

**Russia's Recognition of Independence of Abkhazia and South
Ossetia –
Causes of Deviation from Russian Traditional Recognition Policy**

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Abstract

Recognition of independence of Abkhazia and South Ossetia by Russian Federation in August 2008 undermined stability in the Caucasus and future perspectives of Georgia. Since August 26, 2008 none of the states emerging from the USSR could be sure of inviolability of their territorial integrity, assumption confirmed by the Ukraine events later. It is undoubtedly a significant precedent both in international law and international relations. Recognition of new entities without consent of the parent state and subsequent erosion of territorial integrity principle became one of the most pressing topics of international relations. It is considered as an important bone of contention in current Russia-West discourse.

In this research I explore norms of recognition, secession and self-determination in international law and their development. I trace the evolution of Soviet and Russian perspectives and policies on recognition of new states over the long term and discuss overall Georgia-Russia relations in order to find answers to why Russia recognised Georgia's breakaway entities and whether this act was in line with traditional Russian policy of recognition.

I apply the standard example of game theory - prisoner's dilemma to explain Russian recognition, which I argue was caused by three major reasons: 1) Kosovo's recognition by the western nations in disregard of Russian stance, 2) Prevention of Georgia's membership to NATO and 3) necessity to legitimize presence of Russian armed forces in Georgia's breakaway provinces.

List of Acronyms

AKP – Justice and Development Party (Turkey)

AR- Autonomous Republic

ASSR- Autonomous Soviet Socialist Republic

BTC – Baku-Tbilisi-Ceyhan oil pipeline

CENTO – The Central Treaty Organisation

CFE- Treaty on Conventional Armed Forces in Europe

CIS –Commonwealth of Independent States

CoE- Council of Europe

CPSU – Communist Party of Soviet Union

CSCE – Conference on Security and Cooperation in Europe

CST- Collective Security Treaty

DRG – Democratic Republic of Georgia

EAPC – Euro-Atlantic Partnership Council

EC- European Communities

ECHR – European Court of Human Rights

EU – European Union

FLN – National Liberation Front of Algeria

FRG – Federal Republic of Germany

GA – General Assembly

GDP – Gross Domestic Product

GDR – German Democratic Republic

GPRA – Provisional Government of Algerian Republic

GSSR – Georgian Soviet Socialist Republic

GU(U)AM – Georgia, Ukraine, (Uzbekistan), Azerbaijan, Moldova

ICJ – International Court of Justice

IIFMCG -The Independent International Fact-Finding Mission on the Conflict in Georgia

JCC-Joint Control Commission

KGB- Committee of State Security of Soviet Union

KLA- Kosovo Liberation Army

MAP – Membership Action Plan

MFA – Ministry of Foreign Affairs

NATO – Northern Atlantic Treaty Organisation

NKR – Nagorno Karabakh Republic

OAU – Organisation for African Unity

OSCE – Organisation for Security and Cooperation in Europe

PACE – Parliamentary Assembly of the Council of Europe

PD – Prisoner’s Dilemma

PISG- Provisional Institution of Self-Government in Kosovo

PPP- Pakistan People’s Party

PRC – People’s Republic of China

RF – Russian Federation

RSFSR – Russian Soviet Federal Socialist Republic

RSK – Republic of Srpska Krajina

SC – Supreme Council

SEATO – South East Asian Treaty Organisation

SFRY – Socialist Federal Republic of Yugoslavia

SSR- Soviet Socialist Republic

TMR – Transnistrian Moldovan Republic

TRNC – Turkish Republic of Northern Cyprus

UK- United Kingdom of Great Britain and Northern Ireland

UN – United Nations

UNFICYP - UN Peacekeeping Force in Cyprus

UNMIK – United Nations Interim Administration Mission in Kosovo

UNOMIG – United Nations Observer Mission to Georgia

UNSC- United Nations Security Council

UNSG – United Nations Secretary-General

UNSIMIC – United Nations Settlement Implementation Mission in Cyprus

UNTAET – United Nations Transitional Administration in East Timor

USA – United States of America

USD – United States Dollar

USSR – Union of Soviet Socialist Republics

WW – World War

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Chapter I. Introduction

1.1 Research Topic

Principle of territorial integrity of a state is an established, fundamental, sacrosanct principle of international law and a baseline for international relations. This principle however, was neglected twice in the short, six-month period running from February to August 2008 by four out of five permanent members of the United Nations Security Council. On the one hand, USA, UK and France recognised Kosovo's secession from Serbia and on the other hand, Russia recognised Abkhazia and South Ossetia's secession from Georgia. Recognition of new entities without consent of the parent state and subsequent erosion of territorial integrity principle turned into one of the most pressing topics of international relations. It is an important bone of contention in current Russia-West discourse too. Recognition of tiny entities in South Caucasus resonated as far as in Latin America and Oceania, thus outgrowing Georgian-Russian context and becoming a global issue.

Russian Federation has been the most important stakeholder in all negotiations on protracted and frozen conflicts on the former Soviet territory, as the latter represents a zone of privileged interests for Russia. Hence, it is logical that Russia assumed the role mediator in these conflicts in early 1990's and was the only country to provide peacekeeping forces in Georgia, emphasising the significance this region bears for Russian national interests. Despite Russian covert and overt financial or political support to Georgia's breakaway entities and despite those entities' appeals to have their independence recognised by the mighty northern neighbour, for almost two decades Russian Federation adhered to the principle of territorial integrity and ruled out recognition of independence of Georgia's rebel provinces. Principle of inviolability of Soviet administrative borders was enshrined in the Charter establishing Commonwealth of Independent States, which was created in order to keep former soviet states together after the fall of the Soviet Union. The charter explicitly stated that "member states of CIS will build their relations on the basis of the inviolability of state borders, the recognition of existing borders and the rejection of

unlawful territorial annexations; the territorial integrity of states and the rejection of any actions directed towards breaking up alien territory”.¹

Up until August 2008 Russia always supported UN Security Council resolutions reaffirming the territorial integrity of Georgia². A sudden, unprecedented and, for many, an unexpected discontinuation of this policy occurred in the aftermath of 2008 Georgia-Russia war. On August 26, 2008, Russian Federation officially recognised Abkhazia and South Ossetia as independent states³ calling on the rest of the world to follow suit and adapt to the new realities in the Caucasus. This recognition policy, however did not embrace other breakaway entities on the former Soviet territory and most importantly Kosovo, which had been recognised by several dozen nations by that time. Being a permanent member of the UN Security Council and Contact Group on Kosovo, Russia has unequivocally supported the territorial integrity of Serbia and opposed granting independence to Kosovo.

Russian Federation’s recognition of Abkhazian and South Ossetian independence had a tremendous impact on peace and stability in the region and future positioning of Georgia and the whole South Caucasus region. This decision completely changed the system of state relations in the former Soviet space. Since August 26, 2008 none of the states emerging from the USSR could be sure of inviolability of their territorial integrity. This assumption was shortly confirmed after Russian annexation of Crimea in 2014. Recognition of Abkhazia and South Ossetia was condemned by the EU and the United States, and strained Russia’s relations with the West. This act had overall an adverse impact on Russia’s international image and relations. Some did not shy away from calling the post-recognition period as the new cold war. Negotiations on framework Russia-EU agreement were halted. The NATO-Russia Council was suspended. United States Senate termed the presence of Russian troops in Abkhazia and South Ossetia as an

¹ Устав Содружества Независимых Государств, 22.01.1993, available at:

<http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=187>

² S/Res. 876 (1993); S/Res. 896, (1994); S/Res.993 (1995); S/Res. 1065, (1996); S/Res. 1124 (1997); S/Res.1150 (1998); S/Res. 1287 (2000); S/Res 1494 (2003); S/Res. 1554 (2004); S/Res.1615 (2005); S/Res.1716 (2006); S/Res.1781 (2007); S/Res. 1808 (2008)

³ Указ Президента Российской Федерации от 26 августа 2008 г. N 1260 <http://www.rg.ru/2008/08/29/abhaziya-dok.html> Указ Президента Российской Федерации от 26 августа 2008 г. N 1261 <http://www.rg.ru/2008/08/29/osetiya-dok.html>

occupation of sovereign Georgian territory.⁴ This statement was echoed by the NATO Parliamentary Assembly⁵ and European Parliament Resolution.⁶

Although, few years have passed, the topic is still high on the agenda of not only the Georgian government but at Russia-EU, Russia-NATO and Russia-US summits. Recognition of independence of the two Georgian provinces eroded the territorial integrity principle and brought systemic change to the post-colonial order.

It is undoubtedly a significant precedent both in international law and international relations. Furthermore, it is the most negative blow that any outside State has inflicted on Georgia in the course of the last 90 years. This act of recognition also raised numerous questions, which have paramount importance not only for the relations between Russia and Georgia, but for the state-of-play in the whole former Soviet space: Why did Russia apply different recognition policy to Georgian breakaway territories from its mainstream policy? Is Russia's recognition act Kremlin's "homemade response" to the Kosovo recognition? Did eventual NATO membership signalled to Georgia influence Russian decision? How compliant was Russian decision with the international law norms? What does it imply regionally for former Soviet republics?

1.2 Research Goal and Structure

I have a strong personal interest in researching causes for Russian decision of recognising Abkhazia and South Ossetia. Russia's policy has directly affected my country and its long-term development perspectives. This move had an epochal significance for Georgia and was the most dramatic challenge in its post-Soviet history. From my early professional career I was indirectly involved in conflict resolution process both at national and international level and therefore my interest stems from my professional background as well.

⁴ US Senate Resolution 175, 112th Congress, May 10, 2011, available at: <https://www.congress.gov/bill/112th-congress/senate-resolution/175>

⁵ NATO PA Resolution 382, 16 November, 2010, available at: <http://www.nato-pa.int/default.asp?SHORTCUT=2245>

⁶ European Parliament resolution of 17 November 2011 containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Georgia Association Agreement (2011/2133(INI)), available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0514>

This paper focuses on two main research questions:

- Is Russian recognition of Georgia's breakaway entities deviation from its traditional recognition policy and compliant with international law?
- Why did Russia extend recognition to Georgia's breakaway entities whereas it continues to conduct non-recognition policy towards other secessionist entities in Europe?

The hypothesis of the project is that Russian recognition of independence of Georgian provinces was a direct response to three challenges faced by Russia. These challenges were: collective recognition of Kosovo by major western powers in ignorance of Russian stance and in violation of the territorial integrity principle in February 2008; NATO Bucharest Declaration of April 2008 affirming Georgia's future membership in NATO and expansion of the alliance to Russia's southern borders; and necessity of legitimation of deployment of Russian Armed Forces in Abkhazia and South Ossetia. For research purposes recognition of Kosovo and NATO Bucharest Declaration are independent variables whereas recognition of Abkhazia and South Ossetia is a dependent variable, with Georgia-Russia war serving as antecedent condition that enabled recognition to occur.

In order to provide a comprehensive analysis of the research topic I divided my research into three major chapters. In chapter two, I explore the history of development of norms of self-determination, secession and recognition in international law and their relevance and significance to international relations. Further, I review the existing sources of international law and provide examples of applications of these norms from the international practice. In-depth insight into international law enabled me to conclude that Abkhazian and South Ossetian self-determination should have been realised within the Georgian state and their secession was illegal.

In chapter three, I look at evolution of Soviet and Russian perspectives and policies on recognition of new states in the post WW-II period. I chose this period, because contemporary world order is set with the establishment of the United Nations after 1945. For the purpose of analysis I divided the cases into three sub-groups: States that were not recognised by the parent-state before their recognition by the USSR/RF; states that were recognised by Moscow after recognition by the parent state; and De-facto secessionist entities that have declared

independence but were not recognised by the USSR/RF. I focus on the application of a particular norm by USSR/RF across similar cases to find out how consistent Kremlin was in its recognition policy and to answer whether recognition of Abkhazia and South Ossetia represents an exception in general Russian policy of non-recognition of secessionist entities. This part prepared an empirical basis to positively answer the first research question whether the recognition of Georgia's breakaway entities is a deviation from the traditional mainstream policy of recognition by Russia.

In chapter four, I concentrate on Abkhazia and South Ossetia cases. Here, too I offer a comprehensive picture of factors influencing the course of the conflicts. The chapter begins with historical description of conflicts in South Ossetia and Abkhazia, their evolution and ensuing conflict resolution formats. Then, I turn to analysis of general Georgian-Russian relations after the fall of the Soviet Union up to the August war of 2008. Third part of the chapter is dedicated to the August War, its results and theoretical framework. I apply standard example of Game Theory, the Prisoner's Dilemma, which deals with strategic rationality to evaluate the Russian decision to extend recognition to Abkhazia and South Ossetia.

In the concluding part of the chapter, I trace process of recognition and conclude that recognition of Abkhazia and South Ossetia was caused by combination of three factors. These factors were: 1) recognition of Kosovo by the West in ignorance of Russian position 2) prevention of Georgia's membership to NATO and 3) necessity of legalization of Russian troops in Abkhazia and South Ossetia after the war.

My dissertation is a blend of historical descriptive and historical explanatory types of dissertation. Historical descriptive dissertation provides solid account of historical facts of a certain phenomenon whereas historical explanatory dissertation uses theory to explain causes, pattern or consequences of historical cases⁷. I combine descriptive portions of the work with the application of theory and my research is focusing on past events and conditions.

In this research I use several methods. The research is conducted through content analysis, discourse analysis and case-study. According to Blaikie, there are three types of data. Primary data generated by researcher, secondary data - raw data such as laws, documents, speeches,

⁷ Van Evera, Stephen Guide to Methods for Students of Political Science, 1997, p. 92

reports etc. and tertiary data - information that is already analysed.⁸ Content analysis is applied to secondary and tertiary data such as international law norms, interpretations of these norms by different legal scholars, reports by different international organisations, and strategic documents of the Russian Federation. I interpret international law to examine the evolution of principles of recognition, territorial integrity, self-determination and secession and therefore working with legal documents takes a significant part of the research. Public speeches and interviews of Russian politicians and diplomats published in the press is another set of secondary data used during the research, which would be analysed using the discourse analysis method to sort out the intentions and causes of the decision-making. Unfortunately, due to sensitivity of the topic, my attempts to conduct interviews on the issue of recognition with Russian decision-makers and members of academia close to decision-makers failed, which is clearly a certain limitation for this research. I also use case-study analysis to explore the conflicts in Abkhazia and South Ossetia in-depth and give a detailed account of Georgian-Russian relations – general framework surrounding these conflicts.

Given the sensitivity of the topic of the project and my ethnic background, I feel the responsibility of delivering an unbiased and impartial research and excluding influence of subjective and personal inclinations.

In my paper I use extensively the term recognition. For the purposes of this research the recognition of a state under international law is a declaration of intent by one state to acknowledge another entity as a state within the meaning of international law. Recognition constitutes a unilateral declaration of intent. It is entirely at the discretion of any state to decide to recognize another as a subject of international law.

In this paper I also use the term South Ossetia to denominate the territory in the administrative boundaries of former South Ossetian Autonomous District within Georgia, although such an entity does not exist according to Georgian constitution and the territory is referred to as Tskhinvali Region.

⁸ Blaikie, Norman, *Designing Social Research*, 2000, p.184

Chapter II. Self-Determination, Secession and Recognition In International Law

2.1 Introduction

The present research aims at analysing recognition policy of Russian Federation and applying it to secessionist entities of Abkhazia and South Ossetia. Conduct of analysis however would be impossible without exploring what the international law says about recognition. As recognition of a state is connected with the emergence of new state and the secession is one of the modes of state creation, it is essential to know if and how the international law regulates secession. Secession, in its turn is always justified by appealing to the right of self-determination of peoples. As a result we have a triangle of these notions which are closely linked to each other.

The objects of the present research Russian Federation, Abkhazia and South Ossetia have all referred to international law in their act of recognition and proclamations of independence respectively. Abkhazia and South Ossetia appealed to the right of self-determination for justifying their claim for independence without the consent of Georgian authorities - i.e. secession. Russian Federation too appealed to international law principles when it extended recognition to Georgia's autonomous provinces.⁹ Therefore, it is indispensable for this thesis to research how these three norms are positioned in international law and to explore the history of their development into current state. As the objective of international law is to regulate relations between the states and the international law should be enforced by the states, this chapter looks also at state practice of reacting to self-determination, secession and recognition claims. Furthermore, the linkage between self-determination, secession and recognition in international law is assessed.

⁹ Transcript of Remarks by Sergey Lavrov, Minister of Foreign Affairs of the Russian Federation, at an Enlarged Meeting of the Federation Council International Affairs Committee, Moscow, 18 September 2008, available at: https://en.wikisource.org/wiki/Transcript_of_Remarks_by_Sergey_Lavrov,_Minister_of_Foreign_Affairs_of_the_Russian_Federation,_at_an_Enlarged_Meeting_of_the_Federation_Council_International_Affairs_Committee,_Moscow,_18_September_2008

The chapter is divided into three subchapters each having similar structure. The subchapters describe historic evolution of self-determination, secession and recognition, their place in treaty and customary law, respective court judgments, as well as relevant cases from international practice.

The chapter is constructed according to the logic and sequence of state creation and thus at first self-determination is reviewed, then secession and finally recognition.

2.2 Principle of Self-Determination in International Law

2.2.1 Sources of International Law

International law is an important element of the topic of this research therefore I will briefly dwell on major characteristics of international law. US Foreign Relations Law very well describes what the international law is about. International law consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations *inter se*, as well as with some of their relations with persons, whether natural or juridical.¹⁰ States have evolved two principal methods for creating legally binding rules: treaties and custom.¹¹ Treaties are legal acts binding on the contracting parties. Custom is “evidence of general practice accepted as law”¹² (*opinio juris*) and this practice is required by social, economic or political exigencies (*opinio necessitatis*).¹³ The main feature of a custom is that it is not a deliberate law-making process, but rather intent of states to bring about legal standards of behavior.¹⁴ Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation. International agreements create law for the states parties thereto and may lead to the creation of customary international law when such

¹⁰ Restat 3d of the Foreign Relations Law of the U.S., § 101, 1987

¹¹ Cassese, Antonio, International Law, 2005 p. 153

¹² Statute of the International Court of Justice, Article 38.1 http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0&#CHAPTER_II

¹³ Cassese, Antonio, International Law, 2005, p. 156

¹⁴ *ibid.*

agreements are intended for adherence by states generally and are in fact widely accepted. General principles, common to the major legal systems, even if not incorporated or reflected in customary law or international agreement, may be invoked as supplementary rules of international law where appropriate.¹⁵

International law in contrast to municipal law did not have a hierarchy of sources of law and of legal rules produced from these sources. Understandably, the states did not want to limit their sovereignty in concluding international treaties and there was no supranational body which would decide on legality of a treaty or custom. This has changed in 1960's with the introduction of peremptory norms. The states decided that certain norms governing relations between the states should be given higher rank than ordinary rules deriving from treaties and custom.¹⁶ Although, the hierarchy between the law-making processes was not established, a cluster of general rules have been upgraded to special status. Peremptory norms were defined in the Vienna Convention on the Law of Treaties of 1969, which was drafted to codify and further develop international law:

“A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”.¹⁷

Existence of peremptory norms depends ultimately on the consent of on the one hand influential and on the other hand absolute majority of the states. “It is difficult for a state, whether or not it is a Great Power to oppose the formation of a peremptory norm: numerous political, diplomatic, or psychological factors dissuade states from assuming a hostile attitude towards emerging values which most other states consider fundamental”.¹⁸ There are however limitations to its provisions. The states that are not part of the Vienna Convention (currently 113 states are members) may not be asked to cancel a treaty that violates peremptory norms. To invoke the norm a state should have acceded to the Convention and be a part of the multilateral treaty that it

¹⁵ Restat 3rd of the Foreign Relations Law of the U.S., § 102, 1987

¹⁶ *ibid.* 199

¹⁷ Vienna Convention on the Law of Treaties, 23 May, 1969, Article 53,
<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

¹⁸ Cassese, Antonio, *International Law*, 2005, p. 202

wishes to contest. These limitations are somewhat mitigated by the development of customary rules on peremptory norms, which also hinder states from concluding derogatory treaties. So, the main objective of creation of peremptory norms was the idea that states may not derogate from certain cluster of legal principles and to ensure that the treaties and customary law which are contrary to them are null and void.¹⁹

2.2.2 Historical Background

The origin of the principle of self-determination could be traced back to the second half of the 18th century. The United States declaration of independence in 1776 and the French Revolution of 1789 challenged the notion that fate of the people and the territories that these people populated could be decided solely by the will of monarch. Establishment of republics in these two states meant that the governments should derive their legitimacy from people and thus should be responsible to people. This echoed John Locke's then century-old assertion that the political sovereignty lies in the people.²⁰ The initial meaning of self-determination was that of enjoying a popular sovereignty and representative government and it was anchored this way in western European/American understanding. The first use of this principle in order to acquire lands based on the will of people could be attributed to the French, which annexed Alsace, Avignon, Belgium and the Palatinate in the early years of revolution after the plebiscites were held and the regions and people voted for unification with France.²¹

Development of nationalism in the 19th century resulted in further development of the principle of self-determination, albeit in a different form. It brought national awakening of smaller nations which were parts of multi-ethnic empires such as German, Austro-Hungarian, Russian and Ottoman ones. As these empires conducted assimilating and nationalist policies, the people distinct from the titular nation started to demand greater self-rule or even independence. Thus, the principle of self-determination acquired an "ethnic" character. Since, geographically, all these multi-ethnic empires were located in Central and Eastern Europe, self-determination in this part of Europe gained a somewhat different meaning than in the Western part of the continent. In

¹⁹ Cassese, Antonio, *International Law*, 2005, p. 206

²⁰ Locke, John, *Second Treatise of Civil Government*, 1980

²¹ Cassese, Antonio: *Self-determination of peoples : A Legal Reappraisal*, 2008, p. 12

this context, self-determination became a driving force for autonomy for ethnically different regions or ultimately their independence.

So, by the outbreak of the World War I, the western Europeans saw self-determination as a notion for people to freely choose their representative government, whereas in central and eastern Europe self-determination was seen as a tool for achieving ethnic or national self-government. It was at this point in the history when self-determination was pushed onto the international agenda largely thanks to two influential figures - Lenin and Wilson.

Socialist movements in Europe were the first ardent supporters of the principle of self-determination. As early as in 1896 the fourth congress of the Socialist International in London – which included representatives of social-democratic and labour parties from all over the Europe - adopted a resolution. It read:

“This Congress declares that it stands for the full right of all nations to self-determination and expresses its sympathy for the workers of every country now suffering under the yoke of military, national or other absolutism. This Congress calls upon the workers of all these countries to join the ranks of the class-conscious workers of the whole world in order jointly to fight for the defeat of international capitalism and for the achievement of the aims of international Social-Democracy.”²²

Russian Social-Democrats saw self-determination of nations as a temporary measure in the run-up to a global proletarian revolution. Its importance is highlighted in the works of Lenin and Stalin in 1910's. Lenin argued that the goal of socialism is not only destruction of division of mankind into small states and national distinctions, not only rapprochement of nations, but their merger.²³ “The mankind can achieve annihilation of classes only after the transitional period of dictatorship of the oppressed class. Similarly, inevitable unification of all nations could only happen only after the transitional period of complete liberation of all oppressed nations, i.e. freedom of secession”.²⁴ Therefore, the proletariat of oppressing state should fight for liberation of colonies and the oppressed nations and for the right of self-determination. Otherwise, international character of proletariat would remain an empty word. Lenin gave an explicit definition of what he meant under self-determination by saying that it is the exclusive right of

²² Ленин, Права нации на самоопределение, Полн. собр. соч., т. 25, 1973

²³ Ленин, Социалистическая Революция и Право Наций на Самоопределение (Тезисы), Глава 3, Полн. собр. соч., т. 30, 1973

²⁴ *ibid.*

political independence from the oppressing state.²⁵ Stalin, proposed several modes under which the nations could develop - The nation has the right to live under autonomy, to establish federal arrangement with other nations and to secede completely. Stalin also argued that only the nations themselves have the right to determine their own fate and no one else has the right to interfere forcefully in the life of a nation, destroy its schools and other facilities, break its moral and traditions, oppress the language and cut its rights.²⁶ Stalin echoed Lenin in outlining why self-determination of nations is essential for socialism. “By fighting for self-determination of nations, social-democracy aims at terminating the policy of oppression of nations, making oppression impossible and thus undermine the rise of a nation, numb it, minimize it. This is how policy of proletariat differs from the policy of bourgeoisie which tries to continue and encourage the national movement”.²⁷ Stalin later argued that when the right moment came the Communist party policy tied self-determination of nations to the fate of socialist revolution.²⁸ The Bolsheviks started to carry out this policy after revolution, when several constituent parts of the Russian Empire such as Poland, Finland, Baltic and Caucasus states were allowed into independence, although this could not be attributed to the self-determination policy only, but also to a relative weakness of a revolutionary state. Later, most of them were brought back into a communist empire in the form of autonomies.

