

NATION-BUILDING**SEPARATION OF POWERS
IN THE STATES OF CENTRAL ASIA AND
THE CAUCASUS**

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Introduction

Today practical realization of the classical principle of the separation of powers in all states (in the states of Central Asia and the Caucasus, two regions of key importance, in particular) has acquired special urgency as directly related to global, national, and regional security. Indeed, coordinated functioning of independent and interacting branches of state power (legislative, executive, and judicial) is part of a reasonable and adequate foreign policy which stems from the country's national interests and to a great extent helps the state deal with threats, risks, and challenges.

The experience of state development and the application of the separation of powers principle in nine countries (Afghanistan, Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan,

Tajikistan, Turkmenistan, and Uzbekistan) has already confronted the expert community with a set of far from simple questions about the role of the traditional forms of governance; the way the classical principles should be borrowed and applied; and the impact of starting conditions on what the governments, parliaments, and courts of the newly independent states can do. Not infrequently those undertaking the reforms refer to the threats to national security to explain what has or has not been done; in some countries reforms degenerated into a pure formality, etc.

I have deliberately included Afghanistan, the specific conditions of which set it apart from the post-Soviet states, and will show how it is developing into a unique platform on which histori-

cal and national elements are being strengthened to move the country toward democracy. All the developed democracies are closely following the political reforms underway in Afghanistan and are extending it ever larger amounts of humanitarian aid.

It is expected that the discussion about the future political system of Afghanistan that will unfold at the May 2012 meeting in Chicago with NATO allies and partners convened “to shape the next phase of this transition” will be very intensive.¹

The recent history of the countries bordering on the region under review suggests that the emergence, functioning, and development of the “tripartite” system of the separation of powers call for close attention. I have in mind the constitutional crisis in Russia in 1992-1993; the political crises of 2004, 2006, 2007, and 2008-2009 in Ukraine, the 2009 April parliamentary elections in Moldova, and the political crisis that followed.² Caused by confrontation among the branches of power, some of them developed into clashes of different dimensions (on 3-4 October, 1993, the Supreme Soviet of the Russian Federation was disbanded by force; on 7 April, 2009, there were large-scale riots in Chiçinâu, etc.).

¹ “Obama Says 10,000 U.S. Troops Leaving Afghanistan in 2011,” 22 June, 2011, available at [iipdigital.usembassy.gov].

² For more detail, see: C.R. Wise, T.L. Brown, “The Separation of Powers in Ukraine,” *Communist and Post-Communist Studies*, No. 1, 1999; E.V. Mandryka, *Realizatsiya printsipa razdeleniya vlastey v Rossii i v Ukraine: sravnitelno-pravovoe issledovanie*, St. Petersburg, 2006; W. Crowther, “Second Decade, Second Chance? Parliament, Politics and Democratic Aspirations in Russia, Ukraine and Moldova,” *The Journal of Legislative Studies*, Vol. 17, Issue 2, 2011, etc.

So far, the separation of powers issue has not attracted the attention of the academic and expert communities and has not become a subject of closer scrutiny. There is, however, a small number of works dealing with individual countries,³ as well as contributions to the *Central Asia and the Caucasus* journal.⁴

This article is an attempt to widen the circle and number of studies using the traditional “state-problems-prospects” formula and go beyond the scope of political scientific and legal analysis to concentrate on the

- (1) specific,
- (2) comparative, and
- (3) conflict-prone aspects of the phenomenon.

³ See: R. Grote, “Separation of Powers in the New Afghan Constitution,” Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, available at [www.zaerv.de]; K.A. Nurpeisov, *Stanovlenie natsionalnoy modeli razdeleniya vlastey v Respublike Kazakhstan: politologicheskiy analiz*, Almaty, 2003; D.J. Jangiryan, *Razdelenie vlastey v Respublike Armenia: konstitutsionnaya model i praktika*, Moscow, 2004; G.A. Shmavonyan, *Konstitutsionnoe pravosudie v Armenii v sisteme razdeleniya vlastey*, Moscow, 2000; A.A. Karaev, “Konstitutsionny sovet Respubliki Kazakhstan v sisteme razdeleniya vlasti,” *Rossiyskiy yuridicheskiy zhurnal*, No. 6, 2008; B.A. Mukhamejanov, “Institut prezidentsva i mekhanizm razdeleniya vlastey: sootnoshenie v edinstve gosudarstvennoy vlasti,” *Srednerusskiy vestnik obshchestvennykh nauk*, No. 2, 2007, etc.

