a certain hope for an improvement of the situation.<sup>113</sup>

The downfall of Shevardnadze and his clan will certainly also have positive effects. The Shevardnadze clan in itself was the most apparent symbol of the corruptive and clientele society. As long as the leader of the state was the most obvious representative of those negative structures no change could be expected.

## *2.2. Achievements in transparency*

Considerable improvements are to be noted in view of transparency of security structures as well as of defence spending. Especially mentioned should be the concept of the reform of the Security and Law Enforcement Services of Georgia, the MoD White Paper, the new PPBS<sup>114</sup> budgeting system which is providing more transparency in defence spending and finally a quite close cooperation of the MoD with NGOs and interested public.

### *2.2.1. The Concept of the Reform of the Security and Law Enforcement Services*

As already mentioned before<sup>115</sup>, the concept of the reform of the security and law enforcement services, elaborated by an Interagency Commission, has been made publicly available with a series of relevant expert’s and institution’s recommendations, including recommendations adopted by the Council of Europe on the role of public prosecution in the criminal justice system, recommendations on the Police Ethics Code, furthermore concepts of the reform of investigation and of the reform of procuracy, a concept of the police reform, a concept on the reform of the ministry of state security etc. The web-publication of the concept as well as other relevant material<sup>116</sup> might be seen as a first step towards a public dialogue and public involvement in the reform process.

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<sup>111</sup> Referring to an interview with a Member of the Georgian Ministry of Defence (MoD) and to a member of a Georgian NGO.

<sup>112</sup> Minister Targamadze, the founder of the MOI empire has been dismissed and replaced by his deputy, Koba Narchemashvili. See also: Darchiashvili, 2003, op. cit., pp. 76-78.

<sup>113</sup> Referring to interviews with a military journalist and a member of the Georgian Mission to NATO within the Ministry of Foreign Affairs as well as members of Georgian NGOs.

<sup>114</sup> See Section 1.2.4 on defence budgeting.

<sup>115</sup> See section 1.3.2.

<sup>116</sup> See: <http://www.supremecourt.ge/english/About.htm> → Public Information --> Reform Commission of the Law Enforcement and Security Agencies → Concept of the reform of the Security and Law Enforcement Services of Georgia.

### 2.2.2. *The MoD White Paper*

As stated within section 1.2.1, the White paper is seen as a first step towards more transparency and public involvement in security related issues. At the same time it has been criticized for not going far enough, i.e. for not containing a more precise reform concept<sup>117</sup>. Nevertheless it can't be neglected within the section on achievements. Most of the interviewees mentioned it proudly as a first and remarkable step into the right direction, especially as a sign that the government understood the importance of transparency in view of defence and security related issues.<sup>118</sup> Looking on the paper from the perspective of somebody with a soviet past background, it is a huge step towards transparency, public involvement and participation in the reform process. And seeing it in relation to the historic background, where transparency and public involvement were simply not imaginable, one may also understand the motivation the paper triggered within the strategic community. Not only MOD officials and parliamentary staffers, but also members of NGOs, working within the field of security policy and civil-military relations, relate this paper with a considerable hope, that the real reform process finally and irreversibly has started.

### 2.2.3. *Increasing transparency in defence spending*

In section 1.2.4 the quite optimistic assessment of the introduction of the new PPBS budgeting system, is mentioned which is supposed to provide enhanced transparency in defence spending. It has also been stated that meanwhile the process of introducing the system is blocked. Despite this drawback the system should not be described as entirely failed. Taking the circumstances into account it does not make sense to expect that such a process is going smoothly without any drawbacks. Even if it will take a certain time, one may state that a first and important step is done and that at least with some pressure of the international community, the process of introducing the new system will be irreversible.

### 2.2.4. *Cooperation with NGOs and interested public*

The tense relation with Russia but also the engagement of the West in security related assistance programmes - especially the American Training and Equipement (T&E) programme<sup>119</sup> - caused a quite high public interest towards defence and security related issues. This can be seen in a quite extensive media coverage on defence issues. Some papers even dedicate up to one fourth of their coverage to defence related information.<sup>120</sup>

Understanding the importance of a public understanding and interest towards the reform issues, the MoD follows a quite open policy towards interest and active involvement of NGOs and the general public.<sup>121</sup> Admitting, that MoD issues are still not transparent enough, at least some departments try to be as open as possible. They keep a good and close relationship to NGOs, appreciate their interest and keep them updated on new developments.<sup>122</sup>

## 2.3. *Training and motivation for the Armed Forces*

The reform process of the Armed Forces is stated to be well proceeding while considering NATO standards as well as general western advice as basic guidelines. Western advisors are not only

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<sup>117</sup> Referring to an interview with a Member of the Defence and Security Committee of the Georgian Parliament.

<sup>118</sup> Referring to an interview with a member of the Georgian Ministry of Defence (MoD).

