The Creation of New States in International Law: The Cases of South Ossetia's and Abkhazia's Unilateral Declarations of Independence

Fatima Mushurova

Submitted to the
Institute of Graduate Studies and Research
in partial fulfillment of the requirements for the Degree of

Master of Arts
in
International Relations

Eastern Mediterranean University
July 2012
Gazimağusa, North Cyprus

Approval of the Institute of Graduate Studies and Research

Prof. Dr. Elvan Yılmaz
Director

I certify that this thesis satisfies the requirements as a thesis for the degree of Master of Arts in International Relations.

Prof. Dr. Ahmet Sözen
Chair, Department of International Relations

We certify that we have read this thesis and that in our opinion it is fully adequate in scope and quality as a thesis for the degree of Master of Arts in International Relations.

Assoc. Prof. Dr. Wojciech Forysinski
Supervisor

Examining Committee

1. Assoc. Prof. Dr. Kudret Özersay
2. Assoc. Prof. Dr. M. Moncef Khaddar
3. Assoc. Prof. Dr. Wojciech Forysinski

ABSTRACT

In the 21st century, problems related to the territorial status and statehood are likely to continue to be a focal point of international disputes. The creation of states is an active and complex process, which has no end and is likely to continue in the future. The creation of a new state is important not only for a particular state, but for the international community as a whole. In February 2008 the unilateral declaration of independence by Kosovo and in July 2010 the Advisory Opinion of the ICJ on the accordance with international law of the unilateral declaration of independence in respect of Kosovo raised the question of whether the case of Kosovo could serve as a practical precedent for the legitimacy of the declarations of independence by Abkhazia and South Ossetia.

The aim of this study is not to compare the case of Kosovo with the case of South Ossetia and Abkhazia, but to use the advisory opinion of the International Court of Justice on Kosovo case as a template for assessing the lawfulness of the declarations of independence by South Ossetia and Abkhazia. However, this study goes beyond the advisory opinion of the ICJ and considers whether South Ossetia and Abkhazia meet the criteria of statehood and whether the recognition of South Ossetia and Abkhazia by the the Russian Federation and some other states was in conformity with international law.

Key words: statehood, criteria of statehood, legality, recognition, self-determination

ÖZ

21. Yüzyılda, toprak statüsü ve devlet olma ile ilgili sorunların uluslararası uyuşmazlıkların odak noktası olmaya devam edecek gibi görünüyor. Devletlerin oluşturulması sonu yok ve gelecekte de devam edecek olan aktif ve karmaşık bir süreçtir. Yeni bir devletin kurulması sadece belirli bir devlet için değil, ama genel olarak uluslararası toplum için önemlidir. Şubat 2008'de Kosova'nın tek taraflı bağımsızlık ilanı ve 2010'da Uluslararası Adalet Divaninin Kosova ile ilgili olarak tek taraflı bağımsızlık ilanının uluslararası hukuka göre Danışma Görüşü Kosova durumunda Abhazya ve Güney Osetya'nın bağımsızlık beyanlarının meşruiyet için pratik bir örnek olabileceğini sorusunu gündeme getirdi.

Bu çalışmanın amacı, Güney Osetya ve Abhazya örenekleriyle ile Kosova örneğini karşılaştırmak değil, ama Uluslararası Adalet Divaninin Kosova ile ilgili Danışma Görüşü Abhazya ve Güney Osetya'nın bağımsızlık beyanlarının hukuka uygunluğunun değerlendirilmesi için bir şablon olarak kullanmaya. Ancak bu çalışma, Uluslararası Adalet Divaninin Kosova ile ilgili Danışma Görüşünü geçiyor ve Abhazya ile Güney Osetya devletinin kriterlere uyup uymadıklarını ve Rusya Federasyonu ile bazı başka ülkeler tarafından Güney Osetya ve Abhazya'nın tanınması uluslararası hukuka uygun olup olmadığına bakıyor.

Anahtar Kelimeler: devlet, devlet olma kriterleri, kanuna uyma, tanıma, özerklik

To My Family

ACKNOWLEDGMENT

I would like to thank my supervisor Assoc. Prof. Dr. Wojciech Forysinski for his continuous support and guidance in the preparation of this study. Without his invaluable supervision, all my efforts could have been short-sighted.

Prof. Dr. Ahmet Sözen, Chairman of the Department of International Relations, Eastern Mediterranean University, helped me with various issues during the thesis and I am grateful to him. I am also obliged to Assoc. Prof. Dr. M. Moncef Khaddar and Assoc. Prof. Dr. Kudret Özersay, for their help and support during my thesis. Besides, a number of friends had always been around to support me morally. I would like to thank them as well.

I owe quite a lot to my family who allowed me to travel all the way from Kazakhstan to TRNC and supported me all throughout my studies. I would like to dedicate this study to them as an indication of their significance in this study as well as in my life.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

CIS:	Commonwealth of Independent States
EU:	European Union
ICCPR:	International Covenant on Civil and Political Rights
ICECCR:	International Covenant on Economic, Social and Cultural Rights
ICJ:	International Court of Justice
IIFFMCG:	Independent International Fact-Finding Mission on the Conflict in Georgia
MEP:	Member of the European Parliament
NATO:	North Atlantic Treaty Organization
PACE:	Parliamentary Assembly of the Council of Europe
SSRs:	Soviet Socialist Republics
TRNC:	Turkish Republic of North Cyprus
UK:	United Kingdom
UN:	United Nations
UNMIK:	United Nations Interim Administration Mission in Kosovo
UNPO:	Unrepresented Nations and Peoples Organization
USA:	United States of America
WWI:	World War I

Chapter 1

INTRODUCTION

The creation of states is a complex process because it is a mixture of facts and laws which involves the establishment of particular factual conditions and fulfillment of particular normative criteria of statehood. The creation of states is important not only for a particular state, but for the international community as a whole. The creation of states is the main topic in the field of international law and is an important issue because it is the process which has no end. Almost every day brings more news about new states and problems related with their statehood, declarations of independence of break-away entities, recognition or non-recognition of entities aspiring to statehood. One of the recently successfully created states is South Sudan. In April the media widely reported on the declaration of independence of an entity called Azawad in North Mali where the Tuareg rebels proclaimed an independent state. However, at this point it is important to mention that the creation of new states is almost always contentious and practically every declaration of independence raises questions concerning its legality. That is why there is a growing number of unrecognized entities who seek the right to create new states. Many of them are members of the Unrepresented Nations and People Organization. Forty seven entities are presently members of this organization. Unresolved issues related to statehood result in a growing number of "unrecognized states", "*de facto* states", "state-like entities", "states-within-states" and "contested states". Some of those entities aspiring to statehood are not recognized at all (e.g. Somaliland or Puntland), some

are recognized by a number of states, members of the United Nations (e.g. Turkey), some are recognized, often on the basis of reciprocity, by other unrecognized entities. This, for instance is the case of South Ossetia and Abkhazia being recognized by Transdnestria. Recognition of new states is always both legally and politically motivated.

From the perspective of existing states, the creation of new state can be sensitive for a number of reasons. None of the existing states wants to lose her territory or to have its territory and political independence threatened by the prospect of secession. Consequently, in most of the cases, the creation of new states leads to internal and international conflicts. Conflicts related with the creation of new states can also lead to the use of force and, potentially massive violations of human rights by both the existing states aiming at the preservation of their statehood and new entities aiming at secession and independence. The right to self-determination of the people seems to be one of the most important principles of international law guiding the creation of new states. In the 21st century, problems related to the territorial status and statehood are likely to be the central point of international disputes.

One of the recent statehood related cases and disputes in the case of South Ossetia and Abkhazia who declared independence from Georgia in 2006 and have been recognized as independent states by the Russian Federation and a number of other states in 2008. The problems created by the recognition of South Ossetia and Abkhazia have become increasingly apparent. In particular, they raise questions in international law concerning the legal status of break-away entities, as well as about the legality of certain acts which led to their declarations of independence and recognition. Can they legitimately claim statehood? Do they effectively meet the

criteria of statehood? Are they lawful? Is the involvement of the Russian Federatio in conformity with international law?

The actions of South Ossetia and Abkhazia have, undoubtedly, been inspired by the February 2008 declaration of independence by Kosovo. A question was raised whether the case of Kosovo could serve as a practical precedent for the legality of the declarations of independence by South Ossetia and Abkhazia. Most of the states and commentators agree, however, that these two cases are 'unique' and cannot serve as precedents to one another. After the declaration of independence by Kosovo the UK Foreign Secretary David Miliband for instance, suggested that "Kosovo's declaration of independence is unique and does not set a precedent for other separatist movements in Europe."[1] Rein Mullerson commented that "recognition of Kosovo by some states and recognition of South Ossetia and Abkhazia by Russia is so *sui generis* that they could not serve as precedents."[2]

1.1 Purpose of the Study

It is not the aim of this thesis to compare the case of South Ossetia and Abkhazia with that of Kosovo. However, since both cases raise similar legal questions it seems proper to look into the ICJ's Advisory Opinion on Kosovo and to, by analogy, use the determinations of law and methodology applied by the ICJ in the Kosovo case to answer similar questions with reference to South Ossetia and Abkhazia**.** To be more precise, the general area of the thesis concerns international law and the aim of the research is to look into the question of the legality of the declarations of

[1] "Kosovo case unique, says Miliband," *BBC News* , February, 2011 http://news.bbc.co.uk/2/hi/uk_news/politics/7252212.stm (Accessed on 27 December, 2011)

[2] R. Müllerson, "Precedents in the Mountains: On the Parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia," *Chinese Journal of International Law* 8/ 1(2009), 1-25

independence by South Ossetia and Abkhazia in the same manner the International Court of Justice looked into the question of the legality of the declaration of independence by Kosovo. This will be done by applying the same methodology of the International Court of Justice's Advisory Opinion in the case of Kosovo's declaration of independence to the case of Abkhazia and South Ossetia. However, the present study goes further than the Court's Advisory Opinion and tries to determine whether South Ossetia and Abkhazia actually meet the criteria of statehood and look into the implications of their recognition by the Russian Federation and a small number of other states.

1.1.1 Research Questions

The research question of this thesis is: "Are the unilateral declarations of independence by South Ossetia and Abkhazia in accordance with international law?" This is the question the International Court of Justice was asked by the General Assembly about the legality of the declaration of independence by Kosovo and this study, by analogy, aims to provide answers to this question with the reference to the declarations of independence of Abkhazia and South Ossetia. An important supplementary question is about the criteria of statehood. Do South Ossetia and Abkhazia meet the criteria of statehood or not? To test this, the thesis will apply the "classical" criteria of statehood provided by the Montevideo Convention. Another supplementary question is about recognition of South Ossetia and Abkhazia. What are the legal effects of recognition of South Ossetia and Abkhazia by other states? This question will focus on the influence the Russian Federation has exerted on the legal status of South Ossetia and Abkhazia.

1.2 Methodology

To answer the main research question, the thesis uses the methodology applied by the International Court of Justice in its Advisory Opinion on Kosovo. In other words, the Opinion of the Court will be used as a template or a guideline how to deal with the legality of declarations of independence of entities aspiring to statehood. First, following what the International Court of Justice applied in the case of Kosovo's declaration of independence, the thesis will determine the relevant facts with the aim of establishing the factual framework which led to the declarations of independence being made and both South Ossetia and Abkhazia being recognized by the Russian Federation. This part will predominantly be a historical analysis trying to determine, for instance, who exactly made the declarations of independence on behalf of South Ossetia and Abkhazia. This part will focus on events preceding and following their recognition.

Second, in order to determine the conformity with international law of the two declarations of independence the thesis will undertake a content analysis of the relevant international law. Like the Court, the thesis will look, in the first place, into the conformity of the two declarations of independence with general international law and then, into their conformity with the UN Security Council resolutions and other international legal instruments. The mission of the Court was to determine whether or not the declaration of independence of Kosovo violated international law and in this respect, the Court concentrated its analysis on the principle of self-determination and territorial integrity. The same will be done with respect to South Ossetia and Abkhazia.

1.3 Research Design

The thesis has six chapters. It starts with the introduction which explains the significance of the study, research questions, methodology and the research design. It also includes some general and preliminary literature review.

Chapter two introduces the concepts of statehood and recognition of States in international law. The aim of this chapter is to explain theories and definitions of statehood and recognition of States in international law. The reason for this is that while examining the main issue about the creation of states in international community, it is important to look at what the normative standards for an entity to be a state are.

Chapter three looks into the factual background of the declarations of independence of South Ossetia and Abkhazia. This chapter establishes the facts, that led to their declarations of independence and the facts following Russian recognition of South Ossetia and Abkhazia. Particular attention is paid to the implications of the dissolution of the Soviet Union and the role of the 2008 war involving Georgia, South Ossetia, Abkhazia and the Russian Federation the process which led to the recognition of independence of South Ossetia and Abkhazia by Russia.

The fourth, the key chapter of the thesis is about the lawfulness of the declarations of independence of South Ossetia and Abkhazia under international law. This chapter deals with the legality of the declarations of independence by South Ossetia and Abkhazia. It starts by explaining applicable general international law, i.e. the right to self-determination and important points concerning identity of 'people', territory and the use of force. The chapter assesses whether the two declarations of independence were made in conformity with general international law.

The fifth chapter deals with the statehood and recognition of South Ossetia and Abkhazia in international law. This chapter implements the classical criteria of statehood to the cases of South Ossetia and Abkhazia in order to establish whether they meet the criteria of statehood. Then, the chapter analyzes the issue of recognition and evaluates the issue of recognition, the role and lawfulness of the recognition of South Ossetia and Abkhazia by Russia.

The final chapter, chapter six, presents a series of general conclusions. Its main aim is to answer the question concerning the conformity with international law of the declarations of independence of South Ossetia and Abkhazia and to give reasons for the position taken.

1.4 Literature Review

Literature review refers to the sources of research such as books, articles, journals, etc. by acknowledging what others did in same field of the study by reading, identifying, critically evaluating and analyzing opinions concerning the topic under consideration. The aim of the literature review in this thesis is not just summarizing what different authors and scholars said, but to analyze and to use different "opinions" about the declarations of independence of Kosovo and Abkhazia/South Ossetia. Literature is believed to help to answer the research question about the legality of declarations of independence of South Ossetia and Abkhazia.

The thesis uses primary and secondary sources. Among primary sources, the most important is the "Advisory Opinion of the International Court of Justice on the legality of the declaration of independence of Kosovo."[3] Also, the thesis uses statements made by various states, submitted to the Court and speeches presented

[3] Advisory Proceedings of International Court of Justice (2010) http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=0

during the oral proceedings. Furthermore, the thesis uses dissenting opinions by several judges of the ICJ who disagreed with the Advisory Opinion or expressed their specific reservations concerning the case. Other primary sources include the Charter of the United Nations and various documents of the UN Security Council, EU Report and other documents. After doing content analysis of the documents, the thesis uses secondary sources- books, articles, the Internet sources etc.

For the first chapter of the thesis I used books to give definitions and descriptive explanations. Then I mainly used internet sources for the establishing facts. Lastly I focused on the legal document of International Court of Justice Advisory Opinion.

The topic of this thesis required looking into the literature concerning the creation of states under international law. The most helpful in this respect, was the book by James Crawford "The Creation of States in International Law".[4] His seminal work was one of the most important books which I used while writing this thesis. The book provides comprehensive knowledge about the process of the creation of states in international law. The important issues which are discussed are statehood and recognition of states in international law and the concepts of self-determination, territorial integrity, use of force and non-recognition. These concepts are also commonly described by different authors in different textbooks on international law such as M. N. Shaw "International Law" (5th Edition); M. D. Evans "International Law" (3rd Edition); A. Cassese "Self-Determination of Peoples: a Legal Reappraisal"[5]; G. I. Tunkin "International Law" and J. Summers "Peoples and

[4] J. Crawford, *The Creation of States in International Law* (Oxford University Press 2006)
[5] Antonio Cassese, "Self-determination of Peoples: a legal reappraisal", (Cambridge university Press, 1995).

International Law". These books and articles helped me to construct conceptual framework of the thesis.

The latest issue of the American Journal of International Law (2011) includes articles about the ICJ's Kosovo Advisory Opinion and there are some authors who deal with the Advisory Opinion. For instance, one of them is Marko Divac Öberg who comments on the "Legal effects of United Nations Resolutions in the Kosovo Advisory Opinion".[6] He presents that "in its prior jurisprudence, the Court has distinguished between resolutions, or provisions thereof, that can have binding legal effects (decisions) and those that cannot (recommendations)."[7] He looks on the effects of facts on the Court which were stated by the General Assembly and comes to the conclusion that the Court declined to be bound by a factual determination. The author discussed the Court's new statements about the legal effects of UN Resolutions. He concludes that "in all these matters, the Court made the right legal choices while avoiding unnecessary obiter dicta, leaving fertile ground for additional advance in the future."[8] Also, the American Journal of International Law includes Richard Falk and Dihan Shelton's articles.