Principle of self-determination received instrumental support also from the other side of the Atlantic Ocean. US President Wilson unlike the Bolsheviks pursued completely different goals. Wilson’s self-determination was rooted in the western European understanding of the principle. Wilson declared that the United States entered war “to fight for liberty, the self-government and the undictated development of all peoples”.²⁹ After the US entry into the war, the President started to plan for the post-war settlement and self-determination played an important role in his peace plan. In his address to the US Congress in January 1918, which became to be known as famous fourteen points, Wilson inter alia stated:

“A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the

²⁵ *ibid.*

²⁶ Сталин: Марксизм и Национальный Вопрос, Сочинения, Том 2, ОГИЗ, 1946. р..310

²⁷ *ibid.*

²⁸ Сталин: Национальный Вопрос и Ленинизм Сочинения, Том 11, ОГИЗ, 1949, р.351

²⁹ Duiker William, Spielvogel Jackson, World History, p. 684

populations concerned must have equal weight with the equitable claims of the government whose title is to be determined”.³⁰

Thus, the interests of population were put on an equal footing with the interests of government. Furthermore, nations, part of Austria-Hungary and Ottoman Empires were promised the right of autonomous development and Poland an independent statehood. Fourteen points were followed by Wilson’s another address to the Congress a month later, in which he pointed at indispensability of self-determination. “Peoples may now be dominated and governed only by their own consent. Self-determination is not a mere phrase. It is an imperative principle of actions which statesmen will henceforth ignore at their peril”.³¹ This address also included four main principles on which peace should be established, out of which three dealt with territorial self-determination. He upheld the notion of popular sovereignty by saying that “peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in a game”³² and that “every territorial settlement involved in this war must be made in the interest and for the benefit of the populations concerned, and not as a part of any mere adjustment or compromise of claims amongst rival states”.³³ The fourth principle read that “well-defined national aspirations shall be accorded the utmost satisfaction”.³⁴ Clearly, in the course of war, Wilson’s understanding of self-determination changed and embraced also a nationality notion of the principle. By the time of the Peace Conference, Wilson had accepted that all nationalities were entitled to self-determination.³⁵ It must be noted that when championing the self-determination clause Wilson looked at the situation a bit naively, not even aware of the number of nationalities that would long for legitimization of the principle.³⁶ He also failed to consider that nations could be divided by territory.

Wilson’s wish to include self-determination clause into a Covenant of the League of Nations never materialized. It found strong opposition not only from other Great Powers but from his own compatriots. His Secretary of State Lansing feared that it would be basis for impossible

³⁰ Address of the President Wilson to the US Congress, 8 January, 1918,

<http://www.presidency.ucsb.edu/ws/?pid=65405>

³¹ Address of the President Wilson to the US Congress, 11 February, 1918,

<http://www.gwpda.org/1918/wilpeace.html>

³² *ibid*

³³ *ibid.*

³⁴ *ibid*

³⁵ Musgrave, Thomas, *Self-determination and National Minorities*, p. 24

³⁶ Cassese, Antonio, *Self-determination of peoples*, p. 20

demands and create troubles in many lands.³⁷ Thus, the article on self-determination was redrafted many times and then all references to self-determination were deleted altogether, leaving the way for respect of territorial integrity of the League of Nations' members.³⁸

Contrary to Wilson's vision, the principle of self-determination did not feature in peace treaties concluded after the WW I either. Here, the victorious powers redistributed territories without paying attention to the will of the people concerned. With a few exceptions in non-sensitive regions, no plebiscites or referenda were held to determine the popular wish to rearrangement of territories.³⁹ They did not even insist that the new states which emerged out of the defeated empires upheld the principle of representative government. The only field related to self-determination which was included in international treaties was that of minority protection.⁴⁰ A detailed analysis of the state of affairs is provided in the Aaland Islands case, where two expert commissions addressed the question of self-determination and possible secession of Aalanders from Finland in 1920-21. The first Commission of Rapporteurs stressed that:

“Although the principle of self-determination of peoples plays an important part in modern political thought, especially since the Great War, it must be pointed out that there is no mention of it in the Covenant of the League of Nations. The recognition of this principle in a certain number of international treaties cannot be considered as sufficient to put it upon the same footing as a positive rule of the Law of Nations”.⁴¹

This emphasis demonstrated that self-determination failed to be a legal principle and remained for the time being only a political one.

Even though much hope was vested in self-determination and it was met with great fanfare when declared by Wilson, it never made to the text of the international legal body created after the WW I. A weak Bolshevik government struggling for its own recognition also could not contribute to development of self-determination into a legal principle. As for application, self-determination was used to dismember the defeated states at the peace conference, but the

³⁷ *ibid*

³⁸ Musgrave, Thomas, *Self-determination and National Minorities*, p. 31

³⁹ Hannum, Hurst: *Autonomy, Sovereignty and Self-determination*, p. 29

⁴⁰ Minority treaties were signed with Poland, Czechoslovakia, Romania, Yugoslavia, Greece and Danzig

⁴¹ Report of the International Commission of Jurists entrusted by the Council of the League of Nations with a task to give advisory opinion upon the legal aspects of Aaland island question, <http://www.ilsa.org/jessup/jessup10/basicmats/aaland2.pdf>

victorious powers wary of its possible dangers and limitations to seize additional land did not have any interest in anchoring this right in the Covenant.

2.2.3 Self-determination in International Law

The second attempt of elevating self-determination to the international legal norm proved to be successful. Again, it was at the negotiations on the post-war settlement, this time WW II and process of elaboration of the United Nations Charter, where this norm was put on the agenda again. Politically strengthened, Soviet Union this time insisted on the proclamation of the right to self-determination at the United Nations Conference on International Organisation held in San Francisco in 1945.⁴² Soviets proposed to add principle of self-determination of people as basis for friendly relations among nation in Article 1 of the UN Charter.⁴³ This proposal was initially supported by several non-western states and later also by the western states. However, there was a fierce opposition to Soviet proposal to include self-determination as a tool for “speedy achievement of full state independence” fearing that it would cause dismemberment of states and encouragement of secession.⁴⁴ This fear was shared by colonial as well as non-colonial powers.⁴⁵ Soviet explanation of the aim of self-determination given by Foreign Minister Molotov reconfirmed the Bolshevik policy of freedom for all dependent nations. “We must first of all see to it that dependent countries are enabled as soon as possible to take the path of national independence” – he said.⁴⁶

As a result of negotiations self-determination was inserted in Article 1 and Article 55 of the UN Charter. Article 1 set out the purposes of the UN. Second paragraph says that one of the purposes is: “to develop friendly relations among nations based on the respect of the principle of equal right and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”⁴⁷. Article 55 is about economic and social cooperation and reads as follows:

⁴² Cassese, Antonio, *Self-determination of peoples: A Legal Reappraisal*, p. 38

⁴³ Тункин, Григорий, *Теория Международного Права*, 1970, p.72

⁴⁴ Ibid.

⁴⁵ Belgium, Colombia, Venezuela and Egypt voiced concern

⁴⁶ Musgrave, Thomas, *Self-determination and National Minorities*, p. 63

⁴⁷ UN Charter, Article 1(2)

“With a view to the creation of conditions of stability and well-being necessary for peaceful and friendly relations among the nations, based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development, solutions of international, economic, social, health and related problems, and international cultural, educational cooperation and universal respect for the observance of human rights and fundamental freedoms for all without distinction of race, sex, language, or religion”.⁴⁸

Ironically, self-determination is not mentioned in chapters XI, XII and XIII, which deal with non-self-governing and trust territories to which the self-determination should have applied in the first place. Although, Soviet Union proposed to include reference to self-determination in the above chapters, UK and France opposed and agreed only to implicit formulation, which says that the objectives of the trusteeship are in accordance with the purposes of the UN Charter.⁴⁹

It is visible from the text that the Charter fails to define what is meant under the term of self-determination of peoples and how can it be invoked. Self-determination is mentioned explicitly in articles which are of general purpose and do not cover self-determination issues as such. It is not mentioned in chapters, where exactly this right could have been invoked. Both times it is mentioned in the context of developing friendly relations among nations and in conjunction with the principle of equal rights. UN Charter is a good demonstration of the careful approach taken by western states back then in regard to explicit proclamation of the right. Both UK and France were major colonial powers and they feared that explicit formulation of right to self-determination in the relevant chapters would lead to destabilization in colonies and trust territories and would encourage independence movements. On the other hand, USSR supported wholeheartedly the full implementation of the principle in order to be seen as the liberator of the oppressed world and undermine political stability of the western states. Implementation of this principle, did not mean for Soviet leadership exercise of this right by its own constituent union republics.⁵⁰ Similarly, constitution of Russian Federation of 1993 recognises the right of self-determination, but excludes exercise of this right outside of Federation.

⁴⁸ UN Charter, Article 55

⁴⁹ UN Charter, Article 76

⁵⁰ Meissner, Boris, Sowjetunion und Selbstbestimmungsrecht, 1962, p. 58

Notwithstanding the lack of clarity on how and when right to self-determination could be invoked within the Charter, its inclusion in the UN Charter was still an important milestone for acknowledging self-determination as a legal principle and its further evolution.

Another international legal treaty where self-determination featured was the International Human Rights Covenants. USSR tried to include self-determination in the 1948 Universal Declaration on Human Rights, but this proposal was rejected.⁵¹ Nevertheless, when it was decided to draft two covenants one for civil and political rights and the other for social, economic and cultural rights, Soviet Union again proposed to include self-determination in both covenants. Despite usual opposition from the colonial powers it received support from Socialist camp, as well as Asian, Latin American and African countries. Thus, the General Assembly voted for inclusion of self-determination in the covenants.⁵²

Articles 1 of the Covenant of Civil and Political Rights and the Covenant of Economic, Social and Cultural Rights were formulated in a similar way:

“1. 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.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations”.⁵³

The two covenants on human rights were adopted by the UN General Assembly in 1966 and entered into force 10 years later when a minimum of 35 states acceded to the Covenants. Presently, it has almost universal character with only couple of dozen states still not part of it. Although, the Covenants further strengthened the position of self-determination as a legal principle, it raised number of questions. Number of countries supported a restricted interpretation of self-determination. India, for example stated that self-determination in these articles apply

⁵¹ Тункин, Григорий, Теория Международного Права, 1970, р.73

⁵² UN GA Res. 545 (VI), 1952

⁵³ Covenant of Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

only to the people under foreign domination and not sovereign or independent states.⁵⁴ However, analysis of the language of the article 1 shows that this clause is not restricted to colonial peoples, by saying that all peoples have the right to freely determine their political status and choose its own form of development. Soviet interpretation of the term people was very broad. According to leading Soviet legal scholar of the time Starushenko:

“Subject of the right of self-determination is people, nations and ethnic groups, peoples composed of different national groups that live in a defined territory, have historical, cultural, language and religious commonalities or are united for the objective that they want to achieve with the help of self-determination”.⁵⁵

The language of the Covenants also suggests that this right is permanent. Another important clause is that of free disposal of natural wealth and resources – or economic self-determination. And finally, the article gave clear right to dependent nations for self-determination.

This treaty law however was not sufficient as it did not explicitly regulate self-determination. Therefore, the majority of states opted for development of general standards that could be enshrined in general assembly resolutions that would gradually turn into legally binding norms – customary law.⁵⁶ This way opposition of the western countries could also be overcome. The most important GA resolutions which regulate self-determination were adopted in the period when the decolonization process reached its heights.

On December 14, 1960 the General Assembly adopted Resolution 1514 (XV) “The declaration of granting of Independence to Colonial Countries and Peoples”. This resolution is the most important document connecting self-determination with decolonization. The resolution was initiated again by the Soviet Union and presented by a group of 43 Asian and African nations. Out of 89 countries, 80 countries voted in favour, 9 (USA, UK, France, Australia, Belgium Portugal, Spain, South Africa, Dominican Republic) abstained and no single country voted

⁵⁴ Hannum, Hurst: *Autonomy, Sovereignty and Self-determination*, p. 42

⁵⁵ Старушенко, Г.Б. Принцип самоопределения народов И нации во внешней политике советского государства, 1960, р.161 “Субъектом права на самоопределение являются народы, нации и народности, а также народы, состоящие из нескольких наций, народностей или национальных групп, имеющие общую территорию, одну или несколько других общностей (историческую, культурную, языковую, религиозную и т.п.) и объединенные общностью цели, которую они хотят достичь посредством самоопределения»

⁵⁶ Cassese, Antonio, *Self-determination of peoples: A Legal Reappraisal*, p. 68

against.⁵⁷ The resolution explicitly stated that the final goal of self-determination for colonial peoples was independence.

“subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights.....(A)ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.... (I)mmEDIATE steps shall be taken, in Trust and Non-Self-Governing Territories, or all other territories which have not yet attained independence to transfer all powers to the peoples of those territories without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed and colour, in order to enable them to enjoy complete independence and freedom”.⁵⁸

Resolution 1514 included an important safeguard clause. Paragraph 6 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 Charter of the United Nations”.⁵⁹ This clause was intended to safeguard the territorial integrity of newly emerged states and avoid further dismemberment of former colonial territories. It represented materialization of the principle of *uti possidetis juris*, which originated from the 19th century, when the Spanish Crown lost effective control over its territories in Latin America. *Uti possidetis juris* was designed to protect from external force the sovereignty and territorial integrity of entities that attained de-facto independence. The principle meant that the de-facto states agreed to the external boundaries that they inherited from colonial entities. This principle gradually developed into general principle of law and as ICJ stated in the case Concerning Frontier Dispute between Burkina-Faso and Mali:

“[uti possidetis juris] is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power”.⁶⁰

⁵⁷ Тункин Григорий, Теория Международного Права, 1970, p.75

⁵⁸ UN GA Res. 1514 (XV) 1960 [http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1514(XV))

⁵⁹ *ibid.*

⁶⁰ ICJ Judgment on Case concerning the frontier dispute (BURKINA FASO/REPUBLIC OF MALI), 22 December, 1986, para. 20-26 <http://www.icj-cij.org/docket/index.php?sum=359&p1=3&p2=3&case=69&p3=5>,

Nevertheless, *uti possidetis juris* had not been applied consistently as the examples of Ruanda-Urundi, the northern Cameroons, Island of Mayotte and Gilbert and Ellice Islands have demonstrated. In each of these cases the territorial integrity of the former colonial entities was not preserved and the territories either were partitioned (Ruanda-Urundi, Gilbert and Ellice Islands), or were incorporated into another state (Northern Cameroons into Nigeria), or remained with the colonial power (Mayotte with France). It must be emphasized however that the decisions on the entities' status were taken by the populations themselves. This would not have caused problems had the Comorros Islands agreed to the Mayotte separation. Mayotte case raised the issue whether the will of the whole population of the colonial entity was decisive for the status or part of the population could also be consulted. In other words, it raised the question of partition of the word "self" into several meanings in self-determination. No wonder that this ambiguity was used by the Russian envoy to the UN when justifying Crimean annexation and referring to Mayotte referendum.⁶¹

Resolution 1514 was followed next day with the Resolution 1541 (XV) on "Principles which should guide the Members in determining whether or not an obligation exists to transmit the information called for in article 73(e) of the Charter of the United Nations". The resolution inter alia gave two other options for full-measure of self-government except independence – Free Association with an independent state or integration with an independent state. In both cases, the decision should have been made through "responsible choice of the people under informed and democratic processes".⁶²

Several GA resolutions in the 1960's were adopted with the aim to assist colonial countries in their quest for self-determination and also discourage states from hindering self-determination of the colonial entities. Resolution 2105 granted "the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination"⁶³, Resolution 2131 stated that the

⁶¹ Russian Envoy: Crimea Referendum Like America's Move for Independence in 1776, March 14, 2014, at: <http://cnsnews.com/news/article/patrick-goodenough/russian-envoy-crimea-referendum-americas-move-independence-1776#sthash.dqDQUxOC.dpuf>

⁶² UN GA Res. 1541 (XV) 1960, [http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1541\(XV\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1541(XV))

⁶³ UN GA Res. 2105 (XX) 1965, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/218/68/IMG/NR021868.pdf?OpenElement>

right of self-determination should be exercised “without any foreign pressure”⁶⁴, Resolution 2160 declared any forcible action depriving people under foreign domination for their right to self-determination and independence illegal.⁶⁵ These resolutions were put forward by the Communist states or the third world countries, but opposed by the western states. Therefore, the resolutions represented the views of the USSR and its satellites as well as the developing world.⁶⁶

The Resolution 2625 (XXV) of 24 October 1970 - “The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations” was however a consensual one. The western nations participated in the elaboration of the resolution and pressed to widen the scope of self-determination principle. The resolution dealt with self-determination extensively. It stated that “...all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter”. The resolution declared that people under foreign occupation had the right to self-determination “bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter” and once again confirmed the modes of self-determination – “establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people”, it prohibited the use of force by the states against self-determination of peoples and entitled self-determination movements to seek outside support in case of forceful deprivation of this right: “Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter”. Furthermore, the resolution provided important clauses for territorial integrity of the state and at the same time linked self-determination with representative government “nothing in the

⁶⁴ UN GA Res. 2131 (XX) 1965, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/218/94/IMG/NR021894.pdf?OpenElement>

⁶⁵ UN GA Res. 2160 (XXI) 1966, <http://daccess-ods.un.org/TMP/4799886.94190979.html>

⁶⁶ Musgrave, Thomas, Self-determination and National Minorities, pp. 73-74

foregoing paragraphs shall be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity, or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour". "The territorial integrity and political independence of the State are inviolable".

This resolution is the most comprehensive document that deals with self-determination and it unites almost all provisions stipulated in the earlier resolutions. Therefore, it is regarded as the reference document for the right of self-determination. Unfortunately, the text of the resolution in regard to self-determination is ambiguous. On the one hand, as a general principle it entitles all people to self-determination, without naming the means and end- result. On the other hand it explicitly grants the right to people of trust and non-self governing territories, people under foreign occupation and people under racial discrimination and names the ultimate goal of self-determination - independence.

On a general level, similar line of difference could be drawn between provisions of treaty law and customary law. Treaty law only provides for self-determination of the whole people of each contracting state, whereas customary law grants this right also to all people but explicitly to people under colonial rule, foreign occupation and racial discrimination. Furthermore, customary law provides the denied groups with license to achieve self-determination through the use of force, whereas treaty law does not specify any means for enforcement of the right.⁶⁷

It is clear that the right to self-determination of the "colonial" group of "people" is exercised whenever one of the three abovementioned modes are attained, but it remains vague what self-determination means for the "universal" group of "people".

A bit of clarity on this is provided in the Conference to Security and Cooperation in Europe (CSCE) Helsinki final act of August 1975. By the time of adopting this act, Europe represented a part of the world where people of trust and non-self governing territories, people under foreign occupation and people under racial discrimination were completely absent. Principle 8 of the CSCE Act, which was signed by 35 European states plus US and Canada envisages:

"The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations

⁶⁷ Cassese, Antonio, *Self-determination of peoples: A Legal Reappraisal*, p. 160

and with relevant norms of the international law, including those related to the territorial integrity of States.

By virtue of the principle of equal rights and self-determination of peoples, 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.

The participating States reaffirm the universal of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States. They also recall the importance of elimination of any form of violation of this principle”.⁶⁸

The principle clearly states that self-determination ends where the territorial integrity of a state is concerned. Therefore, the right to self-determination in this document could be interpreted as the continuous right to elect in full freedom the form of government as it wishes. This right should be understood as a right to internal self-determination, i.e. to choose freely and without discrimination the form of government of a state within a sovereign state and this right is given to whole people and not part of the people. The principle also entitles right to self-determination free of outside (external) interference. The right to self-determination given here is clearly the one which should not disrupt the territorial integrity of a state, but could decide on the change of its status or unification or incorporation into another state. This interpretation becomes all the more eligible if we look at the author of the initiative to include this principle into the Final Act – the Federal Republic of Germany. “It is the political aim of the FRG to help create a state of peace in Europe in which the German nation can regain its unity in free-determination” – said the FRG chancellor Schmidt in an address to CSCE in Helsinki.⁶⁹ The phrase was borrowed from a “letter on German unity” which the FRG government attached to the intra-German treaty of 1973.⁷⁰ It is noteworthy that the right to self-determination is not bestowed upon national minorities residing in the CSCE member states. The principle VII which deals inter alia with the rights of national minorities does not mention the right to self-determination at all. Helsinki provisions were once again confirmed in the Charter of Paris for a New Europe adopted by CSCE Heads of States and Governments in 1990 in which they

⁶⁸ CSCE Final Act, Principle 8, <http://www.osce.org/mc/39501?download=true>

⁶⁹ Address by the Chancellor of the Federal Republic of Germany, Helmut Schmidt to the third stage of the Conference on Security and Co-operation in Europe Helsinki, 30 July to 1 August 1975, <http://www.osce.org/documents/16088?download=true>

⁷⁰ Haftendorn, Helga, *Coming of Age*, p.181

“reaffirmed the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with relevant norms of the international law, including those related to the territorial integrity of States”.⁷¹

The analysis of the treaty law and UN GA resolutions as well as CSCE declarations has demonstrated that self-determination gradually turned from political principle into a legal norm. Furthermore, there are several factors pointing at peremptory character of the norm. Overwhelming majority of states ratified the International Human Rights Covenants, General Assembly resolutions 1514 and 2625 have been adopted almost unanimously and governments in Europe as well as Africa, Asia and Latin America regions accept the right of peoples to self-determination. Self-determination could also be seen as peremptory norm in the prism of larger principle of respect for fundamental human rights which itself is jus cogens.

In order to operationalise the norm in international law it is essential to explore judgments and opinions of the International Court of Justice which dealt with the cases involving right to self-determination. This will shed more light on the interpretation of this complex norm.

2.2.4 Court Decisions

Several cases have been heard by the International Court of Justice concerning the issue of self-determination. The first two cases on Namibia and Western Sahara dealt with the colonial context. The ICJ advisory opinion delivered in 1971 on the Case on *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276* was the first opinion in which self-determination was mentioned. Namibia was put under South Africa’s mandate by the League of Nations. South Africa argued that after the dissolution of the League of Nations the mandate had lapsed, and there was no requirement to put Namibia under trusteeship according to UN charter. Therefore South Africa felt entitled to annex Namibia. ICJ inter alia opined that the development of international law in regard to non-self-governing territories, as enshrined in the Charter of the UN, made the principle of self-

⁷¹ Charter of Paris for New Europe, 19-21 November 1990, <http://www.osce.org/mc/39516?download=true>

determination applicable to all of them⁷² and “the last fifty years, have brought important developments. These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned.” Therefore, due to the fact that self-determination never occurred in Namibia, annexation by South Africa was illegal.⁷³

The second advisory opinion entailing self-determination was given by the ICJ in 1975 on the case concerning Western Sahara. The Court made references to the UN Charter and UN GA resolution 1514, 1541 and 2625 as well as ICJ opinion on Namibia to assert that self-determination has become an explicit right in international law for colonial peoples and underpinned the importance of freely expressed wish of the people in the process of self-determination.⁷⁴

The issue was again raised in Portugal’s appeal to ICJ to adjudicate on legality of Australia’s conclusion of an agreement with Indonesia on delimitation of maritime border in the East Timor segment. In 1975 East Timor a non-self-governing territory administered by Portugal was annexed by Indonesia in violation of self-determination. ICJ stated that

“the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court.... it is one of the essential principles of contemporary international law”.⁷⁵

To summarize all three opinions, the Court declares that self-determination has become an integral part of the international law. It exists for all colonial people before the attainment of independence or other two modes of self-government based on free expression of the will of people. Self-determination has an *erga omnes* character and is not limited to single cases. However, there is one caveat that should be taken into account. Namibia, Western Sahara and

⁷² ICJ Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 21 June, 1971, Para.52, <http://www.icj-cij.org/docket/files/53/5595.pdf>

⁷³ *ibid.* para 117-126

⁷⁴ ICJ Advisory Opinion on Western Sahara, 16 October 1975, para 54-59, <http://www.icj-cij.org/docket/files/61/6195.pdf>

⁷⁵ ICJ Advisory Opinion on East Timor, 30 June 1995, para 29, <http://www.icj-cij.org/docket/files/84/6949.pdf>

East Timor all were either trust or a non-self-governing territory, the right of whose people to self-determination was explicitly granted anyway.