⁴ See: F. Arifoglu, Sh. Abbasov, “The Azerbaijani Parliament—Hostage to the Executive. The First Milli Mejlis: A Five-Year History (a Review),” *Central Asia and the Caucasus*, No. 6, 2000; N. Saparov, “‘The Turkmen Model of Democracy’: Specific Features,” *Central Asia and the Caucasus*, No. 2, 2000; A. Tukvadze, G. Jaoshvili, R. Tukvadze, “Transformation of the Political System in Georgia Today,” *Central Asia and the Caucasus*, No. 2 (38), 2006; B. Chedia, “Constitutional Reform in Georgia as a Result of its Political Instability,” *Central Asia and the Caucasus*, Vol. 12, Issue 2, 2011.

The Common and the Specific in the Functioning of the “Triad of Power”

The separation of powers principle was outlined, in one way or another, in all of the Constitutions of the Soviet Union (1924, 1936, and 1977) and the Constitutions of Afghanistan (1923, 1964,

1976, 1987, and 1990), which means that on the eve of the Soviet Union's disintegration all of the Central Asian and Caucasian countries and Afghanistan had a *political-legal foundation of sorts as an instrument of further transformation of the "tripartite" system*.

During perestroika the Soviet election system was improved and in December 1988 corresponding amendments were made to the Constitution of the U.S.S.R.; the Congress of the People's Deputies of the U.S.S.R. acquired more powers, a law that was passed in December 1989 strengthened constitutional review; a multiparty system was introduced; the institution of presidency was established in March 1990; in December 1990 the spheres of activity of the legislative, executive, and judicial power branches were separated, etc. This means that the newly acquired independence created "*new conditions for the democratic separation of powers.*"⁵

In the early 1990s, *executive power* (omnipotent under Soviet power) *acquired a new content*. What looked like a fairly banal change of name from Council of Ministers to Cabinet of Ministers meant that the socialist system was gradually turning into a capitalist system with collective executive structures operating within the laws passed by the legislature.

The post-Soviet cabinets of ministers had to work hard to cleanse the economy from the ideological debris that clogged it, soberly assess the natural economic, mineral, and human capabilities of their countries, remove the totalitarian administrative systems together with the planning and distribution functions and price-formation structures of all sorts, etc. The governments had to operate amid the never ending administrative reform.

*The national parliaments, which replaced the Supreme Soviets of the previous period in the first half of the 1990s, had a fundamentally new role to play. Why did this happen? One of the leaders of the newly independent states answered this question by saying that the new model of state order of his newly independent state "contained from the very beginning the deeply rooted and insurmountable contradiction between the new, presidential form of government and the old system of the Soviets that infected the new state with its faults and shortcomings."*⁶

This explains why in 1993 the deputies of the Soviets of all levels (from the local structures of popular representation to the Supreme Soviet of the 12th Convocation) in Kazakhstan began resigning; this self-liquidation took less than a month and a half. It was decided that until new representative structures were elected, all power should be transferred to the president.

Similar processes in other republics took a different course. In 1995-2005, in Kyrgyzstan, for example, the two-chamber parliament failed to fulfill its mission while the results of the elections to the Jogorku Kenesh of 13 March, 2005 were grossly falsified; in 1992-1994, the Supreme Soviet of Tajikistan dominated on the domestic political scene; the State Council functioned in Georgia (where it replaced the Supreme Soviet) until 1995, and on 22 November, 2003, rioters captured the building of the Georgian parliament (the first act of the Rose Revolution); in 2003-2008, in Turkmenistan, the role of Mejlis was limited in favor of the Halk Maslahaty; in Afghanistan in 2006 Pakistani leaders were invited to take part in the Loya jirga, and in 2009-2010, liberal members of the Taliban likewise enjoyed this right; on 27 October, 1999, there was a terrorist act in the Armenian parliament, etc.

The above shows that *the road toward true parliamentarianism was a thorny one*.

It should be said that the Milli Mejlis of Azerbaijan, Majlisi Oli of Tajikistan, Mejlis of Turkmenistan, Oliy Majlis of Uzbekistan, and the Majlisi milli (the National Assembly) of Afghanistan relied, to a much greater extent than the parliaments of other states with a predominant Mus-

⁵ I.A. Karimov, "Put sozidaniya—osnova skoreyshego protsvetaniya Rodiny," Speech at the fourth session of the Oliy Majlis of the Republic of Uzbekistan, 21 December, 1995, available at [www.press-service.uz].

⁶ N. Nazarbaev, "Konstitutsiya—osnova stabilnosti i protsvetaniya Kazakhstana," 30 August, 2000, available at [www.akorda.kz].

lim population, on the historical principles and traditions of the Islamic political system based on a permanent professional parliament functioning in parallel with the generally elected consultative assembly.