There are number of publications of comparative character, drawing parallels between the case of Kosovo and the cases of South Ossetia and Abkhazia. Most of them focus on how unique these cases are and identify areas where comparison is possible. For instance, according to Rein Mullerson the recognition of Kosovo and Abkhazia/ South Ossetia are unique cases and they cannot be seen as precedents. In

[6] M. D. Öberg, "The Legal Effects of United Nations Resolutions in the Kosovo Advisory Opinion," *The American Journal of International Law* 105 (2011), 81-90 (Agora)

[7] Ibid, 82

[8] Ibid.

his article "Precedents in the Mountains: On the Parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia" he explained that the uniqueness or parallels of the recognition of the independence of Kosovo by a number of states and by the Russian recognition of South Ossetia and Abkhazia "so unique, so *sui generis* that they could not serve as precedents."[9] The author asserts that it is in the eye of the beholder.[10] The reason is that some particular facts or acts which are provided as precedents depends on whether one is interested in seeing them as precedent or not and he made clear that Russia's interest in Abkhazia and South Ossetia is instrumental. Further, Mullerson explained that Russia would not support Abkhazia and South Ossetia if Saakashvili had been the friend of Russia and US would not care about "democracy" in Georgia if it had not been strategically important. In his opinion Russia made mistake by recognizing the independence of Abkhazia and South Ossetia and that Russia needs friendly relations with Georgia more than with Abkhazia and South Ossetia.

Cedric Ryngaert and Sven Sobrie put forward a different view about the recognition of states. The aim of the article was to analyze recent state practice and the way in which 'law and politics' settle on the process of state recognition. In the article "Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia", the authors state that the dissolution of Yugoslavia challenged the traditional normative framework and marked the introduction of a new set of moral norms used to establish whether or not an entity should be recognized as a state and such development was a reason for

[9] R. Müllerson, 1-25

[10] Ibid., 2

the uncertainty and incoherence that led to increased political tensions.[11] The uncertainties or confusion, which were mentioned in the article have arisen because of the creation of new normative framework, are- concrete content of new criteria, relationship between new requirements and traditional criteria and the final issue was related with the very foundations of international law and its uneasy relation to political judgment. The authors conclude that the issue of state recognition remains and will remain one of the most debated issue and that they just tried to offer another possible approach.

Timothy George McLellan deals more with the politics of NATO and Russia and examines the recognition of Kosovo and Abkhazia. The author provides and explains two possible reasons for the failure of Kosovo and Abkhazia to obtain de jure statehood. First of all, the possible reason for the failure is that Kosovo and Abkhazia have to satisfy some international law criteria to get de jure statehood and secondly, there are states which refuse to recognize Kosovo and Abkhazia. Briefly, the policy of NATO in Kosovo, according to the author, is that NATO recognizes Kosovo but opposes the development of a right to unilateral secession because it might be used as precedent for other de facto states like Abkhazia. In Abkhazia the policy of NATO is that there is some kind of hostility towards Russia and this might be shared with a desire to keep Kosovo as *sui generis*[12]. On the other hand, Russia is worried more about the procedural results from the Kosovo and Abkhaz cases and about the benefit

[11] C. Ryngaert & S. Sobrie, "Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia," *Leiden Journal of International Law* 24 (2011), 467-490

[12] T. G. McLellan, "Kosovo, Abkhazia, and the consequences of State Recognition," *Cambridge Student Law Review* 5 (2009), 1-22

of maintaining strong military and political presence in the region. For McLellan, because Kosovo and Abkhazia were autonomous regions and their independence was opposed by Russia and Serbia (two mother-lands) they do not have the right to be legally entitled as statehood and their recognition as states is not declaratory.[13] He finalizes his article by stating that current developments in Kosovo and Abkhazia demonstrate that recognition and non-recognition are important in the creation of new states and that factors driving the decisions of NATO and Russia are greatly subjective.

William R. Slomanson who is Professor of Law presents the paper about "Legitimacy of the Kosovo, South Ossetia, and Abkhazia Secessions: violations in search of a rule" in Saint Petersburg. He says that international law does not permit nor prohibit secession.[14] According to Slomanson for the international community there has to be 'extraordinary circumstances' or exceptions to recognize any legitimate secession. He suggests three commonly accepted elements as "distinct people, gross human rights violations and no alternative but secession."[15] He advises the international community to prepare a kind of first multilateral secession treaty and he concluded that under international law neither the case of Kosovo nor the cases of South Ossetia and Abkhazia have the right for recognition and they are far from resolved.

There are various sources related to the Kosovo's declaration of independence, but there are lack of sources which analyze both cases of Kosovo with South Ossetia and

[13] T. G. McLellan, 1-22

[14] W. R. Slomanson, , "Legitimacy of the Kosovo, South Ossetia, and Abkhazia Secessions: violations in search of a rule," *Ukrainian Yearbook of International Law* 3(2010), 1-28

[15] Ibid, 11

Abkhazia. However, different opinions of authors are important for the critical analysis of the declarations of independence by South Ossetia and Abkhazia. Further, each chapter has more specific literature review.

Chapter 2

THE CONCEPT OF STATEHOOD AND RECOGNITION OF STATES IN INTERNATIONAL LAW

The concept statehood and recognition are closely interrelated and important in both theory and practice of international law. Even though, it is not the purpose of the thesis to determine whether South Ossetia and Abkhazia meet the criteria of statehood. My main task is to discuss the question of the legality of their declarations of independence. I think that it is necessary to draw more general picture of the normative environment within which the criterion of states takes place. So, the role of this chapter is to illustrate that the question of legality is a part of a broader question of statehood.

The reason why an entity is important to be a 'state' in International Law as well as in international community as a whole is because it suggests that becoming a state automatically makes an entity "powerful and important subject of International Law."[16] The reason is that international law applies mainly to states and states automatically are endowed with such personality. Therefore, it is desired to be a 'state'. It is advantageous to be a state because of protection in international law, in other words because it will become an international legal person. Main capacities of an international legal person, as listed by Dixon, are

> "to make claims before international (and national) tribunals in order to vindicate rights given by international law; to be subject to some or all of the obligations imposed by international law; to have the power to make valid international agreements (treaties) binding in international law; to enjoy some

[16] M. Dixon, *Textbook on International Law* (Oxford University Press, 2007), 113.

> or all of the immunities from the jurisdiction of the national courts of other states."[17]

This means that international legal person will act independently and will have legal opportunities such as making international agreements or making claims before international or national tribunals.

This chapter refers to the theories of statehood and recognition. The aim of this chapter is to define the legal concept of statehood and analyze the theories of recognition. The importance of the legal concept of statehood is that it will help to test certain qualities an entity must meet, because to qualify recognition an entity must not come out as the result of illegal actions. In other words, the legal concept of statehood will help to test certain qualities of South Ossetia and Abkhazia and their aspirations to statehood.

It is commonly accepted that the creation of statehood must be done in accordance with international law. Wallace-Bruce supports the view that the creation of new state should not violate any international rule.[18] It means that if an entity emerges in the international system by the violation of the norms of international law, it does not matter how effective it might be, it cannot maintain legal statehood.

The following paragraph deals with the concept of statehood and defines characterizations which have to be met by an entity to declare a legal state in international system. It mainly deals with the Montevideo Convention which the traditional normative framework is determining what the criteria of statehood are.

---

[17] M. Dixon, 112.

[18] "International Recognition of a Unilaterally Declared Palestinian State: Legal and Policy Dilemmas," *Jerusalem Center for Public Affairs*, http://www.jcpa.org/art/becker2.htm (Accessed on 10 December, 2011)

This will allow me to judge if South Ossetia and Abkhazia do or do not meet the legal criteria of statehood. Then the second step is to deal with the theories of recognition and to look at the problem of recognition/non-recognition of South Ossetia and Abkhazia.

2.1 The Concept of Statehood and its importance in International Law

The creation of new states is always an active process. However, the recent history of the creation of new states is marked by two waves of enlargement the creation of statehood which led to the establishment of increased number of independent states in the world. Since the 1950s- 1960s the independence of many "colonial" territories led to the large number of creation of new States and in the 1990s the collapse of the Soviet Union and dissolution of Yugoslavia led to the creation of a number of new States. But today there are still some entities which are not recognized and which are under the influence of other state(s) or "mother" state(s). Those two historical periods are important for this study because the collapse of the Soviet Union was the reason for South Ossetian and Abkhazian declarations of independence and the dissolution of Yugoslavia was the reason for Kosovo's declaration of independence. Chapter three which establishes the factual background explains in details the historical background which starts mainly from the events since 1990s and which led to the declarations of independence by South Ossetia and Abkhazia.

The concept of statehood in international law is explained differently by politicians, lawyers and philosophers. For instance, Crawford describes Vitoria's view of a perfect State or society as one which is "complete in itself, i.e. which is not a part of another community and which has its own rules, law and council."[19] Grotius explains

[19] J. Crawford, *The Creation of States in International Law* (Oxford University Press 2006), 7.

state "as a complete association of free men, joined together for the enjoyment of rights and for their common interest."[20]

The existence of a society of independent states appears to be an essential assumption for the discipline, like something that has to precede the identification of those rules or principles that might be considered as forming the core of International Law.[21] On the other hand, statehood is something that appears to be affected through international law following from the need to determine which political communities can rightfully argue to benefit from the prerogatives of sovereignty.[22]

2.1.1 Defining States in International Law

The most authoritative explanation of statehood is set out in Article 1 of the Montevideo Convention on the Rights and Duties of States which explains the definition, duties and rights of statehood. It was signed in 1933 at Montevideo at the Seventh International Conference of American States and at the Conference the President of the United States declared his 'good neighbor' policy toward Latin America. Article 1 of the Montevideo Convention refers to the classical criteria of statehood which are based on effectiveness. Also, it is based on the Latin maxim '*ex factis jus oritur*'[23] which means that some legal consequences are attached to concrete facts. It specifies that "the State as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states."[24]

---

[20] P. Zagorin, *Hobbes and the law of nature* (Princeton University Press 2009),pg.38.

[21] M. D. Evans, *International Law* (Oxford University Press, 2010), 203.

[22] Ibid.

[23]" Statehood, Effectivenes and the Kosovo Declaration of Independence", http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1316445

[24] J. Crawford, *The Creation of States in International Law* (Oxford University Press 2006), 46.

2.1.1.1 Permanent Population

Permanent population in Article 1 of the Montevideo Convention on the Rights and Duties of State, does not mean that territory has to have fixed number of inhabitants or that there can be no migration across the territorial boundaries and even does not mean that population demonstrate wealth and power or that a state can secure itself in struggle with others. The population can be a group of people of different nationalities, races and religions but they will live in one community. Evans states that the size of population is not important to be a state, i.e. Montevideo Convention says that there seems to be no minimum threshold population compulsory in order to gain statehood, but to a certain extent it suggests that "there must exist a population enjoying exclusive relations of nationality with the nascent State."[25] For example, the population of India is 1,186,280,896 and Nauru has 14,462.[26]

2.1.1.2 Defined Territory

Obviously for a state to exist there should be a defined territory which will identify physical existence of territory and that will draw lines or borders with neighbors. 'Defined' means agreed borders of a territory that separate the territory from its neighbors. Also, similarly to the requirement of permanent population, in defined territory does not have rule which prescribes minimal area of that territory. For instance Guinea has 245,857 km^2 of territory with the population of 10,546,642 people and Belgium has only 30,528 km^2, but approximately has the same population as Guinea.[27]

---

[25] M. Evans, 222.

[26] GeoHive, a site with all kinds of statistics. http://www.geohive.com/earth/population1.aspx (Accessed on 15 May, 2011)

[27] J. Crawford, 52.

There are cases when two or more states disputes over a territory, like India and Pakistan over Kashmir or Azerbaijan and Armenia over Nagorno-Karabakh. But the boundary disputes do not affect their statehood and territorial status, but it is important to have a clear core territory in order to be a State.

2.1.1.3 Effective Government

The third requirement of statehood which in my opinion is the most important one is the government. According to Dixon "for a state to function as a member of the international community it must have a practical identity which is the government which is responsible for international rights and duties of the state."[28] Also, the reason of why government is seen as the main criterion in the declaration of statehood is that other two criteria, territorial sovereignty and population, are linked to the government. Defined territory which has permanent population has to be governed by authorities, which means that most of the time these authorities represent people on the defined territory. And it is also important for the external and internal affairs of a state, because in internal affairs government is responsible for the peace and stability within the territory; it is the same for the external affairs to maintain good relations with other states. Thus, the government has to have effective control and to be able to take actions independently from other governments.

2.1.1.4 Capacity to enter into legal relations

Crawford claims that the capacity to enter into legal relations is a consequence of statehood. It is not a criterion for the creation of statehood and it is not stable, but depends on the situation of particular state.[29] There is no obligation for a state to have relations with other states in order to be qualified as a state, because the

[28] M. Dixon, 115.

[29] J. Crawford, 61.

existence or lack of such relations is largely dependent on the will of the existing states to enter into relations with the entity in question.[30] The better description is that to have ability to have relations with other states requires "'legal independence', but not factual autonomy."[31] Therefore, state will exist if the territory is not in the legal authority of another state. For example, Hong Kong has territory, population and government but since it is under the authority of China, it is not state. Hong Kong practices full autonomy in all matters, except foreign and defense affairs and it participate in international organizations and agreements as 'Hong Kong, China'.[32]

All four classical 'Montevideo' criteria of statehood seem to be closely interrelated. They complement each other in the process of the creation of statehood. A group of people without territory cannot establish a state and vice versa a territory alone without permanent population cannot establish a state, and the government cannot exist without territory and population, because legal authority has to exercise its duties on a specified group of people in the defined territory. However, the law of statehood does not force states have relations with other states, so it depends on the will of the state.

Meeting the criteria of statehood means that there are facts about entity which justify her legal existence according to the traditional normative framework. Next step is to look on the theories of recognition and what is important is that recognition may be

[30] David Raič, *Statehood and the law of self-determination* (online E-book, 2002), 73.

[31] M. Dixon, 116.

[32] The case of Hong-Kong, http://www.state.gov/r/pa/ei/bgn/2747.htm (Accessed on 20 December, 2011)

considered as yet another criterion of legal statehood and in any case, plays the significant role in the process of the creation of statehood.

2.2 Recognition of States in International Law

James Crawford suggests that sometimes recognition is required as the necessary criteria for statehood.[33] He, however, mentions that "an entity is not a State because it is recognized; it is recognized because it is a State."[34]

The importance of the creation of new states is that, as more states are created, the international community faces a lot with their recognition. Recognition, as much as the creation of states is an active process and often debated in international law. The process involves an information act and has an essential political role as well as major legal consequences. Recognition of a state does not focus just on the issue of meeting some required qualifications, but it also means that by recognizing there will be official mutual relations, like political and economical, between recognizing state and recognized entity. However, the decision about recognition belongs to the state which is going to recognize new entity, because in international law there is no obligation to recognize. Recognition is a political act which deals with various factual circumstances. Peter Malanczuk points out that in international law recognition is one of the most difficult topics and it is a confusing mixture of politics, international law and municipal law. The recognition of an entity is affected by political or legal thoughts, but which have legal consequences.[35] He also mentions

[33] J. Crawford, 37.

[34] Ibid., 93.

[35] P. Malanczuk, , *Akehurst's Modern Introduction to International Law* (Routledge, 1997) , 82.

that recognition is a difficult topic in international law because of dealing with different factual situations.[36]

Another reason for recognition being the complex issues in international law is an ongoing controversy between constitutive and declaratory theories of recognition. In constitutive theory recognition creates a status, but in declaratory theory recognition just confirms the status.

2.2.1 Defining Recognition of States in International Law

Hillgruber states that recognition is the act of getting status which resulted that under international law recognized entity gets the legal status of a state.[37] According to him, a new state is not born, but it becomes a chosen subject in international law.[38] Tunkin argues that by recognizing new states or governments means that in the international scene appears new subjects of international law. He describes that:

> "The institution of the recognition of States and governments represents a set of international legal norms that governs relations associated with the appearance on the international scene of new subjects of international law or else with the recognition of new governments that need such recognition."[39]

There are some requirements for a state to be recognized, like sovereignty. Sovereignty is achieved in international law when already existing sovereign countries commonly accept that an applicant has international legal personality with sovereign rights and duties. Most of the time, state sovereignty arises to enforce internal order legitimately and to protect against external threat. On the other hand,

---

[36] Ibid.

[37] C. Hillgruber, , "The Admission of New States to the International Community," *European Journal of International Law* 9 (1998), 492.