There is only one advisory opinion so far (except Kosovo which will be dealt with in the following chapter) which indirectly deals with self-determination in sovereign, independent states. ICJ judgment on *Military and Paramilitary Activities in and against Nicaragua* was delivered in 1986. The Court found that the US breached international law by violating sovereignty of Nicaragua, using force against Nicaragua and intervening in the internal affairs of Nicaragua.⁷⁶ The Court defined the content of the principle of non-intervention in the following way:

“A prohibited intervention must ... be one bearing on matters in which each State is permitted, by the principle of State sovereignty to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones”.⁷⁷

Free choice of a political, economic, social and cultural system is how self-determination is defined in International Human Rights Covenants and UN GA 1514 as described above. Therefore, it could be inferred from the ICJ judgment that self-determination is applicable also to people of sovereign states - as Nicaragua clearly did not represent a colony in 1986. Critics may argue that this paragraph could also be interpreted in a different way and the Court did not mean self-determination under free choice of the system quoted in the text. Nevertheless, the exact choice and sequence of the words as describing self-determination in other UN documents could not have happened accidentally and clearly it represents a reference to right to self-determination. This opinion underlines the right of people of sovereign countries to external self-determination, i.e. freedom to choose its own form of government without outside interference.

The abovementioned Western Sahara case is also interesting because two sovereign nations Morocco and Mauritania claimed that Western Saharan territory belonged to them before Spanish colonisation and should be returned to them. There have been other cases where

⁷⁶ ICJ Judgment on Nicaragua vs. United States, 27 June 1986, para 15, <http://www.icj-cij.org/docket/files/70/6503.pdf>

⁷⁷ *ibid.* para 205

historical title to a territory competed with the principle of self-determination in determining the status of an entity. Next, we will look at some cases and international reaction to it.

2.2.5 Historical Title vs. Self-Determination

There have been several occasions where historical title to a territory challenged the self-determination principle and the outcomes as well as stance of the UN have been different. In case of Western Sahara the court found that “there were no legal ties of such a nature as might affect the application of..... the principle of self-determination through the free and genuine expression of the will of the peoples”.⁷⁸ Therefore, Western Sahara had the right to self-determination. Similarly, Indonesia and Guatemala argued that East Timor and Belize had been part of their territory in pre-colonial era and therefore they had right to incorporate them after the termination of colonial status. In both cases the UN General Assembly decided in favour of self-determination of the non-self governing entities and demanded the independence of both territories.⁷⁹

In Gibraltar and Falkland Islands cases the UN General Assembly decided differently. Here, the historical title of respectively Spain and Argentina were prioritized over the self-determination rights. The arguments of Spain and Argentina in both cases were that the paragraph 6 of Resolution 1514 - “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 Charter of the United Nations” overrides paragraph 2 that all peoples have right to self-determination. The Resolution 2353 declared the referendum held in Gibraltar contravening its earlier resolutions and called on UK and Spain to end the colonial situation.⁸⁰ None of the resolutions adopted on Falkland Islands mentioned of self-determination rights of Falklanders, rather they called for negotiation of the dispute over sovereignty between UK and Argentina.⁸¹

⁷⁸ ICJ Advisory Opinion on Western Sahara, 16 October 1975, para 160, <http://www.icj-cij.org/docket/files/61/6195.pdf>

⁷⁹ Musgrave, Thomas, Self-determination and National Minorities, pp. 242-45

⁸⁰ UN GA Resolution 2353 (XXII), 8 January 1968, <http://www.gibnet.com/library/un2353.htm>

⁸¹ UN Documents on the Falklands-Malvinas Conflict, <http://www.staff.city.ac.uk/p.willetts/SAC/UN/UN-LIST.HTM>

UK, as the administering authority on the other hand argued that the status of the territories should be based on the will of the people, which is clearly against unification with Spain and Argentina. Despite, these resolutions both Gibraltar and Falklands Islands remain under the UK jurisdiction based on referenda conducted in both entities in 2002 and 2013 respectively.⁸²

India got away with invasion and annexation of Goa, Damao and Din in 1961 arguing that these Portuguese colonies belonged to India in the past and were now liberated. Population of Goa was never consulted in a referendum on their status. The United Nations Security Council Resolution calling on withdrawal of Indian forces was vetoed by Soviet Union.⁸³ Subsequently, UN did not take any action on the matter. The population of other Portuguese colony Macau also did not get a chance to vote on its status, due to the fact that China appealed to the UN to delete the territory from a list of colonies and used historic title in negotiations with Portugal to decide on Macau's status in bilateral talks. Similar process occurred with retrocession of Hong Kong from the UK. The population of Dutch colony West Irian did not exercise its right to self-determination fully either, because the Indonesian authorities who claimed the territory and then were temporarily administering it from 1963 to 1969 did not provide for free expression of will and put pressure on the population to support integration into Indonesia at indirect "act of free choice" in 1969.⁸⁴

Russia inter alia used historical title and illegality of territory's transfer to Ukrainian Soviet Socialist Republic in 1954, for annexation of Crimea in 2014.⁸⁵ Crimean case however is even more complicated since Russia claims historical title and self-determination of part of population in a sovereign state simultaneously. This time, UN General Assembly adopted a resolution calling on states not to recognize "any change in the status of Crimea, or the Black Sea port city of Sevastopol, and to refrain from actions or dealings that might be interpreted as such."⁸⁶

All the aforementioned examples except Crimea concern the colonial context. Even in colonial context, the self-determination was not always given an upper hand vis-à-vis historical title as

⁸² Voters choose to remain UK territory, 12 March 2013, <http://www.bbc.com/news/uk-21750909>

⁸³ UN Security Council official records, 988th meeting 18 December, 1961
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.988

⁸⁴ Cassese, Antonio, Self-determination of Peoples: A Legal Reappraisal p.83-85

⁸⁵ Address of President Putin to members of State Duma, Federation Council and Heads of Regions of Russia, 18 March 2014, <http://kremlin.ru/transcripts/20603>

⁸⁶ UN GA Resolution 11493, 27 March 2014, <http://www.un.org/News/Press/docs//2014/ga11493.doc.htm>

the Gibraltar and Falkland Islands' cases show. On the other hand it could be argued that due to the fact that the UN has not raised the issue on status of these entities since the 1980's and the fact that after holding referenda both Gibraltar and Falklands Islands remain part of UK, the international community regarded this as a mode of self-determination and thereby implicitly agreed that in these territories self-determination right tops historical title when deciding over the status of non-self governing territory. Unfortunately, this conclusion is drawn only based on state practice and political constellation of the period when decision was taken. The relationship between historical title and self-determination in international law is not settled and needs clear regulation. A closer look at the state practice is needed also to shed light on another aspect of self-determination which is not clearly regulated – that of self-determination outside the colonial context. Next, I turn to analysis of state practice in application of self-determination in sovereign states.

2.2.6 International Practice

When we exclude colonial ingredient from self-determination only the notion of popular sovereignty is left. There have been only two cases when the UN sanctioned regimes that prevented equal participation of people in the government. Both of those regimes were racially discriminating against the black majority populations in South Africa and Southern Rhodesia. Starting from 1960 the United Nations regularly condemned South Africa's apartheid regime, embargoed it and declared null the constitution of South Africa.⁸⁷ In case of Southern Rhodesia, UN Security Council “condemned unilateral declaration of independence made by racist minority in Southern Rhodesia”⁸⁸ and “called upon all states not to recognize this illegal racist minority regime and to refrain from rendering any assistance to this illegal regime”⁸⁹. Certainly, deprivation of self-determination to South Rhodesian people, as well as racial discrimination against black population were the reasons for non-recognition of its independence, since Southern Rhodesia was qualified as non-self governing territory and was entitled to

⁸⁷ The UN: Partner in the struggle against Apartheid, <http://www.un.org/en/events/mandeladay/apartheid.shtml>

⁸⁸ UN SC Resolution 216, [https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/216\(1965\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/216(1965))

⁸⁹ Ibid.

independence. Its independence was recognized only after UK regained constitutional authority and let it into independence in 1980 under the new name of Zimbabwe.⁹⁰

What about self-determination of distinct ethnic or religious groups in the sovereign states, which is a particularly complex problem faced by numerous countries all over the globe? As we have seen international law does not mention the right of ethnic or religious minorities to self-determination. Internal self-determination of ethnic minorities could be achieved through various levels of autonomous arrangements within the sovereign state, with full access to participation in the government. External self-determination in this context equals to secession. States have been reluctant to recognize that secession derives from the right to self-determination. Before 2008, there was only one case when secession was recognized by the international community – Bangladesh. In all other cases, where seceding entity has established a de-facto state, the international community opposed to it. That territorial integrity of a sovereign state is immune to claims of self-determination by the ethnic groups - was the view unanimously shared by western, socialist and third world states. Both treaty law and customary law clearly state the inviolability of borders of sovereign states and their territorial integrity. Therefore, self-determination in independent states is limited only to its internal character, unless there are grave violations of human rights to the particular racial or ethnic group.

2.2.7 Conclusion

Principle of self-determination has passed a long way of evolution from a political idea into a legal norm. Today it is a principle strongly anchored in international law having a status of a peremptory norm. Self-determination applies to all people, albeit with substantial differences. Peoples of different units of self-determination have different rights. Peoples of trust and non-self governing territories under chapter XI, XII of the UN Charter and people whose entities are under foreign occupation, people who are racially discriminated against as well as people who are forcibly denied from having representative government have the right to choose its own political future by expressing its will at the referendum without external interference and on the

⁹⁰ Raic, David, Statehood and the law of self-determination, 2002, p. 130

basis of equality. Self-determination in these cases could either result in the independence of the entity, its free association with another state or integration with another state based on equality of the people – external self-determination. Where self-determination concerns a sovereign state, the self-determination is exercised by the rule against intervention in the domestic affairs of the state and in the free choice by its population of the form and composition of the government of the state. The customary law provides that the right to self-determination may not be partitioned and belongs to the whole population. Thus, right to self-determination is not granted to ethnic or religious minorities of a state exclusively, but rather together with the majority of the population. Therefore, the right to self-determination rules out any action that might disrupt the territorial integrity of a state. So, external self-determination right of peoples of trust and non-self governing territories as well as of countries under foreign domination and racial discrimination expires once they form an independent state and then only internal self-determination right applies. Thus, self-determination does not always equal to secession and there is no intrinsic attachment of self-determination to independence and sovereignty. Nevertheless, self-determination clauses in the treaty law are formulated too widely, which enables states to use formulations according to their political needs and interests. The problem is further aggravated by lack of commonly agreed definition of what “people” is. Demands of application of self-determination outside the colonial context in the recent past has also highlighted the importance of clear and explicit formulation of what self-determination entitles to the people of sovereign independent states in order to declare whether the right to self-determination entitles to secession or not. Otherwise it creates exactly the situation which was feared by the US Secretary of State Lansing and many western statesmen in the beginning of 20th century that “without a definite unit which is practical, application of this principle is dangerous to peace and stability. The phrase is simply loaded with dynamite”.⁹¹

To return to my research topic, it becomes clear that even though Abkhazia and South Ossetia exercised internal self-determination within the Georgian state through autonomous statuses rewarded to these entities, they still opted for external self-determination – secession. Therefore, in the next chapter I will explore secession, which is exactly the explosive element of the above “dynamite”.

⁹¹ Musgrave, Thomas, *Self-determination and National Minorities*, p.31

2.3. Secession in International Law

2.3.1 What is Secession?

International practice shows that there are several modes of creation of new states in international law, such as devolution, division, dissolution, unification, original acquisition and secession.⁹² The latter is a very important mode for the present research, because both Abkhazia and South Ossetia are qualified as seceding entities and therefore it is worth exploring how secession is treated in international law and what has the international practice been up to date in dealing with secessionist entities.

There is no single definition of secession and legal scholars interpret secession differently. Definition by Americas' and European legal conferences on self-determination and secession asserts that "the issue of secession arises whenever a significant proportion of the population of a given territory, being part of a State, expresses the wish by word or by deed to become a sovereign State in itself or to join and become part of another State".⁹³ John Dugard's formulation adds an important element to this – absence of consent of the parent state: "unilateral withdrawal of part of an existing state from that state without the consent of the government of that state".⁹⁴ This definition is very close to Marcelo Kohen's one which defines secession "as the creation of a new independent entity through the separation of part of the territory and population of an existing state, without the consent of the latter. Yet, secession can also take the form of separation of part of the territory of a State in order to be incorporated as part of another State, without the consent of the former".⁹⁵ James Crawford adds use or threat of force notion and defines it "as the creation of state by the use or threat of force without the consent of former sovereign".⁹⁶ In Supreme Court of Canada definition "secession is the effort of a group or section of a state to withdraw itself from the political and constitutional authority of that state, with a view to achieving statehood for a new territorial unit on the international plane. ... What is claimed by the right to secede unilaterally is the right to effectuate secession without the prior

⁹² Crawford, James: *The Creation of States in International Law*; p.341

⁹³ Dahlitz, Julie, ed. : *Secession and International Law: Conflict Avoidance-Regional Appraisals*; p.82

⁹⁴ Dahlitz, Julie, ed.: *Secession and International Law: Conflict Avoidance-Regional Appraisals*; p.89

⁹⁵ Kohen, Marcelo G, ed. "Secession – in International Law Perspectives", p. 3

⁹⁶ Crawford, James: *The Creation of States in International Law*; p.375

negotiations with the other provinces and the federal government”.⁹⁷ Thus, four out of five definitions cited here underline that secession occurs when the parent state does not agree to change of the status of that territory. Another important element is that the act of secession should be unilateral. Here I come up with my own operational definition which in my opinion captures all necessary characteristics of secession: “Secession is unilateral separation of a certain territory and population living on that territory from the existing state, without the consent of the latter, with the aim of forming an independent state or joining the other state, when the parent state continues to exist”. The instrumental factor here is the lack of approval by the parent state of letting the seceding entity into independence or joining the other state. That is why secession is very controversial in international law and as it would be demonstrated below there have been only a handful of successful cases of secession. It should be differentiated between secession and other types of creation or extinction of the states: 1) secession vs. separation: the former is a violent process without agreement, while the second is an agreed and/or peaceful one; (e.g. Serbia-Montenegro, Eritrea,) 2) secession vs. dissolution: in the first case parent state continues to exist while in the second it ceases to exist, (e.g. USSR, Czechoslovakia) 3) secession vs. devolution: in the first, the consent of the metropolitan state is absent and it is a unilateral process, while in the latter parent state gives consent and the process is gradual and consensual (e.g. South Sudan, British dominions) and lastly 4) secession vs. annexation, when the separating entity does not become a new state, but is integrated within an existing State (e.g. Texas, Crimea).

2.3.2 Secession in International law

It is a common sense that international law neither prohibits nor authorizes secession, because the existing law does not deal with this notion. As Kohen and Tomuschat argue, the states approached using of the term secession very carefully and minimized its use in the law.⁹⁸ Therefore, we do not find norms giving right to secession and subsequent independence to any

⁹⁷ Supreme Court of Canada Reference re secession of Quebec, August 20, 1998 para.83, 86 text available at: <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1643/index.do?r=AAAAAQcXVIYmVjIHNIY2Vzc2lvcgAAAAAAAAAE>

⁹⁸ Kohen, Marcelo G, ed. “Secession – in International Law Perspectives”, p. 3, Tomuschat, Kristian, “Secession and self-determination In: Kohen, Marcelo G, ed. “Secession – in International Law Perspectives”p.26

kind of group in the treaty law. What we do find is the principle of territorial integrity of the states, which prohibits states from using force against or intervening in the affairs of other states. Consequently, it prohibits other states from violating territorial integrity of a state, but does not say explicitly about prohibiting minorities residing in that state from seceding.⁹⁹ This could be explained by the fact that secession is considered as a domestic act and therefore should fall under national law. Nevertheless, the Supreme Court of Canada states that “international law is a relevant standard by which the legality of a purported act of secession may be measured”.¹⁰⁰ The UN Committee overseeing the Convention for the Elimination of Racial Discrimination (CERD) considers still that international law does not recognize a people’s right to unilateral secession.¹⁰¹ Thus, the conflict between secessionists and governmental authorities would still be regulated by the traditional law of internal armed conflicts, and generally treated as a “domestic affair”, in light of fundamental human rights prescriptions.¹⁰²

This is true, but for one special group of peoples, namely of states born in the process of decolonization. Declaration on the granting of independence to colonial countries and peoples of UN General Assembly Resolution 1514 (XV) explicitly stated that trust and other non-self-governing territories have the right to external self-determination and should become independent.

Thus, creation of states for the first time was transformed into a legal matter through an international norm of self-determination¹⁰³ and people who fell under the category of alien subjugation, domination and exploitation could establish new independent states according to international law. Several dozen states in Africa and Pacific, which were created in 1960’s, 1970’s and 1980’s owe their legitimate existence to this particular norm. Nevertheless, this norm is limited to the decolonization context and is vague on whether self-determination outside decolonization implies secession. Interestingly, the new states started to safeguard their newly earned sovereignty and territorial integrity right after independence.

⁹⁹ Tancredi, Antonio, Normative Due Process In: Kohen, Marcelo G, ed. “Secession – in International Law Perspectives”, p. 173

¹⁰⁰ Supreme Court of Canada Reference re secession of Quebec, August 20, 1998 Para.83

¹⁰¹ UN Committee on CERD, General Recommendation 21: Right to Self-Determination, 23 August, 1996, para.6, <http://www1.umn.edu/humanrts/gencomm/genrexxi.htm>

¹⁰² Tancredi, Antonio, Normative Due Process in: Kohen, Marcelo G, ed. “Secession – in International Law Perspectives”, p. 174

¹⁰³ see pp. 16-19

This practice is common to all regions of the world. Most secessionist conflicts were expected to take place in Africa, because borders were drawn so that certain ethnicities found themselves living in different countries. The Organization of African Unity (OAU) adopted the Cairo Declaration in July 1964, whereby all member States solemnly pledged themselves to respect the frontiers existing on their achievement of national independence¹⁰⁴, and discouraging attempts of secession. This was further reinforced by the International Court of Justice judgment on frontier dispute between Burkina Faso and Mali, in which the court upheld the *uti possidetis juris* principle of inviolability of borders achieved at independence.¹⁰⁵

In Europe, Helsinki Act of Conference for Security and Cooperation in Europe also gave territorial integrity principle an upper hand by upholding right of self-determination “in conformity with relevant norms of international law, including those relating to territorial integrity of States”.¹⁰⁶ Similarly, the 1993 Charter of the Commonwealth of Independent States strengthened the border inviolability clause by explicitly stating that “member states of CIS will build their relations on the basis of the inalienable rights of peoples to self-determination and the right to determine their fate without outside interference; the inviolability of state borders, the recognition of existing borders and the rejection of unlawful territorial annexations; the territorial integrity of states and the rejection of any actions directed towards breaking up alien territory”.¹⁰⁷

One of the norms to which CSCE final act referred to originates from UN GA Resolution 2625 (XXV) - Declaration on principles of international law concerning Friendly Relations and Cooperation Among States. Among others, it draws a clear line between the self-determination and the principle of territorial integrity of the states and provided that the right of self-determination shall not be

“construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples.... and

¹⁰⁴ AHG/Res. 16(I) of Cairo Declaration of Organisation of African Unity of 17-21 July, 1964,

¹⁰⁵ ICJ Judgment of 22 December 1986 on Frontier Dispute between Burkina Faso and Mali, <http://www.icj-cij.org/docket/index.php?sum=359&code=hvm&p1=3&p2=3&case=69&k=b3&p3=5>

¹⁰⁶ Helsinki Final Act, 1975, CSCE, 1 VIII

¹⁰⁷ Zbigniew Brzezinski, Paige Sullivan Russia and the Commonwealth of Independent States: Documents, Data, and Analysis”, CSIS, 1997

thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed and colour. Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country”.¹⁰⁸

This declaration is very important in terms of upholding the territorial integrity principle, right to self-determination and illegality of changing the territories by the use of force. However, this declaration is also important in a way that it could be seen as limiting the territorial integrity principle to cases when the government represents the whole people. It opens up a question on what happens when the government is not representing the whole people belonging to territory. Formulation of “distinction” was expanded in 1990’s in two UN documents – Declaration of the UN World Conference on Human Rights and GA Declaration on the Occasion of the Fiftieth Anniversary of the UN by replacing original distinction to race, creed and colour to “distinction of any kind”.¹⁰⁹ Here is where the inferred right of “remedial secession” - a term which is widely used by now in legal literature steps in.

2.3.3 Remedial Secession

Remedial secession is a term coined by a legal scholar Lee Buchheit. It became very popular in legal literature in the last thirty years. Buchheit suggests that secession could be approached in two ways. In the first case, secession should be seen as an instrument for freeing the oppressed community from a state which inflicts massive and grave violations of human rights in discriminatory way. “Remedial secession envisions a scheme by which... international law recognizes a continuum of remedies ranging from protection of individual rights, to minority rights and ending with secession as ultimate remedy”.¹¹⁰ Here the argument is based on moral grounds that the state which oppresses its minorities loses the right to govern over those minorities – an argument taken by both Russia and the West in recognizing Abkhazia and South Ossetia and Kosovo independence respectively. Buchheit also talks about the second approach, which he calls “parochial model of secession” and is not accepted in international law. This

¹⁰⁸ Declaration on principles of international law concerning Friendly Relations and Cooperation Among States, para 7, UN GA Res. 2625 (XXV) 24 October, 1970

¹⁰⁹ Vienna Declaration of the UN World Conference on Human Rights 25 June 1993, para. 2, <http://www2.ohchr.org/english/law/vienna.htm> and Declaration on the Occasion of the Fiftieth Anniversary of the UN, UN GA Res. 50/6 24 October 1995, para. 1 <http://www.un.org/documents/ga/res/50/a50r006.htm>

¹¹⁰ Buchheit, Lee, Secession - Legitimacy of Self-determination, 1978 p.223

approach implies that no matter how well distinct communities are represented in the government, they still have the right “to be governed by those like oneself. It is unconcerned with the relative merits of the alien rule, because the mere fact of alien domination is the basis for complaint”.¹¹¹ This argument is based on political right of freedom of association. Buchheit is echoed by another scholar Allen Buchanan who distinguishes between two types of theories supporting the right of secession. “Remedial Right Only Theories assert that a group has general right to secede if and only if it has suffered certain injustices, for which secession is an appropriate remedy”.¹¹² The second type of theory is a primary right theory, which asserts that the certain group can have the right to secede in the absence of any injustice.¹¹³ This theory rests on political right of self-determination. Most scholars argue that in case a large group of distinct identities are denied basic rights to representation, are suffering grave violations of their civil and human rights and the state is abusing its sovereign power, this group would have a qualified right to secession. Moreover, these violations should have occurred in tandem in order to give rise to the right of secession. Some even add that the likelihood for a possible peaceful solution within the existing state structure should not exist either.¹¹⁴ To summarise the two theories, “the first argues that a group attains moral right to self-determination when it has suffered certain kinds of threats or grievances, including “historical grievances”, such as previous invasion or annexation, as well as threats to its cultural preservation, threats of genocide and finally “discriminatory redistribution”. The other type of answer argues..... that self-determination is a “basic right, rooted in liberal democratic theory, available to any group the majority of whose members desire it. Threats and grievances are unnecessary to establish a claim”¹¹⁵. The political and legal theories however are not equally reflected in the international law. Whereas, basic right of self-determination in international law is attributed only to the colonial entities, the peoples outside colonial context are implied to have the right for self-determination only within the state boundary. The so-called remedial right could be inferred in cases of gross violation of human rights as an *ultima ratio*. The mainstream opinion is that inherent conflict between self-

¹¹¹ *ibid.*

¹¹² Buchanan, Allen, *Theories of Secession, Philosophy&Public Affairs*, Vol. 26, Issue 1, 1997 p.35

¹¹³ *ibid*

¹¹⁴ Cassese, Antonio, *Self-Determination of Peoples: A Legal Reappraisal*, p.119

¹¹⁵ Philpott, Daniel, *Self-Determination in Practice*, In: Moore, Margareth, ed. “National self-determination and secession”, 2003, p.80

determination of peoples and the territorial integrity continues to be resolved in favour of state sovereignty - in line with the then UN Secretary-General U Thant's famous stance towards Biafra's secession in 1970:

“As far as the question of secession of a particular section of a state is concerned, the United Nations attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe will ever accept the principle of secession of a part of its member states”.¹¹⁶

As conventional wisdom has it, international law neither prohibits nor authorizes secession. So, what provisions of the international law are the legal scholars basing themselves when pointing at the existence of this “remedial” right?

