

**THE CHALLENGES OF POST-CONFLICT STATENESS:
THE CASE OF ARTSAKH**

VIOLETTA MANUKYAN

The establishment of the state is the main aim of each nation as a main mechanism of its safety, prosperity and natural development. In the second half of the 20th century after the entry of the UN Charter in force, as a result of significant developments in international law, the people's right to self-determination has been recognized as *erga omnes* and *jus cogens* norm¹ of international law and two active periods of state-building were recorded. The first was the raised decolonization wave in 60-70's, in the result of which more than seventy new states were established², the second was the beginning of the 90's, when after the collapse of the Soviet Union and Yugoslavia more than two and a half dozen countries declared independence. However, the experience of both the countries established on the second half of the 20th century and the countries established until then, shows that the establishment of the state does not automatically lead to security, prosperity and ensuring of natural development.

The afore-mentioned especially holds truth for the states of post-Soviet space. The societies of these countries faced unprecedented challenges along the way of formation of statehood and stateness, as neither experience, nor knowledge of previous decades was applicable, at the same time being compelled to cope with another not less complicated transformational process: globalization. But the problem is even more complicated for the group of those countries, which haven't been recognized yet, as there exist additional difficulties for stateness, particularly, conditioned by challenges and consequences of conflict phase, stringent limitation of international relations and its consequences, lack of experience and knowledge of building sovereign state, etc. This bucket of problems is a prolific base for state fragility and failure – as a result imposing a great threat to domestic and regional stability and security, and hence requires precise study. But, instead the issue of post-conflict stateness of non-recognized states hasn't been studied yet and is not assessed by neither segregated field assessment (except for “Freedom in the World”), nor integral assessment models, hence it's required to study what additional challenges and difficulties the prefix ‘non’ brings with it in addition to the existing difficulties of assessment of stateness.

What is certain – the prefix ‘non’ doesn't mean neglect, but indicates another type of state-like entity ‘full’ with people and their problems. One of the major omissions is the neglect of the fact, that lives of people living in those entities is of high value too, and this is what international community, first and foremost European community should pay precise attention to. What is vital to perceive: human rights are human rights, at last human life is human life, no matter if you live in a recognized or non-recognized state. To greater extent it's not about the government, it's about the people who live and get the extensive portion of sufferings. And the vulnerability of non-recognized states to fragility or failure, and international society's neglect towards those issues certainly won't relieve people's sufferings. So the point is not only the study of the problems, but the elaboration of assessment tool, which will help indicating the existing and potential problems and their roots - for their prompt solving.

¹*Gros Espiel H.*, The Right to Self-Determination, UN Doc. E/CN.4/Sub.2/405/Rev.1, UN Sales N E.79.XIV.5 (1980), p. 12. Legal Consequences for States of the Continued Presence of South Africa in Namibia (S.W. Africa) 1971, International Court of Justice 16, 89-90 (Amoun J., separate opinion); *Parker K., Neylon L.*, Jus cogens: Compelling the Law of Human Rights - Hastings International Law Review, N 585, 1998); *Parker K.*, Definition of Self-Determination -First International Conference on the Right to Self-Determination. United Nations, Geneva, August 2000.

²United Nations Judicial Yearbook 1980, pp. 182-183.

Yet another cumbersome issue is the fact, that the highest rate of ethno-national claims was registered in the first half of the 1990s, but the practice affirms their ‘longevity’: in 2009 18 countries in the world were still engaged in ethno-political conflicts for self-determination, in 2018 “Freedom in the World” report - annually represented by “Freedom House” - outlines 2 related and 13 disputed territories, to which we should also add the Republic of Kosovo, which has yet gained only partial recognition. However, the problem is not only driven by numerical data, but has fundamental reasons: as we can assume the development trends of modern geopolitical system objectively contribute to the emergence of new states, but not much is done to ensure the development of those entities – hence prolonging the sufferings of people living in those regions and nearby.

The assessment of stateness level is rather hard process, but non-recognized status brings a bunch of new peculiar problems, which need specific focus and comprehensive study. If neglected, these types of problems tend to flow into greater ones for the non-recognized states themselves and afterwards for the regional security. As it has been previously presented, the authors, who have studies stateness, tend to refer to stateness only from peculiar perspective or just one field (even sub-field), whereas stateness level is feasible to determine, if all the fields of state activity are reviewed, as all of them are highly interconnected, and leaving out any of them may result in distorted image of stateness level. So, we will stay inclined to our comprehensive view of stateness within afore-presented index of integral assessment and will try to overview the stateness level through all the four fields of stateness: political, economic, social and security – trying to distinguish the features, which are especially vital within the connection of stateness level and international recognition (or in this case the absence of it) – outlining the threats that can arise because of post-conflict features and non-recognized status.