The Jogorku Kenesh of Kyrgyzstan tried to rely on the country's previous parliamentary experience; the Parliament of the Republic of Kazakhstan, the Parliament of Georgia, and the National Assembly of Armenia *tried to rely on the experience of the developed, European in particular, countries.*

What role does *the institution of presidency* play in the separation of powers in the two regions or, to put it differently, what is the place of the head of state in the "tripartite" system?

The institution of presidency was introduced in Central Asia in 1990: in Uzbekistan in March; in Kazakhstan in April; in Turkmenistan and Kyrgyzstan in October; and in Tajikistan in November. The process in the Caucasus began in 1991: in Georgia in April; in Azerbaijan in August, and in Armenia in October. The specific dates were determined by the then leaders of the Soviet republics who wanted to be independent.

According to the Constitutions of Afghanistan (1382 [2003]) and Kyrgyzstan (2010), the president is *the head of state with no functions beyond this definition*. One of the experts has rightly pointed out that in Afghanistan this provision rests on the desire to create a "strong presidential system" and invest the head of state with "*comprehensive responsibility for the smooth functioning of the state as a whole.*"⁷

In Kyrgyzstan, those who wrote the new constitution obviously wanted to overcome the negative political heritage and set up a parliamentary democracy. According to the Venice Commission—European Commission for Democracy through Law, the 2010 constitutional reform in Kyrgyzstan moved the country closer to a much stronger system of separation of powers; it removed the president from the traditional "tripartite" system.⁸

The constitutional reform of 2010 in Georgia changed, in the most radical way, the tripartite system and the functioning of the institutions of presidency and head of state. According to the latest Georgian constitutional innovations, the president cannot annul or suspend any legal act passed by the executive structures or initiate a meeting or a session of the parliament, etc.⁹ There is a Public Service Council in Georgia which functions as a consultative structure under the president to draft decisions in the public service sphere. It consists of representatives of the legislative, executive, and judicial power branches and local administrations (3 from each of them). State development in Georgia has other specifics.

On the other hand, in Tajikistan, Turkmenistan, and especially Azerbaijan (under its Constitution executive power belongs to the president, while the "Cabinet of Ministers of the Azerbaijan Republic is the highest body of executive power of the President of the Azerbaijan Republic" [Art 114.II]) the constitutions make the president part of executive power; there is another specific feature in Azerbaijan's Constitution: "The President of the Azerbaijan Republic is the guarantor of independence of judicial power" (Art 8.IV).

The paradox of our days which says that in Asia "the smaller the country, the higher the centralization of power in it" is explained by the fact that there is a desire to allow the state as the "main reformer" to address and resolve the problems of the transition economy.

Under the constitutions of Uzbekistan and Armenia alone, the president is responsible for *coordination and interaction among the three branches of state power.*

⁷ R. Grote, *op. cit.*

⁸ "Zaklyuchenie po proektu Konstitutsii KR (redaktsia, opublikovannaya 21 maya 2010 g.). Prinyato Venetsianskoy komissiiy na ee 83-m plenarnom zasedanii (Venetsia, 4 June, 2010)," available at [www.venice.coe.int].

⁹ For more detail, see: B. Chedia, *op. cit.*

The 2011 constitutional reform in Uzbekistan invested the prime minister with the power to give the president suggestions for candidates for the post of hokims—governors of the vilayats; the chairman of the Senate (the upper chamber) of the Oliy Majlis was invested with the responsibility to act as the head of state (if the president is incapacitated), etc.¹⁰

The Constitution of Kazakhstan defines the president as “*the head of state, its highest official*” (Art 40.1), a status which allows the president to remain above all disagreements. Those who drafted the constitution were convinced that in a polyethnic, multi-confessional, and highly differentiated society, the president should be “the symbol and guarantor of the unity of the people and the state power” (Art 40.2) seen as an effective instrument for ensuring “responsibility of the institutions of power to the people” (Art. 40).

Natural Collisions in Implementing the Classical Model of the “Tripartite System”

The evolution of *the institution of the head of local state administration structures* is another specific feature of the vertical of power. During perestroika, the territorial C.P.S.U. structures lost their monopoly on power, part of which was transferred to the local representative structures (mainly headed by party functionaries). Such specific institutions as *akims* (heads of state territorial administrations) in Kyrgyzstan and Kazakhstan where they head territorial administrations which represent the president and the government, *hyakims* and *raises* in Turkmenistan and Tajikistan (in both republics they head the territorial executive structures and represent the president), *hokims* in Uzbekistan (official representatives of the president who head the legislative and executive power branches), *gamgebeli* in Georgia,¹¹ *başçı* in Azerbaijan, *vali* in Afghanistan, and *marzpet* in Armenia (appointed and removed by the government; the mayor of Erevan being the only exception) reflected the specifics of each country, but, as time has shown, were not equally effective.