According to Tancredi, this approach takes its origin from the advisory opinion given by the second Commission of Rapporteurs in case of Aaland Islands, which sought secession from Finland and re-union with Sweden.¹¹⁷ The first Commission of Rapporteurs in July 1920 rejected the application of the principle of self-determination to Aalanders because of the absence of “[recognition] of the right of national groups as such to separate themselves from the state, which they form part by the simple expression of a wish”.¹¹⁸ The second Commission in April 1921 proposed a strengthening of autonomy and guaranteeing the use of Swedish language on the islands, upheld Finnish sovereignty over the islands, and further stated that

“the separation of a minority from the state of which it forms a part and its incorporation into another state may only be considered as an altogether exceptional solution, a last resort when the state lacks either the will or the power to enact just and effective guarantees”.¹¹⁹

The report also stated that should Finland fail granting autonomy to the Aaland Islands, their right of secession would be recognized.¹²⁰ Here, for the first time a State was instructed to

¹¹⁶ Tomuschat, Kristian, “Secession and self-determination In: Kohen, Marcelo G, ed. “Secession – in International Law Perspectives” p.29

¹¹⁷ Tancredi, Antonio, Normative Due Process in: Kohen, Marcelo G, ed. “Secession – in International Law Perspectives”, 2006, p. 175

¹¹⁸ Report of the International Commission of Jurists entrusted by the Council of the League of Nations with a task to give advisory opinion upon the legal aspects of Aaland island question, <http://www.ilsa.org/jessup/jessup10/basicmats/aaland1.pdf>

¹¹⁹ Report presented to the Council of the League of Nations by the Commission of Rapporteurs, 16 April, 1921 p.4 <http://www.ilsa.org/jessup/jessup10/basicmats/index2.php>

¹²⁰ *ibid.* p.13

guarantee minority rights or otherwise “remedial” secession right could be granted to secessionists.

The discussion on remedial secession right was taken further by the abovementioned UN GA Resolution 2625 on Friendly Relations Among States and particularly by the penultimate sentence of paragraph 7 – “the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour”. The Supreme Court of Canada in its reference on Quebec secession inferred a right to secession from that declaration concluding that:

“A right to external self-determination arises in only the most extreme of cases, and, even then, under carefully defined circumstances.... The underlying proposition is that, when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession. The *Vienna Declaration* requirement that governments represent "the whole people belonging to the territory without distinction of any kind" adds credence to the assertion that such a complete blockage may potentially give rise to a right of secession”.¹²¹

However, the Court adds that “it remains unclear whether this ... proposition actually reflects an established international law standard”.¹²² Many other scholars also state that the resolution infers such a right. Cassese, asserts that secession is legitimate if "the central authorities of a sovereign State persistently refuse to grant participatory rights to a religious or racial group, grossly and systematically trample upon their fundamental rights, and deny the possibility of reaching a peaceful settlement within the framework of the State structure”.¹²³ Buchheit echoes this by saying that the "innovation of the declaration rests in its implicit acceptance of limitations upon the deference to be accorded to the territorial integrity of States -- limitations arising from the States’ duty to provide a democratic government and protection for basic human rights".¹²⁴ Raic comes to similar conclusion:

“Within the framework of the qualified secession doctrine, there is general agreement on the constitutive parameters for the right of unilateral secession, which may be summarized as follows: a) there must be a people, which though numerical minority in relation to the rest of the population of the

¹²¹ Supreme Court of Canada Reference re Secession of Quebec, 20 August, 1998, para. 126, 134

¹²² *ibid.* para. 135

¹²³ Cassese, Antonio, *Self-Determination of Peoples: A Legal Reappraisal*, 2008, p.319

¹²⁴ Buchheit, Lee, *Secession - Legitimacy of Self-determination*, 1978, p.94

parent state, forms a majority within identifiable part of the territory of that state. b) the people in question must have suffered grievous wrongs at the hand of the parent state from which it wishes to secede consisting of either i) a serious violation or denial of the right of self-determination of the people concerned and/or ii) serious and widespread violations of fundamental human rights of that people and c) there must be no (further) realistic and effective remedies for the peaceful settlement of the conflict”.¹²⁵

Undoubtedly, drafters of the UN GA resolution were aware that self-determination principle could be ultimately interpreted as a qualified right to secession, hence during the debates it was stated that “an essential element of the principle should be the duty of States to accord to peoples within their jurisdiction the right to determine their political status and to pursue their social, economic and cultural development without discrimination as to race, creed or colour. It is not intended that the inclusion of such an element should encourage or condone secessionist or irredentist movements”.¹²⁶

Even though the empirical evidence of remedial secession right being granted is very scarce, there is still a broad consensus in legal literature that this right could be granted, when members of community suffer structural discrimination and all methods including international efforts to stop discrimination have failed. Consequently, the sovereignty of the states over its whole territory might be questioned, when their governments commit grave violations of fundamental human rights and prevent people from exercising their universal right of internal self-determination. Hence, the territorial integrity principle of a state is not as sacrosanct anymore, however, given the presumption in favour of territorial integrity, the threshold is high.¹²⁷ On the other hand, international law, as it stands now, recognizes neither a general nor remedial right to secede. On the contrary, as we will see below, the practice predominantly supports self-determination inside the existing state and even when grave violations of minorities’ rights do occur, international community tends to settle the conflict in the framework of broad autonomy instead of secession. Nevertheless, lack of clearly formulated clause on remedial secession in

¹²⁵ Dugard, John, *International Law: A South African Perspective*, 2005, p.108

¹²⁶ UN GA Official Records, Agenda Item 87, Considerations of Principles of International Law concerning Friendly Relations and Co-operation among States, Report 3, A/6799, p.35-36, <http://invisiblecollege weblog.leidenuniv.nl/2010/03/03/special-committee-on-principles-of-inter/>

¹²⁷ MacFarlane, Neil, *Sovereignty and Self-Determination: Where are We?* In: *International Journal*, Vol.68 No.4, 2013 p. 627

international law, allows the states to interpret the concept freely and according to their political interests.

2.3.4 Secession in Violation of International Law

As we have seen, in certain extreme cases quest for secession could become legitimate. Again, in the absence of a concrete legal clause prohibiting secession, it is indispensable for the present research to analyse in which circumstances secession is deemed illegal.

According to Tancredi, international law sets out a normative due process through which secession could happen. Even though, international law does not deal with the substance of state creation, it is possible to isolate a different normative profile which deals with the procedure.¹²⁸ Three rules should be jointly applied in order for secession not to contradict to international law.

Firstly, secession should take place without direct or indirect military support of foreign states, since secessionist conflict is considered intra-state affair, and thus use of force and military intervention are prohibited by peremptory norms as well as respect of territorial integrity.¹²⁹ UN GA Resolution 2131 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty explicitly states that:

“No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State”.

The intervention could only be justified on the basis of protection of fundamental human rights under the notion of “responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity”,¹³⁰ but in no way should be directed against unity or territorial integrity of a State. To put the concept of responsibility to protect into

¹²⁸ Tancredi, Antonio, Normative Due Process in: Kohen, Marcelo G, ed. “Secession – in International Law Perspectives”, p. 189

¹²⁹ UN GA Resolution 2625 (XXV), UN GA Resolution 3314 (XXIX), CSCE Helsinki Final Act, 1975

¹³⁰ “2005 World Summit Outcome Document,” UN General Assembly, New York, 2005, para 138 and 139.

practice seven criteria must be met: just cause threshold, right intention, last resort, proportionate means, reasonable prospects, right authority (UNSC) and clear and unambiguous mandate at all times.¹³¹

Secondly, there is an increasing tendency that secession should be founded on the results of referenda or plebiscite, where majority of population expresses wish for secession. This has become an important factor especially after the Badinter Commission requested Bosnia and Hercegovina to hold a referendum before recognizing its independence.¹³² Since then number of secessionist entities Transnistria, Kosovo, Chechnya, Karabakh, Abkhazia, South Ossetia, South Sudan, Eritrea, Crimea, Scotland have all held referenda on independence. Catalonia is about to hold it.

Thirdly, seceding entity must respect *uti possidetis juris* principle, meaning that former administrative border of the entity at the time of creation of a new state should remain intact. The abovementioned ICJ ruling on Burkina-Faso and Mali stated that this “is a general principle which is logically connected with the phenomenon of obtaining independence, wherever it occurs”.¹³³

Whenever one of these aspects is absent, the secession and subsequent creation of state is regarded as illegitimate. In such cases, international community is called on not to recognize the secessionist entity as a state. There is quite high number of cases when international community did not extend recognition to such entities – Manchukuo, Southern Rhodesia, South Africa Bantustans, Northern Cyprus, etc. There is a debate in literature whether non-recognition of illegitimate secession hinders statehood and legal personality of a de-facto entity. It should be stressed that in this case we talk about the entities that have effective control over certain part of territory, its population and government – entities fulfilling the Montevideo criteria (see next chapter). On the one hand, it is argued that the entity formed in violation of the norms of non-use of force, aggression and self-determination may not be considered as state for international law purposes. Therefore lawfulness of state creation should be considered as another requirement of statehood. On the other hand it is argued

¹³¹ Report of the International Commission on Intervention and State Sovereignty, Responsibility to Protect, 2001

¹³² Badinter Commission opinion no 4, <http://ejil.org/pdfs/3/1/1175.pdf>

¹³³ ICJ Judgment of 22 December 1986 on Frontier Dispute between Burkina Faso and Mali, <http://www.icj-cij.org/docket/index.php?sum=359&code=hvm&p1=3&p2=3&case=69&k=b3&p3=5>

that a State is a mere fact and the law cannot cancel its existence, since neither UN GA nor UN SC is vested with the power to eliminate the factual existence of an entity by a resolution.¹³⁴

As for the legal personality, here it is distinguished between legal capacity of the entity, and entity's capacity to perform valid acts. Such an entity still has legal capacity, because in some way it remains an addressee of international norms even though it is not recognized and it is obliged to observe peremptory norms. The existing practice increasingly shows that in UN Security Council resolutions on Abkhazia, Karabakh, in OSCE resolutions on South Ossetia, Transnistria the de-facto entities are called upon to refrain from use of force and protect fundamental human rights on the territory under their effective control. ICJ in its advisory opinion on Namibia stated that "physical control of a territory, and not sovereignty or legitimacy of title, is the basis of state liability for acts affecting other states".¹³⁵ The European Court of Human Rights in its 2001 judgment on the case Cyprus vs. Turkey stated that de-facto authority in Northern Cyprus is exercised by the organs of Turkish Republic of Northern Cyprus, which has been recognized only by Turkey so far.¹³⁶

As for capacity to perform valid acts, the aim of non-recognition is certainly to deprive such an entity of this capacity. Any legal act that is enacted by the de-facto entity is void and illegal only if other international subjects do not recognize such effect on their behavior. If we look at the decision of Russian Prime-Minister of May 2008 on establishing direct relations with Abkhazia and South Ossetia, even without official recognition of these entities, it becomes clear that legal acts enacted by those entities have validity in regards to Russian Federation. Same could be said about Armenia-Karabakh, Transnistria-Russian Federation, Crimea-Russian Federation and other non-recognition cases. According to practice, acts of the illegitimate entities are generally recognized by third States in the following situations: 1) for humanitarian reasons (for example tsunami case in Tamil

¹³⁴ Tancredi, Antonio, Normative Due Process in: Kohen, Marcelo G, ed. "Secession – in International Law Perspectives", 2006, p. 198

¹³⁵ ICJ advisory opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) text available at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=a7&case=53&code=nam&p3=5>

¹³⁶ ECHR Cyprus vs. Turkey judgment, text available at <http://sim.law.uu.nl/sim/caselaw/Hof.nsf/1d4d0dd240bfee7ec12568490035df05/636862e7f2911c42c1256a490031e2f2?OpenDocument>

Eelam); 2) With regard to arrangements of private and domestic nature (Turkish vessels trading with Abkhazia); and 3) Routine administration issues such as registrations of births, marriages and deaths and car license plates (Usage of these certificates has been common in all secessionist conflicts in the former Soviet space, crossing of Russian, Ukrainian and Armenian border by documents issued by de-facto entities was a commonplace in Abkhazia, Transnistria and Karabakh respectively). This approach is based on the assumption that the isolation of illegitimate entity should not occur at the expense of people living on its territory.

Even though, up-to-date the international law has been designed in a way to support the states in preserving territorial integrity and the United Nations as the major international organization is a fervent supporter of this principle, it becomes clear that there are some gaps in international law that could be used by illegitimate entities to establish states. True, as the practice shows such states would not be recognized and they would have very limited legal personality, but the fact is that their factual existence could not be denied. Therefore, these illegitimate secessionist entities do play a role in international relations and are addressees of norms of international law. To this end, we may conclude that there is no effective remedy in international law to stop the de-facto entity from becoming a state, if it fulfils the criteria of territory, population and government, other than non-recognition, which does not influence the factual existence of a state, but limits its international legal capacity to act.

2.3.5 Court Opinions

In October 2008, the United Nations General Assembly put a question to the International Court of Justice: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government (PISG) of Kosovo in accordance with international law?”¹³⁷ The procedure was initiated by Serbia, which was confident that the ICJ would rule in its favour. ICJ delivered its opinion on July 22, 2010. By ten votes to four it is of the opinion that the declaration of

¹³⁷ International Court of Justice, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, 22 July, 2010 available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=5>

independence of Kosovo did not violate international law.¹³⁸ Paragraph 122 stated that “the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council Resolution 1244 or the Constitutional Framework. ...Consequently the adoption of that declaration did not violate any applicable rule of international law”.¹³⁹ In paragraphs 79-84 the Court examined in detail whether the declaration of independence is in accordance with general international law. It concludes that:

“during the eighteenth, nineteenth and early twentieth centuries, there were numerous instances of declarations of independence, often strenuously opposed by the State, from which independence was being declared, sometimes, a declaration resulted in the creation of a new state, at others it did not. In no case, however, does the practice of states as a whole suggest that the act of promulgating the declaration was regarded as contrary to international law. On the contrary, State practice during this period points clearly to the conclusion that international law contained no prohibition of declarations of independence. During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation. A great many new States have come into existence as a result of the exercise of this right. There were, however, also instances of declarations of independence outside this context. The practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases”.¹⁴⁰

As for the principle of territorial integrity, the Court notes that it is “an important part of the legal order, enshrined in the Charter of the UN”, but “the scope of the principle of territorial integrity is confined to the sphere of relations between States”.¹⁴¹ The court further observes that Security Council has condemned particular declarations of independence such as Rhodesia, Northern Cyprus and Republika Srpska and “the illegality attached to the declarations of independence, stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of the peremptory character”.¹⁴² The Court noted that in the context of Kosovo, UN SC has never taken such a position. “The exceptional character of the resolutions enumerated above appears to the Court to

¹³⁸ *Ibid.* Para 123

¹³⁹ *Ibid.* Para 122

¹⁴⁰ *Ibid.* Para. 79

¹⁴¹ *Ibid.* para. 80

¹⁴² *Ibid.* para 81

confirm that no general prohibition against unilateral declarations of independence may be inferred from the practice of the Security Council”.¹⁴³ The Court declined to comment on whether part of the population of an existing state has a right to separate from that state, or whether international law provides for a right of “remedial secession”, but noted that radically different views were expressed during the discussions. The dissenting and separate opinions of judges have expressed different reasons for disagreement. As most of the passages relate to procedural issues, jurisdiction and the lex specialis - related to interpretation of Resolution 1244, UNMIK mandate as well as interpretation of what represents PISG, I would concentrate on the references made to general international law. Judge Koroma concluded that “unilateral declaration of Kosovo independence violated the principle of respect for the sovereignty and territorial integrity of States, which entails an obligation to respect the definition, delineation and territorial integrity of an existing state”.¹⁴⁴ He also made a reference to Supreme Court of Canada finding that “international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their parent state”¹⁴⁵ and concluded that ICJ should have made clear that the applicable law in this case contains explicit and implicit rules against the unilateral declaration of independence. Judge Simma bemoaned that “this request deserved a more comprehensive answer, which could have included a deeper analysis of whether the principle of self-determination or any other rule (perhaps expressly mentioning remedial secession) permit or even warrant independence (via secession) of certain people/territories”.¹⁴⁶ According to him, “the Court denied itself the possibility to enquire into the precise status under international law of declaration of independence”.¹⁴⁷ His position is supported by Judge Sepulveda-Amor and Judge Yusuf, who stated that the Court could have elucidated a number of important legal issues such as powers of UN SC in relation to territorial integrity, “remedial secession” and state recognition and thus prevented of the misuse of the post-colonial right of self-determination by groups promoting ethnic and tribal divisions within the existing states.¹⁴⁸

¹⁴³ *ibid.*

¹⁴⁴ *ibid.* annex to summary 2010/2 p.3

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.* page 5

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.* pp. 6, 16

The International Court of Justice chose a very narrow interpretation of Kosovo's declaration of independence and did not shed light on this very complex question. Clearly, Serbian hopes were not met with this Opinion, but it could not be regarded as a victory for the secessionist cause either. The fact that this particular declaration of independence does not contradict international law does not mean that there exists a positive right to secede from an existing state. Supreme Court of Canada reference to Quebec Secession made a broader interpretation of this point.

After two failed referenda (although the second one was defeated by a margin of less than 1%) in Quebec organized during the rule of Parti Quebecois in 1976 and 1995 on secession of Quebec from Canada, the Federal Government submitted a reference to the Supreme Court of Canada concerning questions on unilateral secession. The first question concerned whether Quebec could effect secession under domestic Canadian law. The second question on international law is quoted in full - "Does International law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?"¹⁴⁹ Third question concerned the precedence in case domestic and international law conflict?

Regarding the second question, which is important for our analysis, the Court finds that "international law contains neither a right of unilateral secession nor the explicit denial of such a right, although such a denial is, to some extent, implicit in the exceptional circumstances required for secession to be permitted under the right of a people to self-determination".¹⁵⁰ The Court then examines the self-determination norm in international law and states that although much of the Quebec population certainly shares many of the characteristics of a people, it is not necessary to decide the "people" issue because, whatever may be the correct determination of this issue in the context of Quebec, a right to secession only arises under the principle of self-determination of people at international law where "a people" is governed as part of a colonial empire, is subject to alien subjugation, domination or exploitation and possibly denied any

¹⁴⁹ Supreme Court of Canada Reference re secession of Quebec, August 20, 1998 text available at:

<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1643/index.do?r=AAAAAQcXVIYmVjIHNIY2Vzc2lvbgAAAAAAAE>

¹⁵⁰ *ibid.* para 112

meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state.¹⁵¹

“A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states”.¹⁵²

The Court further opined that Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the "National Assembly, the legislature or the government of Quebec" do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally.¹⁵³

The Court also addressed the argument of effectivity in international law by stating that “although there is no right, under the Constitution or at international law, to unilateral secession, the possibility of an unconstitutional declaration of secession leading to a *de facto* secession is not ruled out. The ultimate success of such secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition.”¹⁵⁴ However, the Court concluded that even if granted, such recognition would not provide any retroactive justification for the act of secession, either under the Constitution of Canada or at international law.¹⁵⁵

Drawing from the fact that the international law does not provide a clear answer on legality of secession, it is necessary to turn to state practice and look at how states have reacted to secession attempts worldwide and how many secessionist entities (outside the colonial context) have finally arrived at independence and have become fully-fledged members of international community and full legal persons.

¹⁵¹ *ibid.* para 122, 126, 127

¹⁵² *ibid.* para. 130

¹⁵³ *ibid.* para 136

¹⁵⁴ *ibid.* para 142

¹⁵⁵ *ibid.* para 144

2.3.6 International Practice

International legitimacy in the pre-1815 period still focused on the notion of state rights in customary international law, which given that most states were hereditary monarchies implied dynastic rights.¹⁵⁶ Legitimism was the prevalent theory of sovereignty during the age of monarchy. First challenge to this was certainly independence of the United States, but after the Congress of Vienna cases of recognition of secessionist entities multiplied. If in 1816 the international system had just 25 members, a century later, it was still less than fifty, whereas during the last 100 years almost 150 states entered the system and nearly two-thirds of the states entered the system after demanding independence.¹⁵⁷ International practice demonstrates that secession was treated differently in the period between the Vienna Congress and the WW II and post-1945 world. Therefore, I would divide this subchapter according to historical periods.

Secession in 1815-1945

First major outburst of secession movements took place in Spanish colonies of Latin America. By the end of the 18th century, Spanish colonies were divided into viceroyalties, which were governed by the legitimate representative of the Spanish King and smaller units called “general captaincies”. In total there were 4 viceroyalties and 4 general captaincies covering the whole area from Texas to Patagonia, excluding Portuguese colony – Brazil.¹⁵⁸ Starting with 1810, wave of independence declarations swept the continent over a decade. Proclamation of independence of the United Provinces of New Granada in 1810 was followed by the establishment of first Venezuelan republic in 1811. Spain re-conquered the latter a year later and New Granada in 1816, rendering the first secession attempt ineffective. New Granada and Venezuela again gave birth to the Republic of Colombia in 1819. In 1821 Panama declared independence and decided to join Colombia, a move which was emulated one year later by Ecuador. Similar development took place in the Viceroyalty of the Rio de la Plata and The general captaincy of Guatemala. Rio de la Plata was

¹⁵⁶ Fabry, Miculas: Recognising States, 2010, p.41

¹⁵⁷ Coggins, Bridget, Friends in High Places: International Politics and the Emergence of States from Secessionism, In: International Organization, 65, Summer 2011 pp. 433-67

¹⁵⁸ Pfirter, Frida Armas and Napolitano, Silvina Gonzalez – Secession and international law: Latin American Perspective, in: Kohen, Marcelo G, ed. “Secession – in International Law Perspectives”, 2006, p. 378-379

transformed into independent United Provinces of Rio de la Plata, out of which four independent republics were born: Argentina, Uruguay, Paraguay and Bolivia and the general captaincy of Guatemala after a brief spell with Mexico declared independence in the form of Central America Federation comprising of five states Costa Rica, Nicaragua, Honduras, El Salvador and Guatemala. Mexico itself was born out of the viceroyalty of New Spain after eleven years of war for independence in 1810-1821 and finally the viceroyalty of Peru and general captaincy of Chile formed new independent republics of Chile and Peru in 1818 and 1821 respectively. In 1822 United States under President Monroe recognized Mexico, Colombia and Rio de la Plata, Great Britain extended recognition in 1825. In Response to Spanish protests over recognition, the British Foreign Secretary George Canning stated:

“To continue to call that a possession of Spain, in which all Spanish occupation and power had been actually extinguished and effaced, could render no practical service to the Mother Country – but it would have the risked the peace of the world. For all political communities are responsible to other political communities for their conduct: - that is, they are bound to perform the ordinary international duties and to afford redress for any violation of the rights of others by their citizens or subjects. ...No other choice remained for Great Britain, or for any other country having intercourse with the Spanish American Provinces, but to recognize, in due time, their political existence as States”.¹⁵⁹

This description of recognition was the equivalent of modern de-jure recognition and it followed that parent state recognition was not a precondition for successful secession if effective independence is achieved.¹⁶⁰ Great Britain was the sole European power that recognized Spanish colonies as independent in the 1820's. Austria, Russia, France and Prussia all protested against the recognition and blamed Great Britain for disregarding sovereign rights. Spain recognized independence of former colonies after the death of King Ferdinand in 1836, however several European states inter alia France and Prussia recognized the Latin American republics prior to that.¹⁶¹

Brazilian independence did not stir up the relations between the European powers, because metropolitan recognition was extended relatively quickly by the Lisbon (not least due to preservation of royal family ruling) and recognition by European powers followed thereafter.

¹⁵⁹ Crawford, James: *The Creation of States in International Law*; 2007, p.378

¹⁶⁰ *Ibid.* p.379

¹⁶¹ Fabry, Miculas: *Recognising States*”, 2010 p.63

United State however recognized prior to Portugal's consent, justifying it as in cases of Spanish colonies with simple existence of a fact of "government of Brazil, exercising all the essential authorities".¹⁶²

The vast majority of new entities maintained the administrative borders they had under viceroyalties and general captaincies, thereby accepting *uti possidetis juris* as a general principle. Certainly, the United Provinces of Rio de La Plata, Colombia, Central American Federation and Mexico disintegrated and gave birth to a dozen independent republics by the mid-19th century, but none of those cases could qualify as secession, since the process proceeded with consent of the federal government and therefore they would qualify as dissolution and separation, rather than secession, with the exception of Texas and Panama.

At the time of creation of Mexico in 1821, Texas was part of it and the United States had recognized the sovereignty of Spain over Texas in exchange for occupation of Florida. In 1821 first thirty Anglo-Saxon families led by Moses Austin settled in Texas. Four years later, the United States government offered purchase of Texas but were rebuked by Mexican authorities. In 1830 Mexican government restricted Anglo-American immigration to Texas and ordered unification of Texas with Coahuila in order to improve the control over the area. Texans rebelled and took advantage of the chaos in central Mexican government in the hope of support from the United States. The expedition sent by central authorities to crush the insurgency failed and Texas declared independence on May 2, 1836. In spite of the wish of Texan leader Houston to annex Texas to the United States, US Congress turned this offer down and instead recognized the new republic. France and Britain followed suit and even tried to persuade Mexico to recognize Texas but failed. Mexico never recognized Texan independence until the defeat in the war against the United States in 1848. By that time, Texas was already a 28th state of the United States, without the consent of the former sovereign.