[38] Ibid.

[39] G. I. Tunkin, *International Law* (Translated from the Russian), (Progress Publishers, 1986), 111.

Lake suggests that sovereignty is a type of authority relationship and that it has both internal and external faces.[40] The internal sovereignty constitutes domestic hierarchy and external sovereignty comprises the anarchical characteristic of relations between states.

Most of the rules applicable to recognition of states apply also to the recognition of governments. Recognition of a new government is different from the recognition of a new state. The question of recognizing a government arises when new government comes to power within a state through unconstitutional means, like coup d'état or civil war or with regards to states which recognize them. Shaw mentioned that

> "…as far as statehood is concerned, the factual situation will be examined in terms of the accepted criteria and different considerations apply where it is the government which changes. Recognition will only really be relevant where the change in government is unconstitutional."[41]

2.2.2 Theories of state recognition: Constitutive and Declaratory

Over a century ago a great debate about the lawful effects of recognition of new entities which declare for the statehood and nature of recognition, rose between the two theories of recognition.

2.2.2.1 Constitutive theory

The Constitutive theory claims that "Recognition is said to 'constitute' the state or government."[42] It is done by the will and consent of already existing states, but not the process by which it achieves independence. It rejects that international personality is granted by the act of international law alone. For Constitutive theory,

[40] D. A. Lake, "The New Sovereignty in International Relations" *International Studies Review* 5(2003), 305.

[41] M. N. Shaw, *International Law* (Cambridge University Press, 2003), 377.

[42] M. Dixon, 128.

recognition is the important requirement to the existence of the capacities of statehood or government.[43] So, according to the Constitutive theory if an entity, for example TRNC, is not recognized as a state by the international community, then it is not a state. The reason is that recognition is said to 'constitute' state or government.[44] Dixon also points out that "constitutive theory emphasizes the practical point that states are not obliged to enter into bilateral relations with any other body or entity."[45] For instance, West Germany is not obliged to recognize East Germany and if it does not recognize, then there is no mutual relations between them. The weakness of the constitutive theory is that unrecognized state may not be the subject to the duties imposed by the international law and may accordingly be free from such restraints as for example prohibition of aggression. Further, difficulty would arise if a state was recognized by some but not other states. Dixon outlines some unsolvable theoretical and practical problems which are raised by constitutive theory claiming that:

> "First, there is no doubt that recognition is political act, governed only in part by legal principle…. Second, we must ask ourselves whether it is consistent with the operation of any system of law that legal personality under it should depend on the subjective assessment of third parties… Third, assuming we accept the constitutive theory, in practical terms what degree of recognition is required in order to 'constitute' a state? Must there be unanimity among the international community, or is it enough that there be a majority, substantial minority or just one recognizing state? Again, is membership of an international organization tantamount to collective recognition and, if so which organizations?.. Are some states or groups of states (e.g. USA, EU) more important when it comes to recognition?"[46]

[43] Ibid.

[44] Ibid.

[45] Ibid.

[46] M. Dixon, 129.

The issues referred to by Dixon are widely discussed nowadays in international law, because according to constitutive theory if it is accepted that a new state is created just by the initiative of already existing states then the issue of what kind of recognition is arisen.

2.2.2.2 Declaratory Theory

Declaratory theory emerges as a reaction to the constitutive theory and adopts the opposite approach which is less in accordance with practical realities and it notes the fact of the appearance of a new subject of international law.

According to declaratory theory, when an existing state recognizes a new state it is just an acknowledgement of preexisting legal capacity or factual situation, nothing more. Dixon stated that international legal personality of a state does not depend on its recognition by other states because that status is provided by the process of international law.[47] It is still entitled to the rights and the subject to general duties of the system.

The Declaratory theory, just as the constitutive theory, has some weaknesses, but in any case declaratory theory is widely accepted. Evans listed two particular difficulties:

> "The difficulty is that it is frequently impossible to entirely dissociate the fact of recognition from the idea of political approval… This relates to a second difficulty with the practice of recognition namely that even in cases in which States have taken a firm position in seeking to avoid recognition of a State they are not infrequently unable or unwilling to live with the consequences…"[48]

[47] Ibid., 127.

[48] M. D. Evans, 243-244.

To summarize briefly, for the constitutive theorists the heart of the matter is that an unrecognized state cannot have rights or obligations in international law and declaratory theorists stress on the factual situation and minimize the power of states to give legal personality.

Evans states that to a large extent the respective positions on the question of recognition turn on analytical relationship between "status" and "relationship".[49] He explains difficulties related with both theories pointing out that:

> "…declaratory theory seeks to maintain both the idea that creation of states is rule-governed and that the conferral or withholding of recognition is an essentially political and optional act. By contrast, constitutive theory seeks to maintain that the conferral or withholding of recognition is a legal act, but that in the absence of either 'duty to recognize' or existence of an agency competent to adjudicate, then allows the question of status to become entirely dependent on the individual position of recognizing states."[50]

Besides the fact that there are different entities to be recognized, recognition itself may take different forms. However, this study is not dealing with the forms of recognition of South Ossetia and Abkhazia is beyond the present analysis.

This chapter defines characterizations of statehood and recognition of states. It deals with the Montevideo Convention which is a traditional normative framework for statehood including theories of recognition. The actions of the entity must not violate international law. If a new state emerges by the violation of international law, there is less possibility to be recognized. When a state is granted recognition, it is the influence of more political act rather than legal consideration. It was mentioned

[49] M. D. Evans, 242.

[50] Ibid., 243.

before that recognition is a problematic one because it is dealing with the factual situations.

The following chapter is dealing with the factual background of South Ossetia and Abkhazia. Concerning the justification of the legality of the declarations of independence by South Ossetia and Abkhazia, it is important to establish facts which justify the legality of the declarations of independence of South Ossetia and Abkhazia and then, their recognition/ non-recognition.

Chapter 3

DECLARATIONS OF INDEPENDENCE OF SOUTH OSSETIA AND ABKHAZIA: FACTUAL BACKGROUND

By looking into what the ICJ has done to answer the question regarding the legitimacy of the declaration of independence of Kosovo, the first thing the Court did was to establish the factual context which led to the adoption of the declaration of independence. The purpose of this chapter is to establish the factual background which led to the adoption of the declarations of independence of South Ossetia and Abkhazia. The Court briefly explained important characteristics of Security Council Resolution 1244 (1999) and the relevant United Nations Mission in Kosovo (UNMIK) regulations. The reason the Court did it was to determine the lawful status of Kosovo at the time the declaration of independence was made. The Court established the facts preceding the declaration of independence and then dealt with the factual background of the declaration itself.[51]

In contrast to the case of Kosovo, we have two declarations of independence and the factual background for each of them is not identical, but very similar and in fact, these two cases cannot be disentangled. They are different not because they have different histories, but rather because their legal statuses at the time declarations were made were different.

[51] ICJ "Advisory Opinion on the accordance with international law of the unilateral declaration of independence in respect of Kosovo," 21.

The Ossetians migrated from Asia and settled in what is now North Ossetia and when in 18th and 19th centuries Russian empire expanded into the Caucasus, the Ossetians did not oppose it.[52] The beginning of the armed conflict between Georgia and South Ossetia occurred in 1920s and South Ossetia became an autonomous region within the Soviet Socialist Republic of Georgia in 1923.[53] Another part of Ossetia, North Ossetia, was formed in Russia. However, Abkhazian history is a little different from South Ossetia. From 1810 to 1864 Abkhazian principality was preserved its autonomous control within Russia and lasted longer than any other in the Caucasus. From 1864 to 1917 Abkhazia was subject to imperial administration in the Caucasus. In May 1918 in Batumi peace conference was proclaimed Mountain Republic (North-Caucasian republic) which was composed of Dagestan, Chechnya, Ossetia, Kabarda and Abkhazia. Therefore, Abkhazia restored its statehood which was lost in 1864. Lately in June in violation of all agreements, the troops of just proclaimed Democratic Republic of Georgia (26th of May) with the military support from Germany occupied the territory of Abkhazia.[54] The policy of Georgian government caused great dissatisfaction of multinational population of Abkhazia and this led to the easier establishment of Soviet power on 4th March 1921. The new regime was seen as freedom from repression and armed intervention of the Georgian Republic. At first Bolsheviks permitted Abkhazia the freedom of political choice. Then, the uniqueness of such political situation was the fact that in 1921 for

[52] Regions and Territories: South Ossetia, *BBC News*, http://news.bbc.co.uk/2/hi/europe/country_profiles/3797729.stm (Accessed on 1 April, 2012)

[53] "Georgia: Avoiding war in South Ossetia" , *ICG Europe Report No. 159* http://www.google.com.tr/url?sa=t&rct=j&q=UNPAN019224&source=web&cd=2&ved=0CFEQFjAB&url=http%3A%2F%2Funpan1.un.org%2Fintradoc%2Fgroups%2Fpublic%2Fdocuments%2Funtc%2Funpan019224.pdf&ei=F0jpT6rAKNSG8gPKhaDaDQ&usg=AFQjCNGZYjN-GScvnp_-mGtD0OF_XhMGWg (Accessed on 1 February, 2012)

[54] State News Agency of the Republic of Abkhazia (Государственное информационное агенство Республики Абхазия), http://apsnypress.info/history (Accessed on 30 March, 2012)

approximately one year Abkhazia was independent from Soviet Russia as well from Soviet Georgia and her independence was officially recognized by Georgian Bolshevik government.[55] But lately Abkhazia was forced by Stalin and other Georgian powerful Bolsheviks to conclude a union treaty with Georgia and in 1931 again under Stalin's pressure Abkhazia's status was reduced from Union Republic to Autonomous Republic within Georgia.[56] So, it was union of two neighbors by integration of one of them. In 1936 the Transcaucasian Soviet Federative Republic dissolved and Georgia became Soviet Socialist Republics (SSRs). 1936 Constitution of The Union of Soviet Socialist Republics declared union republics to be sovereign states with the right to secede.[57] However, the Autonomous SSR of Abkhazia was not granted independence or the right to secede or the right to upgrade her political status.[58]

The structure of this chapter follows the chronological order of events, in the same manner it was done by the Court in the case of Kosovo. It chronologically establishes the events prior to the declarations of independence of and then turning to the events of 26 August 2008 thereafter.

Consequently, the chapter is divided into two parts. It starts by explaining of events before August 2008 and it mainly focuses on the events following the dissolution of

[55] The Ministry of Foreign Affairs Republic of Abkhazia, http://www.mfaabkhazia.net/en/node/1117 (Accessed on 30th March, 2012)

[56] State News Agency of the Republic of Abkhazia (Государственное информационное агенство Республики Абхазия)

[57] 1936 Constitution of USSR, http://www.constitution.org/cons/ussr77.txt (Accessed on 5 October, 2011).

[58] B. Coppiters & M. Huysseune *"In Defense of the Homeland: Intellectual and the Georgian Abkhazian conflict"* Secession, history and the Social Sciences, (Brussels University Press, 2002), 91.

the Soviet Union. Also, it takes into consideration events during the war between South Ossetia and Georgia in 2008. The significance of explaining the war in 2008 is because the legality or illegality of the use of force during the war is an important factor in the determination of the legality of claimed statehood. Then, the chapter turns to the recognition by the Russian Federation the declarations of independence by South Ossetia and Abkhazia on August 26, 2008 and the following events.

3.1 The Events before August 2008

Since April 1922 South Ossetia was an autonomous part of Georgian SSR and in 1989, South Ossetia demanded more autonomy from the Georgian Soviet Socialist Republic which resulted in three months of armed conflict. The aim of the South Ossetian's leadership was to become independent from Georgia and to unite with North Ossetia, which was a republic in the Russian Federation.[59] The Georgian Parliament started to take unilateral decisions ignoring the intergovernmental nature Georgia's relation with Abkhazia. In fact this led to the abolition of Abkhazian statehood. Tbilisi declared null and void all state structures of the Soviet time from February 1921 and in response Supreme Council of Abkhazian Autonomous Soviet Socialist Republic in August 1990 adopted the declaration on State Sovereignty of Abkhazia.[60] In August of 1990s, South Ossetia itself declared independence and asked Moscow to recognize it as an independent subject of the Soviet Federation. The Georgian government reacted immediately and overturned those actions as unconstitutional and stated that procedural rules were violated and decisions adopted were invalid. In 1991, during the period of shift to independence, the President of

[59] K. Dawisha & B. Parrott, *Conflict, cleavage, and change in Central Asia and the Caucasus*, (online e-book 1997), 171.

[60] State News Agency of the Republic of Abkhazia (Государственное информационное агенство Республики Абхазия)

Georgia, a Georgia nationalist lobbied for the separation Abkhazia and South, stating publicly slogans such as 'Georgia for Georgians'.[61]

In 1992, Authorities of South Ossetia held referendum proclaiming the province's independence, but it was not recognized by Georgia. In 2006 there was a second referendum.[62] In 1992, South Ossetians voted in favor of independence in unrecognized referendum by Georgia after which Russia brokered a cease-fire and the officials of Russia, South Ossetia and Georgia made a peace deal which included the formation of peacekeeping force set up in the capital of South Ossetia.[63] The 1990's was the period when Georgia with South Ossetia and Abkhazia established Constitutions. In 1993, South Ossetia drafted its own Constitution and three years later elected its first President. The current Constitution of South Ossetia was adopted 8 years later, in 2001 and was accepted in a referendum.[64] In 1995 Georgia adopted Constitution and Article 1 states that Georgia shall be an independent, unified and indivisible state.[65] The Constitution of Georgia says that she is undivided which means that Abkhazian and South Ossetian territories are under the Georgian control and not separable. In 1999 Abkhazia held a referendum on independence in accordance with the provisions of the 1994 Constitution which was accepted by the Parliament of the Republic in November 1994. The Constitution declared that

---

[61] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, pg. 13

[62] "Fast- Facts: South Ossetia at a Glance" August 8, 2008. http://www.foxnews.com/story/0,2933,400046,00.html (Accessed on 6 November, 2011)

[63] Elizabeth Stewart, "Timeline: South Ossetia", *Guardian*, 8 August, 2008. http://www.guardian.co.uk/world/2008/aug/08/georgia.russia5 (Accessed on 6 November, 2011)

[64] "Республика Южная Осетия " (Republic of South Ossetia)

http://community-dpr.org/about_country/osetia.php (Accessed on 24th May, 2012)

[65] Constitution of South Ossetia, http://www.parliament.ge/index.php?lang_id=ENG&sec_id=68 (Accessed on 24 May, 2012)

Abkhazia was a sovereign state. At the same time the government made it clear that it was not proclaiming independence from Georgia.[66] However, in the referendum 98 % of the voters reportedly accepted independent statehood and formally declared it lately. In 1999 Abkhazia finally adopted her Constitution.

In 2001, Eduard Kokoity was elected as President of South Ossetia and re-elected again in November 2006.[67] Eduard Kokoity was against the reunification of Georgia, but he supported the idea of reunification of South Ossetia with North Ossetia.

3.1.1 The Internal Changes in Georgia

An important element of the factual background that led to the declarations of independence of South Ossetia and Abkhazia was internal situation in Georgia. The change of government in Georgia had important role in the ongoing developments in South Ossetia and Abkhazia. Especially the role of Saakashvilli who was the President of Georgia affected South Ossetian and Abkhazian position. The so called "Rose Revolution" is important in the modern history of Georgia because of the bloodless change of power.[68] Increase of inflation, extraordinary devaluation of the national currency was followed by the reforms to normalize economical situation in Georgia. There was corruption which led to reforms. The economy of Georgia reached poverty level and decline in social conditions created dissatisfaction of the Georgian people with the Shevardnadze administration and because of this the ground for revolution was prepared.[69] Following the Rose Revolution and mass

[66] D. Geldenhuys, *Contested States in World Politics*, (Palgrave Macmillan,2009), 74

[67] "Regions and territories: South Ossetia", *BBC News*, 30 November, 2011 http://news.bbc.co.uk/2/hi/europe/country_profiles/3797729.stm (Accessed on 7 November, 2011)

[68] V. Papava, "The Political Economy of Georgia's Rose Revolution." *East European Democratization* (2006), 657.

[69] Ibid.

protests against Shevardnadze administration, Shevardnadze resigned and Mikhail Saakashvilli, who was more pro-NATO and pro-US, came to power. After the Rose Revolution, because of the new policies of new government the relations between Georgia and Russia began to worsen.

Saakashvilli won election in 2004 and came to power with the mission to reunify Georgia, to bring Abkhazia under Tbilisi's control and integrate Georgia into Western structure.[70] Since 1991 Georgia wanted to join and cooperate with NATO to achieve those goals. NATO and the United States were strategically interested in South Caucasus especially after 9/11 and because of that Georgia kept its pro-Western orientation and tried to integrate in their structure.[71] Further, the process of close relationship between NATO and Georgia made Russia agitated.