The specifics of cooperation between the head of the local state power branch and the local representative power structures explained why they functioned differently in different countries. In Kazakhstan, corresponding legislation was revised several times (including during the constitutional reforms of 1998 and 2007); according to the decision of the Constitutional Council of 2000, the akims have much broader powers than the maslihats (the local representative structures), particularly in the budget sphere.

It seems that some of the innovations introduced in many CIS states merely reflected *the trend toward a stronger vertical of power* started in Russia by Putin during his presidency.

The specifics of the functioning of local self-administration structures and their interaction with the state administration structures, which differed from country to country, explain the differences in efficiency of the former in different countries. Uzbekistan’s experience can be described as most pertinent. After liberating themselves from Soviet domination, the people revived the centuries-old mahalla (meeting of local people) institution. During the transition period (1991-2000), it assumed social security functions; today it has accumulated about 30 functions of the local self-administration structures.

¹⁰ See: Zakon Respubliki Uzbekistan O vnesenii izmeneniy i dopolneniy v otdelnye statyi Konstitutsii Respubliki Uzbekistan (Arts 78, 80, 93, 96, 98), available at [www.lex.uz].

¹¹ For more detail, see: P. Bolashvili, “Osobennosti reformirovaniya systemy upravleniya v Gruzii,” available at [emsu.ru].

During the 2011 elections, about 10 thousand aksakals (heads of meetings of the local people) and over 98 thousand of their advisors were elected (in November-December 2008, 9,881 aksakals and over 85 thousand advisors were elected).

The Afghan experience deserves special attention in the context of a discussion of the roles of the local state administration and self-administration structures and strengthening the vertical and horizontal separation of powers. In Afghanistan, the governors have relative freedom to maneuver, they maintain close contacts with the elders and ulema, local cells of the political parties, human rights organizations, the media (in the form of weekly press conferences), and other civil institutions; they are making efforts to draw women into administrative work, are paying attention to computerization, etc. This can be described as a highly positive experience. On the other hand, they are not bothered about the confessional and ethnic balance in the administrative structures, many of them prefer to see their relatives in responsible posts, which is easy to arrange in the absence of a clear staff structure; there are no strictly outlined budgets for the lower administrative structures; governors and their deputies often do not act as one team; the Taliban is still fairly influential; there is corruption and many other shortcomings.¹²

To exclude any revival of authoritarianism and totalitarianism and to consolidate their “tripartite systems,” the Central Asian and Caucasian countries should develop democratic standards and procedures. One of the local leaders described authoritarianism as a “road to nowhere” and totalitarianism as a “supranational phenomenon”¹³ to be defeated by concerted efforts.

The president of Uzbekistan believes that “poorly educated and ignorant people” support authoritarian and totalitarian trends and that these faults should be remedied during the transition period. There trends should be counteracted by “strong mass public structures” represented by the institutions of civil society, “higher political awareness of the nation during elections,” etc. This is a dual phenomenon: authoritarianism and totalitarianism might be revived in the absence of a separation of powers; the Uzbek president pointed out that chauvinism is one of the instruments which could revive both negative phenomena.¹⁴

Liberalization as a form and post-transition development stage of the “tripartite system” deserves special mention. In Armenia, for example, liberalization is understood as overcoming the negative features of Gorbachev’s perestroika and freedom of movement. In Georgia and Kyrgyzstan, liberalization is associated with financial and economic reforms; in Azerbaijan and Tajikistan, with economic modernization. In Kazakhstan, liberalization has been placed in the wider context of the political, economic, juridical, media, and even religious spheres.¹⁵

¹² See: S. Lister, *Caught in Confusion: Local Governance in Afghanistan*, Afghanistan Research and Evaluation Unit, Kabul, 2005; *Local Governance and Development*, UNDP, Kabul, 2009; *Final Report: Local Governance and Community Development Program Evaluation*, USAID, Kabul, 2009; *Executive Summary: Sub-national Governance Policy*, Independent Directorate of Local Government, Kabul, 2010; S. Miakhel, N. Coburn, *Many Shuras Do Not a Government Make: International Community Engagement with Local Councils in Afghanistan*, United States Institute for Peace, Washington, 2010; M. Lefevre, *Local Defence in Afghanistan: A Review of Government Backed Initiatives*, Afghanistan Analysts Network, Kabul, 2010; D. Saltmarshe, A. Medhi, *Local Governance in Afghanistan. A View from the Ground*, Afghanistan Research and Evaluation Unit, Kabul, 2011.