United States contributed greatly also to another secession case in Latin America, namely that of Panama. Panama as mentioned above declared independence in 1821 and joined Republic of Colombia. Although, Republic of Colombia was dismembered in 1829-1831, Panama stayed in the union. In 1903, United States and Colombia signed a treaty on indefinite concession of an

¹⁶² *ibid.* p.65

area in Panama to construct a channel for free navigation between the oceans. However, Colombian congress objected to the treaty. Discontent with the Colombian decision, people of Panama started separatist rebellion with the US support and in November 1903 Panama declared independence. The US immediately recognized Panama and signed Hay-Bunau-Varilla Treaty on ceding the territory for construction of the canal and paying 10 million USD to Panama government.¹⁶³ Only in 1921, when the canal had already been operational for 7 years, the US and Colombia signed Thomson-Urrutia Treaty whereby Colombia recognized independence of Panama and received 25 million USD in exchange.¹⁶⁴

Meanwhile, 19th century saw birth of several new states in Europe too. In the west, Belgium was a new state, which effectively broke away from the United Kingdom of Netherlands after a revolt in summer 1830 and after King William's failure to address grievances of Belgians. The provisional government declared independence and ousted Dutch soldiers from most of the Belgian territory. King William appealed to great powers who were guarantors of the 1814-15 treaty incorporating Belgium to the United Kingdom of Netherlands. Great Powers faced with de-facto secession and wary of shattering the balance of power in Europe convened in London. None of the powers except Russia was eager to fight for legitimist cause. Foreign Secretary of Great Britain Lord Palmerston declared that "any attempt to again join those countries together under any modification of union, would probably be as repugnant to the wishes of the Dutch, as it would be to the wishes of Belgians, and to any attempt to re-establish such a union by force, Her Majesty's government could never consent".¹⁶⁵ France and Austria also agreed and finally Russia acquiesced seeing lack of enthusiasm. The powers drafted the treaty of separation, which granted independence to Belgium. Dutch protests did not yield any results and Netherlands signed a treaty in 1839.

In the south, Greece emerged as another new state, which was the first state to attain de-facto independence on Ottoman territory. Greek revolt and subsequent declaration of independence in 1822 caught the great powers in confusion. Although, sympathetic to Greek independence, they saw the struggle potentially harming their own constitution. As early as 1823, Great Britain

¹⁶³ Der Grosse Ploetz, Die-Daten Enzyklopaedie zur Weltgeschichte, 1998, p.1312

¹⁶⁴ *ibid.*

¹⁶⁵ Fabry, Miculas: Recognising States" 2010, p.82

recognized equality of Greek and Ottoman belligerents.¹⁶⁶ Failure of the Sultan to suppress the insurgency for five years, atrocities committed by Turkish soldiers and aggravation of instability in the Mediterranean led Great Britain, Russia and France to conclude Treaty of London in 1827 and demand from Porte end of hostilities and armistice on the condition of Greek autonomy. Although, Ottomans rejected the treaty initially, their subsequent defeats on the battlefield in the war with Russia forced them to yield to pressure from the three powers and accept not only autonomy, but eventually, a full independence of Greece in 1830. Austria, Prussia and the US recognized Greece in 1833 and other European states shortly followed suit.

Five decades later, three new states namely Romania, Serbia and Montenegro emerged out of the Ottoman Empire. In 1870's mass mobilization in the Balkans against the Ottoman rule ignited new conflicts. The initial sparkle came from Bosnia and Hercegovina, where a local insurrection started in 1875.¹⁶⁷ Austria-Hungary, Russia and Germany advised Sultan to introduce political and economic reforms. The Sultan agreed, but the rebels declared they did not trust the Porte and violence gradually spread and embraced other parts of the European Turkey. Serbs and Montenegrins also joined the fight against the Ottomans. At the end of October 1876, when the death toll increased dramatically, Russia issued an ultimatum to Porte demanding cessation of fighting. The ultimatum did achieve armistice with Serbia, but the Porte refused to carry out necessary reforms to ease the lot of Slavic Christians. Russia had a strong resolve to take arms in case of Turkish objection and was supported by Austria-Hungary in this endeavour. Great Britain however, observed with fear the growing Russian influence in the European Turkey as destabilizing the balance of power.¹⁶⁸ Russian aims were supported by the declaration of war on the Ottomans in May 1877 and subsequent declaration of independence by the Bucharest government. In December, Romania and Montenegro, which did not sign armistice, were joined by Serbia. Faced with the occupation of Constantinople by the Russian forces, the Porte asked for armistice and in March 1878 San Stefano agreement recognized independence of Romania, Montenegro and Serbia. The Porte also approved Bulgarian and Bosnian autonomy.¹⁶⁹ Although,

¹⁶⁶ Протопопов, Козменко, Елманова, История международных отношений И внешней политики России, 2008, p.77

¹⁶⁷ Fabry, Miculas: Recognising States", 2010, p.99

¹⁶⁸ Протопопов, Козменко, Елманова, История международных отношений И внешней политики России, 2008, p.85

¹⁶⁹ Treaty of San-Stefano 1878, text available at: <http://archive.org/stream/mapofeuropebytre04hert#page/2672/mode/2up>

discontent with Russian unilateralism the Great Powers revised San Stefano Treaty at the Congress of Berlin in the same year, but the decision on recognition of independence of Romania, Serbia and Montenegro from the Ottoman Empire remained in force.¹⁷⁰

Similarly to Latin America, the entities that were able to effectively secede from the existing sovereign and establish de-facto states gained recognition from the Great Powers in Europe too. A novelty that was attributed to the recognition and remains valid until present is that recognition was extended with condition – for Brazil it was abolition of slavery, for Balkan states – protection of religious and ethnic minorities.¹⁷¹

Another parade of independence declarations in Europe occurred during the World War I. Both the Central Powers and Entente encouraged the ethnicities residing on each other's territory to secede from their sovereigns and respectively weaken the adversary. As early as in 1916 the independent Kingdom of Poland was proclaimed on the Russian territory which was predominantly inhabited by Poles and occupied by Germany and Austria-Hungary. The interim Government that assumed power after the February revolution of 1917 in Russia, realizing the weakness of Russian state accepted independence of Poland. The second revolution in October further shattered the country and its provinces started to declare independence one after another. In November 1917 Ukraine declared independence, followed by Finland, Baltic and Caucasus states. The treaty of Brest-Litovsk in 1918 forced Russia to withdraw its troops from these territories and Germany and its allies recognized them throughout 1918. However, as it became apparent that the Central powers were losing the war and the Brest-Litovsk treaty was renounced as illegitimate, Ukraine and the Caucasus states were gradually swallowed back by the Bolshevik Russia.¹⁷² Even though Georgia and Armenia were recognized by most of the League of Nations members by then¹⁷³, they represented the only cases whose extinction was not protested.¹⁷⁴ On the contrary, Finland already by 1919 was a de-facto state and received recognition by France, Britain and the US as well as other allies. So did the Baltic States in 1921, which basically guaranteed their independence and membership to the League of Nations. In a similar vein,

¹⁷⁰ Treaty of Berlin 1878, text available at <http://www.fordham.edu/halsall/mod/1878berlin.asp>

¹⁷¹ Fabry, Miculas: Recognising States, 2010, p.106

¹⁷² Ukraine in 1919, Armenia and Azerbaijan in 1920 and Georgia in 1921

¹⁷³ Georgia was recognized in January 1921

¹⁷⁴ Ментешашвили, Автандил, История взаимоотношений Грузинской Демократической Республики с советской Россией и Антантой. 1918-1921, 2000, p. 86

secession of entities populated by Czechs and Slovaks, Serbs, Croats and Slovenians and finally defeat in the war led to dissolution of Austria-Hungary and two new states emerged. At the Paris Peace Conference Czechoslovakia and Yugoslavia were recognized as independent. All of these new states had border disputes with the neighbouring states - as the *uti possidetis juris* principle was not applied and territorial claims were made due to different factors such as “economic viability”, “fortification of defence” or “access to the sea”. Undoubtedly, the birth of so many new states should be attributed not only to the war, but also to the high expectations raised by the Wilsonian declaration of the self-determination principle.

Post-1945 Period

Successful Secessions

After creation of the United Nations, the territorial integrity principle has been deeply anchored in international law. Thus, secession and subsequent recognition of secessionist entities has become very rare. In the last 70 years we have witnessed only a few cases of successful secession – in contrast to dissolution, devolution and other modes of state creation. Needless to say that I mean here non-colonial context, since secession of colonial entities was a positive right of international law after 1960 anyway.¹⁷⁵

There is a widespread consensus that Bangladesh is the successful case of secession from Pakistan. Bangladesh was formerly a non-contiguous part of Pakistan, with distinct population in terms of ethnicity, language and culture, with Islam being the only unifying factor.¹⁷⁶ The Awami-League, which nurtured the idea of autonomy for Bengalis, won the national elections in 1970 with an overwhelming majority. The Pakistani military rejected the results of the elections and deployed armed forces in the province, which caused eruption of civil war and declaration of independence. The humanitarian crisis and influx of refugees into India, led the Indian leadership to attack Pakistani forces and defeat them in the matter of two weeks. Awami-League then exercised full control over the territory and within five months was recognized by more than 70

¹⁷⁵ see :UN GA Resolution 1514 (XV), 1960

¹⁷⁶Thio, Li-Ann, International law and secession in Asia and Pacific regions, In: Kohen, Marcelo G, ed. “Secession – in International Law Perspectives”, 2006, p. 306

states. There are several reasons why Bangladeshi case found support of the international community. Geographical separation of East-Pakistan and the rest of Pakistan, lack of representation of the East-Pakistanis in the Pakistan government and economic backwardness pointing at quasi neo-colonial status; Distinct Bengali identity concentrated on that territory, and local support for autonomy as well as its huge size of population (more than 70 million in 1971). Finally, secession would not have undermined West Pakistan's political stability and economic wealth and would have served the establishment of peace and stability.¹⁷⁷ Still, it is a unique case, because the de-facto independence of Bangladesh was brought about by Indian intervention and defeat of Pakistani army. Therefore, according to current understanding of international law, this secession was legitimized on illegitimate grounds, since the boundaries were changed as a result of use of force. However, given the scale of humanitarian catastrophe committed by Pakistani army, the international community regarded Indian intervention as a humanitarian one. It could be said that Bangladesh was the first case when the debated right of remedial secession was granted. Nevertheless, the United Nations accepted Bangladesh as a new member only after Pakistan recognized its independence in 1974, although Bangladesh applied in 1972.

Kosovo could also be regarded as a successful secession case, even though it has not become a member of the UN and is not recognized by the parent country Serbia. Kosovo bears certain similarities with Bangladesh in terms of deprivation of autonomy, under-representation, poor economy, humanitarian crisis and outside intervention. Kosovo, once an autonomous province of Serbia with overwhelmingly Albanian population was deprived of autonomy in 1990 by the Serbian government. In 1991 Albanian leadership declared independence of the Republic of Kosovo, which was totally disapproved by the international community- with the exception of their kin across the border in Albania recognizing it. Hopes of Kosovars were dashed after UN GA resolutions calling for restoration of autonomy were ignored and the issue was not raised at international conferences on Yugoslavia in 1991, 1992 and 1995. Disappointed with the stance of international community, the Kosovo Liberation Army started an uprising in the province, which was brutally suppressed by Serbian security forces. Almost complete dislocation of ethnic Albanians from their homes and disregard of several warnings from the international community to Serb leadership to cease hostilities resulted in NATO's aerial intervention against Serbia and

¹⁷⁷ *ibid.*308

subsequent withdrawal of Serbian forces from Kosovo. UN SC Resolution 1244 of 1999 established an interim UN administration in Kosovo (UNMIK), pending final resolution of future legal status of Kosovo, thereby limiting Serbian sovereignty over the province and helping Kosovo to build autonomous institutions. Resolution 1244 also re-affirmed the territorial integrity of the Federal Republic of Yugoslavia, Serbia being a federal republic within the union.¹⁷⁸ Following eight years of negotiations which did not yield any results, UN Special Envoy for Kosovo Martti Ahtisaari recommended for Kosovo “independence, supervised initially by the international community”.¹⁷⁹ Ahtisaari’s judgment also inferred the remedial right for secession as well as attainment of de-facto statehood.

“After years of peaceful resistance to Milosevic’s policies of oppression – the revocation of Kosovo’s autonomy, the systematic discrimination against the vast Albanian majority in Kosovo and their effective elimination from public life – Kosovo Albanians eventually responded with armed resistance. Belgrade’s reinforced and brutal repression followed, involving the tragic loss of civilian lives and the displacement and expulsion on a massive scale of Kosovo Albanians from their homes and from Kosovo.For the past eight years, Kosovo and Serbia have been governed in complete separation... [UNMIK’s] assumption of all legislative, executive and judicial authority throughout Kosovo, has created a situation in which Serbia has not exercised any governing authority over Kosovo”.¹⁸⁰

Even though Serbia and one of the negotiators Russia did not agree to Ahtisaari’s findings and demanded continuation of talks on status, the US and the certain EU states issued a joint statement “that the potential for a negotiated solution is now exhausted”.¹⁸¹ This was a signal to Kosovo that the US and EU would support Kosovo independence without a Security Council resolution. Kosovo elected representatives convened an extraordinary meeting on February 17, 2008 and declared independence of Kosovo again. This time Kosovo was recognized by far more states. By the time of writing this paper, 106 states have extended recognition.¹⁸²

¹⁷⁸ UN SC Resolution 1244, 10 June 1999 text available at <http://www.un.org/docs/scres/1999/sc99.htm>

¹⁷⁹ UNSC S/2007/168 “Report of the Special Envoy of the Secretary-General on Kosovo’s future status” 26 March 2007, p.3

¹⁸⁰ *ibid.*

¹⁸¹ Informal comments to the media by the Permanent Representatives of Belgium, France, Italy, United Kingdom, USA, Slovakia and Germany on the situation in Kosovo. Available at: <http://www.un.org/webcast/stakeout2007.html>

¹⁸² The Kingdom of Lesotho is 106th state to recognize Kosovo, 11 February, 2014

<http://inserbia.info/today/2014/02/the-kingdom-of-lesotho-is-106th-state-to-recognize-kosovo/>

East Timor also achieved independence after being administered by the UN mission (UNTAET) in 1999-2002. Indonesia unlawfully annexed East Timor in 1975, after Portugal relinquished its administration, but failed to establish a government which would have been popularly accepted. In 1999 East Timorese voted to reject autonomy within Indonesia, resulting in their mass displacement due to resulting violence between local militias and Indonesian military. Invoking Chapter VII, the UN SC authorized deployment of multinational force to restore order and interim administration which helped East Timor in establishing self-government institutions. In 2002 East Timor was admitted to the UN.

I deliberately did not attach the cases of Eritrea and South Sudan in this category, because their independence was preliminarily agreed with the parent state and declaration of independence was not unilateral but rather consensual. In a similar vein, cases of Senegal and Mali (Soudan Federation) in 1960, Singapore in 1965, USSR in 1991, and Czechoslovakia in 1992 should be regarded as cases of dissolution since there were mutual consents of constituent parts to dissolve federations. As for SFR Yugoslavia, declarations of independence by Slovenia and Croatia in June 1991 represented acts of unilateral secession, but actually their independence was a result of dissolution of SFR Yugoslavia, because soon thereafter Bosnia and Macedonia also declared independence. As Badinter Commission concluded SFRY had been a federal-type state embracing communities that possess a degree of autonomy. With four out of six republics declaring independence, federal authorities could no longer meet the criteria of representativeness inherent in federal state.¹⁸³ If we take a broader picture, SFRY was a dissolution case, in which the impetus to dissolution was given by the rearrangement of the federal balance by the federal authorities with tacit support of two constituent republics - Serbia and Montenegro.

It is debatable, whether Abkhazia, South Ossetia, the Northern Cyprus as well as Karabakh and Transnistria belong to the category of successful secession cases. These entities have attained de-facto independence from their parent states more than 20 years ago (Northern Cyprus even almost 40 years ago), have defined territory, population and effective control over that territory. The parent states are not able to exercise any type of control over these breakaway entities

¹⁸³ Pazartzis, Photini, *Secession and International Law* In: Kohen, Marcelo G, ed. "Secession – in International Law Perspectives" 2006, p.365

anymore and to recite Ahtisaari's words they are "governed in complete separation". So, clearly from the point of effectivity principle, these secession cases are successful. However, due to various violations of peremptory norms that guided the process of their de-facto independence, their statehood is not recognized by the international community.¹⁸⁴ There are several common characteristics for their non-recognition. Especially, the former Soviet breakaway entities do not agree to internal self-determination and wide autonomy rights and strive for being elevated on the par with parent state. Secondly, presence of third country troops on the territories of the secessionist entities makes their independence claims illegitimate, because they were created in violation of peremptory norms on non-use of force against a state and territorial integrity, non-intervention and thirdly they violate the fundamental human right of refugees to return home. The state practice of the last two decades shows that if the parent states manage to restore their jurisdiction over those breakaway territories, even by military means, the international community would still uphold their right for territorial integrity.¹⁸⁵ This leads us to take a look at several unsuccessful attempts of secession.

Unsuccessful Attempts of Secession

Certainly, there are much more unsuccessful cases of Secession in post-1945 history than successful ones. I will take a geographic approach and start with cases in Europe and move on to African and Asian cases.

Chechnya is one of the best examples of unsuccessful secession attempts. A constituent part of Chechen-Ingush Autonomous Republic of Russian Soviet Federal Socialist Republic, Chechnya declared independence in 1991 after the National Congress won the first free elections held in the wake of the failure of August coup d'état in Moscow. From 1991 to 1994 Chechnya was a de-facto independent state with collapsing economy and problems characteristic to all successor republics of the USSR. In 1994, the Russian forces entered Chechnya and a bloody campaign which cost lives of up to 50 000 civilians and displacement of several hundred thousand

¹⁸⁴ Only 4 states – Russia, Nicaragua, Venezuela and Nauru have recognized Abkhazia and S. Ossetia and Turkey – Northern Cyprus.

¹⁸⁵ Compare Croatian restoration of jurisdiction over Krajina, Russia over Chechnya and Sri-Lanka over Tamil Eelam

followed.¹⁸⁶ As Russia could not break the resistance of Chechen militias in 1996 the two sides concluded an agreement “on the Principles for Determining the Bases of Bilateral Relations” – so –called Khasavyurt agreement, which provided for the withdrawal of Russian army units from Chechnya until the end of 1996 and peaceful resolution of dispute based on international law. Final decision on Chechnya’s political status should have been reached by the end of 2001. This did not happen, as in 1999 the second war destroyed any hopes of peaceful resolution of dispute. Chechen secular nationalism turned into violent Islamism and resulted in factionalism within the Chechen society. As a result, Russia quickly gained upper hand and brought Chechnya back under its control with the help of proxy regime. The referendum held in March 2003 in Chechnya approved a republican constitution that placed Chechnya in Russian Federation.¹⁸⁷ The international community although criticizing Russia for excessive use of force and violation of international humanitarian law¹⁸⁸, maintained that the issue was an internal matter of Russian Federation.¹⁸⁹

In winter 1991-92, the Serbian population of Croatia and Bosnia-Herzegovina constituted their own assemblies, conducted referenda and proclaimed independent Republika Srpska Krajina (RSK) (in Croatia) and Republika Srpska (in Bosnia-Herzegovina).¹⁹⁰ The EU arbitration commission was explicitly asked the question whether Serbian population of Croatia and Bosnia had the right of self-determination. The Commission replied that the right of self-determination did not involve the modification of borders achieved at independence, except by mutual consent. So, the issue of their recognition was off the agenda. Consequently, the RSK was crushed by the Croatian operation Storm in 1995 and reintegrated back to Croatia, resulting in mass exodus of Serbs from the region. Despite international demands, autonomy was not granted to the

¹⁸⁶ International Crisis Group, North Caucasus – the Challenges of integration, ethnicity and conflict, Europe Report 220, 2012 p. 10

¹⁸⁷ *ibid.* p.13

¹⁸⁸ Report of the High Commissioner for Human Rights submitted in accordance with Commission resolution 2001/24, U.N. Doc. E/CN.4/2002/38 (2002), on the situation in the Republic of Chechnya of the RF available at: www1.umn.edu/humanrts/commission/russiareport2002.html

¹⁸⁹ See: <http://english.pravda.ru/news/world/13-11-2002/14913-0/>,

<http://www.nytimes.com/1995/01/06/world/us-and-allies-to-press-russia-for-chechnya-peace-settlement.html>

¹⁹⁰ Fogelquist, Alan, The Yugoslav Breakup and the War in Bosnia-Herzegovina, Eurasia Research Center, 1995

remaining Serb minority in Croatia. As for the Republika Srpska, it was recognized in 1995 as one of the two federal units constituting Bosnia and Hercegovina.¹⁹¹

Katanga and Biafra cases represent two unsuccessful attempts of secession right after decolonization in Africa. Katanga declared independence eleven days after Congo itself became independent in 1960 and existed de-facto for three years. Katanga government showed better stability and effectiveness than the central Congolese government, not least to Belgian support and revenues from copper and gold mines.¹⁹² Katanga's short-lived secession terminated after deployment of UN troops in Congo, the mandate of which included promotion of territorial integrity of Congo and withdrawal of Belgian troops from the province¹⁹³. Katanga was not recognized by any state in contrast to Biafra, which declared independence from Nigeria in 1967 and received recognition of five states.¹⁹⁴ Here too, secession was terminated after three years, when the federal military government regained control over the breakaway region and agreed ceasefire with Biafran forces, thus reintegrating the province into Nigeria.

Even presently, Africa witnesses two cases of secession – Somaliland and Azawad. Somaliland is a former British protectorate which after decolonization united with Italian trust territory of Somaliland into Republic of Somalia. But after the collapse of the central government of Somalia and eruption of inter-factional fighting in 1991 the northern clans of the country proclaimed independent republic of Somaliland on the former British mandate territory. Throughout, the last two decades Somaliland government rejects the proposals to form united government with the rest of Somalia not least due to the fact that as the UN Secretary-General stated “Somaliland has maintained a high degree of autonomy”¹⁹⁵ and is more stable and effective than the rest of the country. Somaliland is not recognized by any state.

In April 2012, another secessionist conflict started in Africa when after the military coup in Mali, the nomadic Touareg tribes drove out Mali forces out of the country's north and proclaimed independent Azawad. Azawad was controlled by the Touaregs and islamist groups, but the

¹⁹¹ Schewtzyk, Bart, EU in Bosnia and Hercegovina, powers, decision and legitimacy, ISS Occasional paper 83, 2010 p.24

¹⁹² Crawford, James: The Creation of States in International Law; 2007, p.405

¹⁹³ UN Security Council Resolution 146 (1960); available at: <http://www.un.org/documents/sc/res/1960/scres60.htm>

¹⁹⁴ These states were Zambia, Ivory Coast, Gabon, Tanzania and Haiti

¹⁹⁵ Crawford, James: The Creation of States in International Law; 2007, p.415

intervention of French forces as well as deployment of OAU troops in Mali, buried the prospect of independent Azawad.

In African cases, unilateral declarations of independence occurred when the central government was either toppled or unable to control the situation. In the ensuing chaos, secessionists representing ethnicities distinct from the titular nationalities and experiencing grievances at the hands of central government attempted to establish independent states. In none of the cases they have succeeded to gain international recognition. Similarly, none of the secessionist cases in Asia-Pacific have gained international support, where most of the secessionist conflicts date back to inclusion of secessionist regions in new decolonized states against their wish such as Tamil Eelam in Sri-Lanka, Aceh and West Papua in Indonesia, Bougainville in Papua-New Guinea, Mindanao in Philippines and Karen Lands in Burma. These entities striving for independence and at some point even having established functioning states were encouraged to seek self-determination within the existing state borders by the international community.

2.3.7 Conclusion

It is evident that the international law does not mention secession at all. Consequently, it neither grants nor prohibits secession, because it is considered to be a domain of intra-state rather than international law. The sovereign states have been careful not to undermine territorial integrity principle and therefore avoided any reference to secession in texts of treaty or customary law. The state practice also demonstrates that international community is not willing to accept unilateral secession. Since 1945 not a single new member of the United Nations had been admitted to the organization without the consent of the parent state. Self-determination is confined within the boundaries of the existing states and minorities are encouraged to opt for internal rather than external self-determination. States have a duty to protect minority rights and international organisations have responsibility to ensure compliance with the principle of minority protection. When rights are protected within the governance structures of states, there is no reason to believe that independence through secession is warranted.¹⁹⁶

¹⁹⁶ MacFarlane, Neil, Sovereignty and Self-Determination: Where are We? In: International Journal, Vol.68 No.4, 2013 p. 627

States opposing unilateral secession of their parts get international support in form of non-recognition of secessionist entities. UN and other regional organisations adopt resolutions respecting territorial integrity of states suffering from secession. The principle of *uti possidetis juris* has become a general principle, which makes it difficult to modify the existing borders once the state is recognised. States, in general, are no more recognized according to the factual and political reality (effectivity) principle, as the state practice had in the 19th century. There has been only one exception in the last 70 years – Kosovo, when more than 100 countries recognized independence as a result of secession. This is however argued to be a *sui generis* case¹⁹⁷ and still Kosovo is not a member of the UN, because another half of the world does not recognize it. Thus, the only valid recipe for international recognition today is the prior recognition of secession by the parent state. In order to connect the three angles of a triangle – self-determination, secession, recognition, the role of recognition for state creation will be discussed in the next chapter.