3.1.2 Russian- Georgian War in 2008

In June 2004, the Parliament of the Republic of South Ossetia appealed to the Russian Federation's State Duma and ask to recognize their independence.[72] In response, Saakashvilli increased pressure on South Ossetian border in 2004.[73] One year later Saakashvilli announced his peace plan but it was rejected by South Ossetian president Kokoity, because they were "the citizens of Russia."[74] In the

[70] P. Avis, B. Ellis, S. Fitzsimmons &S. Turney *"*Georgia in Brief", *Norman Paterson School of International Affair s*(2004).

[71] J. A. George and J. M. Teigen, "NATO Enlargementand Institution Building: Military Personnel Policy Challenges in the Post-Soviet Context",*European Security* 17 (2008), 339-366.

[72] "Хроника становления государственности РЮО" (Establishment of South Ossetia's statehood) South Ossetian Journalist Zarina Sanakoeva helped in researching information and gave an informationa about establishment of South Ossetia's statehood.

[73] Jim Nichol, (2008), "Russia-Georgia conflict is South Ossetia: Context and Implications for US interests." *CRS Report for Congress*, fpc.state.gov/documents/organization/110841.pdf (Accessed on 20 December, 2011)

[74] Jim Nichol, (2008), "Russia-Georgia conflict is South Ossetia: Context and Implications for US interests." *CRS Report for Congress*, fpc.state.gov/documents/organization/110841.pdf (Accessed on 20 December, 2011)

meantime, there were presidential elections in Abkhazia and Sergey Bagapsh, a strong advocate of independence, was elected as a President of Abkhazia.[75]

In November 2006 popular referendum was held in South Ossetia to confirm its independence from Georgia and approximately 95% of voters supported it.[76] The secessionist authorities in Tskhinvali staged an independence referendum alongside the presidential election. The question asked on the referendum was "Do you agree that the Republic of South Ossetia preserve its current status as an independent state and be recognized by the international community?"[77] South Ossetian leadership proclaimed that the referendum was the first step toward international acceptance and final step toward the union with Russia.[78] However, South Ossetian expectation about international acceptance has not been realized, because referendums in 1992 and in 2006 were not recognized and endorsed by either Georgia or the international community. Georgia declared the referendum "devoid of legitimacy and directed against the peace process."[79] In response, Russian Foreign Minister Lavrov said that "the right to self-determination is part of international law."[80] After that, since 2000

[75] "Abkhazia" March 25, 2008, http://www.unpo.org/members/7854 (Accessed on 20 December, 2011)

[76] Jeffrey Donovan, (November 10, 2006), *"Georgia: South Ossetia To Vote In Independence Referendum"* http://www.rferl.org/content/article/1072641.html (Accessed on 21 December, 2011)

[77] D. Geldenhuys, *Contested States in World Politics*, (Palgrave Macmillan 2009), 83.

[78] *"Separatist Region in Georgia Votes on Independence"* (November 13, 2006), http://www.nytimes.com/2006/11/13/world/asia/13ossetia.html?ref=eduardkokoity (Accessed on 21 December, 2011)

[79] Jeffrey Donovan

[80] Ibid

one of the main policies of Russia was to grant Russian citizenship to South Ossetians and to issue them Russian passports.[81]

The so-called "passportization" policy of Russia means the mass conferral of Russian citizenship and as result passports to persons living in South Ossetia and Abkhazia.[82] The aim of giving Russian passports to South Ossetians was to make it easier to get education and job in North Ossetia or in the Russian Federation because of unsatisfied conditions in South Ossetia. For instance, Russia provided financial assistance and, paid pensions to citizens of South Ossetia and Abkhazia who had Russian citizenship and allowed to use Russian ruble. By 2006 in Abkhazia approximately 80 % of the population received such documents and by 2004 approximately 90 % of the Ossetian population was Russian citizens by birth or through "passportization."[83] Georgia strongly criticized the policy of "passportization" calling it "annexation" and considering illegal and a violation of its sovereignty.[84] The reason of criticizing the policy of "passportisation" was that Georgians were concerned that Russian passports would be a kind of excuse to intervene for protection of its citizens.

The declaration of independence by Kosovo and its recognition by many members of the international community encouraged South Ossetians and Abkhazians to raise the question of independence again. The President of Abkhazia, Sergei Bagpash said that "if Kosovo is recognized, Abkhazia will be recognized in three days. I am absolutely

[81] S. Walker, (November 15, 2006), *"South Ossetia: Russian, Georgian...independent?"* http://www.opendemocracy.net/democracy_caucasus/south_ossetia_4100.jsp (Accessed on 21 December, 2011)

[82] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, 18

[83] Deon Geldenhuys, 82

[84] Ibid., 75

sure of that."[85] After making that statement in 2007 the Presidents of South Ossetia and Abkhazia appealed to the UN for international recognition after Kosovo. The Presidents claimed to have "just as strong grounds to demand independence similar to Kosovo".[86] On 15 April 2008 Security Council adopted Resolution 1808 which "reaffirms the commitment of all Member States to the sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders…"[87]

Later in 2008, South Ossetians again raised the question about independence, but it was opposed by Georgian government. On July 3 both Georgia and South Ossetia started bombardments on each other's small towns and the tension between two sides further increased. Russia blamed Georgian actions and called it an open act of aggression.[88] Five days later, four Russian military planes flew over the South Ossetian airspace.[89] Russia stated that its action was meant to prevent Georgia from attacks on South Ossetia, while Georgians stated that it was a violation of their territorial integrity. This brought serious hostility at the end of July and beginning of August. The Georgian-South Ossetian war started on 7th August. After Georgian

[85] Nicu Popescu "'Outsourcing' de facto Statehood. Russia and Secessionist Entities in Georgia and Moldova," *Center For European Policy Studies*, (July 2006), 7

[86] Deon Geldenhuys, 77

[87] To see full text of Security Council Resolution 1808 (2008) http://www.un.org/News/Press/docs/2008/sc9299.doc.htm (Accessed on 24th May, 2012)

[88] Johanna Popjanevski, "Tensions Mounting in South Ossetia", Central Asia Caucasus Institute (September 2008),, http://www.cacianalyst.org/?q=node/4906

[89] D. Sanakoev, *"South Ossetia and Russia's War on Georgia."* (October , 2008), Published in Liberal, http://georgiaupdate.gov.ge/doc/10006908/Liberal%20Sanakoev%20ENG.pdf

invasion in Tskhinvalli, Russian President D. Medvedev announced that there is an emergency situation and criticized Georgia's invasion into South Ossetia.[90]

Russia sent troops to defend South Ossetia and on August 9 Georgia announced the "state of war." Independent International Fact-Finding Mission on the Conflict in Georgia declared that "Russia called its military actions in Georgia a 'peace enforcement operation', while Georgia called it an 'aggression.'"[91]

The international community, especially the European Union did not leave South Ossetian case without attention and called on both sides to stop fighting. After 5 days of fighting, the President of France who was represented as Chairman of the European Council, visited Russia for mediation and as a result of mediation, cease-fire between Russia and Georgia was reached.[92] Russia and Georgia with France agreed on a six-point peace plan.[93]

The agreement provided the departure of the Russian armed forces from Georgia, but allowed their effective control of South Ossetia. It did not mention about the protection of Georgia's territorial integrity.[94] Six-point plan was not able to bring Russia and Georgia to a basic and genuine resolution because Russia did not put any timetable on the departure of troops and she left troops in the "buffer zones" on the

---

[90] *"The Moscow Bombings: A Prelude to Russia's Invasion of Georgia?"*(April 8, 2010) http://larussophobe.wordpress.com/2010/04/08/the-moscow-bombings-a-prelude-to russia%E2%80%99s-invasion-of-georgia/ (Accessed on November 15, 2011)

[91] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, pg. 22

[92] See more detailed information about EU mediation Extraordinary meeting, General Affairs and External Relations, Brussels, August 2008 http://consilium.europa.eu/moresearchresultsregistry?search=extraordinary%20meeting&lang=en

[93] *"Russia signs up to Georgia truce."(16 August, 2008),* http://news.bbc.co.uk/2/hi/7564776.stm (Accessed on 15 November, 2011)

[94] Deon Geldenhuys, 84

Georgian territory near the borders of Abkhazia and South Ossetia. The end of the war between Georgia and South Ossetia brought new changes to South Ossetia and Abkhazia.

3.2 The Events of 26 August 2008 and Thereafter

After few attempts to declare independence by South Ossetia and Abkhazia and rejection of it by Georgia, led to the war and finally to the recognition by Russian Federation. The events of 26 August and thereafter refer to the recognition of independences of South Ossetia and Abkhazia by Russia. On August 26, the President of Russia Dmitriy Medvedev stated that "I signed Decrees on the recognition by the Russian Federation of South Ossetia's and Abkhazia's independence."[95] Also, he called other countries to recognize them as well. Later on, Nicaragua, Venezuela, Nauru, Tuvalu and Vanuatu recognized South Ossetia and Abkhazia and they were also recognized by Transnistria and Chechnya which are unrecognized entities.[96]

The intervention of President Sarkozy brought cease-fire and stopped the war in South Ossetia and Georgia but the conflict damaged both economic and political system of Georgia and its relations with Russia. After the war two sides, Russia and Georgia criticized each other. Georgia accused Russian intervention on its territory as an unlawful act and as violation of international law. Russia replied that firstly South Ossetia asked help and secondly because South Ossetians had Russian

[95] To see full statement of the Russian President, http://www.nytimes.com/2008/08/27/world/europe/27medvedev.html?ref=europe

[96] "Abkhazia" March 25, 2008, http://www.unpo.org/members/7854 (Accessed on 20 December, 2011)

passport, Russia has to protect its citizens. However, European Union Report largely blamed Georgia.[97]

On 28th August 2008 the Security Council discussed the situation in Georgia. Georgian Permanent Representative Irakli Alasania appealed to the United Nations and requested the Council "to consider the illegal unilateral actions of the Russian Federation with regard to two Georgian provinces (Abkhazia and South Ossetia) in violation of the Charter, all Security Council resolutions on Georgia, fundamental norms and principles of international law, the Helsinki Final Act, the six-point accord and the sovereignty, independence and territorial integrity of Georgia."[98] Thirteen countries participated to the meeting and 12 of them supported the territorial integrity of Georgia and condemned Russia of illegal acts and use of force. However, Vitaly I. Churkin said that Russia recognized independence of South Ossetia and Abkhazia to guarantee the survival of people who were under Georgian oppression. He justified the actions of Russia claiming that they were carried out according to UN Charter, the Finland Final Act and other norms of international law.

On December 2, 2008 the Council of the European Union established an Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG). IIFFMCG was the first such mission ever established by the European Union and its purpose was to "investigate the origins and the course of the conflict in Georgia."[99] IIFFMCG's investigations continued until 31 July 2009. On May 5, 2010 the leader of the mission group Haidi Talyavini said that Georgia initiated the military action in

[97] "Georgia 'started unjustified war'" (30 September, 2009), http://news.bbc.co.uk/2/hi/8281990.stm (Accessed on 23 December, 2011)

[98] To see full document of Security Council meeting on the situation in Georgia, http://www.un.org/News/Press/docs/2008/sc9438.doc.htm (Accessed on 24 May, 2012)

[99] Full Report of the IIFFMCG http://www.ceiig.ch/Report.html, pg.5

South Ossetia when she attacked Tskhinvali with heavy artillery on the night of 7 to 8 August 2008.[100]

According to the report the use of force was not justifiable in international law.[101] In terms of mission, Georgia initiated the military action in South Ossetia, when it attacked Tskhinvalli in the night of 7 to 8 August 2008. Also, the Report accused Russia; they said that Russia violated rules of international law in many ways. The European Union countries claimed that report was not about to blame Russia or Georgia and underlined their hopes that report could "contribute toward a better understanding of the origins and the course of last year's conflict."[102]

After briefly describing the factual background which led to the adoption of the declarations of independence by South Ossetia and Abkhazia, and the events, now I can turn to the main question this thesis is to address, the question of conformity with international law of the declarations of independence by South Ossetia and Abkhazia.

[100] "*Глава миссии ЕС: Войну в Южной Осетии начала Грузия*" (May 5, 2010),(The head of EU mission: The war in South Ossetia, Georgia began), own translated http://news.mail.ru/politics/3763700/

[101] "Georgia 'started unjustified war'" (30 September, 2009), http://news.bbc.co.uk/2/hi/8281990.stm (Accessed on 23 December, 2011)

[102] Ibid

Chapter 4

LAWFULNESS OF THE DECLARATIONS OF INDEPENDENCE OF SOUTH OSSETIA AND ABKHAZIA UNDER INTERNATIONAL LAW

After the establishment of the factual background of the case of South Ossetia and Abkhazia it is important to look into the legality of their declarations of independence. The aim of this chapter is to answer the question about the legality of the declarations of independence by South Ossetia and Abkhazia in international law in the same manner the International Court of Justice addressed the question of the legality of the declaration of independence of Kosovo in its 2010 Advisory Opinion.

In the case of Kosovo, Serbia informed the Secretary- General that it in its view "that declaration represented a forceful and unilateral secession of a part of the territory of Serbia, and did not produce legal effects either in Serbia or in the international legal order."[103] Consequently, on 18 February 2008, the President of Serbia criticized the declaration of independence as an unlawful act and declared it 'null and void' by the National Assembly of Serbia.[104] Georgia did the same in the case of South Ossetia and Abkhazia. Mikhail Saakashvili stated that it was illegal declaration of independence and promised to begin a 'peaceful struggle' to restore Georgia's territorial unity.[105] Dealing with the legality of the declaration of

[103] See Full Texts of Advisory Proceedings of International Court of Justice http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=0 (Accessed on 26 April, 2011), 29

[104] Ibid

[105] *"Russia recognizes Georgian rebels."* (26 August, 2008), http://news.bbc.co.uk/2/hi/7582181.stm (Accessed on 26 December, 2011)

independence of Kosovo the International Court of Justice first consider its accordance with the general international law and concluded that the declaration of independence of 17 February 2008 did not violate general international law.[106] Then, the Court turned to the legal importance of the UN Security Council resolution 1244 (1999) and the UNMIK Constitutional Framework created thereunder. The Court looked at who issued that declaration and did the authors violated Security Council resolution 1244 (1999) or the measures adopted thereunder. In the case of Kosovo, the Court did not deal with the question regarding the right of remedial secession. The UN General Assembly asked a specific question about the accordance of the declaration of independence by Kosovo with international law and, because of that the Court did not look into its legal consequences, including recognition, or whether Kosovo achieved statehood. Also, the Court did not deal with the internal law. There were arguments that Constitutional Framework was the act of internal law, but then the Court observed that Constitutional Framework acquired its binding force from the binding character of resolution 1244 (1999) and therefore from international law.[107]

This chapter follows the methodology used by the Court in dealing with the issue of legality. After the establishment of facts, this chapter turns to the issue of legality. It explains the concept of self-determination and important points concerning identity of the "people", territory and the use of force. The reason this chapter is dealing with "people", territory and the use of force is that it focuses on the legality in the area of self-determination and on identification of who and where declared independence of

[106] See Full Texts of Advisory Proceedings of International Court of Justice http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=0 32.

[107] Ibid, 33

South Ossetia and Abkhazia. The use of force is the interference to the domestic affairs of other state and because of that it is important. The questions which are addressed in this chapter include: what is the status of self-determination in international law and who, when and under what circumstances can legitimately exercise the right of self-determination. After the descriptive explanation of the principle of self-determination in the first part, next step is to determine who declared independence on behalf of South Ossetia and Abkhazia and whether it violated territorial integrity of Georgia and can be considered as an act of secession.