Political field: Within political factors from the perspective of the connection with the international recognition of notional importance are state legitimacy and government effectiveness. One of the most fragile points in all the non-recognized states are indeed the issues of good governance and government effectiveness. As a rule the governments of these entities find themselves incapable and/or non-reluctant to work on that issue. No doubt, the most difficult are the cases when we have to deal with their non-willingness (reasons and opportunities as described in the previous chapter), as the cases with incapability or lack of knowledge/experience can be easily addressed in the case of international community’s ‘willingness’ to assist.

Nagorno-Karabakh is registering outstanding results in democratic good governance – having established effectively functioning state institutions and civil organizations. However, the established good results and further development are constantly at risk because of the tension across the borderline, as the resumption of large-scale armed conflict would not only stop the development, but also collapse the established through decades effective system (and any other success in any other field).

In the states, where the state institutions haven’t still been fully established, the non-state actors – e.g. warlords, rebels and criminal networks – can take the advantage of lack of state capacity and legitimacy, and offer alternative governance systems. Therefore, the issue of legitimacy is very complex in fragile post-conflict entities - with different sources of legitimacy coexisting, competing and conflicting – and interacting with other sources of power and interest. This further complicates external actors’ effective intervention during the post-conflict period¹. Especially after armed conflict very often power is focused in the hands of the

¹Paris R., Sisk T., The Contradictions of State Building: Confronting the Dilemmas of Post-War Peace Operations, Routledge, London, 2008.

actors, who, in their turn, control the armed groups¹, unless the Constitution and relevant laws haven't been adopted and the elections haven't been held on their basis. Hence, in the first phase the key actors are the warlords, whose role in the second phase should gradually decrease, of course, if the process is moving in the right direction. But there are examples, when the warlords are not very eager to relinquish from the attained power and fight for it through all the possible means, e.g. in Nagorno-Karabakh Republic the Self-Defense Forces Commander Samvel Babayan launched an assassination attempt on then president Arkadi Ghukasyan – leaving the president alive and Babayan sentenced to 14 years in prison². This was the last chord of post-conflict features' influence on governing process: afterwards NKR was able to fully 'clean up' and rehabilitate the governance system – showing spectacular results in good governance.

All in all, legitimacy issue is, indeed, a very vulnerable point for all of these states, as neither their sovereignty, nor their elections are perceived as legitimate by the international community. E.g. legitimacy issue in Abkhazia: here a problem is emerged not only with the elections or sovereignty, but the process of declaration of independence itself: the referendum for independence was held after the majority of the population of the region was set to ethnic cleansing and about 250.000 ethnic Georgians were made to leave the region³.

Economic field: For each state economic factor is undoubtedly of high significance, especially the issues of trade and investments. But the non-recognized states are, in fact, facing almost absence of the afore-named relations, particularly conditioned by stringent limitation of any type of international relations, apparently including the economic relations too. But if we take into account, that these states in this cumbersome plight should develop their economy along with the 'ideal' pack of challenges: reconstruction and rehabilitation of the whole country after the military phase, worldwide deepening of the globalization process, in the context of still "a frozen conflict" the process of extensive and intensive armament and in the case of the countries of Post-Soviet space the pack accrues with the process of Post-Soviet transformation, the international community is, in fact, directly putting these states under the threat of becoming fragile and even failed, as this 'ideal' pack of challenges is too much even for a recognized state – with its already firmly established international relations, what to say about the ones which have a lack of them.

Despite the registered good results in political and social fields, Nagorno-Karabakh still faces issues with economic field, as it is yet not able to compile its state budget and relies on Armenia's aid. The economy is still small, but it is noteworthy, that it is rapidly growing⁴. The budget is mainly comprised of mining (gold, copper), manufacturing industries, agriculture, construction, jewelry and diamond polishing. The government is trying to address the issue with a number of economic rehabilitation projects.

Social field: Overall, without ensuring public security, the economy and public services simply cannot work and peace cannot be obtained. Bright examples are Somalia and Afghanistan. But the difficulties of the limited public representation and capacities in fragile post-conflict states facilitate the process of focusing the provision of key activities and

¹ Goldstone J., Pathways to State Failure, *Conflict Management and Peace Science*, Vol. 25, Issue 4, 2008, 285-296.