<sup>119</sup> The over 60 million worth of assistance is provided to train and equip about 2 000 Georgian soldiers within the overall framework of American anti-terrorism campaign.

<sup>120</sup> Referring to an interview with a military journalist.

<sup>121</sup> Referring to an interview with a member of the Georgian Ministry of Defence (MoD).

<sup>122</sup> Referring to an interview with a member of the Georgian Ministry of Defence (MoD).

appreciated as trusted and respected experts but also seen as main source for motivation and hope in success of any reforms.<sup>123</sup>

The obvious engagement and interest by the West, which found a new peak in the American Training and Equipment Programme (T&E programme) considerably increased the motivation to continue with the reform process and is generally seen as crucial basis for a professional army-building process.

The over 60 million worth of assistance is provided to train and equip about 2000 Georgian soldiers within the overall framework of the American anti-terrorism campaign. Members of the Armed Forces as well as of other security forces are undergoing the intensive training programme, which is supposed to result in a first basis for a well trained, reliable and disciplined army.<sup>124</sup> Media echo as well as expert views on this programme show the importance of such a project, not only in view of training and professionalisation of the Armed Forces, but much more in view of the motivation which has been triggered by this new sign of international engagement and support.<sup>125</sup>

#### *2.4. Coordinating international assistance*

Western assistance is clearly seen as fundamental for any success in SSR and it has been understood, that a crucial matter of concern is the proper use of foreign aid. First steps have been taken to arrange programmes which help to coordinate different support projects and try to guarantee their most effective use. An example of those positive coordination-efforts has been launched by the Parliamentary Defence and Security Committee, which arranged meetings with the military attachés of those countries, supporting Georgia in its reforms in order to start a comprehensive coordination of useful assistance programmes, which also take into account the current infrastructure as well as capacities and challenges caused by corruption. The feedback on those meetings has been quite positive.<sup>126</sup>

A Swiss pilot project has also been mentioned, which takes into account corruptive structures by purchasing necessary equipment in Georgia and handing it over directly to the departments in need without involving any money transfer.<sup>127</sup> Those pilot projects may help to avoid mismanagement in view of international assistance and help to built up sustainable donors' involvement in the process. Seeing those efforts as valuable steps within the reform process it should of course be mentioned that an effective coordination finally only can take place when clear priorities are set by the government.

### *3. Prospects for the Future and Factors for Success and Failure*

“Reforms will be definitely implemented. It only takes time.”<sup>128</sup>

We asked the interviewees on prospects for the future and factors for success and failure in view of a democratic governance of the security sector. The following picture is a selection of the most important factors, which determine the future reform process.

Generally there have not been any crucial doubts in a final success of a democratic reform of the security sector, even if it is admitted, that it probably would take quite a long time

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<sup>123</sup> Referring i.e. to an interview with a Member of the Georgian Defence Academy and to several members of Georgian NGOs.

<sup>124</sup> Referring to an interview with a military journalist and to a member of a Georgian NGO.

<sup>125</sup> Referring to an interview with a military journalist and to a member of the Georgian Mission to NATO within the Ministry of Foreign Affairs.

<sup>126</sup> Referring to an interview with a parliamentary staff member.

<sup>127</sup> Referring to an interview with a member of the Georgian Ministry of Internal Affairs (MIA).

<sup>128</sup> Quotation from an interview with a Member of the Georgian Defence Academy.



to implement the democratic changes. However there are a lot of uncertainties in view of concrete prospects of the next years and quite a lot of different variables and factors, determining anticipated developments:

### *3.1. The role of international assistance*

International support in SSR is clearly seen as most fundamental factor in view of a successful implementation of the reforms in future. The following quotations of our experts' statements mirror their concerns in this direction:

The prospects of security sector reform depend on the involvement of international aid. Our own forces and energy are not strong enough. We need Western assistance on educational and strategic level. If the assistance will remain, the SSR has a chance to progress. In case Western support would stop, no chances would be left for any progress.<sup>129</sup>

“During the past years we saw what Georgia can do by itself: We saw that we can do nothing! We need the Americans and their Training and Assistance Programmes”<sup>130</sup>

“I hope the Americans don't let Georgia down. They are stakeholders now.”<sup>131</sup>

There is no doubt, that the Georgian perspective clearly sees international support and assistance as basic factor and absolute necessary pre-condition for the success of Security Sector Reform. Georgians seem to be convinced, that, if the West would let them down and stop supporting them a total failure not only in view of a reform of the security sector but also of democratization in general is to be expected. Furthermore it has been repeatedly stressed how important a general support and cooperation concerning democracy-building and a basic development of the whole country would be. Hopes are especially linked to Turkey, Germany, US, France, Switzerland, as well as to UN, EU and NATO. Assistance is especially appreciated and needed with regard to training, education and qualification of militaries as well as civilians. Those assistance programmes are seen as basis for any future prospects of SSR in Georgia.<sup>132</sup> In view of a time-wise perspective most experts are convinced, that international and especially American interest in Georgian SSR clearly helps to speed-up the process.<sup>133</sup>

### *3.2. The role of national motivation*

“We need readiness and motivation from our side.”<sup>134</sup>

“We have to sit down like the Estonians and say ‘We have Zero’ and start building everything from the scratch”<sup>135</sup>

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<sup>129</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>130</sup> Quotation from an interview with a Member of a Georgian NGO.