4.1 The Principle of Self-Determination

Dealing with the accordance of the declaration of independence of Kosovo with general international law, the Court focused first on the principle of self-determination. The Court did not refer to the definitions of self-determination or to the views of different writers. However, for us to fully understand the significance of the principle of self-determination, it seems necessary. Self-determination is the principle primarily concerned with the right to be a state. Patrick Thornberry explained self-determination as the right of all peoples to govern themselves.[108]

Within the context of the creation of statehood, self-determination has the role to maintain the sovereignty and independence of states, in providing conditions for the resolution of disputes and in the area of the permanent sovereignty of states over natural resources. Shortly, it is an integral part of democracy and the process of the formation of states in international law. The importance of self-determination is explained in Antonio Cassese's work where he stated that "self-determination has been one of the most important driving forces in the new international community. It

[108] Patrick Thornberry, 175

has set in motion a restructuring and redefinition of the world community's basic 'rules of the game'".[109] Further he added that:

> "In the hands of would-be States, self-determination is the key to opening the door and entering into that coveted club of statehood. For existing States, self-determination is the key for locking the door against the undesirable from within and outside the realm."[110]

The principle of self-determination is a "powerful" one. As Wolfgang Danspeckgruber expressed that "no other concept is as powerful, visceral, emotional, unruly, as steep in creating aspirations and hopes as self-determination."[111] According to Danspeckgruber that emotions or desires to get the right of self-determination frequently lead to the conflict, but actually it is established in international law that all people have fundamental right to self-determination.[112] Marc Weller observes that there are approximately 26 ongoing armed conflicts on self-determination.[113] Dealing with self-determination as a right, James Crawford concludes that international law recognizes the principle of self-determination.[114]

The principle of self-determination is significantly embodied in Chapter 1 of the Charter of the United Nations which describes the UN purposes and principles. One of the purposes of the United Nations is embodied in Article 1 (2) which provides that:

---

[109] Antonio Cassese, "Self-determination of Peoples: a legal reappraisal", (Cambridge university Press, 1995) , 1

[110] Ibid., 6

[111] 'Self-determination' *Unrepresented Nations and Peoples Organization* (July 19, 2006),http://www.unpo.org/article/4957

[112] Ibid.

[113] M. Weller, "Settling Self-determination Conflicts: Recent Developments", *The European Journal of International Law* 20 (2009), 112.

[114] J. Crawford, 127.

> "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."[115]

Colonialism, imperialism and nationalism were the reasons for nations and entities who wanted to be independent and to have self-determination. In the previous years the principle of self-determination was as guiding principle for the reconstruction of Europe after WWI and it was introduced by US President Woodrow Wilson and Lenin. In the first article common to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that:

> "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[116]

At the end of the twentieth century, self-determination developed into an anti-colonial norm of international law which decreed that colonial territories had the right to independence.[117] The collapse of the Soviet Union and Yugoslavia led to the claim of the right to self-determination. The federal entities which broke away from them formed a number of smaller, independent states.[118]

---

[115] UN Official web page http://www.un.org/en/documents/charter/chapter1.shtml

[116] Office of the United Nations High Commissioner to Human Rights http://www2.ohchr.org/english/law/cescr.htm

[117] H. Hannum & E. Babbitt, *"Self-Determination in the Twenty-First Century"* Negotiating self-determination (A division of Rowman & Littlefield Publishers, 2006), 61

[118] Tsoundarou Paul, "The Continued Relevance of Sovereignty in a Globalizing World: Yugoslavia and its Successor States*", Turkish Journal of International Relations* 1 (2002) http://www.alternativesjournal.net/volume1/number3/paultsoundarou.htm

In the words of Antonio Cassese self-determination is "a way of opening a veritable Pandora's box."[119] In other words, it is the way of opening a window toward multifaceted and hugely important phenomenon.[120] Similarly, in March 2008, Irena Belohorska, an independent MEP claimed that "the case of Kosovo opens a Pandora's Box in the process of European integration."[121] She underlined that it sets a very dangerous precedent. The political analyst from Azerbaijan Rasim Musabekov commented on the decision of the Court itself. He said that the decision which was taken in Hague would not move the principle of territorial integrity to the second place, but it's a fact that the decision has opened a Pandora's Box and that various separatists will leech off this decision.[122] As Belohorska and Musabekov said the case of Kosovo's recognition opened the Pandora's Box, because other unrecognized entities see the case of Kosovo as precedent and trying by using the case of Kosovo to be independent and to get recognition. Therefore self-determination has conflicting nature, because it is not just critical at the level of legal principles but from the understanding of the people declaring these rights.

Rights related to self-determination can be divided into internal self-determination and external one. Rights related to internal rights of self-determination are essentially provided for the 'people' to be able to have full voice in the legal system on the whole nation state, to control over natural resources, to protect their culture and way

[119] A. Cassese, 1

[120] A. Cassese, 1

[121] "Saying 'No' to Kosovo independence" ,(5 March, 2008), http://news.bbc.co.uk/2/hi/europe/7265249.stm#Irena (20 December, 2011)

[122] "Kosovo Ruling Pandora's Box for Caucasus" CRS Issue 552, 30 July 2010, http://iwpr.net/report-news/kosovo-rulingpandoras-box-caucasus, (2 December, 2011)

of life and to be able to participate in national polity.[123] However, external right of self-determination belongs to the so called "nationalist" school of thought. Casanovas pointed out that external right to self-determination is "born of exceptional circumstances which may give rise to secession."[124] External self-determination arises when people realize that internal self-determination is not acceptable and the right of full sovereignty comes into play. Some scholars argue that the right of self-determination arises only in specific situations, because not every distinct group qualified as "people" can declare the right of self-determination. And on the other hand, there are arguments that any distinct ethnic group, whether part of colonial, federal or unitary state, has the right to self-determination.[125] In Geldenhuy's view, it is a little bit difficult to explain which view is correct, because in the history there are different cases which are not the same. For instance, there are cases when there is the right to remain a dependent territory, like Puerto Rico; or liberated from colonial control, like Nigeria or Ghana; or the right to dissolve an established state peacefully to create new states, like Soviet Union and Czechoslovakia; or the right of divided state to reunite, like Germany and Vietnam; or the right of limited autonomy, like Catalonia; or the right of internal self-determination or minority rights.[126]

In order to properly understand the principle of self-determination it must be determined who this principle applies to. According to the UN Charter declaration that all peoples have the right to self determination, firstly it is important to

[123] A. Cassese, 5

[124] O. Casanovas, *"Unity and Pluralism in public international law",* Martinus Nijhoff Publishers, 138

[125] M. Dixon, 165.

[126] D. Geldenhuys, 35

determine what kind of "people" are in international community and secondly to improve that South Ossetian and Abkhazian are the "people" and have the right to declare self-determination.

4.1.1 The "people"

Article 1(2) and Article 55 of the UN Charter emphasize on the "respect for the principle of equal rights and self-determination of peoples."[127] The question is: who are those people? Who has the right to declare self-determination? The specific definition of people is questionable. James Summers pointed out that "the concept of people is well-established that peoples are the basic unit that the exercise of the legal right of self-determination."[128] On the other hand, Patrick Thornberry explained in his article that "Unesco Experts describe people as a mutable concept, possibly carrying different meanings for different rights."[129] Further, he added that Unesco Experts describe, but do not define, the characteristics of people. According to Unesco Experts description of people is "a group of individual human beings who enjoy some or all of the following common features."[130] These features might be like cultural homogeneity, racial or ethnic identity, a common historical tradition, territorial connection or common economic life. Oriol Casanovas, who looked at the concept of self-determination of peoples from different perspectives, claims that historically, politically and legally the term 'people' had many meanings and it has changed significantly during the past few decades. He identified three aspects of: universalist, nationalist and internationalist. First, the principle of self-determination is a democratic principle directed against dictatorship or totalitarianism in the

[127] UN Official web page http://www.un.org/en/documents/charter/chapter1.shtml

[128] James Summers *"Peoples and International Law"*, (Martinus Nijhoff Publishers,Leiden-Boston 2007), 1.

[129] Patrick Thornberry, 187.

[130] Ibid.

government, so that people would be governed by their own elected government. Second, it means that self-determination means that every people or nation has the right to establish its own government and the last aspect means that people once established as a state have the right to be governed without any external intervention which will mean non-intervention.[131] In the concept of self-determination Rosalyn Higgins stressed that self- determination does not mean independence, but means that people are free in their choices. Furthermore, she added that "this right is not only applicable at the moment of independence from colonial rule but it is a constant entitlement."[132]

Many UN related instruments refer to the principle of self-determination of people. During its fifteenth session in 1960, the UN General Assembly adopted two resolution: 1514 (XV) "Declaration on the granting of independence to colonial countries and people" and 1541 (XV) "principles which should guide members in determining whether or not an obligation exists to transmit the information called for under article 73e of the Charter" described the right of colonial people to self determination.[133] Later, in 1966, the International Covenant on Economic, Social and Cultural Rights (ICECCR) and the International Covenant on Civil and Political Rights (ICCPR) dedicated/apply on the right of peoples to self-determination. The Declaration on Principles of International Law concerning Friendly Relation and Co-operation among States in accordance with the Charter of the United Nations annexed to the resolution 2625 (XXV)[134] on 24th October 1970 which were adopted

[131] O. Casanovas, 138.

[132]Ibid., 119- 120

[133] For more details http://www.un.org/documents/ga/res/15/ares15.htm

[134] Full text of Resolution 2625 (XXV) http://www.un.org/Depts/dhl/resguide/r25.htm

on the reports of the sixth committee, means the universal recognition of the right to self-determination as a principle of International Law.[135]

The 1975 Helsinki Declaration marks the shift from understanding of colonial peoples benefited from the application of self-determination through the process of decolonization with the Helsinki Declaration of 1975, because Helsinki Declaration deals with the human rights not decolonization, which shows the shift from decolonization to human rights. The Final Act of the Helsinki Conference on Security and Co-operation in Europe in 1975 and the African Charter of Human Rights and Rights of Peoples in 1981 tell about the human right of peoples to self-determination. The Conference on Security and Cooperation in Europe followed a new trend between international organizations and judicial institutions to reconceptualise the right of self-determination in the context of post-colonial world and by then decolonization had largely run its course in Africa and Asia.[136] The Helsinki Declaration gives emphasis to freedom of people and for their choices. It asserts that:

> "All peoples always have the right, in full freedom, to determine when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development."[137]

The term "people" may also refer to indigenous people. Indigenous rights are the rights of native people of a specific territory, not minorities or immigrants. However, this statement is doubtful because there is no accepted specific definition of

[135] O. Casanovas, 135

[136] D. Geldenhuys, 35

[137] Conference on Security and co-operation in Europe Final Act Helsinki 197 www.osce.org/mc/39501

indigenous people. Hurst Hannum and Eileen F. Babbitt claims that there is growing acceptance of the idea that indigenous peoples are different from minorities and that neither individual human rights nor minority rights are enough to deal with their situation.[138] Article 4 of the draft of UN Declaration on the Rights of Indigenous Peoples explains that "indigenous people have the right to autonomy or self-government in their local affairs and also in their social or economical activities as well as ways and means for financing these autonomous functions."[139] Oriol Casanovas points out that recently, the so-called indigenous people are considered as groups or minorities with special rights.[140]

The term "minority rights" can be understood in several different ways. Minority rights may be applied to the people who are the members of religious, ethnic, racial and other groups or it can be applied to the people who are not part of majority, in other words who are a small number. The dissolution of the Soviet Union and Yugoslavia opened the question of minority rights, because the parts of the former Soviet Union and Yugoslavia claimed independence as states. Higgins referred to the majority rights as those who are majority in the new state borders, but minority within the old union and now they claim that as minorities they are entitled to self-determination.[141]

In South Ossetia and Abkhazia, does not matter are they indigenous people or minorities, they are a group of individual human beings who enjoy some

[138] H. Hannum & E. Babbitt, 61

[139] United Nations Declaration on the Rights of Indigenous Peoples, Article 31www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

[140] O. Casanovas, 144.

[141] R. Higgins, 121

characteristics of people. For Georgia, South Ossetia and Abkhazia are minorities within Georgian territory. On the other hand, South Ossetians are majority within her territory and Abkhazians because of long history they are native people who are living on the Abkhazian territory.[142] After examining different meanings of the term 'people', even if the specific meaning is debatable, I came to the conclusion that South Ossetians and Abkhazians as 'people' have the right for self-determination.

However, while declaring that South Ossetians and Abkhazians have the right to self-determination it is significant to evaluate the relationship between self-determination and national unity through the General Assembly Resolution1514 (XV) on the Granting of Independence to Colonial Peoples and General Assembly Resolution 2625 (XXV), the Declaration of Principles on Friendly Relations. In Resolution 1514 it is stated that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the UN."[143] Resolution 2625 (XXV) provides that "nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which dismember or impair, totally or in part, the territorial integrity or political unity of sovereign or independent states."[144]

4.2 Territorial Integrity

The declaration of self-determination of people challenges by the protection of territorial integrity. The interpretation that indigenous people have the right to self-determination is declined by many states who argue that Paragraph 2 of the UN

[142] "Kosovo or Abkhazia: Contrasts and Comparisons" (Accessed on 30th March, 2012) http://www.abkhazworld.com/headlines/702-kosovo-or-abkhazia-contrasts-and-comparisons.html

[143] "Kosovo or Abkhazia: Contrasts and Comparisons"

[144] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among State in accordance with the Charter of United Nations, Resolution 2625 (XXV) http://www.un.org/Depts/dhl/resguide/r25.htm

Resolution 1514 (XV) states that "all peoples have the right to self-determination"[145] and Paragraph 6 cannot be used to justify territorial claims.

The obligation to respect territorial integrity of existing states is explicitly referred to by the UN Charter which in Article 2 (4) stipulates that:

> "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations."[146]

The respect for territorial integrity is highlighted in many international instruments. Patrick Thornberry, for instance, gives the example of the listed which, in paragraph 4 "refers to the integrity of the territory of dependent peoples; paragraph 6 warns against disruption of the "national unity and the territorial integrity of a country"; paragraph 7 requires respect for 'the sovereign rights of all peoples and their territorial integrity'."[147] The determination of territory, be it territorial integrity or secession, may lead to some questions and disputes. For instance, in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) it is stated that "all peoples have the right of self-determination". So, does it mean that all peoples without any limitations or discrimination are entitled as people and do they have rights for self-determination? On the other hand, the desire for the secession of a group of people

[145] UN Official web page http://www.un.org/en/documents/charter/chapter1.shtml

[146] Charter of the United Nations, Article 2 (4)
http://www.un.org/en/documents/charter/chapter1.shtml

[147] P. Thornberry, 189

will be powerful when their human rights are suppressed or there are other extraordinary situations.

One of the principles Declaration on Friendly Relations refers to is the principle of self-determination. At the same time, however, the Declaration obligates to respect territorial integrity of states.

The use of force is another important point which is essential for and controversial to the lawfulness of the declaration of independence and which has to be taken into consideration. There are some conditions when the use of force is needed. For instance, in self-defence for the protection of nationals the use of force is acceptable or when there is a need for the humanitarian intervention. However, there is a controversial with the UN Charter 2 (4) which states that "all members have to refrain from the use of force against territorial integrity of other state."[148] Also, the UN Charter 2 (7) specifies that:

> "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."[149]

In the use of force there are conditions when it is needed, but on the other hand the UN Charter opposes the use of force against territorial integrity and intervention to the domestic affairs of other state.

[148] Charter of the United Nations, Article 2 (4)
http://www.un.org/en/documents/charter/chapter1.shtml

[149] Charter of the United Nations, Article 2 (7)
http://www.un.org/en/documents/charter/chapter1.shtml

In the case of South Ossetia and Abkhazia, their declarations of independence violated territorial integrity of Georgia. The Fact-Finding Mission on the conflict in Georgia declared that "the issue of self-determination of South Ossetians and Abkhazians as well as their right to unilateral secession from Georgia are two legal issues related to the conflict."[150] South Ossetians compare their situation with the cases of East and West Germany and North and South Korea. They declare the right to reunite with North Ossetia by seeing these cases as expression of self-determination.[151] In 2004, the administration of Eduard Kokoity frequently called for the integration of South Ossetia into the Russian Federation. Also, he called to stop dividing Ossetia into North and South and that there is one unified Ossetia.[152] It is obvious that South Ossetia by this statement violates the territorial integrity of Georgia. But international law "does not recognize a right to unilaterally create a new state based on the principle of self-determination outside the colonial context and apartheid."[153] It is possible and accepted to secede only under the conditions like the crime of genocide, committed against the people. Also, the Russian actions contradict the UN Charter 2(4) and the UN Charter 2(7), because according to the UN Charter 2(4) "states shall refrain from using force against territorial integrity of any state."[154] On the other hand, the Russian Federation claims to a right to use of force to protect her nationals abroad. The majority of the population of South Ossetia and Abkhazia hold Russian passports and because of that the Russian Federation

[150] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, pg. 17

[151] D. Geldenhuys, 87

[152] "Georgia: Avoiding war in South Ossetia",(26 November, 2004), International Crisis Group, Europe Report No 159, 8.

[153] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, 17

[154] Charter of the United Nations, Article 2 (4)
http://www.un.org/en/documents/charter/chapter1.shtml

claims that she has to protect her nationals. However, Russian protection of nationals is controversial to the UN Charter 2(7), because of intervention to the internal affairs of Georgia.