² See Grigoryan A., *Armenian Authorities Arrest Former Separatist Karabakh "Defense Minister" on Eve of Parliamentary Elections*, *Eurasia Daily Monitor* Volume: 14 Issue: 45, <https://jamestown.org/program/armenian-authorities-arrest-former-separatist-karabakh-defense-minister-eve-parliamentary-elections/>, (27.02.2018).

³ Freedom in the World 2009: Abkhazia, <https://freedomhouse.org/report/freedom-world/2009/abkhazia>, (29.02.2018); Ethnic Cleansing on Georgians Resulted from Russian Invasion and Occupation since August 8, 2008, <https://www.osce.org/odihr/34091?download=true>, (28.02.2018).

⁴ Artsakh state budget revenues exceed by 5.6% in first quarter 2018, <https://www.panorama.am/en/news/2018/04/12/Artsakh-state-budget-revenues/1932570>, (14.04.2018).

services in the hands of some non-state actors – including international and local non-governmental organizations, inherited power holders and in some cases criminal or armed groups, who are challenging and competing with the elected authorities¹. But the elected authorities also do not restrain from taking the advantages of misusing the public goods for the sake of their own interests. The afore-mentioned is not acceptable, as state should be able to protect itself from both internal and external threats, while simultaneously being obliged to protect the population – regardless of ethnicity².

Nagorno-Karabakh shows totally different results, as it has established effectively functioning state and social institutions, which do their best to meet the needs and expectations of the society. Year-by-year development of industry is offering new workplaces for the citizens, which is manifested in the low rate of unemployment (about 5%). The work of the government is transparent and has high level of accountability: every year detailed reports on all the state activity and especially expenses are represented (also always available on the official websites). Though there were claims about the privatization of major industries and economic activities by a small group of powerful elite, the government was able to address the following accusations by presenting precise documentation denying all the claims and accusations. The government also tries to stipulate birth rate by granting couples money after marriage and additional funds for the birth of each child³.

But at the end of the day one thing is unchangeable: no matter how effectively any type of positive changes and amendments are implemented, the political voice is formed not only through political processes, but also by the mobilization possibilities of society, especially - civil society. In Nagorno-Karabakh civil society is ascribed with important role in state and civil activities, the authorities do not restrain the activity of any civil society organizations.

Yet another important point: where the society is fragmented by conflicts and violence, the possibilities for political voice and social accountability are often eroded. A matter of special concern are the issues of mobilization capabilities of vulnerable and marginalized groups, especially in post-conflict entities. In post-conflict fragile states the continuous disregard of fundamental rights, including the violation of children's rights, gender inequalities and the systematic expulsion of indigenous peoples and vulnerable minority groups, is largely conditioned by the absence of voting rights and legal channels for participation⁴.

Security field: The most troublesome issues of non-recognized states are mainly referring to security field. The absence or underdevelopment of international and local control mechanisms over the non-recognized entity, as well as the fact that fragile post-conflict states are likely to have limited authority over some regions within their own territory, becomes a truthfully prolific basis for the emergence and development of illegal groups and activities. As a rule, the process of state-building and afterwards stateness is more visible in the capital, whereas the population of the peripheries typically has a limited and insufficient interaction with the state. As a result, informal or regional authorities are more actively participating in the management of these regions. In such context, not only the traditional model of "top-down"

¹ Batley R., McLoughlin C., Engagement with Non-State Service Providers in Fragile States: Reconciling State-Building and Service Delivery, *Development Policy Review*, 28 (2), 2010, 131-154.

² Sisk T., Wyeth V., Rethinking Peace-Building and State-Building in War-Torn Countries: Conceptual Clarity, Policy Guidance, and Practical Implications, Draft discussion note for the OECD DAC International Network on Conflict and Fragility, 2009.

³ Freedom in the World 2016: Nagorno-Karabakh, <https://freedomhouse.org/report/freedom-world/2016/nagorno-karabakh>, (16.03.2018).

⁴ Migdal J., State in Society: Studying How States and Societies Transform and Constitute One Another, Cambridge University Press, Cambridge, 2001.

state-building and governance is put under a risk, but also the threat of non-stability is increasing. At the same time, it's worth mentioning, that even the existence of international control and administration mechanisms isn't yet a guaranty for stability. Even UN, OSCE, EU and NATO efforts weren't sufficient to make Kosovo, located in the centre of Europe – the cradle of democracy, to refrain from being cradle of illicit activities like illegal arms trade, drugs, trafficking. Plus, the issue is more troublesome because of the problem of not only the disability, but first and foremost non-willingness of formal authorities to address the issues, as they may themselves run, have share in illicit activities and/or special agreements with the groups managing such kind of activity.