<sup>131</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>132</sup> Referring to interviews with a member of the Georgian Ministry of Internal Affairs (MIA), with several members of Georgian NGOs, with a parliamentary staff member and with a member of the Georgian Mission to NATO within the Ministry of Foreign Affairs.

<sup>133</sup> Referring to an interview with a member of a Georgian NGO.

<sup>134</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>135</sup> Quotation from an interview with a Member of the Defence and Security Committee of the Georgian Parliament.

“For 200 years we had no state, no army...Now it is most important to get a strategy. That is very difficult, because we have to start from Zero-position. But we will try...”<sup>136</sup>

International assistance is certainly a crucial aspect in view of Georgian security sector reform but an even more important point is the role of national motivation and self-confidence within the reform process. Like in Estonia or Latvia also in Georgia the state and governance structures have to be built from scratch. Those states naturally face crucial additional challenges in reforming their Armed Forces and security structures than long established states. The interviewees quite often alluded to the magic number “Zero” when referring to this fact. The awareness of having no own historical experiences on which they could built up an own success-story appears as a quite strong psychological burden. “Zero” experience and knowledge is clearly seen as a “Zero” basis for the “reform”. Quotation-marks are used here because it has been stressed out, that “reform” is not the right expression. There was more or less nothing to reform in Georgia. The first roots of the Georgian Armed Forces appeared spontaneously without any strategy or concept within a chaos situation at the beginning of the civil war. Therefore the interviewees statements refer to a complete new construction of the security sector rather than to its “reform”.

This magic figure “Zero” is a quite relevant factor in Georgian SSR and nothing can counter it but national motivation and self-confidence. However, statements on confidence in Georgia’s own will and energy to successfully proceed on the democratic path have been quite rare.

While the interviewees hardly mentioned any conviction to be able to rely on the own national will and energy, “International Assistance” or “Western support” are dominating expressions which have been repeated like magic formulas when talking on a prospective success of Georgian Security Sector Reform.

### *3.3. The role of political goodwill*

Speaking on national motivation in a country where the nation’s fate is almost exclusively determined by governmental actors there is no way to forget about the political good will of the government as crucial factor, determining the future of Georgian SSR: “The prospects depend on how far the politicians are willing to move the reforms”<sup>137</sup>

Basically nobody seems to doubt that capacities and knowledge for the conceptualization is available. However, finally everything depends on the political will to give concrete directives and elaborate a consistent strategy, which could be used as binding guideline for all those involved in security sector reform. Such an official obligation and commitment would have to be launched and seriously promoted by the government. As long as there is no binding and officially adopted security concept available, no effective improvement of the situation can be expected.<sup>138</sup> The role of the new government will be crucial in this regards.

### *3.4. The role of political stability*

A most crucial factor for the democratization of the security sector is – needless to say – the political stability in the country during the upcoming years. Everything depends on the ability and willingness of the new government to proceed with the democratization process and the implementation of the reforms. The presidential election in January 2004 as well as the first months under the new government will provide a test of the stability of Georgian democracy.”<sup>139</sup>

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<sup>136</sup> Quotation from an interview with a Member of the Georgian Ministry of Defence (MoD).

<sup>137</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>138</sup> Referring to interviews with a Member of the Defence and Security Committee of the Georgian Parliament and with several members of Georgian NGOs.

<sup>139</sup> Quotation from an interview with a member of a Georgian NGO.

The international community is obviously ready to support Georgia by all means in securing the stability in the country: Several million euros have been for example pledged by OSCE participating states for the “Georgia Elections Assistance Programme”.<sup>140</sup>

### 3.5. *General democratization and change of mentality*

“If the democratic change in Georgia will be successful, the governance of the security sector will also have a chance to change in a positive and democratic way”<sup>141</sup>

The general importance of democratization and democracy-building as a basis for a democratic governance of the security sector has been stressed quite often. And furthermore for a general democratization a change of mentality is seen as crucial pre-condition. As stated before soviet legacies still have strong influence and impact on all kind of societal and political life and prevent democratic changes.<sup>142</sup> The future of the general transformation process will determine the future of a democratization of the security sector and the other way around.<sup>143</sup>

## 4. *Priorities and Recommendations for SSR and International Involvement in the Reform Process*

The interviewees have been finally asked on priorities and recommendations in view of the implementation of SSR in Georgia. The recommendations will be split into national and international implications. The first aspect considers actions and steps to be taken on a national level. The second aspect considers implications for international assistance and support.