In the case of South Ossetia and Abkhazia no act of genocide or any other serious grievances can be found. But obviously, both South Ossetia and Abkhazia had grievances against Georgia for violating their rights. Georgia and Russia blamed each other for committing genocide. The President of Russia stated on 11 August 2008 that the Georgian actions can be called only as genocide, because there were mass killings and were directed against innocent individuals, civilians and peacekeepers.[155] Two days later, President Saakashvili replied that Russians accused Georgia of doing genocide, but they are doing it themselves.[156]

The accusations of Russia and South Ossetia became less frequent as the so-called Georgian intention for genocide could not be proven. The EU Fact-Finding Mission found that there was no genocide to South Ossetians during the 2008 war. It also found out that the number of victims among Ossetian civilians was lower than the Russian representatives presented. Fact-Finding Mission reported that initially Russian officials said that approximately 2000 civilians had been killed in South Ossetia, but then the number was reduced to 162.[157] On the contrary after the Georgian government declared unilateral ceasefire on 10 June 2008 and withdrew from South Ossetian territory, Russian troops entered deeper into Georgia and set up military positions in some Georgian towns.

[155] "Georgia Conflict: Key Statement", (19 August, 2008) http://news.bbc.co.uk/2/hi/europe/7556857.stm (Accessed on 22 December, 2011)

[156] Ibid.

[157] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, 21

Russia justified its military intervention by their intention to stop an allegedly ongoing genocide of the Ossetian population by the Georgian forces, and also to protect Russian citizens living in South Ossetia and the Russian group of the Joint Peacekeeping Forces deployed in South Ossetia according to Sochi Agreement of 1992.[158] On the other hand, the government of Georgia justified its actions and assaults as the reaction to a secret Russian invasion and considered both breakaway regions part of its territory. Also, Russia every time claims "to any justification of the NATO Kosovo intervention as a humanitarian intervention."[159] However, Russia cannot justify its intervention on Georgian territory by looking at the case of Kosovo and because of that justification of humanitarian intervention cannot be recognized. Russian intervention challenged Georgian sovereignty and constituted interference into Georgian internal affairs.

According to the Russian view, her formal recognition of South Ossetia and Abkhazia contains legal reasons. The Ministry of Foreign Affairs of the Russian Federation stated that:

> "Making this decision, Russia was guided by the provisions of the Charter of the United Nations, the Helsinki Final Act and other fundamental international instruments, including the 1970 Declaration on Principles of International Law concerning Friendly Relations among States."[160]

After examining the positions of all the sides, it may be concluded that the declarations of independence of South Ossetia and Abkhazia were not in accordance with international law. The main reason they cannot be considered legal is that both

[158] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, 21

[159] Ibid., 24

[160] C. Ryngaert & S. Sobrie, "Recognition of States: International Law or Realpolitik? ThePractice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia," *Leiden Journal of International Law 24* (2011), 482

of them violated territorial integrity of Georgia. It is against the fundamental principles of general international law reflected in the declarations of the UN General Assembly and many other international instruments. Resolution1514 (XV) on the Granting of Independence to Colonial Peoples provides, for instance, that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the UN."[161] And the UN General Assembly Declaration on Friendly Relations, Principle 1 of the Helsinki Final Act states that "the participating States will respect each other's sovereign equality and individuality as well as all the rights inherent and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence."[162] It means that the Russian intervention and recognition of South Ossetia and Abkhazia in the Georgian territory and declaration of independence is incompatible with the purposes and principles of the UN.

The second issue in the lawfulness of the declaration of independence is about who declared independence in South Ossetia and Abkhazia. In 1992, the Authorities of South Ossetia held referendum proclaiming the province's independence, but it was not recognized by Georgia. In June 2004, the Parliament of the Republic of South Ossetia asked the Russian Federation's State Duma to recognize their independence. But South Ossetians miscalculated the point that according to Helsinki Declaration on equal rights and self-determination of peoples "all peoples always have the right to determine their political status, without external interference." External

[161] R. Higgins, 121

[162] Conference on Security and Co-operation in Europe Final Act Heslinki 1975, 4

interference refers to the Russian interference. In 2006, the second referendum was held but again it was not recognized by Georgia and international community. South Ossetians and Abkhazians are ethnic minorities in Georgia, but majorities in their own territory. They have dual citizenship, one from Georgia and another from Russia. Most of the population in South Ossetia and Abkhazia has Russian passports. However, Georgian law does not recognize dual citizenship.[163] So, it means that the authorities who declared independence are "illegal persons" because they have dual citizenship which is not accepted and recognized in Georgia. The illegal act of Russian "passportization" policy and prohibition of dual citizenship in Georgian internal law made declaration of independence by South Ossetia and Abkhazia problematic.

The attempt of South Ossetia and Abkhazia to declare independence through the right of remedial secession is not justified because it was proven that there was no genocide in 2008. According to the general international law, declaration of independence by South Ossetia and Abkhazia are against General Assembly Resolution 1514 and Helsinki Final Act.

The authorities who declared independence are the constitutive bodies of South Ossetia and Abkhazia, but in Kosovo case Provisional Group of People declared independence and was accepted by the Court. Because of those reasons I argue that the declarations of independence by South Ossetia and Abkhazia is problematic. International law does not prohibit the right to self-determination, but it has to be done in an appropriate way. The 'passportization' policy and Russian interference made the declaration of independence problematic.

[163] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, pg. 18

Chapter 5

THE STATEHOOD AND RECOGNITION OF SOUTH OSSETIA AND ABKHAZIA IN INTERNATIONAL LAW

The creation of a new state is an active process and recognition of a new state is not an easy issue in international law. For an entity to be a state is important because it leads to the acquisition of different abilities, such as ability to sign international agreements or to bring cases to the international courts. Shortly, creation of a new state means that it has more opportunities to be connected to the world and to do it legally. On the other hand, the creation of a new state is problematic because it has unclear picture of effectiveness and justification. First, it is related with the effectiveness of international law related to the creation of states. In other words, is it enough if an entity meets all the criteria provided by the Montevideo Convention to become a state? Or is it enough that other states define the legal status of a new entity by recognizing it is a state? If recognition is understood to be 'constitutive', it means that after meeting the criteria of statehood a new entity becomes a state by the will or consent of already existing states. If recognition is understood to be 'declaratory' it means that states accept already existing factual situation.

This part of my analysis of these two cases goes beyond the template provided by the International Court of Justice's Advisory Opinion on Kosovo. The Court did not deal with the recognition of Kosovo. The Court noted that the question it receieved from the UN General Assembly asked for its opinion on conformity of the declaration of independence of Kosovo with international law. The General Assembly did not ask "about the legal consequences of that declaration, whether or not Kosovo achieved

statehood and it did not ask about legal effects of the recognition of Kosovo by other states."[164]

Therefore, the aim of this chapter is to consider what the Court did not consider in the Kosovo case and to look into the legal consequences of the declarations of independences by South Ossetia and Abkhazia. The reason of going beyond the template of the Court's Advisory Opinion on Kosovo and dealing with the issue of recognition of South Ossetia and Abkhazia is that these two entities, South Ossetia and Abkhazia, sees the case of Kosovo, including its recognition by a number of states, as an important precedent. Immediately after the declaration of independence by Kosovo, both South Ossetia and Abkhazia claimed that they had the right to be independent from Georgia. The present chapter will consider the validity of such claim.

There are two main questions which are important to answer in this chapter. First, whether or not South Ossetia and Abkhazia have achieved statehood and second, what are the legal effects of recognition of South Ossetia and Abkhazia by other states? I will try to analyze the case of South Ossetia and Abkhazia in the light of the criteria of statehood. If South Ossetia and Abkhazia have met the criteria of statehood, then they have the right to claim independence as sovereign states to ask for recognition. The following part will evaluate the legal status of South Ossetia and Abkhazia. It will look into the issue of recognition of South Ossetia and Abkhazia by other states, especially by the Russian Federation.

---

[164] See Full Texts of Advisory Proceedings of International Court of Justice http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=0 (Accessed on 26 March, 2010), pg. 19

In the previous Chapter two (The Concept of Statehood and Recognition of States in International law) which is descriptive one, was explained in details the definitions of statehood and recognition. Because of that in Chapter five I am not explaining in details the definitions, but I am trying to imply the definitions to the case of South Ossetia and Abkhazia. Therefore, Chapter two is a theoretical and Chapter five is practical.

5.1 Have South Ossetia and Abkhazia Achieved Statehood?

Wallace-Bruce in his doctrine wrote that:

> "an entity, in satisfying the traditional criteria must do so in accordance with international law… when an entity claims to be a state; it has to satisfy the international community that it is not the product of international illegality. To put it in another way, the process by which the entity emerges should not have breached any international rule."[165]

In the case of South Ossetia and Abkhazia the process by which the entity emerges is referred to the classical criteria of statehood. During the process of creation of state the entity should not violate international rule. The Montevideo Convention points out four criteria "a permanent population, a defined territory, effective government and ability to enter into relations with other states." [166]

The permanent population of Abkhazia is approximately 300.000[167] inhabitants and the majority is Abkhazians (44 %) who are indigenous people. The rest of the

[165] "International Recognition of a Unilaterally Declared Palestinian State: Legal and Policy Dilemmas," Jerusalem Center for Public Affairs, http://www.jcpa.org/art/becker2.htm (Accessed on 10 December, 2011)

[166] "Convention on Rights and Duties of States", Supplement: Official Documents, (April 1934), *The American Journal of International Law*, Vol. 28, No. 2, pg. 75 (JSTOR)

[167] State News Agency of the Republic of Abkhazia, "*Abkhazia"*, http://apsnypress.info/abkhazia (Accessed on 20 April, 2012)

population are Georgians and Armenians, 21 % each and Russians- 11%.[168] South Ossetia's population is about 70.000 people.[169] The majority of the population is Ossetians and Georgians account for around 25 % of the population.[170] Kosovo's population is 1.7 million and ethnic Albanians are majority of the population with 88 %, 7 % of ethnic Serbs and 5 % of others.[171] In any case, the size of population is not a barrier to statehood, because there is no specific number of people required and there is no expectation that all have to be nationals of the state. However, for some authors the number of population is reasonable. For example, in Newsweek Magazine it is written that South Ossetia is "too small to be a nation".[172] The size was provided according to population and territory of South Ossetia.

Second, there has to be a defined territory where the population lives on and it is not important to have well-established borders. For instance in the case of Israel when it is declared as a state, there is doubt about land frontiers. In the case of South Ossetia and Abkhazia their territories have been defined when they were established as autonomous entities. In other words, they were autonomous regions before they declared independence and now with the defined territories they can claim to be a state. The definition of Kosovo's territory as autonomous entity has been accepted as defining its territory as a state. It is, by the way a common practice that 'internal'

[168] Unrepresented Nations and Peoples Organization, "*Abkhazia"*, http://www.unpo.org/members/7854 (Accessed on 20 April, 2012)

[169] BBC News, "*Regions and territories: South Ossetia"*, http://news.bbc.co.uk/2/hi/africa/country_profiles/3797729.stm#facts (Accessed on 20 April, 2012)

[170] http://en.wikipedia.org/wiki/South_Ossetia#Demographics (Accessed on 22 April, 2012)

[171] US Department of State, "*Background Note: Kosovo"*, http://www.state.gov/r/pa/ei/bgn/100931.htm (Accessed on 22 April, 2012)

[172] The Daily Beast, *Too Small To Be A Nation,* http://www.thedailybeast.com/newsweek/2008/08/29/too-small-to-be-a-nation.html (Accessed on 22 April, 2012)

boundaries serve as international after independence. It applied, for instance in the dissolution of the Soviet Union or divisions of Czechoslovakia. By referring to the size of the alleged territories- Abkhazian territory is 8.700 km², South Ossetia's is 3.900 km² and Kosovo's is 10.908 km².

Third, defined territory which has permanent population has to be governed by authorities, which means that there is a representative of people on the defined territory who is responsible for the internal and foreign affairs of the state. The most important is that there will be effective control on the defined territory. The representatives are elected by people through elections. Both South Ossetia and Abkhazia have elected governments which control the territories since the 1990s. They have Presidential and Parliamentary elections. It means that they have governments, but how effective the two governments are remains problematic. The reaction of the international community to recent elections in South Ossetia and Abkhazia was predominantly negative, even though some of the foreign states came to monitor the elections in South Ossetia and Abkhazia. For example, the Parliamentary election in Abkhazia was monitored by delegations from Russia, Venezuela, Transdnestria, Nagorni-Karabakh, South Ossetia, Tuvalu and Nicaragua.[173] It should be noted that Nagorni-Karabakh, South Ossetia and Transdnestria are unrecognized entities themselves. A number of states and international organizations called for the recognition of the elections in Abkhazia as "illegitimate". [174] Among them are NATO, the EU Delegation in Georgia, PACE

[173] "In Tbilisi, angered by the presence of the Russian delegation at the elections in Abkhazia", *Ekho Kavkaza* , http://www.ekhokavkaza.com/archive/news/20120310/3235/2759.html?id=24511128 (Accessed on 23 April, 2012)

[174] "Sukhumi: the application of several countries of the 'illegitimate' elections in Abkhazia are undergrounded", *Ekho Kavkaza* , http://www.ekhokavkaza.com/archive/news/20120321/3235/2759.html?id=24523005 (Accessed on 23 April, 2012)

reporters for Georgia, the US State Department, as well as Latvia, Lithuania, Estonia, Poland and Azerbaijan. The main reason for the international community's reluctance to accept validity of parliamentary and presidential elections in South Ossetia and Abkhazia is their view that they violate territorial integrity of Georgia. On the official website of the State Minister of Georgia was posted that,

> "NATO does not recognize the elections held in March in the Georgian region- Abkhazia. Alliance reiterates that it supports the sovereignty and territorial integrity of Georgia within its internationally recognized borders."[175]

The same reaction was for the Presidential elections in South Ossetia on 25th March 2012. The spokesperson of Catherine Ashton, High Representative of the EU for Foreign Affairs and Security Policy and Vice-President of the Commission stated that "the European Union does not recognize the constitutional and legal framework within which these elections have taken place."[176] The High Representative repeated that she supported the territorial integrity and sovereignty of Georgia, as recognized by international law. So, the problematic part of the effectiveness of government is that the elected government might be effective internally, but internationally the election of government is not recognized and it seems as illegal act which violates the territorial integrity and sovereignty of Georgia.

[175] "NATO does not recognize the parliamentary elections in Abkhazia," *Ekho Kavkaza*, http://www.ekhokavkaza.com/archive/news/20120314/3235/2759.html?id=24514972 (Accessed on 23 April, 2012)

[176] Council of the European Union, Full statement of Catherine Ashton, http://www.consilium.europa.eu/searchresults?lang=en (Accessed on 23 April, 2012)

The last requirement is the capacity to enter into relations with other states. The main point is that to process this ability requires "legal independence", but not necessarily factual autonomy.[177] Crawford stated that,

> "… the capacity to enter into relations with other States, in the sense in which it might be a useful criterion, is a conflation of the requirements of government and independence."[178]

It means that the fourth criterion is a function of the effective government combined with independence. When the case of South Ossetia and Abkhazia are analyzed, it seems that both of them are politically and economically dependent on Russia. George McLellan, making a reference to Kosovo, explained that,

> "while Abkhazia may appear to be even less independent than Kosovo, by virtue of its dependence being on a single state, any NATO claim that Abkhazia cannot be recognized as a state on the basis that it is dependent on Russia would be self-fulfilling- Abkhazia's dependence on Russia is significantly fortified by the refusal of any UN member states other than Russia and Nicaragua to recognize it."[179]

The situation in South Ossetia and Abkhazia can be described as "international isolation" because they have not entered into diplomatic relations with other states, with the exception of Russia, Venezuela or Nicaragua.

As a conclusion I found out that even though South Ossetia and Abkhazia meet most of the criteria of statehood, there are some uncertainties or limitation which will not allow them to accomplish the traditional framework of statehood. South Ossetia and Abkhazia cannot be compared to Kosovo, because I agree with the view of the Court

[177] M. Dixon, 116.

[178] J. Crawford, 62.

[179] T. G. McLellan "Kosovo, Abkhazia, and the consequences of State Recognition," *Cambridge Student Law Review 5* (2009), 4

that each case is unique. Paul R. Williams in his article "No comparison between Kosovo and South Ossetia" explained that South Ossetia has defined territory within Georgia, that population of South Ossetia is changeable and cannot be considered as permanent population and that South Ossetian government is basically a Russian puppet state.[180] Basically, he argues that South Ossetia and Abkhazia do not have similarities with Kosovo and he comes to that point by the evaluating the criteria of statehood of South Ossetia and Abkhazia with Kosovo. We must not forget that each case is unique, because each of them has own distinctive historical background and other characteristics.