¹³ N.A. Nazarbaev, “O polozhenii v strane i osnovnykh napravleniyakh vnutrenney i vneshney politiki: demokrati-zatsiya obshchestva, ekonomicheskaya i politicheskaya reforma v novom stoletii. Poslanie narodu Kazakhstana,” September 1998, available at [www.alorda.kz].

¹⁴ See: I.A. Karimov, “Gotov sporit s lyubym opponentom,” *Otveti na voprosy gazety Trud*, available at [www.press-service.uz]; idem, “Vazhneyshie zadachi uglublenniya demokraticeskikh reform na sovremennom etape. Vystuplenie na VI sessii Oliy Majlisa Respubliki Uzbekistan pervogo sozyva,” 29 August, 1996 [www.press-service.uz]; idem, “Uzbekistan na poroge XXI veka: ugrozy bezopasnosti, usloviya i garantii progressa,” 1997, available at [www.press-service.uz]; idem, “Po puti demokraticeskogo razvitiya,” Interview to the media in connection with the National Referendum, 27 January, 2002, available at [www.press-service.uz]; idem, “Protsessy preobrazovaniy i obnovleniya neobratimy. Doklad na VIII sessii Oliy Majlisa Respubliki Uzbekistan vtorogo sozyva,” 4 April, 2002, available at [www.press-service.uz].

¹⁵ See: N.A. Nazarbaev, “Istoricheskaya pamyat, natsionalnoe soglasie i demokraticheskie reformy—grazhdanskiy vybor naroda Kazakhstana. Doklad na chetvertoy sessii Assamblei narodov Kazakhstana,” 6 June, 1997, available at [www.akorda.kz].

In Uzbekistan, in December 1995, the first calls to liberalize public life were heard¹⁶; later the media and state-building were also included.¹⁷ In 2000, the country received integrated Programs of Liberalization and Intensification of Reforms in the Political, Economic, and Spiritual Spheres and Ensuring the Country's Security. On the whole, liberalization in Uzbekistan affected state-building and the creation of a civil society and helped to "consolidate the separation of powers principle."¹⁸

Current experience shows that *the stronger controlling functions of the legislative and representative power structures*, in other words, *control by the parliament and the deputies*, can play an important role in strengthening the "tripartite system." The approaches to this are different in different countries.

Under the Constitution of Turkmenistan, the Mejlis "enacts laws, makes amendments and additions to the Constitution and laws, and monitors their performance and their interpretation" (Art 63.1).

Under the Constitution of Tajikistan, the Majlisi milli and the Majlisi namoyandagon are responsible for holding parliamentary hearings; the latter is vested with the power to control the implementation of the budget (Art 60).

The political system of Georgia is shaped by the country's leaders according to the formula: "a strong President and a strong Parliament that will staff and control the Government." The Constitution of Georgia states that "the Constitution must regulate relations with the government, parliament and, what is most important, with society, the demands of which take priority."¹⁹

Independent courts are indispensable for developing the power triad. Armenia's experience is very interesting. According to the Armenian president, to be independent the judges and courts should acquire "financial independence, be independent of the people in power and bureaucrats but, at the same time, should not be independent of the law."²⁰ "The 2008 political crisis revealed the vulnerabilities of our legal framework and practice, lending additional impetus to our efforts. As a result, legislation underwent serious revisions. Fundamental reform of the police system is currently underway. The 2012-2014 Judicial Reform Plan is now being elaborated with the aim of safeguarding judicial independence. Important changes have been made to the Criminal Code articles regarding mass disorder and seizing power by force. The legislation was revised in order to guarantee the exercise of the right to freedom of assembly," etc.²¹

The structures designed to select judges can be described as one of the important instruments of the judicial system's independence. In Armenia, for example, this mission belongs to the Council of Law which submits lists of candidates for judges and proposed promotion of judges to the president.

There is a similar structure in Kyrgyzstan. In Uzbekistan, this function belongs to the Supreme Qualifying Commission under the President of the Republic of Uzbekistan, which selects the best judges and recommends them.

The term in office of the head of state is extremely important for the emergence, functioning, and development of the tripartite system. It bears recalling that when amending the Constitution and

¹⁶ See: I.A. Karimov, "Put sozidaniya—osnova skoreyshego protsvetaniya Rodiny."

¹⁷ See: I.A. Karimov, "Uzbekistan na poroge XXI veka."

¹⁸ I.A. Karimov, "Uzbekistan, ustremlyeni v XXI vek. Doklad na chetyrnadtsatoy sessii Oliy Majlisa Respubliki Uzbekistan pervogo sozyva," 14 April, 1999, available at [www.press-service.uz].