### 4.1. *Implications: The national dimension*

A first range priority is the adoption and promotion of a national security concept as well as a concrete and precise concept for the security sector reform in Georgia. The reform plan has not only to list NATO requirements for joining MAP or list recommendations of foreign advisors, but also has to take into account the basic question: “What actually does SSR mean for Georgia?” and “What are the implications for a binding implementation of such a reform?”. Those considerations should include the following questions: “What are the main obstacles to Georgia’s democratization? What are the primary challenges to its security? Are the current military, police, border guard and intelligence structures capable of responding effectively to those challenges? Why not? What are the priority areas for a reform? What are the domestic and institutional barriers to a reform? etc.”<sup>144</sup> The concept should be precise in view of structures, institutions and responsibilities and give concrete directives for implementation to accountable persons in charge.

The conceptualization of SSR should be built up on a national consensus. Therefore all kind of political actors as well as the general public have to be involved in this process. Requirements as well as developments must be made transparent. Transparency has to be promoted in view of all SSR-related aspects. Successful cases should be promoted in order to motivate actors as well as the general public.

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<sup>140</sup> See: OSCE States pledge almost four million euros for assisting Georgia in 2004 elections. Article to be found online at: [http://www.osce.org/news/show\\_news.php?ut=2&id=3792](http://www.osce.org/news/show_news.php?ut=2&id=3792)

<sup>141</sup> Quotation from an interview with a member of a Georgian NGO.

<sup>142</sup> Referring to an interview with a member of a Georgian NGO.

<sup>143</sup> Referring to an interview with a military journalist and to a Member of the Georgian Ministry of Defence (MoD).

<sup>144</sup> Assessment and recommendations by Marina Caparini, Senior Fellow, Geneva Centre for the Democratic Control of Armed Forces, Geneva.

Not only the Armed Forces, but also other security forces, most of all police forces, have to be reduced to its natural size and be restructured in a most professional way. Increased salaries and social securities should be provided in order to prevent corruption and illegal activities of the personnel. Furthermore civilian, especially parliamentary control over the armed and other security forces have to be guaranteed. The implementation of Disarmament-, Demobilisation, Reintegration- and Retraining- programmes is of crucial importance.

Restructuring processes in the government must focus on the separation of responsibilities and improved decision-making processes.

Some experts also suggested an improvement of legislation and a reform of the court system.

The need of the establishment of a proper crisis management system has also been stressed out during the interviews.

#### 4.2. *Implications: The international dimension*

International Community has to give up its one-sided focus on the support of the reform of Armed Forces and has to strengthen its assistance in view of a reform of internal security forces, especially the police forces. This is especially important since the Police forces are at the very heart of a society and interact with public and societal life on a daily basis. As law enforcement body they form the direct arm of the government and therefore strengthen or weaken directly governmental legitimization. Democratization has no chance without a reformed police, since democracy has to be based on the rule of law.

Also crucial is a training and reform of the border guards. An effective border management system will help preventing conflicts with neighboring countries. A reformed and more effective border management system will also help preventing smuggling and trafficking and is therefore not only of importance for Georgia, but for the whole region.

Training and educational programmes have to be launched and/or further supported. Further training is crucial in view of all kind of military, political and other societal actors. Programmes should be focused on Armed Forces, Internal Security Forces, including Police and Border Guards, but also on civilians in defence structure, including civilians within the ministries, parliamentarians, and civil society in general. Therefore the Military Academy as well as other institutions need to start long-term training programmes for civilians in Military Affairs. Civic education-programmes should be conceptualized in view of general democracy-building but also in view of democratic civilian involvement in security issues.

A crucial support should be provided in view of parliamentary involvement and oversight of the security sector. International assistance has to help strengthening knowledge and expertise among parliamentarians and staffers with the help of specialized training programmes.

A general support of civil society building is in need. A further retreat of the public has to be prevented. International assistance has to invest in civic education and civil society building. It is crucial to help making democracy as well as democratic oversight over the security sector understandable. The role of donors in this respect is crucial: they must send clear messages, that political leadership as well as civil society are all participants in efforts to improve security. Furthermore donors should seek local organizations with ties in the Georgian community, in order to bring SSR into the own local agendas.<sup>145</sup>

International assistance is generally and basically in need of cooperation and coordination. Various programmes and efforts have to be coordinated and re-evaluated in view of efficiency. Despite “conditionality” is quite often considered as politically incorrect, international

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<sup>145</sup> See Johanna Mendelson Forman: “Promoting Civil Society in Good Governance: Lessons for the Security Sector”. DCAF Working Paper Series No. 29, page 15.

assistance should be at least conditional on i.e. respect for the rule of law and human rights.<sup>146</sup> A certain political will and at least a basic processing of the reforms, not only in view of Armed Forces and MoD, but in view of all security forces and their related agencies, should serve as measure for the assessment of prospective support programmes.