5.2 The Legal Effects of Recognition of South Ossetia and Abkhazia by Other States.

Before looking into the question of recognition of South Ossetia and Abkhazia it is useful to recall the statement of James Crawford that "An entity is not a State because it is recognized; it is recognized because it is a State."[181]

Recognition is, undoubtedly important for unrecognized entities aspiring to independence, statehood, international legal actorness and membership in the international system. The intentions of both South Ossetia and Abkhazia seem to be different. South Ossetia evidently aims at to re-unification with North Ossetia which is a part of the Russian territory. Abkhazia, on the other hand, wants to be independent and recognized, but to maintain very close relations with the Russian Federation. The Crisis Group reported that "South Ossetians themselves often insist

[180] Radio Free Europe Radio Liberty, *"No Comparison Between Kosovo and South Ossetia"*,http://www.rferl.org/content/No_Comparison_Between_Kosovo_And_South_Ossetia/1191723.html (Accessed on 23 April, 2012)

[181] J. Crawford, 93.

on integration into the Russian Federation, and their entity's situation closely mirrors that of Russia's North Caucasus republics."[182] The ex-President of South Ossetia Eduard Kokoity after the 2008 war, made the statement that "his aim is to unify South Ossetia with North Ossetia within Russian Federation."[183] His statement, however, was not approved by the Russian Federation and lately Mr. Kokoity resigned from the government of South Ossetia. The support for the independence of South Ossetia and Abkhazia offered by the Russian Federation encouraged both of them to seek recognition.

In the case of South Ossetia and Abkhazia recognition by Russia is a political act. First, political act of recognition means that recognizing state A is willing to enter into political or other relations with recognized state B. So, political recognition is not compulsory, but it is an arbitrary decision of recognizing state. Hans Kelsen explained that political recognition "can be brought about either by a unilateral declaration of the recognizing state, or by a bilateral transaction, namely, by an exchange of notes between the government of the recognizing state, on the one hand, and the government of the recognized state or the recognized government on the other."[184] Russian President Dmitry Medvedev signed "Decrees on the recognition by the Russian Federation of South Ossetia's and Abkhazia's independence."[185] It

[182] International Crisis Group, *"South Ossetia: The Burden of Recognition",* http://www.crisisgroup.org/en/regions/europe/south-caucasus/georgia/205-south-ossetia-the-burden-of recognition.aspx (Accessed on 23 April, 2012)

[183]"Regions and territories: South Ossetia", *BBC News* http://news.bbc.co.uk/2/hi/africa/country_profiles/3797729.stm#facts (Accessed on 20 April,2012)

[184] H, Kelsen, "Recognition in International Law: Theoretical Observations", *The American Journal of International Law* 35 (1941), 605.

[185] To see full statement of the Russian President, http://www.nytimes.com/2008/08/27/world/europe/27medvedev.html?ref=europe

was the first step toward the recognition of South Ossetia and Abkhazia by the Russian Federation.

Second, Russia's recognition of South Ossetia and Abkhazia seems as political act for establishing peace, stability and security in the Caucasus region. However, we do not have to forget what Rein Mullerson says in his article that "uniqueness is in the eye of the beholder" which means that the recognition of unrecognized entity is in the eye of the recognizing state. In the case of South Ossetia and Abkhazia their recognition is in the interests of Russia. Also, in the case of Kosovo most of the states who recognize her, justify their decision as political act of recognition, but those who do not recognize Kosovo refer mostly to international law, rather than to political considerations. One of the Russian foreign policies is the "near and abroad" policy. When Georgia publicized its intention to enter NATO, Russia opposed it. The reason is that if Georgia will join NATO then the Russian territorial borders will be under the threat. Because of the process of close relationship between NATO and Georgia, Russia became agitated and supported independences of two regions on the Georgian territory. Since 2000 Russia strengthened her connection with South Ossetia and Abkhazia by the "passportization" policy. Almost 90 % of the population of South Ossetia and Abkhazia have Russian passports.

The IIFFMCG report, determining statehood on the basis of international law, identified three categories that entities can fall into: full states which means that entity meets all the criteria of statehood and is recognized universally; state-like entities, meaning entities who meet the criteria of statehood but are not recognized universally; and entities of 'short statehood' including entities who meet some of the

criteria of statehood and are recognized by one or more states.[186] According to these categories, South Ossetia and Abkhazia can be classified as 'short statehood' entities.

It may be concluded that South Ossetia and Abkhazia meet the criteria of permanent population and defined territory. The assessment whether South Ossetia and Abkhazia meet the remaining criteria, sovereign government and capacity to enter into relations with other states remains rather complicated. First, the governments of South Ossetia and Abkhazia are not recognized internationally and their parliamentary and presidential elections have not been accepted by the international community as legitimate. Second, the capacities of South Ossetia and Abkhazia to enter into relations with other states and international organizations are limited- because they fully depend on Russia and maintain diplomatic relations with Russia and Venesuela. Because of the influence by Russia, the governments of South Ossetia and Abkhazia are not independent and this lead to the conclusion that they do not meet the two remaining, most important criteria of statehood.

The legal effects of recognition of South Ossetia and Abkhazia by the Russian Federation and some other states are, therefore, debatable. It may be noted here that the theories of recognition themselves are disputable and while implementing them to the case in question, it is difficult to justify the actions of state which recognizes entity. In the case of South Ossetia and Abkhazia the Russian recognition seems to be constitutive for Russia, because it depends on the Russian will. However, for other states, mainly for those who oppose independence of South Ossetia and Abkhazia and recognition of South Ossetia and Abkhazia by the Russian Federation is not a constitutive act and may be even considered illegal because of the violation

[186] Independent International Fact-Finding Mission on the Conflict in Georgia Report, volume II, pg. 128.

of the Georgian territorial integrity. At the end I came to the ‘middle’ theory that for those states who recognize South Ossetia and Abkhazia, it is constitutive, but for South Ossetia and Abkhazia, it is declaratory.

Chapter 6

CONCLUSIONS

The aim of the thesis was to find out whether the 2008 unilateral declarations of independence in respect of South Ossetia and Abkhazia were in accordance with international law. In order to answer this question, this thesis used the template provided by the Advisory Opinion concerning the legality of the declaration of independence of Kosovo, delivered by the International Court of Justice on July 22, 2010 responding to the question directed to the Court by the UN General Assembly. The Court was asked to address the following question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"[187]

The cases of South Ossetia and Abkhazia are examined in this thesis as if they were addressed by the International Court of Justice or, in other words as if the UN General Assembly requested the Court to look into the matter as it did in the Kosovo case. However, one needs to be fully aware that the likelihood of a similar case with respect to South Ossetia and Abkhazia can be practically ruled out. First, it is not likely that the question is asked by the Security Council, because it directly involves the Russian Federation, one of the permanent members of the Security Council enjoying the veto right. Second, it does not seem likely that the Russian Federation,

[187] See Full Texts of Advisory Proceedings of International Court of Justice http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=0

like Serbia in the Kosovo case, initiates the procedure through the UN General Assembly in a case involving its most sensitive national interests.

The thesis is also based on the assumption that the International Court of Justice would not refuse to answer the question concerning South Ossetia and Abkhazia as it did not refuse, despite opposition from a number of its judges, to address the question concerning Kosovo.

The thesis asked the same question the International Court of Justice was asked in respect to Kosovo- the question concerning the legality of the declarations of independence of South Ossetia and Abkhazia- and the analysis is structured in the same manner the Court structured its analysis and answer in respect to Kosovo. Therefore, the main question is whether the declarations of independence by South Ossetia and Abkhazia in 2008 are in accordance with general international law. Unlike in the Kosovo case, the analysis did not include conformity of the two declarations of independence with the UN Security Council resolutions. In the case of South Ossetia and Abkhazia the Security Council did not adopt any resolution and because of that the Court could not deal with the Security Council resolution, as it did in the Kosovo case. In the Kosovo case the Court interpreted Security Council Resolution 1244 (1999) and looked into the question whether the declaration of independence was in accordance with that Resolution.

Again, following the pattern provided by the ICJ's Advisory Opinion, the thesis determined the factual context of two declarations of independence identifying historical events which led to South Ossetia's and Abkhazia's declarations of independence. In 2006 when South Ossetians again raised the question about independence, but it was opposed by Georgian government and the declaration of

independence by Kosovo in 2008 which gave the courage to South Ossetians were the final reasons which resulted in the armed conflict. This part paid particular attention to the 2008 armed conflict involving Georgia, two break away entities and the Russian Federation.

After establishing facts, the Court turned to the core issue submitted by the General Assembly related with the lawfulness of declarations of independence by South Ossetia and Abkhazia. First of all, the Court looked on the legal issues related with the lawfulness of the declaration of independence under general international law. The Court firstly focused on the principle of self-determination and came to the conclusion according to the UN Charter that all peoples have the right to self determination.

The only significant departure from the template provided by the ICJ, are references to the question whether South Ossetia and Abkhazia actually meet the criteria of statehood and their recognition by the Russian Federation and a number of other states. In the Kosovo case the Court refused to move beyond the question of the legality of its declaration of independence. The thesis, however, aims at providing more comprehensive view of the case in question and, therefore, considers that it is necessary to go beyond the Court's analysis and to look into the legal implications of the declarations of independence of South Ossetia and Abkhazia for their alleged statehood and recognition.

The thesis came to the conclusions that the adoption of declarations of independence by South Ossetia and Abkhazia in August 2006 violated general international law. In other words, declarations of independence by South Ossetia and Abkhazia were not in conformity with the general international law. After that the thesis found out that

South Ossetia and Abkhazia meet partly the criteria of statehood and their recognition by Russia and some other states is political act.

Furthermore, the research explained who can seek the right of self-determination, indigenous people or ethnic minorities, etc., and came to the conclusion that in South Ossetia and Abkhazia there is a mixture of people. On the other hand, it is debatable who the "people" of South Ossetia and Abkhazia are. The reason is that for Georgia, South Ossetians and Abkhazians are ethnic minorities, but for South Ossetians and Abkhazians they are indigenous people who have the right to declare self-determination. However, by all means South Ossetians and Abkhazians as a group of individuals are 'people' who have the right to self-determination in the light of international law.

Self-determination is an important subject, but with limitations. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations recognizes the right to self-determination, but on the other hand it protects and supports the territorial integrity of existing states and it is against the use of force. However, it is important to mention that if there are serious damages, violations of human rights, like mass killing of people and there is no other choice, but secession, then the issue of remedial secession is accepted by the international law and this is seen as an exception to the right to ask respect for the territorial integrity. The importance of secession itself is that it might be the last option to end the repression. In the case of South Ossetia and Abkhazia the use of force by the Russian Federation must be opposed and territorial integrity and political independence of Georgia supported. If, on the other hand the Russian allegations of mass killings of people by Georgia, during the August 2008 war are substantiated, the need to protect territorial integrity

of Georgia may lose its priority to the need to protect human rights. After the war, Russian representatives claimed that the Georgian side was responsible for the act of genocide and approximately 2000 people died, but the IIFFMCG found out that Russian representatives gave wrong number of civilian victims and instead of 2000, there were 162.[188] The case of Kosovo seems to be different, because it involved well documented massive violations of human rights which approves that it was last option and which gave the right to the remedial secession.

One of the most important questions addressed by the ICJ in the Kosovo case was the determination who declared independence. In the case of South Ossetia and Abkhazia the thesis found out that they were the constitutive bodies of South Ossetia and Abkhazia. It means that at least the authorities who declared independence were not illegal bodies and in both South Ossetia and Abkhazia there were referenda held in which people voted in favor of independence.

South Ossetia and Abkhazia met partly the criteria of statehood. The lack of effective governments and capacity to enter into international relations are the main reasons of not to consider them to be states. Even though it is again debatable, because South Ossetia and Abkhazia had parliamentary and presidential elections and they opened embassies in Venezuela or they have agreements on economic matters with Russia. The problem here is that South Ossetia and Abkhazia are not fully independent. They are not fully independent because both of them economically and politically depend on Russia.

[188] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, pg. 21

Finally, there is the question of recognition. Recognition itself is a political act and there are no obligations for state A to recognize state B. It is up to the will, consent and intentions of the recognizing state. In the case of South Ossetia and Abkhazia, the recognition by Russia is political act. There is no prohibition to recognize an entity, but because of the intervention into internal affairs of other state, Georgia, recognition by the Russian Federation and other states is not accepted by the international community. One of the obvious examples is granting Russian passports by the Russian Federation to South Ossetians and Abkhazians.

When starting this research, my tentative working hypothesis was that South Ossetia and Abkhazia had the right to be independent and therefore their declarations of independence were in conformity with general international law. However, after thorough investigation of the case of South Ossetia and Abkhazia, my conclusions is that the accordance with general international law of their declarations of independence is questionable and the main reason is the involvement of the Russian Federation and the fact that the real intention of the break-away entities is not independence but unification with Russia. The Russian Federation is not strongly encouraging the CIS states to recognize South Ossetia and Abkhazia, because it would weaken her desire to unite them with Russia. For that reason, Russian insistence on Venezuela and Nicaragua is more likely, because geographically they are far from South Ossetia and Abkhazia. Therefore, my initial hypothesis has not been confirmed.

Another conclusion I come to after investigating the cases of South Ossetia and Abkhazia is that I do not fully agree with the way the International Court of Justice analyze the case of Kosovo. In my opinion, the way the Court analyzed the case of Kosovo may create certain problems. Yes, that is true that Advisory Opinion on

Kosovo case helped me as a model to look into and to study the case of South Ossetia and Abkhazia, but there were certain limits which the Court did not touch and did not discuss. I think that it would be better if the International Court of Justice would not conclude that the adoption of the declaration of independence by Kosovo did not violate general international law. Judge Bennouna and Judge Koroma in their dissenting opinions and written statements of the Republic of Cyprus and a number of other states also think like that. They encouraged the International Court of Justice not to comply with the request from the UN General Assembly to deliver an advisory opinion on Kosovo. For instance, Judge Bennouna considered the propriety of the Court giving advisory opinion responding to the request submitted to it by the General Assembly in resolution 63/3 of 8 October 2008 "so hazardous for it, as the principal judicial organ of the United Nations."[189] He advised that "the Court should have exercised its discretionary power and declined to give its opinion on a question which is incompatible with its status as a judicial organ."[190] Judge Koroma, on the other hand, stated that "the Court should have found that the unilateral declaration of independence of 17 February 2008 by the Provisional Institutions of Self-Government of Kosovo is not in accordance with international law."[191] In the written statement submitted by the Republic of Cyprus it is presented that "International law must be applied consistently and globally. It is contrary to the Rule of Law to create exceptions and to settle the legal rights and duties of States by treating them as *sui*

[189] To see full Advisory Opinion of the Judge Bennouna http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=4

[190] Ibid.

[191] To see full Advisory Opinion of the Judge Koroma http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=4

generis cases."[192] It argues that Kosovo does not have effective government or population of Kosovo does not constitute "people". Recently, the President of Georgia Mikhail Saakashvili expressed his opinion that recognition of independence of Kosovo was wrong.[193]

Another observation is that it is true that we must not have to put everything to same basket, but if there are such kind of exceptions like the advisory opinion by the ICJ on the case of Kosovo, then there is no other way as comparing and to take it as a precedent for those who seek for independence. I strongly agree with the Court and the statements from the representatives of EU, that each case is unique because of the factual background and context. The case of Kosovo is like an example or precedent and I think that it is normal that South Ossetia and Abkhazia wanted to use it as a model and to be independent and recognized. The problem is that their fulfillment of the criteria of statehood and the statements of their leaders make the case more difficult. In the case of Georgia or Serbia it is acceptable that they do not want to lose their territories and to lose their sovereignties, but for Georgia the scenario is worse than for Serbia, because her two breakaway regions want to reunite with Russia and their leaders stated it openly.

I think that neither South Ossetia and Abkhazia nor Kosovo are suitable to be recognized or to be states. In both cases there were huge damages and killing of people. I do not see prosperous future of South Ossetia and Abkhazia without any external intervention and support. I think that in the case of Kosovo most of the

[192] To see full Written Statements http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=1

[193] "Саакашвили: Признание независимости Косово было неправильно " (Saakashvili: Recognition of Kosovo's independence was wrong) http://www.ekhokavkaza.com/content/news/24607391.html

states recognize it because International Court of Justice which is the legal body approved Kosovo's declaration of independence and because of that for many states recognition of Kosovo's independence seems to be a legal act. However, maybe if the Court did the same for South Ossetia and Abkhazia, then other states would recognize them as well, because the Court as a legal body examined and justified the case.

Finally, we must not forget the role played in this case by the Russian Federation. We have to accept the reality that after the 2008 events South Ossetia and Abkhazia will not return to the Georgian control, unless the Russian Federation stops supporting them. Another point which I want to mention is that when Georgia started to be closer with the West, especially with USA and NATO, Russia agitated about her near and abroad policy. If Georgia will become a member of NATO, it will mean that the borders of Russia will be under the threat and because of that Russia supports South Ossetia and Abkhazia. Also, I would like to use the phenomenon that Cold War is still continuing. The reason of why I am stating like that is that for instance in February 2012 America stated that she will actively participate in improving Georgia's defense and defense will be strengthened with the help of American experts.[194] On the other hand, Russia deployed a military base on the Abkhazian territory.[195] There is support of America to Georgia and Russia to South Ossetia and Abkhazia.