¹⁹ "The Meeting of the President of Georgia with the Majority Members of Georgia's Supreme Legislative Body in Anaklia," available at [www.president.gov.ge].

²⁰ S. Sargsyan, "Pozdravlenie prezidenta na prieme v chest 10-letiya Kassatsionnogo suda," 10 July, 2008, available at [www.president.am].

²¹ S. Sargsyan, "Rech na Parlamentskoy Assamblee Soveta Evropy," 22 June, 2011, available at [http://commonspeak.eu/eng/speeches/6/id260].

conducting pre-term presidential elections, the official circles of Kazakhstan (the first to address and resolve the problem) were guided by the desire to avoid the negative impact of the Russian default of 17 August, 1998 on the republic's economic and political stability.

In Uzbekistan these processes took a slightly different course: the transition period had to be lived through, the country's two-chamber parliament launched, the Cabinet of Ministers endowed with more powers, and the results of the reforms in the legal sphere assessed. This meant that *the optimal term of presidency should be established* in full conformity with the president's role as head of state rather than of the executive power branch.²²

I want to conclude my overview of the problems related to the triad of powers with the observation that because of its "deficit of law" Afghanistan could not escape certain collisions. President Karzai pointed out that there was a "unitary presidential system;" he had to admit that the country's leaders are engaged in "intensive examination of the municipal, district, and provincial level governance." At the same time, Hamid Karzai and his associates have rejected the "false choice between centralization and decentralization" and are seeking the best possible correlation between the vertical of power and civil self-administration.

The president of Afghanistan pointed out that there are problems in the "alignment between the levels and functions of government and the delivery of services to citizens" and that his government is convinced that "accountability is imperative in this regard through checks and balances throughout the three branches of power."²³

The Future of Democratic Reforms in the Context of the Separation of Powers

Today, the parliaments of the nine countries have to address different tasks (where content and scope are concerned). In accordance with the Conception of Further Intensification of Democratic Reforms and the Creation of a Civil Society in the Country formulated by the president of Uzbekistan in November 2011, the Oliy Majlis will address *six issues*: the democratization of state power and governance; the transformation of the legal system; the conducting of reforms in the sphere of information to ensure freedom of speech, information, and choice; improvement of the election laws; the creation and development of the institutions of civil society; and the promotion of democratic market reforms and liberalization of the economy.

President of Kazakhstan Nazarbaev has pointed out that the present parliament of the Republic of Kazakhstan must address *four sets of law-making tasks* intended to stimulate innovations (in the priority spheres, in particular); to further social modernization; to create a wider legal base for reform of the law-enforcement structures and the judicial system; and to develop the national media and NGOs.²⁴ Even though both chambers of the parliament of Kazakhstan are fairly efficient, the parliamentary opposition creates certain problems while the legislature is not always satisfied with what the government is doing, etc.

²² See: "Osnovnye napravleniya zakonodatel'noy raboty po itogam referendumov Respubliki Uzbekistan ot 27 yanvarya 2002 goda. Utverzhdeny Postanovleniem Oliy Majlisa Respubliki Uzbekistan ot 4 aprelya 2002 goda," available at [www.lex.uz].

²³ H. Karzai, *Statement at the 47th Munich Security Conference*, 6 February, 2011, available at [president.gov.af].

²⁴ See: N.A. Nazarbaev, "Vystuplenie na otkrytii 5-y sessii Parlamenta chetvertogo sozyva," 1 September, 2011, available at [www.akorda.kz].

The Majlisi Oli of Tajikistan is improving the mechanisms for applying laws and drawing the expert community into legislative projects.²⁵

The Mejlis of Turkmenistan is engaged in improving the quality of laws and increasing the number of draft laws (in 2009-2010, it discussed 300 drafts, adopted 66 laws, and passed 94 decisions,²⁶ which is considered insufficient); the deputies intended to improve the legal environment of the market economy and mobilize society to pool efforts to promote the changes underway in the republic. In short, the country is moving toward the presidential election scheduled for 12 February, 2012.

The Milli Majlis of Azerbaijan is expected to improve the political system, ensure pluralism of opinions, and promote free competition of ideas and opinions in the media.²⁷

The National Assembly of Armenia is amending some of the regulatory legal acts related to conscription and military service, etc.

The Parliament of Georgia is working on constitutional reform (greater powers for the parliament and the government), while the country is moving toward the parliamentary elections of 2012. Today, the Georgian deputies are working on regulatory legal acts to make the country more attractive for investments and protect state control of sensitive facilities, the rights of national minorities, etc.