Another feature of non-recognized states is the high level of military potential – mainly conditioned by the fact, that these states have gone through phase of armed conflict (and not once) with their 'mother' states. Of course, the existing military potential may become the primary means of ensuring state sovereignty and national security, in particular in the cases of major failures of international administration bodies and efforts of peace maintenance, especially in the context of current rise of terroristic attacks. However, there are some states, where the size of military forces is bigger comparing to the population, but still it doesn't guarantee the absence of problems associated with stateness in these countries. On the other hand, some recognized states (mainly European) have the lack of military strength, whereas some non-recognized states do not. For instance, in a number of recognized states (e.g. Switzerland) the existence of the armed forces, especially its size, are indeed not vital factor for stateness., as they successfully use other mechanisms, particularly supranational bodies and security guarantees. While observing the question from another angle, it can be stated, that the military potential, which doesn't get precise economic support (especially taking into account that non-recognized states in the majority of cases are not even able to fully ensure themselves their state budgets), can become fragile and quickly lose its significance, as the process of extensive and intensive armament is expensive and at the same time encounters the problem of unceasing equipment upgrade.

Unlike the other three non-recognized states of post-Soviet space, which share the problems with contraband, money laundering (especially in Transnistria), trafficking, sale of drugs and weaponry and functioning of criminal organizations on their territory, Nagorno-Karabakh is suffering not from the security threat coming from inside, but outside: the tension along the cease-fire line and day-by-day increasing threat of war resumption¹. What about inner threats, the only one is the presence of land mines, which NK forces and HALO Trust continue to clear².

Violetta Manukyan
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Key Words: *Post-conflict stateness, non-recognized states, Artsakh*

The article discusses the challenges of post-conflict stateness issues –representing the case of Artsakh. In fact, these states lack not only international recognition, but also the precise study of their post-conflict stateness issues. Whereas it is of pivotal importance to identify the existing and potential problems. The article presents the challenges in each sphere of state solvency and security threats that the status of being unrecognized carries in itself.

¹ Nagorno-Karabakh's Gathering War Clouds, <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-azerbaijan/244-nagorno-karabaks-gathering-war-clouds>, (21.03.2018).

² The HALO Trust, <https://www.halotrust.org/minefreenk/>, (21.03.2018).

Վիոլետտա Մանուկյան
ՀԵՏԿՈՆՖԼԻԿՏԱՅԻՆ ՊԵՏԱԿԱՆՈՒԹՅԱՆ ԿԱՅԱՑՄԱՆ ՄԱՐՏԱՀՐԱՎԵՐՆԵՐԸ.
ԱՐՑԱԽԻ ԴԵՊԸ

Բանալի բառեր՝ Հետկոնֆլիկտային պետության կայացում, չճանաչված պետություններ, Արցախ

Հոդվածն ուսումնասիրում է հետկոնֆլիկտային պետականության կայացման մարտահրավերները՝ ներկայացնելով Արցախի դեպքը: Ըստ էության, չճանաչված պետությունները ոչ միայն ունեն միջազգային ճանաչման, այլև իրենց հետկոնֆլիկտային պետականության կայացման խնդիրների պատկան ուսումնասիրության պակաս: Այնուամենայնիվ, առկա և հնարավոր խնդիրների վերհանումն առանցքային նշանակություն ունի: Այսպիսով, սույն հոդվածը ներկայացնում է, թե ինչ մարտահրավերներ է չճանաչված կարգավիճակը ծառացնում պետականության կայացման յուրաքանչյուր ոլորտի, ինչպես նաև անվտանգության համար:

Виолетта Манукян
ВЫЗОВЫ ПОСТКОНФЛИКТНОЙ ГОСУДАРСТВЕННОЙ
СОСТОЯТЕЛЬНОСТИ НА ПРИМЕРЕ АРЦАХА

Ключевые слова: *постконфликтная государственная состоятельность, непризнанные государства, Арцах*

В статье рассматриваются проблемы постконфликтной государственной состоятельности на примере Арцаха. Фактически, непризнанные государства испытывают недостаток не только международного признания, но и надлежащего изучения их проблем постконфликтной государственной состоятельности. А это имеет ключевое значение для выявления существующих и потенциальных проблем. В статье представлены проблемы в каждой сфере государственной состоятельности и угрозы безопасности, которые несет в себе непризнанный статус.