[194] "Сотрудничество США и Грузии испугало Москву" (Cooperation between the U.S and Georgia frightened Moscow) http://www.ekhokavkaza.com/content/article/24472859.html

[195] "Российская база в Абхазии усиливает подготовку экипажей танков Т-90" (The Russia base in Abkhazia enhances T-90 crew trainings tanks)
http://www.ekhokavkaza.com/content/news/24558144.html

REFERENCES

1. 'Self-determination' *Unrepresented Nations and Peoples Organization* (July 19, 2006),http://www.unpo.org/article/4957 (Accessed on 24 May, 2012)

2. "Abkhazia" March 25, 2008, http://www.unpo.org/members/7854 (Accessed on 20 December, 2011)

3. Convention on Rights and Duties of States. Supplement: Official Documents, (April 1934). *The American Journal of International Law*. 28 (JSTOR)

4. "Fast- Facts: South Ossetia at a Glance" August 8, 2008. http://www.foxnews.com/story/0,2933,400046,00.html (Accessed on 6 November, 2011)

5. "Georgia 'started unjustified war'" (30 September, 2009), http://news.bbc.co.uk/2/hi/8281990.stm (Accessed on 23 December, 2011)

6. "Georgia Conflict: Key Statement", (19 August, 2008) http://news.bbc.co.uk/2/hi/europe/7556857.stm (Accessed on 22 December, 2011)

7. "Georgia: Avoiding war in South Ossetia" , *ICG Europe Report No. 159* http://www.google.com.tr/url?sa=t&rct=j&q=UNPAN019224&source=web&cd=2&ved=0CFEQFjAB&url=http%3A%2F%2Funpan1.un.org%2Fintradoc%2Fgroups%2Fpublic%2Fdocuments%2Funtc%2Funpan019224.pdf&ei=F0jpT6rAKNSG8gPKhaDaDQ&usg=AFQjCNGZYjN-GScvnp_-mGtD0OF_XhMGWg (Accessed on 1 February, 2012)

8. "In Tbilisi, angered by the presence of the Russian delegation at the elections in Abkhazia", *Ekho Kavkaza* , http://www.ekhokavkaza.com/archive/news/20120310/3235/2759.html?id=24511128 (Accessed on 23 April, 2012)

9. "International Recognition of a Unilaterally Declared Palestinian State: Legal and Policy Dilemmas," *Jerusalem Center for Public Affairs*, http://www.jcpa.org/art/becker2.htm (Accessed on 10 December, 2011)

10. "Kosovo case unique, says Miliband," *BBC News*, (February 2011) http://news.bbc.co.uk/2/hi/uk_news/politics/7252212.stm (Accessed on 27 December, 2011)

11. “Kosovo or Abkhazia: Contrasts and Comparisons” http://www.abkhazworld.com/headlines/702-kosovo-or-abkhazia-contrasts-and-comparisons.html (Accessed on 30 March, 2012)

12. “Kosovo Ruling Pandora’s Box for Caucasus” CRS Issue 552, 30 July 2010, http://iwpr.net/report-news/kosovo-rulingpandoras-box-caucasus, (Accessed on 2 December, 2011)

13. “NATO does not recognize the parliamentary elections in Abkhazia,” *Ekho Kavkaza*, http://www.ekhokavkaza.com/archive/news/20120314/3235/2759.html?id=24514972 (Accessed on 23 April, 2012)

14. “Regions and territories: South Ossetia”, *BBC News* http://news.bbc.co.uk/2/hi/africa/country_profiles/3797729.stm#facts (Accessed on 20 April, 2012)

15. “Regions and territories: South Ossetia”, *BBC News*, 30 November, 2011 http://news.bbc.co.uk/2/hi/europe/country_profiles/3797729.stm (Accessed on 7 November, 2011)

16. *"Russia recognizes Georgian rebels."* (26 August, 2008), http://news.bbc.co.uk/2/hi/7582181.stm (Accessed on 26 December, 2011)

17. *"Russia signs up to Georgia truce."(16 August, 2008),* http://news.bbc.co.uk/2/hi/7564776.stm (Accessed on 15 November, 2011)

18. "Saying 'No' to Kosovo independence" ,(5 March, 2008), http://news.bbc.co.uk/2/hi/europe/7265249.stm#Irena (20 December, 2011)

19. *"Separatist Region in Georgia Votes on Independence"* (November 13, 2006), http://www.nytimes.com/2006/11/13/world/asia/13ossetia.html?ref=eduardkokoity (Accessed on 21 December, 2011)

20. *"South Ossetia"* http://community-dpr.org/about_country/osetia.php (Accessed on 24th May, 2012)

21. "Statehood, Effectiveness and the Kosovo Declaration of Independence", http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1316445 (Accessed on 24 May, 2012)

22. “Sukhumi: the application of several countries of the ‘illegitimate’ elections in Abkhazia are undergrounded”, *Ekho Kavkaza* , http://www.ekhokavkaza.com/archive/news/20120321/3235/2759.html?id=24523005 (Accessed on 23 April, 2012)

23. *“The Moscow Bombings: A Prelude to Russia’s Invasion of Georgia?”*(April 8, 2010) http://larussophobe.wordpress.com/2010/04/08/the-moscow-bombings-a-prelude-to russia%E2%80%99s-invasion-of-georgia/ (Accessed on November 15, 2011)

24. “*Глава миссии ЕС: Войну в Южной Осетии начала Грузия*” (May 5, 2010), (The head of EU mission: The war in South Ossetia, Georgia began), own translated http://news.mail.ru/politics/3763700/ (Accessed on 10 May, 2011)

25. “Российская база в Абхазии усиливает подготовку экипажей танков Т-90” (The Russia base in Abkhazia enhances T-90 crew trainings tanks) http://www.ekhokavkaza.com/content/news/24558144.html (Accessed on 28 May, 2012)

26. “Саакашвили: Признание независимости Косово было неправильно ” (Saakashvili: Recognition of Kosovo’s independence was wrong) http://www.ekhokavkaza.com/content/news/24607391.html (Accessed on 20 June, 2012)

27. “Сотрудничество США и Грузии испугало Москву” (Cooperation between the U.S and Georgia frightened Moscow) http://www.ekhokavkaza.com/content/article/24472859.html (Accessed on 20 May, 2011)

28. “Хроника становления государственности РЮО” (Establishment of South Ossetia’s statehood) South Ossetian Journalist Zarina Sanakoeva helped in researching information and gave an informationa about establishment of South Ossetia’s statehood.

29. 1936 Constitution of USSR, http://www.constitution.org/cons/ussr77.txt (Accessed on 5 October, 2011).

30. A website on geographical data, GeoHive, is a site with all kinds of statistics. http://www.geohive.com/earth/population1.aspx (Accessed on 15 May, 2011)

31. Advisory Proceedings of International Court of Justice (2010) http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=0

32. Antonio Cassese, “Self-determination of Peoples: a legal reappraisal”, (Cambridge University Press, 1995).

33. Avis, P., Ellis, B., Fitzsimmons, S., & Turney, S. (2004). Georgia in Brief. *Norman Paterson School of International Affairs.*1-9.

34. B. Coppiters & M. Huysseune (2002). In Defense of the Homeland: Intellectuals and the Georgian- Abkhazian conflict. *Secession, history and the Social Sciences.* Brussels University Press, Brussels.

35. BBC News, "*Regions and territories: South Ossetia"*, http://news.bbc.co.uk/2/hi/africa/country_profiles/3797729.stm#facts (Accessed on 20 April, 2012)

36. Charter of the United Nations, Article 2 (4) and 2(7) http://www.un.org/en/documents/charter/chapter1.shtml

37. Conference on Security and co-operation in Europe Final Act Helsinki 197 www.osce.org/mc/39501

38. Constitution of South Ossetia, http://www.parliament.ge/index.php?lang_id=ENG&sec_id=68 (Accessed on 24 May, 2012)

39. Council of the European Union, Full statement of Catherine Ashton, http://www.consilium.europa.eu/searchresults?lang=en (Accessed on 23 April, 2012)

40. D. Geldenhuys, "*Contested States in World Politics",* Palgrave Macmillan, Basingstoke, (2009).

41. David Raič, *Statehood and the law of self-determination* (online E-book), Published by Kluwer Law International, Netherlands, (2002)

42. Declaration on Principles of International Law concerning Friendly Relations and Co-operationamong State in accordance with the Charter of United Nations, Resolution 2625 (XXV) http://www.un.org/Depts/dhl/resguide/r25.htm

43. Elizabeth Stewart, "Timeline: South Ossetia", *Guardian*, (8 August, 2008) http://www.guardian.co.uk/world/2008/aug/08/georgia.russia5 (Accessed on 6 November, 2011)

44. Full text of Resolution 1541(XV) http://www.un.org/documents/ga/res/15/ares15.htm

45. Full text of Resolution 2625 (XXV)
http://www.un.org/Depts/dhl/resguide/r25.htm

46. G. I. Tunkin, *International Law* (Translated from the Russian), (Progress Publishers, Moscow, (1986)

47. George, J. A., & J. M., Teigen (2008). NATO Enlargement and Institution Building: Military Personnel Policy Challenges in the Post-Soviet Context. *European Security. 17*, 339-366.

48. H. Hannum & E. Babbitt, *"Self-Determination in the Twenty-First Century"* Negotiating self-determination (A division of Rowman & Littlefield Publishers, Lexington, (2006)

49. Hillgruber, C. (1998). The Admission of New States to the International Community. *European Journal of International Law. 9,* 491-509.

50. http://en.wikipedia.org/wiki/South_Ossetia#Demographics (Accessed on 22 April, 2012)

51. International Crisis Group, *"South Ossetia: The Burden of Recognition",* http://www.crisisgroup.org/en/regions/europe/south-caucasus/georgia/205-south-ossetia-the-burden-of recognition.aspx (Accessed on 23 April, 2012)

52. J. Crawford, *The Creation of States in International Law* (Oxford University Press, New York, (2006)

53. James Summers *"Peoples and International Law"*, (Martinus Nijhoff Publishers, Leiden-Boston, (2007)

54. Jeffrey Donovan, (November 10, 2006), *"Georgia: South Ossetia To Vote In Independence Referendum"* http://www.rferl.org/content/article/1072641.html (Accessed on 21 December, 2011)

55. Jim Nichol, (2008), "Russia-Georgia conflict is South Ossetia: Context and Implications for US interests" *CRS Report for Congress,* fpc.state.gov/documents/organization/110841.pdf (Accessed on 20 December, 2011)

56. Johanna Popjanevski, "Tensions Mounting in South Ossetia", Central Asia Caucasus Institute (September 2008) http://www.cacianalyst.org/?q=node/4906

57. K. Dawisha & B. Parrott, *Conflict, cleavage, and change in Central Asia and the Caucasus*, (online E-book), (Cambridge University Press, UK, 1997)

58. Kelsen, H. (1941). Recognition in International Law: Theoretical Observations. *The American Journal of International Law.* 35, 605-617.

59. Lake, D. A. (2003). The New Sovereignty in International Relations. *International Studies Review.* 5, 303- 323.

60. M. N. Shaw, *International Law* (Cambridge University Press, UK, 2003)

61. M. D. Evans, *International Law* (Oxford University Press, New York, 2010)

62. M. Dixon, *Textbook on International Law* (Oxford University Press, New York, 2007)

63. McLellan, T. G. (2009). Kosovo, Abkhazia, and the consequences of State Recognition. *Cambridge Student Law Review.5*,1-21.

64. Müllerson, R. (2009). Precedents in the Mountains: On the Parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia. *Chinese Journal of International Law*. 8, 2-25.

65. O. Casanovas, *"Unity and Pluralism in public international law",* Martinus Nijhoff Publishers, The Hague, (2001).

66. Öberg, M. D. (2011). The Legal Effects of United Nations Resolutions in the Kosovo Advisory Opinion. *The American Journal of International Law.105,* 81-91. (Agora)

67. Office of the United Nations High Commissioner to Human Rights http://www2.ohchr.org/english/law/cescr.htm (Accessed on 24 May, 2012)

68. P. Malanczuk, *Akehurst's Modern Introduction to International Law* (Routledge, New York, 1997)

69. P. Zagorin, *Hobbes and the law of nature* (Princeton University Press, New Jersey, 2009)

70. Papava, V. (2006). The Political Economy of Georgia's Rose Revolution. *East European Democratization.* 657- 667.

71. Patrick Thornberry, *The principle of self-determination,* (Manchester University Press, UK, 2002)

72. Paul, T. (September, 2002). The Continued Relevance of Sovereignty in a Globalizing World: Yugoslavia and its Successor States. *Turkish Journal of International Relations. 1*, 1-64. http://www.alternativesjournal.net/volume1/number3/paultsoundarou.htm

73. Popescu, N. (July, 2006). 'Outsourcing' de facto Statehood. Russia and Secessionist Entities in Georgia and Moldova. *Center for European Policy Studies*. 1-8.

74. R. Higgins, *Problems and Process: International Law and How We Use It,* (Clarendon Press, 1995)

75. Radio Free Europe Radio Liberty, *"No Comparison Between Kosovo and South Ossetia*", http://www.rferl.org/content/No_Comparison_Between_Kosovo_And_South_Ossetia/1191723.html (Accessed on 23 April, 2012)

76. Regions and Territories: South Ossetia, *BBC News*, http://news.bbc.co.uk/2/hi/europe/country_profiles/3797729.stm (Accessed on 1 April, 2012)

77. Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, (2009) http://www.ceiig.ch/Report.html

78. Ryngaert, C., & Sobrie, S. (2011). Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia. *Leiden Journal of International Law.* 24, 467-490.

79. S. Walker, (November 15, 2006), *"South Ossetia: Russian, Georgian...independent?"* http://www.opendemocracy.net/democracy caucasus/south_ossetia_4100.jsp (Accessed on 21 December, 2011)

80. Sanakoev, D. (October, 2008). South Ossetia and Russia's War on Georgia. *Published in Liberal, Rome, Italy.* http://georgiaupdate.gov.ge/doc/10006908/Liberal%20Sanakoev%20ENG.pdf (Accessed on 24 May, 2009)

81. See Full Texts of Advisory Proceedings of International Court of Justice http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=0 (Accessed on 26 April, 2011)

82. See more detailed information about EU mediation Extraordinary meeting, General Affairs and External Relations, Brussels, August 2008 http://consilium.europa.eu/moresearchresultsregistry?search=extraordinary%20meeting&lang=en

83. Slomanson, W. R. (2010). Legitimacy of the Kosovo, South Ossetia, and Abkhazia Secessions: violations in search of a rule. *Ukrainian Yearbook of International Law. 3,* 1-28.

84. State News Agency of the Republic of Abkhazia (Государственное информационное агенство Республики Абхазия), http://apsnypress.info/history (Accessed on 30 March, 2012)

85. The case of Hong-Kong, http://www.state.gov/r/pa/ei/bgn/2747.htm (Accessed on 20 December, 2011)

86. The Daily Beast, *Too Small To Be A Nation,* http://www.thedailybeast.com/newsweek/2008/08/29/too-small-to-be-a-nation.html (Accessed on 22 April, 2012)

87. The Ministry of Foreign Affairs Republic of Abkhazia, http://www.mfaabkhazia.net/en/node/1117 (Accessed on 30th March, 2012)

88. To see full Advisory Opinion of the Judge Bennouna http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=4

89. To see full Advisory Opinion of the Judge Koroma http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=4

90. To see full document of Security Council meeting on the situation in Georgia, http://www.un.org/News/Press/docs/2008/sc9438.doc.htm (Accessed on 24 May, 2012)

91. To see full statement of the Russian President Dmitriy Medvedev http://www.nytimes.com/2008/08/27/world/europe/27medvedev.html?ref=europe

92. To see full text of Security Council Resolution 1808 (2008) http://www.un.org/News/Press/docs/2008/sc9299.doc.htm (Accessed on 24 May, 2012)

93. To see full Written Statements http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=1

94. United Nations Declaration on the Rights of Indigenous Peoples, Article 31www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

95. Unrepresented Nations and Peoples Organization, "*Abkhazia"*, http://www.unpo.org/members/7854 (Accessed on 20 April, 2012)

96. US Department of State, "*Background Note: Kosovo"*, http://www.state.gov/r/pa/ei/bgn/100931.htm (Accessed on 22 April, 2012)

97. Weller, M. (2009). Settling Self-determination Conflicts: Recent Developments. *The European Journal of International Law. 20,* 111-165.