John Dalberg-Acton said at one time that “power corrupts, and absolute power corrupts absolutely.” This formula remains highly topical, which explains why all constitutional governments take into account and establish the check-and-balances system as practical realization of the separation of powers principle. Different countries realize the principle in different ways.

The constitutional reforms carried out in Uzbekistan in the last ten years can serve as an example: the two-chamber parliament (established in 2002) balanced out state and regional interests; in 2006, the Oliy Majlis and the local Kengashes of people’s deputies acquired new powers; the executive branch of power became more independent, while the functions and powers of the president were somewhat trimmed, etc.²⁸

It should be said that the role of the two-chamber parliament (it exists in Kazakhstan, Uzbekistan, Tajikistan, and Afghanistan) is not limited to its regulatory functions. The fact that political parties, self-administration structures, and public movements are involved in parliamentary elections (to the lower chambers in particular) means that *the interests of the broad masses are taken into account to the maximum degree*.

It seems that the Kyrgyz experience of restoring the one-chamber parliament is an exception to the rule. This was done to limit the powers of the president and ensure more democratic decision-making in line with the recent experience and traditions. There are other opinions as well.

It is not easy to put the checks-and-balances system into practice because it incorporates not only the power branches and political parties, but *also other public and civil institutions* into the decision-making (the media and NGOs in particular). We should always bear in mind that the tripartite division of government functions is a social contract of sorts. For example, it is commonly asserted that the

²⁵ See: E. Rakhmon, “Vystuplenie na vstreche s predstavitelnyami intelligentsii strany,” 19 March, 2011, available at [www.president.tj]; idem, “Vystuplenie na zasedanii po sluchayu 15-letiya Obshchestvennogo Soveta Respubliki Tadjikistan,” 29 April, 2011, available at [www.president.tj].

²⁶ See: “Prezident Turkmenistana podverg kritike deyatelnosti parlamenta,” 20 January, 2011, available at [www.regnum.ru].

²⁷ See: I. Aliev, “Rech na pervom zasedanii Milli Majlisa AR,” 29 November, 2010, available at [www.president.az].

²⁸ See: I.A. Karimov, “Izbranny nami put—eto put demokraticeskogo razvitiya i sotrudnichestva s progressivnym mirom. Doklad na XI sessii Oliy Majlisa RUz 24 aprelya 2003 goda,” available at [www.press-service.uz]; idem, “Obespechenie interesov cheloveka, sovershenstvovanie sistemy sotsialnoy zashchity—nasha prioritnaya zadacha. Doklad na torzhestvennom zasedanii, posvyashchennom 14-letiyu Konstitutsii RUz,” 7 December, 2006, available at [www.press-service.uz].

Law on Political Parties and the Law on the Press (adopted in 2002 and 2003) contributed to the separation of powers in Afghanistan.²⁹

The world community has learned from experience that the checks-and-balances system can become highly effective when *not only the leader but all the people are free to speak for themselves and initiate important constitutional amendments*. This will happen sometime in the future when the countries have laid the foundations for a strong, open, and fair civil society. So far, Afghan law “does not provide for such an individual complaint procedure,” however this can be done through the Independent Human Rights Commission.³⁰

The “*fifth power*” in the region (*religious organizations, the relatively independent economic structures, informal diasporas, public opinion, experts, the blogger communities, and even the shadow sector, organized crime, and the mafia*), as well as the “*fourth power*” (the media), are all equal members of the separation of powers system.

Today, the expert community is interested in *the structures bordering on the “fourth” and “fifth” powers, viz. the social networks* which have already revealed their potential in Moldova, Belarus, and North Africa. This means that the tripartite system will be tested for durability once more.

“Control of the social networks in the Internet is a task to be addressed in the future: all states should act together to stand opposed to this evil.”³¹ This dictum belongs to the Prosecutor General of Kazakhstan; the leaders of some countries are concerned with the possible use of the Internet for destructive purposes.³²

Recently, the “permanent representatives of China, Russia, Tajikistan, and Uzbekistan to the United Nations jointly sent a letter to U.N. Secretary-General Ban Ki-moon asking him to circulate the International Code of Conduct for Information Security as a formal U.N. document of the 66th session of the General Assembly”³³ to prevent information technology being used for acts of hostility or aggression, for creating threats to international peace and security, and for proliferating information weapons and technologies.

There are many other issues directly related to the future of the tripartite system. Here is one of them: “Where does the public prosecutor’s office belong in the region: does it function inside the triad or outside it?” (In Hungary, for example, there are four independent power branches—three of them common to all other countries, while the fourth is the public prosecutor’s office.)