Democracy-Building has to be supported in general. A system of democratic and understandable values has to be established in order to support a change of mentality. Root causes of bad governance of the security sector have to be considered in the assistance programmes. Therefore i.e. enhanced support of anti-corruption programmes would be in need.

Financial aid and support with technical equipment has to take corruption into account, i.e. assistance has to be adapted: direct hand over of equipment rather than money transfer to in-transparent accounts.

Assistance in stabilizing the security environment and settling frozen conflicts in the Caucasus region would help providing a solid basis for reforms. Long term international back-up against aggressive territorial infringements would help to free resources and invest them in democratic reforms of SSR rather than in efforts to enlarge combat readiness.

Trainings and seminars on professional state-management are in need, as well as assistance in creation of a state-management culture.

### *Conclusion: Reforming the Reform*

The Security Sector Reform in Georgia is in need of a reform. The current reform is leading to nowhere.<sup>147</sup>

One of the main conclusions from the preceding sections might be that the security sector reform in Georgia is in need of a reform. Considering the main points of what was said before, one might conclude, that such a reform should have an external as well as an internal dimension. One also might call it an international and a national dimension.

### *The international dimension*

The international assistance has to shift its focus. On the one hand it is taken for granted that SSR must be seen in a general frame of democratization and democracy-building and can't be promoted as a separate issue (as well as the other way around democratization itself is not possible without an effective reform of the security sector). Nevertheless this insight seems not to be mirrored in international assistance programmes. International support is still focusing on a reform of the Armed Forces, which is certainly an important factor for the country's and region's security. However another crucial factor is the countries democratization. Crucial elements in view of democratization are internal security forces and law enforcement bodies as direct links between government and society. Without a reform of Georgian law enforcement bodies, especially police forces, general democratization will not be able to succeed.

A basic and most important conclusion is, that international assistance has to considerably reinforce its support of a reform of the police and internal security forces. Given the crucial importance of police forces within a society - and especially a society in transition -, donors have to become aware of the implications and bundle efforts and energy to help transforming the internal security actors.

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<sup>146</sup> Born 2002, op. cit., p. 66.

<sup>147</sup> Quotation from an interview with a member of a Georgian NGO.

Furthermore an intensified cooperation and a coordination of SSR-relevant programmes would be in need – always having in mind, that SSR can't be seen as singled-out factor. Therefore not only mere security sector related, but also general assistance in democracy-building would have to be taken into consideration when coordinating relevant assistance.

Such a coordination would also help to develop a joint assistance policy, which would eventually be able to link support to a minimum of concrete results. We don't mean that support should stop in case reform would not be implemented fast and successful enough. But pre-conditions in view of assistance programmes must more clearly be promoted as incentives to further proceed with the implementation.

Coordination would also help evaluating success and failure of support programmes. It might help determining the further direction of assistance, especially in view of the given background, i.e. the corruptive structures.

### *The national dimension*

International assistance can't help reforming the security sector without national motivation. Domestic will is crucial for the reforms. So far Georgia has made a good start, mirrored i.e. in the Defence White Paper - despite its flaws – and in the Police Reform Concept, both considerable exercises in transparency. Furthermore Georgia is an active PfP partner and open to international advice, assistance and models, i.e. to be seen in the adoption of western legislation and the PPBS budgeting system. Nevertheless, receiving advice and assistance is not enough. A country and most of all its government should know where it wants and needs to go. It is not sufficient to wait until Georgia is told by NATO how and what to reform. It is of crucial importance to undertake itself the step to identify the specific national interests and requirements and then build a political consensus on a respective reform plan.<sup>148</sup>

Political goodwill alone is maybe the first and foremost important aspect to trigger a positive process, but it also would not be able to succeed without a broad national consensus, getting a back-up by all kind of political actors as well as the general public. And here again one should stress the importance of transparency on the one hand and civil-society-building on the other. National security including the reform of the security sector must become a transparent issue, discussed and promoted publicly. The role of civic education on those issues as well as on general democracy related aspects is of crucial importance.

Whatever the reasons for the failure to take the necessary steps towards a concrete reform plan are – domestic constraints, persistence of old-guard nomenklatura in key positions, clientelism and corruption etc. – the step has finally to be taken - and this by the country itself.

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Assessment by Marina Caparini, Senior Fellow at the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, Switzerland.