2.4 Recognition in International Law

2.4.1 What is Recognition?

It is indispensable for my research to explore how recognition is regulated in international law if at all. According to international practice, recognition may be extended to a state, to a government and to a belligerent party.¹⁹⁸ For the purposes of the present research I will concentrate only on recognition of states. Recognition is an institution of state practice that can resolve uncertainties as to status and allow for new situations to be regulated.¹⁹⁹ It confirms the will of recognising state to establish relations with the new state and it is legal acknowledgement that the new entity fulfils the conditions for becoming an international subject.²⁰⁰ Recognition is

¹⁹⁷ Rede von Angela Merkel im Europarat, 15, April, 2008, available at: <http://assembly.coe.int/Sessions/German/2008/02/0804151000D.htm> ; Briefing en Route Brussels, Secretary Condoleezza Rice, 5 March, 2008, available at: <http://2001-2009.state.gov/secretary/rm/2008/03/101797.htm>

¹⁹⁸ Lauterpacht, Hersch, Recognition in International Law, 1947, pp.4-5

¹⁹⁹ Crawford, James: The Creation of States in International Law; 2007, p.26

²⁰⁰ Cassese, Antonio, International Law, 2005, p.74

an instrument for validation of claims to statehood on the part of new entities by existing states.²⁰¹ At the same time, recognition is an important factor in diplomacy and newly formed states are striving for recognition to secure their place on the international arena. The notion of recognition could be understood very broadly and could embrace all international agreements that recognise certain rights and responsibilities of the state. Most frequently, recognition takes place in part of international life that regulates territorial distribution. Recognition deals with creation of new subjects of international law, representation of existing subjects at the international arena and establishment of legal relations between the subjects of international law. Object of state recognition is legal relations between the benefactor and beneficiary of recognition.

2.4.2 Evolution of Recognition

It is extremely difficult to ascertain concrete date of origin of institutions, but it could be stated that the notion of recognition started to develop when the Westphalian congress in 1648 extended first ever collective recognition to Switzerland and Netherlands. It introduced the rule, according to which accession to the family of nations was granted only through approval of the family of nations.²⁰² Nevertheless, recognition, like self-determination, did not become important until at least late 18th century, when political liberalism started to challenge authority of the monarch. The frequent changes in the family of nations, new forms of the government and emergence of new entities required new tools to establish relations with the new countries and governments. International legitimacy in the pre-1815 period still focused on the notion of state rights in customary international law, which given that most states were hereditary monarchies implied dynastic rights.²⁰³ Legitimism was the prevalent theory of sovereignty during the age of monarchy. It relied on the idea that a dynasty enjoyed the historic right of ruling the state and a monarch remained a sovereign of the state even in case of factual displacement from throne. Dynastic legitimacy and full monarchical authority began to erode in the second half of the eighteenth century under the growing popularity of political liberalism. As already mentioned above, the liberal views had it that the government was to be based on the will of those subject to

²⁰¹ Dugard and Raic in Kohen, Marcelo G, ed. "Secession – in International Law Perspectives", 2006, p. 94

²⁰² Fabry, Miculas: Recognising States" 2010, p.22

²⁰³ *ibid.* p.24

it and not on the will of monarchs.²⁰⁴ In the late 18th century the problem of recognition arose in the context of recognition of elective governments in France, US and Switzerland. The American independence and French revolution also contributed to the advance of political liberalism and the US independence was justified exactly from liberal viewpoints. Despite this, all nations but France extended recognition to the US only after it was clear that the parent state Great Britain let the US into independence in 1782. There was a common understanding among states that recognition of a new state can only happen when the parent state renounces its sovereignty over that territory.

After the US and French revolutions, dynastic legitimacy as already discussed above suffered its blow in Latin America with the emergence of 12 independent states from the period of 1810-1830. The Latin American independence declarations established very important notions in the recognition process: Existence of de-facto statehood and the principle of *uti possidetis juris*. Once the Spanish Crown lost effective control over its territories in Latin America, someone had to be responsible for interaction with these entities. Although, Britain and the United States did not recognise the entities right away, they dealt with de-facto governments and endorsed the application of *uti possidetis juris*, which was designed to protect from external force the sovereignty and territorial integrity of entities that attained de-facto independence. Strikingly, all new independent states that gained foreign recognition except Brazil were democratic republics, defying the legitimist theory prevalent in Europe. The main factors leading to recognition was a success of freedom movements, which managed to effectively secede from the Spanish Crown. The tendency of recognising was further developed in Europe when political entities such as Belgium, Greece, Serbia-Montenegro were granted independence and gained recognition from the great powers. The novelty in recognition of these new states was connected with conditionality clauses i.e. committing themselves to different actions such as protection of religious minorities (Balkans) or end to slave trade (Brazil). Old, established states such as Turkey were also embraced in the family of nations, through recognition as a member of society of nations at the Congress of Paris in 1856, although the Porte had entered into relations with other European powers long before 1856. Second half of the 19th century is marked with a new wave of sovereign nations being born either as a result of great power agreements (the above cases) or unification of entities (Italy, Germany).

²⁰⁴ Locke, John, Second Treatise of Civil Government, 1980

19th century revised the importance of recognition and brought it into the centre of international law. According to positivist theory, which was a prevailing theory of the time, the obligation to obey the international law derived from the consent of individual state.²⁰⁵ If a new state subject to international law came into existence, new legal obligations would be created for existing states. The positivist logic seemed to require consent either to the creation of the state or to its being subjected to international law so far as other states were concerned”.²⁰⁶

Late 19th century positivist stance towards statehood and recognition is best described in Oppenheim’s International Law which is acknowledged as the most influential work of the time reflecting views propagated by different jurists. Here are the main principles:

1) “As the basis of the Law of Nations is the common consent of the civilised States, statehood alone does not imply membership of the family of nations. Those states which are members are either original members because the law of nations grew up gradually between them through custom and treaties, or they are members as having been recognised by the body of members already in existence as they were born”.²⁰⁷

2) “New States which came into existence and were through express or tacit recognition admitted into the Family of Nations thereby consented to the body of rules for international conduct in force at the time of their admittance.”²⁰⁸ States not so accepted were not bound by international law, nor were the “civilized nations” bound in their behaviour towards them.

3) “Since the Law of Nations is based on the common consent of individual States, and not of individual human beings, States solely and exclusively are the subjects of International Law. This means that the Law of Nations is a law for the international conduct of States, and not of their citizens”.²⁰⁹

4) “International law does not say that a state is not in existence as long as it is not recognised, but it takes no notice of it before its recognition. A State is and becomes an International Person through recognition only and exclusively. It is a rule of International Law that no new State has a

²⁰⁵ Crawford, James, The Creation of States in International Law, 2007, p.15

²⁰⁶ *ibid.*

²⁰⁷ Oppenheim, L. International Law, Vol. 1 para. 71, available at: http://www.gutenberg.org/files/41046/41046-h/41046-h.htm#Page_16

²⁰⁸ *ibid.* para 12

²⁰⁹ *ibid.* para 13

right towards other States to be recognised by them, and that no State has the duty to recognise a new State.”²¹⁰

5) It did not matter how an entity became a state. Unrecognised states were not part of the law-governed system and neither the recognised states were treating them as such. Their birth and mechanisms of acquisition of a territory were completely irrelevant to international law. “The formation of a new state is... a matter of fact not a law. It is through recognition, which is a matter of law, that such new states become a member of the family of nations and subject to international law. As soon as recognition is given, the new state’s territory is recognised as the territory of a subject of international law, and it matters not how this territory is acquired before the recognition”.²¹¹

The quotes from Oppenheim clearly reflect the constitutivist theory to recognition. This theory was later challenged by declaratory approach, which maintains that recognition is a mere declaration of the fact that the state exists. The difference between these two theories constituted the great debate on recognition as a doctrine.

2.4.3 Theories of Recognition

Constitutive and declaratory theories of recognition are termed as classical theories. Recognition is described as either “constitutive” or “declaratory” of statehood. The debate had implications for state practice, because the way one described recognition could influence when one believed it is proper to extend recognition. The constitutive school argues that a recognition of a new entity as a state creates a state. It makes recognition part of statehood and implies discretion of the existing state to bring new states into being. As Oppenheim put it shortly “A state is, and becomes, an International Person through recognition only and exclusively”. The central implication of this is that whether or not an entity has become a state depends on the actions of existing states. Recognition by others makes an entity a state, non-recognition leaves the entity in non-state status. For a constitutivist, existence of all attributes of statehood and how the state was formed bears no importance in the absence of recognition. The constitutive proposition follows directly that recognition resides at the complete discretion of the existing state.

²¹⁰ *ibid.* para 71

²¹¹ *ibid.* para.209

The decision to recognise is subject exclusively to the sovereign will of the existing state and is made unilaterally without reference to the actions of other members of international community or objective condition of the entity receiving recognition. Extending or withholding recognition is a political act and more often an act of bargain. Some historic quotes below clearly prove this notion. The Head of Eastern Department of UK Foreign Office, an important architect of Middle East policy Bernard Burrows said:

“We can repeat to the Americans that our attitude on recognition (of Israel) will depend on the success of the plan on which we are working, and we could perhaps add that we have always considered our recognition as a valuable card which must be played to the best political advantage”.²¹²

US Ambassador to the UN Warren Austin in response to criticism by Syrian representative at UN SC in 1948 when the US recognised Israeli government stated:

“I should regard it as highly improper for me to admit that any country on earth can question the sovereignty of the United States in the exercise of that high political act of recognition..... Moreover, I would not admit here, by implication or by direct answer, that there exists a tribunal of justice or of any other kind, anywhere, that can pass upon the legality or the validity of that act by my country”.²¹³

One of the reasons given by the US in 1920 for refusing to recognise Georgia and Azerbaijan was “the reaction on the minds of Russians, hitherto friendly to the allied and associated governments, of such recognition.”²¹⁴ In a similar vein, US Secretary of State Dulles on a question why the US and Great Britain have not recognised German Democratic Republic said:

“It would be politically disadvantageous and harmful to our interests to do it. So the guide in these things isn't something doctrinaire, that you have to give recognition of a diplomatic character to a regime which is hostile to you and where it involves great disadvantages to do it ... But on the other hand we do not accept the blind policy of pretending that it doesn't exist. It does exist. We know it exists”.²¹⁵

All of the above quotes show that basically it is not important whether a state fulfils statehood criteria or not, political interests and political bargaining play far more important role.

Historic roots of constitutivist theories are traced back to the Vienna Congress. Accession of any new state to the family of states depended on great powers. States seeking recognition could not *ipso facto* and *ipso jure* have rights similar to existing states and particularly to great nations.²¹⁶

²¹² Pattison, Keith: The delayed British Recognition of Israel, In: The Middle East journal Vol. 37, No.3, 1983, pp. 412-413

²¹³ Lockwood, John, Recognition of Israel, In: The American Journal of International Law, Vol.42, No.4, p. 621

²¹⁴ Lauterpacht, Hersch, Recognition in International Law, 1947, p.35

²¹⁵ Ahmed Sheikh, The United States and Taiwan After Derecognition: Consequences and Legal Remedies, Wash. & Lee L. Rev. 323 (1980), available at: <http://scholarlycommons.law.wlu.edu/wlulr/vol37/iss2/2>

²¹⁶ Фельдман Д., “Современные теории международно-правового признания”, 1965, Р.7

Constitutivist interpretation of recognition could be compared to an entrance ticket for a new state to enter the exclusive club of states.

Recognition, under this model is not a principled and mandatory response to certain developments within a foreign community. It is a deliberate measure taken unilaterally and at the discretion of the individual state. Recognition in this sense has a heavy political agenda behind it, which may have little or no relation to the act of recognition or even to the benefactor of recognition.

Recognition is solely a matter between the state recognising and the entity being recognised. If recognition is bilateral and discretionary, then there are no legal restraints to censure a state extending recognition. The reaction of third states is also irrelevant, since it concerns conduct over which the state has discretionary power. The recognising state does not confront any multilateral mechanism either, since only its relations with the beneficiary matter. The constitutive doctrine provides no apparent means to regulate state conduct and no apparent code of conduct either.²¹⁷

Constitutive theory of recognition is challenged by the declaratory theory. The declaratory school asserts that an entity becomes a state upon meeting the statehood criteria and recognition simply declares the fact that it has done so. Ti-Chiang Chen representing declaratist view wrote that “in general, a nation’s existence should be determined without reference to whether or not other states have officially recognized it.”²¹⁸ Declaratory theory emerged as a reaction to the constitutive theory of recognition which failed to address the questions of recognition as early as in 19th century. Some scholars consider the Monroe Doctrine as the source of declaratory theory. Monroe doctrine of de-facto recognition did strike on the principles of legitimism which served as a basis of constitutive theory. Grant writes that recognition to the declaratist, is a response triggered by certain facts and conditioned by law. When the statehood criteria are attained by a community, existing states should recognise that community as a state. Declaratory theory sees recognition as a legal duty, whereas the constitutivists argue that states have no such duty. Thus, the declaratory doctrine is a more complex one, since the recognising state needs to determine whether the claimant entity has attained the statehood criteria.

²¹⁷ Grant, Thomas D “Recognition of States”, 1999, p.3

²¹⁸ Chen, Ti-chiang, The international law of Recognition, 1951, p. 13

Soviet scholar Tunkin writes that even though the recognition does not create a legal personality of the state, its legal implications are obvious, since it creates “solid legal basis for relations between the two states.”²¹⁹ Declaratists also acknowledge that the more states recognise the new entity, the stronger is its position in international law. Recognition brings about certain juridical consequences. These consequences are mostly dependent on the forms of recognition and most frequently culminate in establishment of full diplomatic relations.

The Badinter Arbitration Commission tasked by the European Community in 1991 to provide legal advice on compliance with the EC guidelines for the recognition of states following the dissolution of Yugoslavia, found that “the existence or disappearance of the state is a question of fact and the effects of recognition by other states are purely declaratory.”²²⁰

Both views have their weaknesses however and have been criticised therefore. Constitutivists are criticized for neglecting the rights of new states and simultaneously providing immunity to non-recognised entities for violation of international law (excluding Geneva conventions), by not letting them to become subject of international law. Equality of states under constitutive model is distorted and new states are subordinated to supremacy of existing ones. Most importantly its main shortcoming however is “that constitutive act of creative of statehood is an act of unfettered political will divorced from binding considerations of legal principle.”²²¹

The declarative theory is criticized for non-compatibility of the theory with juridical importance of recognition. Declaratists are further criticized for neglecting the political ingredient of the act of recognition and claiming that it is a legal duty. The declaratory model does not put an emphasis on recognition, but as historic examples of Turkish Republic of Northern Cyprus, Biafra and Rhodesia and more recently Abkhazia, Karabakh, and Kosovo show the entities do need recognition to become fully-fledged members of international community.

The great debate of 19th-20th centuries between constitutive and declaratory schools of recognition is a debate between conservative and liberal principles of international law. Interestingly, most of Soviet and eastern European legal scholars tended to support the declaratory school since the constitutivist school was considered to be serving the interests of colonial powers to use recognition as a tool against emergence of new states out of former

²¹⁹ Тункин Г, Основы современного права, р.22

²²⁰ Opinions of the Arbitration Committee, Opinion 1, Article, 1, available at: <http://ejil.oxfordjournals.org/content/3/1/178.full.pdf+html>

²²¹ Lauterpacht, Hersch, Recognition in International Law, 1947, p.41

colonies or adversaries.²²² Example of People's Republic of China and German Democratic Republic confirms this view, as neither PRC nor GDR were recognised by the majority of western states before 1970's, although both states effectively functioned since 1949.

It is sometimes suggested that the great debate over the character of recognition has done nothing but confused the issues. It is mistaken to categorise recognition as either declaratory or constitutive in accordance with a general theory. As Thomas Grant writes neither doctrines addresses where recognition falls along the spectrum between law and politics.²²³ Grant is echoed by Starke who says that "the truth lies between these two theories. One and the other theory could be applied to different cases."²²⁴ As the state practice shows, different states may also apply different approaches to the same case.

The recognition in fact is a two-step process: 1) declaration of recognising states of the fact that a new entity is created with sustainable government and 2) establishment of official relations with the new state. The first of these acts is declaratory and the second – constitutive.

Recognition does have important legal and political effects. Even individual acts of recognition may contribute towards the consolidation of a status.

The interim conclusion to constructivist vs. declaratory debate is that recognition only does not make an entity a state. Entity can become a state irrespective of recognition, albeit its international legal personality could be limited. On the other hand, the declaratory approach implies that there should be workable statehood criteria established in international law, attainment of which qualifies entity as a state and thereafter its recognition is a mere declaration of fact by the recognising state. Therefore, now we will turn to the criteria of statehood.

2.4.4 Criteria of Statehood

As Crawford writes, if the effect of positivist doctrine in international law was to place the emphasis in matters of statehood on the question of recognition, the effect of modern doctrine and practice has been to return the attention to issues of statehood and status independent of recognition.²²⁵ However, for a quite long period of time, there have been no recognised criteria

²²² Фельдман Д., "Современные теории международно-правового признания", 1965, р.26

²²³ Grant, Thomas D "Recognition of States", 1999, р.1

²²⁴ Фельдман Д., "Современные теории международно-правового признания", 1965, р.29

²²⁵ Crawford, James, The Creation of States in International Law, 2007, р.37

for statehood. Here, we have to distinguish between the criteria of effective statehood and international law conditions that should be met for creation of a state.

Attempts to declare rules about recognition within the framework of international codification had been rejected by the League of Nations Committee of Experts as well as during International Law Commission's work on the draft of Declaration on the Rights and Duties of States.²²⁶ The topic of recognition of states and governments has remained on the International Law Commission's work programme since 1949, for the Vienna Convention on the Law of Treaties in 1956 and 1966 and for proposed Articles on Succession of States in Respect of Treaties in 1974, but during last discussion it was agreed to set it aside for the time being due to "many political problems, which did not lend themselves to regulation by law."²²⁷

Before we turn to criteria of statehood, we should understand what is a legal concept of statehood? Crawford lists five principles of legal characteristics of states: 1) States are sovereign in international affairs; 2) States are exclusively competent with the respect to internal affairs; 3) States are not subject to compulsory international process, jurisdiction or settlement without their consent; 4) States are regarded as equal; 5) Derogations from these principles will not be presumed. These five principles constitute in legal terms the core of the concept of statehood.²²⁸ If there is a legal concept of statehood there must be means of determining which entities are states.

The best known formulation of the basic criteria for statehood was offered by the United States and other American nations after endorsing the Montevideo convention in 1933. Article I of the Montevideo Convention on the Rights and Duties of States, reads: "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."²²⁹ Although, the Montevideo convention was limited in its geographical scope, the criteria have been endorsed by wider international society thereafter. Surprisingly, though the Montevideo criteria have become a touchstone for defining state, little if any examination is to be found of their origin. "References to academic literature in 1930s and 1940s offer no insight into why the

²²⁶ *ibid.* p.38

²²⁷ *ibid.*; p.40

²²⁸ *ibid.* p.42

²²⁹ Montevideo Convention on the rights and duties of states, available at:
<http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>

drafters chose the adopted phrasing. Nor, when publicists have mentioned the Montevideo criteria in the last half century has much light been shed on the matter.”²³⁰

States are territorial entities and aggregates of individuals. The right to be a state is dependent upon the exercise of full governmental powers with respect to some area of territory. Although, the state must possess a territory, there is no rule prescribing the minimum area of that territory. Similarly, there is no minimum limitation for permanent population. In order to qualify as a state the central feature is to have a functioning government having effective control. In international law, territorial sovereignty is defined as governing power with respect to territory and governmental authority is the basis for normal inter-state relations. Capacity to enter into relations with other states is a rather vague criterion, because it is already embraced by the existence of effective government, which is responsible for establishing relations with other states. As Crawford rightly points out, this capacity is a consequence of statehood not a criterion for it.²³¹

According to the Foreign Relations Law of the United States, the state exists when 1) its leadership is in effective control of the state’s defined territory; 2) the bulk of its inhabitants possess sufficient political stability and provide allegiance to whatever national symbols there might be; 3) the leadership possesses sufficient administrative capability to carry out certain well recognized internal government functions and its international obligations under international law and the United Nations Charter; and 4) there is no massive and systematic interference in its affairs by a foreign power.²³²

Though international organisations or conferences have not produced any new instrument to replace and supplement the Montevideo Convention as a definition for statehood, many scholars are calling for revision arguing that additional criteria are necessary. Crawford puts forward other important criterion, which Montevideo does not mention but implies, - independence. According to him, independence is the central criterion for statehood. It is important to distinguish independence as an initial criterion for statehood and as a condition for continuing existence. “A new state attempting to secede will have to prove substantial independence both formal and real from a parent state before it could be regarded as definitely created”.²³³

²³⁰ Grant, Thomas D “Recognition of States”, 1999, p.6

²³¹ Crawford, James, *The Creation of States in International Law*; 2007, p.61

²³² Restatement (2nd) FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 4, 100,101 (1965)

²³³ Crawford, James, *The Creation of States in International Law*, 2007, p.62

However, it is very hard to measure the extent of independence. It is also not clear why independence from a parent state should be a criterion and not from the other state.

Some new criteria however are blurring the distinction between criteria for statehood and criteria for recognition. These are for example respect of fundamental standards such as ban on wars and aggression, respect of human rights, rights of minorities and respect for existing frontiers that have become more important in international law.²³⁴ It has been suggested that respect of these principles also form criteria for effective statehood and hence recognition. Therefore, we will turn to recognition criteria next.

2.4.5 Criteria for Recognition

As I have mentioned above, the international law does not provide for concrete norms which regulate the creation of new states – subjects of international law. Lauterpacht wrote that recognition of a political entity as a State means to declare that it satisfies the conditions of statehood under international law.²³⁵ His criterion of recognition consists of independent government exercising effective authority within a defined area.²³⁶ Basically, Lauterpacht's vision coincides with Montevideo criteria of statehood. Charpentier challenges Lauterpacht arguing that these are not criteria for recognition, but rather criteria for legal personality of state. "International legal personality of a state depends on factual existence of a state (and not its recognition). The general criterion for legal personality is compatibility of this personality of a new state with international law practice due to lack of norms regulating creation of a new state".²³⁷ In 1936 the Institut de Droit International – French organisation devoted to study development of international law and composed of renown international lawyers - in its resolution on recognition of new states and new governments defined the following:

“The recognition of a new state is the free act by which one or several states take note of the existence of a human society, politically organised on a fixed territory, independent of any other existing state,

²³⁴ Cassese, Antonio, International Law, 2005, p. 75

²³⁵ Lauterpacht, Hersch, Recognition in International Law, 1947, p.6

²³⁶ *ibid.* p.26

²³⁷ Фельдман Д., “Современные теории международно-правового признания”, 1965, p.119

capable of observing the prescription of international law and thus indicating their intention to consider it a member of the international community”.²³⁸

French legal scholar Mouskhely proposed to subordinate the process of creation of new state to the UN and named five conditions, which should be satisfied by a new state to be recognised: 1) existence of an effective government and own national administration; 2) Ability to protect territorial integrity and independence; 3) Internal stability of the state; 4) Existence of sufficient financial resources to cover for basic state expenditures and 5) legislation and effective court system.

The UN role in recognition is important but the international practice denies the interdependence of creation of new states and their UN membership to the recognition. Even in the case of League of Nations and later in the UN, it has been held that the admission to membership of a state not yet recognised by some of the members does not imply recognition by the latter.²³⁹ Such were the cases of USSR in the League of Nations and Israel and GDR in the UN. Some states when voting for membership of a new state to the UN specifically declare that this act is a juridical recognition of the concerned state. However, accession to the UN does not bring any duty to establish any type of relations with the new UN member state, except accepting it as a legal personality.