The public prosecutor’s office (at least throughout the post-Soviet expanse) is relatively free from executive power; it has its own checks-and-balances system when dealing with the other branches of power. It operates at the same level as the legislative, executive, and judicial powers and has its own sphere of competence and exclusive powers, which makes it an independent element of the system.³⁴ At the same time, the far from clear legal status of public prosecution at the constitutional level is still being discussed in the academic circles.

²⁹ See: R. Grote, *op. cit.*

³⁰ See: *Ibidem.*

³¹ “Genprokuror Rossii khochet kontrolirovat sotsialnye seti,” 14 September, 2011 [bbc.co.uk]; “Prokurory vystupayut za kontrol nad sotsialnymi setyami,” 15 September, 2011, Kazakhstan Today Information Agency, available at [www.kt.kz] (see also: B. Temirbolat, “The Political Internet in Kazakhstan: Trends, Problems, and Prospects,” *Central Asia and the Caucasus*, Vol. 12, Issue 1, 2011).

³² Public prosecutor Askhat Daulbaev reminded that in Kazakhstan “public prosecution takes rigid measures” and that “dozens of sites” (LiveJournal among them) had been closed.

³³ See: “China, Russia, Tajikistan, Uzbekistan Jointly Submit Int’l Code of Conduct for Information Security to U.N.,” available at [http://business.highbeam.com/62876/article-1P2-29622780/china-russia-tajikistan-uzbekistan-jointly-submit-intl].

³⁴ See: V. Yu. Shevchenko, “Mesto prokuratury v sisteme razdeleniya vlastey,” “*Chernye dyry*” v *rossiiskom zakonodatelstve*, No. 1, 2008.

The judicial system should be removed from executive control during the transition period if we want an effective separation of powers system. The legislative and judicial branches should be invested with corresponding powers to keep the executive branch under control.

In Afghanistan, the position of the head of state is relatively strong in relation to judicial power, “the appointment and dismissal of judges in lower courts does not require the parliament’s approval.” “The President is in a position to exert considerable influence over the review practice of the Supreme Court with regard to the constitutionality of laws, legislative decrees, and international treaties, i.e. those matters which are politically most sensitive,” while the “Court cannot exercise these powers on its own initiative.”³⁵

In Uzbekistan, on the other hand, in full accordance with the new version of the Law on Courts adopted in December 2000 (the previous version is dated September 1993) and the amendments and addenda to criminal and procedural legislation, the Ministry of Justice lost its right to recommend candidates for judges, to suspend or terminate pre-term the powers of the judges, and to institute disciplinary proceedings against them. In 2007, the courts acquired the right to sanction detention; the amendments introduced in 2010 improved interaction among courts, prosecutors, investigators, pre-trial investigation structures, and competent structures of other states, etc.

Today, the countries of Central Asia and the Caucasus rely on foreign experience and standards to promote state-building at home. President Nazarbaev offered the following comment on Montesquieu’s doctrine of the separation of powers: “It is not of an absolute but rather of a suggestive nature.”³⁶ To improve the tripartite system, however, it is necessary to study and apply the experience accumulated by the democratic countries and the most developed states.

The Central Asian and Caucasian countries should concentrate on developing the “lower stories” of their representative structures and on gradually shifting the triad to the municipal level (Germany has progressed further than the other developed states in this respect).

It is absolutely necessary to strictly delineate the functions unrelated to any of the main branches—public prosecution, central banks, central election commissions, auditing chambers, ombudsmen, presidential administrations, national security councils, etc.). American experience can and should be borrowed.

There are several other pertinent issues.

Conclusion

In all the countries discussed above foreign policy is the prerogative of the heads of state and government. However, today behavior on the international arena depends not so much on coordination and interaction among the power branches as on the relations among those who coordinate foreign policy with the business community and national and international NGOs, etc.

It seems that in the near future the Central Asian and Caucasian countries should move away from arithmetic to algebra; to be implemented the separation of powers principle demands that political-legal issues of a higher order should be successfully resolved.

It is highly important to avoid the extremes that can be described as “divided power,” which leads to an open confrontation among the branches of power, conflicts among the people in power, and mounting opposition between the people and the government. Even the most detailed models of

³⁵ The Constitution of Afghanistan. Year 1382, available at [www.afghan-web.com].

³⁶ N. Nazarbaev, “Konstitutsiya—osnova stabilnosti i protsvetaniya Kazakhstana,” 30 August, 2000.

the tripartite system will never work in a society that has not yet completely accepted democratic values, that is, remains at a fairly low level of legal awareness.

This makes democratic changes absolutely indispensable, and, as we see it, they should occur first and foremost in public conscience.