## Annex 1

### About the Authors

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## Annex 2

### DCAF Programmes in Georgia

#### Projects 2002

- **Stock Taking on the Standing of Security Sector Reform in Georgia**  
A DCAF staff member initiated research with CCMRSS in Tbilisi mapping the Georgian security sector.  
See [http://www.dcaf.ch/news/PfP\\_Reichenau1103/Papers/Fritz.pdf](http://www.dcaf.ch/news/PfP_Reichenau1103/Papers/Fritz.pdf)
- **NATO – PA Rose - Roth Seminar – Georgia** (co-sponsored by DCAF)  
For a report on this seminar for parliamentarians.  
See <http://www.nato-pa.int/default.asp?TAB=298>

#### Projects 2003

- **Collection of Georgian Security Sector Laws (Security Sector Legal Assistance)**  
Extant acts collected and translated into English during 2003 for publication.
- **Conference – ‘Democratic Control over Armed Forces’ (Tbilisi)**  
In support of the Estonian Ministry of Defence – ISAB organized three-day conference, a DCAF member participated and also presented a paper on ‘Civilians in Defence Ministries’.
- **PfP Consortium - SSR Working Group Meeting - ‘Security Sector Governance in Southern Caucasus’** Georgian security sector governance discussed at a Joint Meeting with the Regional Stability Group in Southern Caucasus and South Eastern Europe, Reichenau, Austria.  
<[http://www.dcaf.ch/news/PfP\\_Reichenau1103/mainpage.html](http://www.dcaf.ch/news/PfP_Reichenau1103/mainpage.html)>

#### Projects 2004

- **DCAF-IPU Handbook on Parliamentary Oversight of the Security Sector - Georgia**  
Translated into Georgian during 2003 and published in March 2004. A formal press conference was held at the official launch event at the Parliament in June 2004. 1000 copies were distributed, of which c. 500 went to MPs and parliamentary staffers and the remainder to the media and civil society groups. Electronic version online from March 2004 at <http://www.dcaf.ch/handbook/publications.html>
- **UNOMIG –Policing Standards Mapping Exercise**  
During late 2004 a DCAF team conducted a mapping survey, analysis and needs assessment of contemporary policing standards and needs assessment.



### **Publications (scheduled for publication in 2005)**

- **Georgian Security Sector Laws (Security Sector Legal Assistance)**  
All extant acts relating to the Security Sector will be published in Georgian and English
- **Commentaries on Georgian Security Sector Laws (Security Sector Legal Assistance)**  
Subsequent to the collation and publication of the Russian Security Sector Laws, the DCAF Legal-Political Assistance Group will comment on the existing legislation (including drafts) on the Security Sector. The volume will be published in Georgian and English.
- **Georgian Security Sector Governance Self-Assessment**  
Completing the research begun in 2002, the findings of CCMRSS' research will be published along with papers by Western experts mapping the current status and prospects of the Georgian Security Sector.

### **Possible Projects**

- **PAP-DIB Support – Workshops & Conferences**  
DCAF is prepared to assist Georgian institutions and civil society with implementation of the NATO-Georgia Partnership Action Plan in the formats already used to date in Ukraine.

## Annex 3

### DCAF Publications about Georgia and the Caucasus 2000-2005

#### DCAF-IPU Handbook for Parliamentarians on Oversight of the Security Sector (Georgian Version)

Fluri, Philipp H., Johnsson, Anders B., Born, Hans (eds), *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, (Geneva: Inter-Parliamentary Union and Geneva Centre for the Democratic Control of Armed Forces, 2002)

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#### Articles and Books on Georgia and the Caucasus

Darchiashvili, David, 'Striving for Effective Parliamentary Control over the Armed Forces in Georgia', in Hans Born, Marina Caparini, Karl Haltiner, J. Kuhlmann, (eds.), *Democratic Governance of Civil Military Relations in Europe: Learning from Crises and Institutional Change*, (Berlin, LIT Verlag/Transaction Publishers, 2004)

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#### DCAF Conference Proceedings

"Security Sector Governance in Southern Caucasus Challenges and Visions," *DCAF Workshop*, Reichenau, 21-24 November 2003,

[http://www.dcaf.ch/news/PFP\\_Reichenau1103/mainpage.htm](http://www.dcaf.ch/news/PFP_Reichenau1103/mainpage.htm)

#### DCAF Conference Papers presented at the Joint Meeting of the PFP-Consortium Security Sector WG together with the Regional Stability in Southern Caucasus Study Group: "Security Sector Governance in Southern Caucasus - Challenges and Visions."