Even this short overview shows that the fundamental problem in recognition is absence of well-defined requirements of statehood and recognition. Lorimer expressed concern that “each state is to say, not only whether or not a given community fulfils the requirements of international existence, but is, moreover, left to determine what these requirements are.”²⁴⁰ Since Montevideo, more criteria have been added in the practice, leaving unclear whether these are criteria for statehood or for recognition. This, of course makes recognition subject of political manipulation. An important clarification for criteria of recognition came from the European Community. Following the break-up of the USSR and velvet revolutions in the Eastern Europe, on December 16, 1991 the foreign ministers of the EC countries adopted a “Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union”. The declaration stated that the following criteria should be satisfied in order to recognise the emerging states:

²³⁸ Institut De Droit International, *La reconnaissance des nouveaux Etats et des nouveaux gouvernements*, 1936, available at: http://www.idi-iil.org/idiF/resolutionsF/1936_bruux_01_fr.pdf

²³⁹ Lockwood, John, *Recognition of Israel*, In: *The American Journal of International Law*, Vol 42, No.4, p. 621

²⁴⁰ Grant, Thomas D “*Recognition of States*”, 1999, p.83

“The Community and its Member States affirm their readiness to recognise those new states which, following the historic changes in the region, have constituted themselves on a democratic basis”. Respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights; Guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE; Respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement; Acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability; Commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes.

The Community and its Member States will not recognize entities which are the result of aggression. They would take account of the effects of recognition on neighbouring States.”²⁴¹

It is worth concentrating at some of the important provisions of the guidelines, such as democracy, minority rights and security and regional stability.

Like self-determination, democracy began to matter as a criterion in the recognition in the 20th century and gained widespread recognition itself towards the late 20th century. In deciding whether to recognise the Yugoslav and Soviet republics, the European Community and the United States demanded that the emerging states undertake democratic reform. However, Yugoslav and Soviet cases were different. Former Soviet republics were recognised after the official dissolution of USSR and recognising states did not bother about statehood criteria at all. However, Yugoslav case was different and EC declared that the governments of Slovenia, Croatia, Bosnia and Macedonia had to demonstrate adherence to democratic principles before recognition could be extended.²⁴² However, commitment to these guidelines did not turn into practice as Germany and Austria recognised Croatia and Slovenia unilaterally, with big question marks over Croatian democratic governance and Bosnia also received recognition in summer 1992 with its tri-partite institutions not functioning democratically.

²⁴¹ Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union, available at: <http://www.ejil.org/pdfs/4/1/1227.pdf>

²⁴² EC Declaration on Yugoslavia, 16 December 1991, available at: <http://www.dipublico.com.ar/english/declaration-on-yugoslavia-extraordinary-epc-ministerial-meeting-brussels-16-december-1991/>

Truly, democracy is not as evident criterion for recognition and it is very difficult to de-couple democracy criterion from politics. As the practice in Yugoslav and Soviet cases showed, the democratic criterion is applied more negatively than positively, meaning it is applied to halt the recognition of new entity until better times.

State practice had connected minority rights to state recognition even until the 1990's. As I have mentioned previously, the new states were required to guarantee minority rights in the 19th century and after the WW I. The break-up of Yugoslavia and the USSR served again as a catalyst because the emergence of new independent states with large ethnic minorities, whose rights were not enshrined in the respective constitutions and ongoing ethnic tensions, posed a threat to security of the new states and the continental Europe as well. The EC Guidelines of Recognition explicitly stated that “guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of CSCE” were required. Slovenia and Croatia quickly amended their constitutions, adding guarantees of minority rights to the text.

Insistence by the EC that minority rights receive formal guarantees preferably through amendment of the constitutions in the new states extended the formal criterion for recognition to minority rights' protection. However, it should be noted that it can not be regarded as a universal criterion, since outside the EU and US many other countries recognised the new states without insisting on guarantee of minority rights.

Security and stability has been named as another criterion for recognition. This criterion coincides with the UN membership condition. Presently, as international law prohibits war as a means of solving problems in relations between the states, and international aggression is condemned, the existing states closely examine international intentions of a new entity. Commitment to peace is as important criterion for recognition as political independence²⁴³ and one of the aims of the international community is to hinder emergence of a new state prone to aggression.

2.4.6 Modalities and Forms of Recognition and Non-Recognition

²⁴³ Фельдман Д., “Современные теории международно-правового признания”, 1965, p.128

There are several modalities of recognition of a new state as well as non-recognition. It could occur either unilaterally or collectively. Unilateral recognition occurs when an existing state, international legal personality recognises that another entity claiming to be a State meets the requirement of statehood and is therefore regarded as a state with the rights and duties attached to the statehood.

Collective recognition occurs, when a group of States, such as the European Union or the United Nations recognises the statehood of a claimant entity directly, by an act of recognition, or indirectly, by the admission of the State to the international organisation.

I have discussed the purpose and consequences of unilateral recognition already, therefore I will focus on collective recognition here. In recent past the European Community has collectively recognised states emerging from the former USSR as well as ex-Yugoslavia. Germany recognised Croatia and Slovenia three weeks before the collective recognition from the EC but did not enter into diplomatic relations before collective EC recognition.²⁴⁴ Here, states exercised their individual right of recognition collectively in a manner which does not depart substantially from traditional recognition practice. Second example of collective recognition is admission of an entity to the UN. Since, membership to the UN is limited to states only, it is clear that by becoming the member of the UN all its member states recognise the new member as a state. Today, apart from Israel whose statehood is still denied by some states, all members of the UN are accepted as states. Former colonial territories achieved statehood en masse by admission to the UN. They would have otherwise not received widespread recognition through traditional unilateral recognition only. Thus, it is reasonable to conclude that many states have achieved statehood by becoming members of the UN and that this procedure for recognition co-exists alongside the traditional method of unilateral recognition. Any description of the law of recognition that fails to take account of this development cannot lay claim to be an accurate reflection of state practice.²⁴⁵ Remarkable feature of collective recognition is that the process of recognition becomes collective meaning that international society has a role every time a decision is required about recognition.²⁴⁶

²⁴⁴ Haftendorn, Helga, *Coming of Age*, 2006, p.375

²⁴⁵ Dugard and Raic in: Kohen, Marcelo G, ed. "Secession – in International Law Perspectives", 2006, p. 100

²⁴⁶ Grant, Thomas D "Recognition of States", 1999, p.215

Apart from collective recognition, there exists a notion of collective non-recognition dating back to non-recognition of puppet state of Manchukuo in 1932. The then US Secretary of State Henry Stimson declared that the US would not recognise Manchukuo, because it was created in violation of the Pact of Paris 1928 renouncing war. This was followed by a declaration by the League of Nations calling upon its members not to recognise Manchukuo.²⁴⁷ The doctrine of non-recognition is founded on the legal principle that if certain peremptory norms are violated, the legal act itself is null and void. This applies also to the creation of states. States are under a duty not to recognise such acts under customary international law and in accordance with general principles of law. In accordance with this doctrine, the UN has directed States not to recognise claimant States created on the basis of aggression (Northern Cyprus), systematic racial discrimination and denial of human rights (Bantustan states), and self-determination rights (Southern Rhodesia) or illegal change of status (Crimea). Non-recognition could be a tool for the states not to recognise entity, which is not considered to be really independent of the state that had been instrumental in its establishment. In such cases non-recognition reinforces the legal position and helps to prevent consolidation of unlawful situations. Its value in this respect is significant, although non-recognition is not as such either a method of enforcement or a sanction. It is a precondition for other enforcement action and a method of asserting the values protected by the relevant rules.

Unilateral non-recognition is also a phenomenon that is widely spread in international relations. PRC, North Korea and GDR were not recognised on ideological grounds. The recent recognition of Kosovo on one hand and recognition of Abkhazia and South Ossetia on the other have brought unilateral non-recognition policies to the center stage. For example the United States and the member states of the EU declared that they will not recognise the independence of Abkhazia and South Ossetia. On the other hand, Russia, China, 5 EU member states and among others Georgia conduct non-recognition policy towards Kosovo. We can still attribute non-recognition of Abkhazia and South Ossetia by the European Union to collective non-recognition, whereas other cases and Kosovo non-recognition is clearly a unilateral policy of non-recognition chosen by the solid amount of states.

State practice provides for the principle of de-recognition that is withdrawal of recognition. Although, de-recognition is not widely spread and concerns mostly the case of Taiwan. Taiwan

²⁴⁷ Dugard and Raic in: Kohen, Marcelo G, ed. "Secession – in International Law Perspectives", P. 100

was de-recognised by most of the international community in 1971 and replaced by People's Republic of China at the United Nations. However, until recently some states have switched recognition from China to Taiwan and back for political and financial reasons.²⁴⁸ Abkhazia and South Ossetia were also derecognised by Vanuatu and Tuvalu in July 2013 and March 2014 respectively.²⁴⁹

Dependence between the forms of recognition and intensity of relations has also been a matter of discussions of the legal scholars. The international law distinguished three forms of recognition 1) De-Jure; 2) De-Facto and 3) Ad-Hoc. The discussions mainly concentrated over the form of de-facto recognition. Some scholars argued that de-facto recognition could be revoked, some said that de-facto recognition could not be revoked, but fully-fledged relations could not be established and the others denied any juridical difference between de-jure and de-facto recognition. The analysis of legal nature of the form of recognition shows that division of recognition into de-jure and de-facto may not be applicable to all types of recognition and specifically to recognition of new states. Act of recognition is a juridical fact for the creation of a state. If a new state emerges on the international arena it has the right for full recognition (de-jure). Nevertheless, the government of the new state may get limited recognition (de-facto).

Thanks to Hallstein Doctrine most of the countries who had trade, economic and cultural relations with the German Democratic Republic recognised its government de-facto, because in case of de-jure recognition they were faced with breaking of diplomatic ties with German Federal Republic.²⁵⁰ This practice effectively came to an end when both GDR and FRG were admitted to the UN.

Nowadays, features of de-facto recognition can be observed in relations between Russia and Transnistria and Armenia and Karabakh. Russian President Putin's decision to deal directly with authorities of Abkhazia and South Ossetia represented also a sort of de-facto recognition. But none of those entities were recognised as states either by Russia or Armenia in the period concerned.

Ad-hoc recognition is a form of recognition where one state recognises the other not by specific act of recognition but by certain activities that imply recognition (establishment of diplomatic

²⁴⁸ States that have switched recognition from PRC To Taiwan were Macedonia, Kiribati, Nauru, Guatemala, Gambia

²⁴⁹ Georgia, Vanuatu Establish Diplomatic Ties, 15.07.13, <http://civil.ge/eng/article.php?id=26273>; Tuvalu retracts Abkhazia, S. Ossetia recognition, 31.03.14, <http://civil.ge/eng/article.php?id=27093>

²⁵⁰ Haftendorn, Helga, *Coming of Age*, 2006, p.39

relations, conclusion of an interstate agreement). Entering a multilateral agreement that the recipient state is also signatory does not mean recognition of that state. Israel – UN member since 1948 is not recognised by the overwhelming majority of Arab countries yet.

The de-jure and ad-hoc recognitions basically fall in the same category and recognise the new state fully as an international legal person, whereas de-facto recognition is mostly applied to governments and could not be regarded as recognition of a new state.

2.4.7 Conclusion

Recognition has been an important factor in validation of claims to statehood for over two centuries. It started to feature as an important principle when political liberalism challenged the dynastic rights. Recognition became a tool for establishing relations with the newly emerging states first in the Americas and then also in Europe. At first recognition was thought to have a constitutive character for the beneficiary state however, the declaratory theory challenged this notion by stating that recognition only confirmed the existence of a factual state. The great debate over these theories of recognition pointed that the “truth lies somewhere in between”. Declaratory approach presupposed existence of certain criteria for statehood but until today international community failed to codify criteria for state creation, with Montevideo convention being the only limited source.

Similarly, there are no universal criteria for recognition either. Mostly, development of recognition criteria reflected the prevalent state practice of recognition of new states. When recognising new states the recognising states guide themselves with their own criteria for recognition. Despite attempts to codify criteria as well as the institution of recognition in international law²⁵¹, there is no single international law act which lists the universal criteria for recognition. These attempts have failed because there are no clear dividing lines between law and politics in the field of recognition. Recognition to the new entity is still extended at discretion of a recognising state and there is no provision in international law that could force the state to recognise the new one. The truth is that recognition is not governed by any rules

²⁵¹ UN International Law Commission members advised to codify recognition of states at the first session in 1949.

whatsoever. All aforementioned criteria are deriving solely from international practice of recognition of new states.

Along with lack of codification of recognition criteria, there is a lack of any international authority tasked with determining whether an entity claiming to be a state in fact is a state. It is for each state to make such determination based on its own assessment and its own political will whether the new entity should be admitted to the community of nations. De-recognition, non-recognition and recognition thus becomes a political act, and perceptions of national self-interests play a determining role.

As a rule new states are rarely successful in achieving recognition by all members of the international community within a short period of time, unless they become the member of the UN right away. Recognition of a new entity largely depends on the consent of the parent state to let the entity into independence. Absence of recognition however does not mean that the new entity is devoid of legal personality in relation to non-recognising states. “General international rules such as those concerning to high seas, or respect for territorial and political sovereignty do apply to the relationships between the new state and all other members of community.”²⁵²

²⁵² Cassese, Antonio, *International Law*, 2005, p.76

Chapter III. Soviet/Russian Practice of Recognition of New States after 1945

3.1 Introduction

In the previous chapter I analysed the international law provisions on self-determination, secession and recognition and described some cases of recognition and non-recognition from the international practice. As this paper is aiming at researching Russian policy of recognition, it is worthwhile to focus on Russia's practice of recognition. In my research I will embrace the time period starting from 1945 up to 2014 when this paper was written. I chose to begin my research from 1945 due to the fact that a new world order was established after the WWII. The end of WWII, creation of the United Nations providing for world peace, security and supremacy of international law, bipolar character of the world, all contributed to creation of certain stability and also normativity in international relations.

Russian Federation did not exist as an independent state in 1945, therefore in this chapter, I will discuss the recognition policy of RF's legal predecessor Soviet Union from 1945-1991 and one of Russian Federation covering the years 1992-2014 interchangeably.

As already shown in the previous chapter, there were only a handful of cases when new states emerged outside the colonial context after the end of WWII. For the purpose of my research these states will be grouped under three headings: 1. States that were not recognised by the parent-state prior to their recognition by the USSR/RF (Israel, Bangladesh) 2. States that were recognised by Moscow after recognition by the parent state (Eritrea, East Timor, South Sudan) and 3. De-facto secessionist entities that have declared independence but were not recognised by USSR/RF (Northern Cyprus, Kosovo, Transnistria, Karabakh). I deliberately did not put Abkhazia and South Ossetia in the first group at this stage, because their recognition will be discussed extensively in chapter four. I also do not consider Crimea, due to the fact that Crimea

was annexed to Russia and did not enjoy independence. Clearly, the first and third groups represent the most interesting cases for the present research, therefore Soviet/Russian policy on those entities will be closely analysed.

Although the issue of recognition of states emerging out of the colonial context starting from the late 1950's to 1970's is not my research topic, I still start out with brief review of Soviet stance on this issue in order to give readers a complete picture of Kremlin's policy towards creation of new states.

3.2 Recognition of States emerging out of Colonial Rule

In the chapter on self-determination I discussed evolution of the norm of self-determination in international law and the role Soviet Union played in anchoring this norm in both treaty and customary law. Kremlin had two reasons for championing the self-determination cause. Firstly, it was the importance of national movements of colonial countries for world socialist revolution – emphasized by Lenin already at the dawn of 20th century. Since then support to self-determination of colonial peoples became significant direction of Soviet foreign policy in order to reach the objective of worldwide communist rule: “The breakdown of the system of colonial slavery under the impact of the national-liberation movement is a development ranking second in historic importance only to the formation of the world socialist system” – read a statement of 81st Communist and Workers parties' meeting of 1960 in Moscow.²⁵³ Secondly, national-liberation movements of colonial nations were seen as an effective tool to fight against the western powers and to spread Soviet influence. At the 20th party congress, CPSU Secretary-General Khrushchev announced that the fall of imperial colonial system and entry of independent developing nations to the world arena is the most important characteristic of the new epoch.²⁵⁴ Soviet policy-makers held that chances of socialist revolution in colonial countries were quite high. These newly emerged independent nations together with Eastern European socialist states were supposed to be united in “the broad zone of freedom” and form a joint front against “imperial powers”. More

²⁵³ Statement of 81 Communist and Workers parties meeting in Moscow, 1960, available at: <https://www.marxists.org/history/international/comintern/sino-soviet-split/other/1960statement.htm>

²⁵⁴ Meissner, Boris, Sowjetunion und Selbstbestimmungsrecht, 1962, p.115

than Lenin and Stalin, Khrushchev was adamant that the fate of the future world order will be decided in developing nations.

The party program adopted at 22nd congress of the CPSU in 1961, includes a whole chapter dedicated to national-liberation movements in the third world and it best describes Soviet policy towards the emerging nations:

“The world is experiencing a period of stormy national-liberation revolutions. Imperialism suppressed the national independence and freedom of the majority of the peoples and put the fetters of the brutal colonial slavery on them, but the rise of socialism marks the advent of the era of emancipation of the oppressed peoples. A powerful wave of national-liberation revolutions is sweeping away the colonial system and undermining the foundations of imperialism. Young sovereign states have arisen, or are arising, in one-time colonies or semi-colonies. Their peoples have entered a new period of development. They have emerged as makers of a new life and as active participants in world politics, as a revolutionary force destroying imperialism..... The CPSU considers fraternal alliance with the peoples who have thrown off colonial or semi-colonial yoke to be a corner-stone of its international policy. This alliance is based on the common vital interests of world socialism and the world national-liberation movement. The CPSU regards it as its internationalist duty to assist the peoples who have set out to win and strengthen their national independence, all peoples who are fighting for the complete abolition of the colonial system”.²⁵⁵

The program document also explicitly stated that the “U.S imperialism is the chief bulwark of modern colonialism” and “consistent struggle against imperialism is a paramount condition for the solution of national tasks”.

The United States and United Kingdom were warned by the Soviet government already in July 1958 that any attempt to prevent hundreds of millions of people of colonial nations that stood up to fight for their national rights to achieve independence is doomed to failure,²⁵⁶ because “all the socialist countries and the international working-class and Communist movement saw it as their duty to render the fullest moral and material assistance to the peoples fighting to free themselves from imperialist and colonial tyranny”.²⁵⁷ Algeria represented one of the most symptomatic cases, because USSR recognised Algeria before the colonial patron.

²⁵⁵ Party Program of the Communist Party of Soviet Union adopted at 22nd Congress, 1961, p. 42-49

²⁵⁶ Meissner, Boris, Sowjetunion und Selbstbestimmungsrecht, 1962, p.444

²⁵⁷ Statement of 81 Communist and Workers parties meeting in Moscow, 1960, available at:
<https://www.marxists.org/history/international/comintern/sino-soviet-split/other/1960statement.htm>

Algerian war of independence of 1954-62 was a major anticolonial war that shook the foundations of the French Fourth Republic. National Liberation Front (FLN) of Algeria with vast support of the local population waged an independence war with the French army. In 1958 after the fall of the fourth republic, the FLN's Provisional Government of Algerian Republic (GPRA) called on the governments of the world nations to recognise Algeria. Several Arab and communist nations including Lebanon, Morocco, Saudi Arabia and PR China, North Korea and Vietnam extended recognition.²⁵⁸ Reinstatement of De-Gaulle and his statement in 1959 that self-determination is necessary for Algeria turned the tide in favour of Algerian independence. Soviet Union recognised de-facto Provisional Government of Algerian Republic in October 1960 (Recognition of belligerent party – national-liberation movement did not contradict international law) and its head was received in Soviet Union officially.²⁵⁹ In December 1960, the United Nations in its Resolution 1573 recognised the right of Algerian people to self-determination and independence as well as “the imperative need for adequate and effective guarantees to ensure the successful and just implementation of the right of self-determination on the basis of respect of unity and territorial integrity of Algeria”.²⁶⁰ On March 18, 1962 Evian Accord between the French Government and FLN concluded almost a year-long negotiations and envisaged immediate cease-fire and release of Algeria into independence once the referenda were held in France and Algeria. On March 19, 1962 ignoring the referendum clause of the Evian Accord Government of the Soviet Union “guided by the high principle of self-determination of peoples and deeply respecting just national aspirations of the Algerian people declared about de-jure recognition of the Algerian provisional government and expressed readiness to establish diplomatic relations”.²⁶¹ Soviet government opined that with the signature of Evian Accords, the French government also recognised FLN as the representative of Algerian people. However, the French Government considered de-jure recognition of GPRA from the Soviet Union as a non-friendly act and recalled the French ambassador to USSR back to Paris. In fact, Soviet de-jure recognition of GPRA in March 1962 meant the official recognition of Algeria, because Soviet Union did not issue any other act of recognition after the referendum results both in France and

²⁵⁸ <http://digitalarchive.wilsoncenter.org/document/121604>

²⁵⁹ Note from the GPRA SG to foreign missions and delegations, available at:

<http://digitalarchive.wilsoncenter.org/document/121605>

²⁶⁰ UNGA Res. 1573 (XV), December 1960, available at:

[http://www.un.org/french/documents/view_doc.asp?symbol=A/RES/1573\(XV\)&TYPE=&referer=/french/&Lang=E](http://www.un.org/french/documents/view_doc.asp?symbol=A/RES/1573(XV)&TYPE=&referer=/french/&Lang=E)

²⁶¹ СССР И страны Африки: 1946-1962, 1963, p.542-543

Algeria sealed Algeria's independence and France recognised Algeria on July 3, 1962. The last Soviet telegram after the referendum on this issue read that "the Government of the USSR welcomes independent Algerian Republic and declares about its sincere aspiration to further strengthen and develop ties of friendship and fruitful cooperation, with sovereign Algerian state, launched in difficult years of Algerian people's struggle for freedom and national independence".²⁶²

Obviously, Soviet policy implied speedy recognition of states emerged out of colonial rule. Acts of recognition in most cases were very demonstrative going farther than mere fact of recognition and offering treaty relations to the recognised state. Telegram of the USSR's Chairman of Minister's Council to Sudanese Prime-Minister is exemplary in this regard. It stated:

"Guided by the high principle of self-determination of peoples and respecting just national aspirations of Sudan, the Soviet government solemnly declares about recognition of Sudan as an independent and sovereign nation and expresses readiness to establish diplomatic, consular and trade relations with Sudan and exchange diplomatic representations".²⁶³

The telegram also expressed Soviet confidence that establishment of diplomatic relations would contribute to development of international cooperation and strengthening peace and friendship among nations. Recognition acts of Morocco, Tunisia, Ghana, Guinea, Cameroon, Togo, Mali, Congo, Madagascar, Somali, Dahomey (present day - Benin), Niger, Upper Volta (present day - Burkina-Faso), Gabon, Ivory Coast, Chad, Central African Republic, Nigeria, Senegal, Sierra-Leone, Tanganyika (present day - Tanzania), Rwanda, Burundi, Uganda all carried the same message.²⁶⁴ Thus, Soviet Union did not only recognise the new states, but expressed willingness to enter into important treaty relations with them. The treaties affirmed that Soviet policy towards the third world was a crucial determinant of Soviet policy. The analysis of the treaties showed that mostly they entailed upon USSR exclusive responsibilities: to provide long-term economic and military aid and arms supply to its treaty partners.²⁶⁵ In exchange, Soviet Union requested the signatories not to join military alliances and not to provide military facilities to them, closely consult on foreign policy issues and support to Soviet policies of decolonisation,

²⁶² Ibid. p.151

²⁶³ СССР И страны Африки, 1946-1962, 1963, p. 321

²⁶⁴ Фельдман Д., "Современные теории международно-правового признания", 1965, p.150

²⁶⁵ Imam, Zafar, Soviet Treaties with third world countries, In: Soviet Studies, vol. XXXV, No.1, 1983 pp.53-70

anti-racism and anti-imperialism.²⁶⁶ In general, USSR preferred to establish good relations with governments created after liberation movement. Once the liberation movement succeeded in forming an independent state, Soviet Union supported its territorial integrity and even supported the states which faced internal secessionist rebellions. Nigeria, Somalia, Ethiopia and DR Congo all profited from receiving significant military aid from Moscow during Biafra, Eritrean and Katanga secessionist uprisings.²⁶⁷

However, not all decolonised states received that much of an attention from Soviet authorities. Telegram of the Chairman of USSR Minister's Council to the Prime-Minister of Western Samoa only stated that

“the Soviet Government constantly supporting self-determination of peoples and having feelings of deep respect to Samoan people, declares about recognition of Western Samoa as independent and sovereign nation by USSR. We express hope that our countries would establish friendly relations for the good of peoples of our countries and in the interest of the world peace”.²⁶⁸

In a significant departure from recognition acts of African countries, Western Samoa was not offered establishment of diplomatic relations and exchange of diplomatic representations.