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[http://www.dcaf.ch/news/PfP\\_Reichenau1103/Papers/papers.htm](http://www.dcaf.ch/news/PfP_Reichenau1103/Papers/papers.htm)

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Harutyunyan, Aram, 'Armenia as a Factor of Balance in the Southern Caucasus,' *Workshop Paper*, Reichenau, 21-24 November 2003,

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Hiscock, Duncan, 'The Role of Civil Society in Security Sector Governance in the South Caucasus,' *Workshop Paper*, Reichenau, 21-24 November 2003,

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Johnson, Garry, 'Security Sector Reform in the Southern Caucasus,' *Workshop Paper*, Reichenau, 21-24 November, 2003,

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**DCAF Conference Presentations given at the Joint Meeting of the PfP Consortium Security Sector Reform WG together with the Regional Stability in Southern Caucasus Study Group: "Security Sector Governance in Southern Caucasus - Challenges and Visions."**

Ebnöther, Anja, H., 'Introduction to the Security Sector Reform Working Group and to Security Sector Governance in Southern Caucasus, *DCAF Conference Presentation*, Reichenau, 21-24 November 2003,

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Felberbauer, Ernst, 'Security Sector Governance in Southern Caucasus – Challenges and Visions,' *Conference Presentation*, Reichenau, 21-24 November 2003,

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### **DCAF Working Papers about the Caucasus**

Fluri, Philipp, 'Former Soviet Union: Security Sector Reform in the Southern Caucasus', *DCAF Working Papers*, No. 110, February 2003,

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## **Annex 5: About DCAF**

### **The Geneva Centre for the Democratic Control of Armed Forces (DCAF)**

The Geneva Centre for the Democratic Control of Armed Forces (DCAF), established in October 2000 on the initiative of the Swiss government, encourages and supports states and non-state-governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and promotes international cooperation in this field, initially targeting the Euro-Atlantic area. To implement these objectives, the Centre:

- collects information, undertakes research and engages in networking activities in order to identify problems, to establish lessons learned and to propose the best practices in the field of democratic control of armed forces and civil-military relations;
- provides its expertise and support to all interested parties, in particular governments, parliaments, military authorities, international organisations, non-governmental organisations, academic circles.

DCAF works in close cooperation with national authorities, international and non-governmental organisations, academic institutions and individual experts. In its operational and analytical work, DCAF relies on the support of 46 governments represented in its Foundation Council, on its International Advisory Board comprising some 50 renowned experts in the field of defence and security, on its Think Tank, Outreach, and International Projects Departments.. The Centre has established partnerships or concluded cooperative agreements with a number of research institutes and with several international organisations and inter-parliamentary assemblies.

In order to be able to thoroughly address specific topics of democratic control of armed forces, DCAF has established dedicated working groups covering the following issues: security sector reform; parliamentary oversight of armed forces; legal dimension of the democratic control of armed forces; transparency-building in defence budgeting and procurement; civilian experts in national security policy; democratic control of police and other non-military security forces; civil-military relations in conversion and force reductions; military and society; civil society building; civil-military relations in post-conflict situations; criteria for success or failure in the democratic control of armed forces; civil-military relations in the African context. Planning, management, and coordination of the working groups is centralised in DCAF's Think Tank.

DCAF provides its expertise on bilateral and multilateral levels, and also addresses the interests of the general public. A number of bilateral projects in the areas of security sector reform and parliamentary control of armed forces are underway within the states of South Eastern and Eastern Europe. At the multilateral level, DCAF implements several projects in the framework of the Stability Pact for South Eastern Europe, the Organisation for Security and Cooperation in Europe, NATO, Council of Europe, and the United Nations. The Centre regularly produces publications, organises conferences, workshops and other events. It uses information technology, including its own website (<http://www.dcaf.ch>), to reach both target audiences and the general public.

DCAF is an international foundation under Swiss law. Forty-six governments are represented on the Centre's Foundation Council.\* The International Advisory Board is composed

\*

Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Cote d'Ivoire, Croatia, Czech Republic, Denmark, Estonia, Finland, France, FYROM/Macedonia, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Nigeria, Norway, Poland, Romania, Russian Federation, Serbia and Montenegro, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States of America, and the Canton of Geneva.

of the world's leading experts on the subjects of defence and security, who advise the Director on the Centre's overall strategy. DCAF is staffed by some 50 specialists of more than 20 different nationalities,

The Swiss Federal Department of Defence, Civil Protection and Sports finances most of the DCAF budget. Another important contributor is the Swiss Federal Department of Foreign Affairs. Certain member states of the DCAF Foundation support DCAF by seconding staff members or contributing to the Centre's specific projects.

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Website: [www.dcaf.ch](http://www.dcaf.ch)

## Annex 6

### **The DCAF Legal-Political Assistance Group (LPAG)**

The DCAF Legal-Political Assistance Group (LPAG) (<http://www.dcaf.ch/lpag/about.html>) was set up in 2002 to meet a growing demand from parliaments for assistance with their law-making activities. The LPAG is a non-permanent body of renowned experts on legal and law-making matters who may constructively assist with the theoretical and practical aspects of legislative activity. Jointly operating under the direction of the DCAF Deputy Director and Head of International Projects, LPAG members are invited to collaborate on projects that are suited to their particular expert fields.

Collaboration usually takes the form of attending and contributing papers at a conference, participating in workshops, and/or critically commenting on legal texts. In each country where the LPAG operates, DCAF seeks to collate and publish in written and electronic form the collected security sector laws of the country concerned. The laws are also added to the DCAF legal database (<http://www.dcaf.ch/legal/intro.htm>)

Mandates for cooperation with the LPAG currently exist with the following institutions:

- The Russian State Duma Defence Committee
- Ukrainian Verkhovna Rada Foreign Relations Committee
- The Parliament of Georgia
- The CIS Parliamentary Assembly in St. Petersburg

#### **LPAG Activities 2002-2004**

##### **Conferences**

In the CIS (in cooperation with the Centre for Political and International Studies (CPIS)).

Round-Table discussions of draft laws in the context of international good practices have taken place in Russia in cooperation with the Centre for Political and International Studies (CPIS).

- November 2002 Moscow – CIS Model Laws on Parliamentary Oversight of Armed Forces and Civil Military Relations
- November 2003 Moscow – CIS Draft Model Law on Peacekeeping
  - Model Law unanimously adopted at the 23<sup>rd</sup> Session of the CIS Inter-Parliamentary Assembly April 17th, 2004.

Conferences have also taken place in Ukraine in Kiev (September, December 2002 – Ukrainian law draft on Parliamentary Oversight of Armed Forces).

- December 2002 Kiev - Hearing on Money-Laundering (in cooperation with Rada Foreign Relations Committee and NATO representative to Ukraine), leading to legislation on Money-Laundering
- September 2002, December 2002, February 2003, September 2003 Kiev - Hearings on Parliamentary Oversight of Armed Forces and Security Sector Law Draft law on Oversight issues accepted February 2003.

LPAG members have also participated in the workshops and conferences of 2004 Ukraine programme

- May 2004 Kiev - DCAF-Rada-NIISP Conference on 'Ukrainian Security Sector Reform'
- April & July 2004, Kiev - DCAF-Rada Roundtable 'Parliamentary Oversight of the Security Sector – Defence Budget Transparency and Parliamentary Powers'.

### **Seminars**

Members of the LPAG also participate in DCAF's Civil Society Working Group's 'The Civil Society Building Project (CSBP) in Russia'. The Project's activities consist of ten seminars in Moscow on various aspects relating to civil society with particular emphasis on legislative aspects. The Working Group's activities form a complementary adjunct of the LPAG. The proceedings are being published and widely distributed to political and academic institutions in Russia and other Former Soviet countries.

### **Inventories of Security Sector Legislation**

Russian and English versions of the Russian Federation's security sector laws have been published in Moscow in December 2002 (Russian) and March 2003 (English) in cooperation with the Centre for Political Centism in Moscow. This is now a template for the type of cooperation and publication sought with LPAG partners. Similar inventories are being established for Ukraine and Georgia.

### **Members**

LPAG members are invited to activities according to their specializations and the needs identified by the respective parliaments.

Mr. Yevhen R. Bersheda	<i>former Ambassador of Ukraine to Switzerland; Ukrainian Academy of Sciences</i>
Dr. Hans Born	<i>Senior Fellow, Geneva Centre for the Democratic Control of Armed Forces</i>
Mr. Roy Cullen	<i>MP (Canada); Parliamentary Secretary of Finance Ministry</i>
Dr. Wim van Eekelen	<i>Dpty Secretary General NPA, former WEU Secretary General &amp; Netherlands MP</i>
Dr. Lidija Georgieva	<i>Assistant Professor of Peace, Conflict and Etiology of Threats, Institute of Defence and Peace Studies, Skopje University, Macedonia</i>
Mr. Simon Lunn	<i>Secretary General, NATO Parliamentary Assembly</i>
Mr. Anthony Foley	<i>Senior Legal Advisor, Ministry of Defence, Republic of Ireland</i>
Lt. Todd Huntley	<i>JAGC USN, and Member of DIILS</i>
Professor Ian Leigh	<i>Director, Centre for Human Rights, University of Durham, UK</i>
Dr. Dov Lynch	<i>Research Fellow, ISS EU Institute for Security Studies, Paris, France</i>
Mr. Leigh Merrick	<i>Former NATO Representative to Ukraine, UK</i>
Gen. Karlis Neretnieks	<i>President, National Defence College, Sweden</i>
Dr. Michael Noone	<i>Catholic University of America, Washington DC</i>
Dr. Ioan Pascu	<i>Professor, Defence Minister of Romania</i>
Lt. Col. Andreas Pruefert	<i>Chairman, EUROMIL</i>
Dr. Janusz Onyszkiewicz	<i>Former Defence Minister, Warsaw, Poland</i>
Cptn. Shackley Raffeto	<i>Judge, JAGC USNR, and Member of DIILS</i>
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