The case of Libyan recognition is a demonstrative case of implied recognition. USSR did not produce any act of recognition of Libya, but Soviet and Libyan ambassadors to Egypt exchanged letters on establishment of diplomatic relations. Although, Soviet ambassador's letter did not mention recognition as such, approval on establishment of diplomatic relations implied full recognition. Soviet Ambassador's letter stated that “establishment of diplomatic relations between the USSR and the United Kingdom of Libya corresponds to the Soviet Government's policy directed at cooperation with all the nations of the world and development of strong friendly relations with them”.²⁶⁹

Decolonisation period coincided with economic upheaval in the Soviet Union that enabled Kremlin to project its power beyond Europe. Africa and Asia were the primary targets to expand Soviet influence and to keep the newly independent countries of these regions out of the western

²⁶⁶ Ibid. p.67

²⁶⁷ Nolutshungu, Sam, African Interests and Soviet Power: The local context of Soviet policy, In: Soviet Studies, Vol.XXXIV, No.3, 1982, pp.397-417

²⁶⁸ Фельдман Д., “Современные теории международно-правового признания”, 1965, p.151

²⁶⁹ Ibid. 153

camp and Chinese encroachment. Presence in the strategically important Indian Ocean was one of the reasons why USSR tried to cultivate close relations with Somalia, Ethiopia and Mozambique, apart from existence of Marxist forces there.²⁷⁰ Therefore, pushing for decolonisation within the limits of the international law provisions, referring always to the principle of self-determination as the legal ground for emergence of new states out of former colonies, best served Moscow's strategic interests.

3.3 Recognition of States Outside of Colonial Context

3.3.1 Group 1 - Recognition of Israel and Bangladesh

Israel

Soviet Union was the first state to recognise de-jure the state of Israel on 17 May 1948. Recognition letter from the Soviet Foreign Minister Molotov read:

“Confirming receipt of your telegram of May 16, in which you inform the government of the USSR of the proclamation, on the basis of the resolution of the United Nations Assembly of November 29, 1947 of the creation in Palestine of the independent state of Israel and make request for the recognition of the state of Israel and its provisional government by the USSR, I inform you in this letter that the Government of the USSR has decided to recognise officially the State of Israel and its Provisional Government”.²⁷¹

Thus, USSR became the godfather of the State of Israel as other superpower – the United States extended only de-facto recognition of Israeli provisional government on May 15, 1948. The former mandate holder of Palestine –Great Britain recognised Israel de-facto only in January 1949 and de-jure as late as April 1950.²⁷² On the one hand, it could be argued that recognition of Israel did not really represent the case of recognition prior to consent of the parent state, because Great Britain has agreed already in November 1947 to terminate the mandate status of the

²⁷⁰ Nolutshungu, Sam, African Interests and Soviet Power: The local context of Soviet policy, In: Soviet Studies, Vol.XXXIV, No.3, 1982, pp.397-417

²⁷¹ Lockwood, John, Recognition of Israel, In: The American Journal of International Law, Vol.42, No. 4, 1948 pp620-627. p. 620

²⁷² Pinkus Binyamin, Change and Continuity in Soviet Policy towards Soviet Jewry and Israel, May-December 1948 In: Israel Studies Vol.10 No. 1, 2005 pp. 96-123, p.96

territory by August 1, 1948 and withdraw its troops by that date.²⁷³ Thus, USSR recognised the State of Israel almost half-a year later after Great Britain gave consent to termination of its mandate over Palestine and creation of Jewish state. On the other hand, it is clear that the UN GA resolution 181 was not properly and fully implemented leaving doubts regarding the coherence of proclamation of a Jewish State with resolution's provisions. The fact that Great Britain did not recognise Israel de-jure until April 1950, i.e. almost two years after recognition by the Soviet Union underpin the argument that still this was a case of recognition prior to metropolitan approval. It is interesting why the Soviet Union rushed to recognise Israel considering the consistent negative attitude of Lenin and Stalin to Zionism, and the overt pro-Arab line taken by the Kremlin during the Arab riots of 1929 and 1936, denouncing Zionists as diverting Jewish workers from the class struggle and the ally and tool of British imperialism.²⁷⁴ The shift in Soviet policy should be attributed to worsening of relations between the Allies, which started in 1946 and the fall of Iron Curtain in 1947. Truman's decision to allocate funds for fight against Communism in Turkey and Greece, establishment of Anglo-American Committee of Enquiry for Palestine leaving the Soviets out, the conclusion of the Jordanian-Turkish Pact in early 1947, together with the Turkish-Iraqi plans for the establishment of a Turkish-Arab bloc, further pointed to a deliberate scheme to create a strategic environment under British domination.²⁷⁵ With military bases in Egypt, Iraq, Palestine and Jordan the British hoped to keep the Middle East under control and stop Soviet penetration to the region. UK Foreign Secretary Bevin stated in a memorandum addressed to US ambassador to UK on 25 May 1948 that

“Our experience of Russia's pressure on Persia indicated a desire on her part to get into the Middle East and Persian Gulf. If she could detach the Eastern world from the West, she would gobble up Iraq and make Turkey a satellite, and oil, one of the great resources essential for the material and political

²⁷³ UN GA Resolution 181 (II) Future Government of Palestine, 29 November, 1947, available at: <http://unispal.un.org/UNISPAL.NSF/0/7F0AF2BD897689B785256C330061D253>

²⁷⁴ Freedman, Robert Ed.; Soviet Jewry in the 1980's: Politics of anti-semitism and immigration and the Dynamics of Resettlement, 1989. P.61

²⁷⁵ Gorodetsky Gabriel, The Soviet Union and the Creation of the State of Israel, 2001. P. 14, available at http://www.cap.uni-muenchen.de/download/2002/2002_israel_soviet_union_gorodetsky.pdf

recovery not only of Europe, but of other parts of the world, will be gone and enormous power will be placed in the hands of Russia".²⁷⁶

These military bases were seen as a threat to Soviet security by Stalin.²⁷⁷ With creation of the State of Israel, USSR thought to diminish the influence of the Great Britain in the Middle East and gain foothold in a strategically important region. Therefore, the very first objective of Soviet policy was to terminate the British mandate of Palestine and withdrawal of British troops. The next objective was to create a loyal Jewish state along socialist doctrine – feared by the British diplomats²⁷⁸ (As many members of the Jewish agency, who later served in the Israeli government inclined to Socialism and were Russian-speakers) and repatriate hundreds of thousands of Jews liberated from Nazis in Eastern Europe to Palestine to bolster their ratio vis-à-vis the Arabs. With these actions Soviet leaders believed that they would win the hearts of Jews and gain a strong ally in the region. Soviet objectives were materialised as the British failed to negotiate with Arabs and Jews and were compelled to transfer the issue to the United Nations. Already in Spring 1947, Soviet Ambassador to the UN Gromyko signalled Soviet support to partition of Palestine and creation of a separate Jewish state at the special session of the General Assembly.²⁷⁹ In November 1947, Soviet Union scored its major success by passing the GA resolution 181 on termination of mandate, withdrawal of troops and partition of territory. Act of recognition in May 1948 was just icing of the cake, since the recognition of the new Jewish state was already predestined a year before.

Extension of recognition to Israel was dictated by the Soviet plans to disrupt British dominance in the Middle East, avert threats coming from establishment of British military bases near the Soviet territory and gain a strong and thankful ally in the region of strategic importance as the Cold War unfolded. Hope that Israel might become a socialist state given the ideological background of quite a few Jewish Agency members as well as sympathy towards Jewish

²⁷⁶ Pattison, Keith, The Delayed British Recognition of Israel, *The Middle East Journal*, Vol 37, No.3, 1983, pp. 412-428, p.415

²⁷⁷ Freedman, Robert Ed.; *Soviet Jewry in the 1980's: Politics of anti-semitism and immigration and the Dynamics of Resettlement*, 1989. P.62

²⁷⁸ Pattison, Keith, The Delayed British Recognition of Israel, *The Middle East Journal*, Vol 37, No.3, 1983, pp.412-425, p. 416

²⁷⁹ Gorodetsky Gabriel, *The Soviet Union and the Creation of the State of Israel*, 2001. P. 18, available at http://www.cap.uni-muenchen.de/download/2002/2002_israel_soviet_union_gorodetsky.pdf

nation²⁸⁰ which suffered holocaust during the WWII further strengthened Soviet leadership's resolve to recognise the new Jewish state. Recognition of Israel was first such act extended by the Soviet Union in the post-war history, when the new state was not recognised by the parent country prior to that. However, it should be emphasized that the USSR was not alone in this endeavour. Apart from USSR and its satellite states from the Eastern Europe up to 30 states – a vast majority of existing states back then - recognised Israel de-jure prior to recognition by the Great Britain, including United States, France, Netherlands, Switzerland, Canada, Australia, Norway, Belgium, etc. This impressive list of recognizing countries of the Western world meant that international society agreed with Soviet stance on Israel's recognition, albeit for different motives. More than two decades would pass until Soviet Union would recognise another emerging state prior to Metropolitan recognition - Bangladesh.

Bangladesh

The civil war that led to dismemberment of Pakistan erupted in March 1971, three months after the general elections in which the Awami League won 169 seats in 313-member National Assembly (53% majority), almost all of them thanks to votes in East Pakistan. At the time of the elections, Pakistan was ruled by military junta and civilian power should have been transferred to the winner of the elections. Soviets supported the Awami League in the sphere of foreign policy it stood for development of friendly relations with all the countries and for strengthening cooperation with the Soviet Union and other socialist states. Awami League leaders were against Pakistan's membership in SEATO and CENTO and supported close cooperation with India.²⁸¹ In addition to this, the linguistic, cultural and ethnic differences also played an important role in creating more differences between the two parts of the country. Bengalis strongly resisted against the imposition of Urdu as the sole official language of Pakistan, and the attempt to preserve Bengali language became the basis for nationalist movement in East Pakistan.²⁸² Internal disagreements between the Awami League and the other winner of the elections Pakistan

²⁸⁰ Ibid.

²⁸¹ Budhraj, Vijay Sen, Moscow and the Birth of Bangladesh, Asian Survey, Vol. 13, No.5, 1973 p. 485

²⁸² Mahmood, Amna; Farooq, Sadaf; Awan Nadia, Bangladesh-Pakistan Relations: Hostage to History, In: American International Journal of Contemporary Research, Vol 5. No.2, 2015 p. 67 available at: http://www.aijcrnet.com/journals/Vol_5_No_2_April_2015/10.pdf

People's Party (PPP), which also won the overwhelming majority of the seats in West Pakistan constituencies led to failure in establishing civil authority. The military junta, which supported the PPP arrested the leader of the Awami League Sheikh Mujibur Rahman and launched a military offensive in March 1971 to crush Awami League supporters in East Bengal. In response to military operation, the Awami League proclaimed establishment of independent Republic of Bangladesh. Internal conflict very soon transgressed Pakistan's borders. Almost 10 Million of East Bengalis fled the atrocities and terror of Pakistani military into neighbouring West Bengal and Assam states of India.²⁸³ Pakistan's archrival India signalled sympathy and support to East Bengal people.²⁸⁴

Soviet policy towards Indian subcontinent in the 1960-70's was conditioned by the ongoing Cold War and strained Sino-Soviet relations after armed clashes at the border in 1969. Soviet Union attempted to keep the United States and China out of the subcontinent and fill in the vacuum left after departure of the British. After mediating Tashkent Declaration in 1966 ending the war between India and Pakistan, the Soviet Union started to court India and Pakistan to create a Soviet-led economic cooperation organisation including Afghanistan, which would serve as a precursor for some sort of security alliance.²⁸⁵ CPSU Chairman Brezhnev hinted at this in his address to International Conference of Communist and Workers Parties in June 1969: "International course of events places on the agenda the task of creating collective system of security in Asia".²⁸⁶ Pakistani military regime although initially approved of the idea, turned down this Soviet offer in 1969 in fear of losing support of both Washington and Beijing. The Soviets hoped that instalment of civilian regime in Pakistan, especially with solid representation of Awami League with its political orientation would turn the tide in Soviet favour.

Mass influx of Bengali refugees from East Bengal to India, opening of diplomatic representations of self-proclaimed Bangladesh in Calcutta and New Delhi and overt support of Indian authorities to East Bengali forces put the two enemies - Pakistan and India on the verge of

²⁸³ Mahmood, Amna; Farooq, Sadaf; Awan Nadia, Bangladesh-Pakistan Relations: Hostage to History, In: American International Journal of Contemporary Research, Vol 5. No.2, 2015 p. 68 available at: http://www.aijcrnet.com/journals/Vol_5_No_2_April_2015/10.pdf

²⁸⁴ Budhraj, Vijay Sen, Moscow and the Birth of Bangladesh, Asian Survey, Vol. 13, No.5, 1973, p. 483

²⁸⁵ Bakshi, Jyotsna, Soviet Attitude towards Bangladesh liberation movement In: The Indian Journal of Political Science, p. 181

²⁸⁶ Thomas, Raju, Indian Security Policy, 1986, p. 35

war again. Even though, Soviet Union did not support the secession of Bangladesh initially and worked rather towards establishing stability in East Bengal and instalment of civilian regime in Pakistan, she had to take sides in the event of imminent war. In August 1971, Soviet Union and India signed treaty of Peace, Friendship and Cooperation in New Delhi implying that in the case of war Soviet support to India was guaranteed. However, in the consequent statements Moscow referred to conflict in East Bengal as “internal conflict of Pakistan”.²⁸⁷ With this policy, Soviet Union tried to kill two birds with one stone – to assure India of its strategic partnership and support and not to alleviate Islamabad regime completely and keep the doors open for cooperation. Soviet diplomacy did not abandon hope that with preservation of the territorial integrity of Pakistan, East Bengal would gain a wide-range autonomy and Pakistan under civilian rule (read Awami League), would conduct policy of non-alignment, secularism and socialism and join the collective security system proposed by Brezhnev. Hence, unlike the Israeli case, USSR did not rush to recognise Bangladesh. Moreover, in 1971 in contrast to 1948, there were already international law provisions in place that regulated self-determination.

Towards the end of the year, it became clear that military junta in Islamabad would not be replaced by civilian administration, moreover, the junta started to foster ties with Beijing. During a visit to China, Pakistani officials called Tashkent agreement facilitated by Moscow a great betrayal.²⁸⁸ Meanwhile, fighting in East Pakistan between the regular forces and Awami League supporters intensified and Soviet supply of arms and ammunitions to India increased the capacity of Indian army. Indian Prime-Minister’s tour to western countries to persuade them to influence Islamabad regime to cease hostilities did not bring any results and the Soviet Union started to tilt away from neutral position towards New Delhi. First, USSR rejected proposal on deployment of UN observers at Indian side of the border.²⁸⁹ Bangladeshi forces which gained strength through Indian support intensified guerrilla warfare in East Bengal, which brought about shelling of Indian border villages by Pakistani armed forces, where guerrilleros found refuge. This shelling prompted Indian Government to cross the border and intervene in East Bengal on November 21 1971. USSR held the Pakistani leaders responsible for the start of war.²⁹⁰ After Indian

²⁸⁷ Budhraj, Vijay Sen, Moscow and the Birth of Bangladesh, Asian Survey, Vol. 13, No.5, 1973, p. 485

²⁸⁸ Budhraj, Vijay Sen, Moscow and the Birth of Bangladesh p.491

²⁸⁹ Bakshi, Jyotsna, Soviet Attitude towards Bangladesh liberation movement In: The Indian Journal of Political Science, p. 192

²⁹⁰ Ibid. p.197

intervention Soviet Union started to support the self-determination cause of the East Bengalis wholeheartedly in the UN Security Council throughout December, citing large-scale atrocities and grand suffering of the Bengalese in the hands of Pakistani army and vetoed US-initiated resolutions calling for cease-fire and withdrawal of Indian troops.²⁹¹ Pakistani forces surrendered to India in Dhaka on December 16 and six days later Awami League representatives assumed government of Bangladesh. Prior to that India as the first country recognised Bangladesh's independence. Soviet Union along with its socialist satellites recognised Bangladesh in January 1972, with western European nations following suit in less than two weeks and the United States in April 1972. Pakistan granted recognition to Bangladesh only at Organisation of Islamic Countries' conference in Lahore as late as in 1974²⁹² and only thereafter China extended recognition too.

International recognition of Bangladesh was a victory for Soviet Union as it changed the political picture at Indian subcontinent. Soviet Union had gained a strategic partner and close ally in the face of India and a newly emerged nation – Bangladesh which was thankful to USSR for its existence. Washington's and Beijing's erstwhile ally – Pakistan was truncated to its western territory and Chinese influence in the region halted. Leaving aside geopolitical interests and turning to pure recognition matter, we could draw parallels with Israeli case. True, USSR extended recognition to Bangladesh prior to Pakistan's formal recognition, but here Israeli recognition alike, the international community was unanimous (with the exception of China) in recognising the new state. Surrender of Pakistan forces in Dhaka, practically meant release of Bangladesh into independence and there was no way back for Pakistan to regain control over the East Bengal.

If we analyse Israel and Bangladesh cases from the perspective of my research they look pretty similar. In both cases, it was in the interest of the Soviet Union to recognise the new state, in both cases Soviet Union extended recognition prior to metropolitan states – UK and Pakistan respectively. However, there were proper legal grounds for state creation – UN Resolution 181 for Israel and right for remedial secession for Bangladesh (see chapter on secession). It should be

²⁹¹ Budhraj, Vijay Sen, Moscow and the Birth of Bangladesh p. 494

²⁹² Mahmood, Amna; Farooq, Sadaf; Awan Nadia, Bangladesh-Pakistan Relations: Hostage to History, In: American International Journal of Contemporary Research, Vol 5. No.2, 2015 p. 69 available at: http://www.aijcrnet.com/journals/Vol_5_No_2_April_2015/10.pdf

also underlined that in neither case USSR acted unilaterally and not only its satellite states emulated her in recognition, but also its cold war rivals and non-aligned states. Near unanimous agreement of international community on recognition of Israel and Bangladesh is very important detail that points to the argument that the Soviet Union did not breach any international legal norms and stayed within the international law limits when extending recognition. Both of these nations acceded to the UN soon, which would not have been possible were they born through illegal means.

Now, let's turn to non-controversial cases of recognition, when the new states were recognised by Moscow after recognition by parent states or after negotiated exit.

3.3.2 Group 2 – Recognition of Eritrea, East Timor, South Sudan

UN-supervised referendum on independence of Eritrea was held on April 23-25 1993, after 30-years of war for independence from Ethiopia, which annexed Eritrea in 1961. The referendum was a result of the peace talks between Ethiopian transitional government which ousted Marxist regime of Mengistu and Eritrean Liberation Front, which supported Ethiopian opposition in fight against Mengistu. At the peace talks, Ethiopians recognised the right of Eritreans for self-determination and agreed to hold referendum on the future of province. More than 99% of population voted for independence and Eritrea officially declared independence on May 24. Interestingly, Ethiopia recognised independence of Eritrea right after the referendum. Russian Federation did not wait for official declaration of independence either and recognised Eritrea on May 13, 1993.²⁹³ Reasons for swift recognition of Eritrea by Russian Federation was the issue of Ethiopia's debt to Russia, which could not have been solved without Eritrea's participation and demonstration of friendly gesture towards a country with strategic location at the Red Sea, in contrast to USSR's decade-long support for Mengistu's regime. Eritrea joined the UN two weeks later.

²⁹³ Россия признала Эритрею, 15.05.1993, available at: <http://www.kommersant.ru/doc/48032>

Russian Federation extended recognition to East Timor within hours after its independence was proclaimed on May 20, 2002. Declaration of independence took place at a solemn ceremony in Timorese capital Dili in presence of UN Secretary-General, Presidents of former colonial masters of East Timor Portugal and Indonesia, Australian Prime-Minister and delegations from 92 countries.²⁹⁴ East Timor was placed under UN administration after 24 years of Indonesian occupation in 1999 to prepare her institutions for independence. Thus, international consensus on the fate of East Timor's recognition was reached already at the peace talks in the end of 1990's.

In a similar vein, Russian Federation recognised the independence of South Sudan on July 9, 2011 the same day as the new republic was proclaimed in South Sudanese capital – Juba.²⁹⁵ South Sudan separated from Sudan based on the referendum results, in which the South Sudanese voted overwhelmingly in favour of independence. The referendum, in its turn was a result of internationally facilitated peace accord between Khartoum and Sudanese People's Liberation Army, which fought for South Sudan's independence since 1950's.

Russian Federation acted in concordance with international community when extending recognition to new states, which emerged as a result of negotiated peace settlement and expression of population's will. State creation followed the normative due course and therefore all three nations became UN members right away, securing speedy universal recognition of their statehood. Even though it could not have influenced the Russian stance on the recognition, it is worth mentioning that Russia's predecessor – Soviet Union throughout 1960-70's rendered financial and military support to Marxist/Communist regimes in Addis-Ababa and Khartoum which fought exactly against Eritrean and South Sudanese independence fighters.

3.3.3 Group 3 – Non-Recognition -Northern Cyprus, Karabakh, Transnistria, Kosovo

Entities belonging to these group have one common feature. They do not enjoy unanimous international recognition of their statehood and are denied membership to international organisations. If we deduct Kosovo from this group, then the other three breakaway entities have

²⁹⁴ Россия признала новое государство, 21.05.02, available at: <http://www.km.ru/v-rossii/2002/05/21/obshchestvennoe-mnenie/rossiya-priznala-novoe-gosudarstvo>

²⁹⁵ Маргелов передал главе Южного Судана послание Медведева, 09.07.11, available at: <http://ria.ru/politics/20110709/399363562.html>

only one recognition in total to their credit. The international community including Russia effectively denied recognition of sovereignty of those entities. Nevertheless, the situation in all these states are different and therefore I will analyse in detail why Russia opted for non-recognition in each case.

Turkish Republic of Northern Cyprus

Turkish Republic of Northern Cyprus (TRNC) was proclaimed on November 15, 1983 after failure of UN-led negotiations to unite the island following 1974 invasion of one of the three guarantee powers – Turkey. Turkish invasion was caused by the military coup in Nicosia, which threatened the independence of the Republic of Cyprus by possible unification with Greece. Turkish invasion however, not only restored the previous Cypriot administration, but effectively divided the island and its capital in two, leaving the northern part of the island and capital Nicosia under Turkish military control. At the behest of Turkish occupying power, population exchange along ethnic lines also took place, turning northern part of Cyprus homogeneously Turkish and southern part homogeneously Greek. The division brought the establishment of the Turkish Federated State of Cyprus with the capital in North Nicosia/Lefkosa in February 1975. From the very beginning, the international community was against forming any entities on the territory of the island. The Security Council passed Resolution 367, where it regretted this unilateral decision of forming a “Federated Turkish State”²⁹⁶ and requested that the Greek and Turkish communities and other parties refrain from any attempt to partition the island or its unification with any other country. Soviet Union along with Belorussian SSR who was a non-permanent member of the SC at the time supported the resolution. Although the language was not as strong as in following Resolutions, it became clear that the idea of separate Turkish Cyprus found no support in the world. The Security Council adopted the same approach when the international efforts to unite Cyprus in bi-zonal, bi-communal federation failed and with tacit support from Ankara, Northern Cyprus at last declared independence. TRNC was immediately recognised by Turkey and up until now it remains the only country having done so. The reason for non-recognition lies in unanimous rejection of legality of TRNC’s birth by the international

²⁹⁶ UN Security Council Resolution, 367 (1975), available at:
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/367

community. Three days after the unilateral declaration of independence by TRNC, the United Nations Security Council issued a resolution 541 declaring TRNC independence legally invalid, calling to respect territorial integrity of the Republic of Cyprus and urged UN member states not to recognise the TRNC.²⁹⁷ Soviet Union along with 12 other members of the UN Security Council voted in favour of the resolution, only Pakistan voted against and Jordan abstained. UN Security Council issued another resolution in May 1984 condemning secessionist actions of Turkish Cypriot leadership, particularly exchange of ambassadors between Turkey and Turkish Cyprus and reiterated support to the territorial integrity of the Republic of Cyprus and the call to all states not to recognise the TRNC and not assist the entity in any way.²⁹⁸ Declaration of independence was again considered illegal and invalid. In a similar pattern, Soviet Union voted in favour of the resolution again along with 12 members of the Security Council. Pakistan still voted against and this time United States abstained.

Russian Federation continues the Soviet policy of non-recognition of TRNC. Interestingly however, out of the first three vetos cast by Russia after the collapse of the Soviet Union at the UN Security Council two concerned Cyprus. The first vetoed resolution in 1993 concerned support to UN peacekeeping force in Cyprus. As the Russian Ambassador to the UN at the time Yuli Vorontsov stated Russia could not afford the \$2 million annual contribution required under the resolution.²⁹⁹

The second veto was cast in 2004 when Russia blocked a resolution that would have terminated the mandate of the UN Peacekeeping Force in Cyprus (UNFICYP) and replaced it with the UN Settlement Implementation Mission in Cyprus (UNSIMIC) had the Greek and Turkish Cypriots voted for the so-called Annan Plan of unification of the island in referendum. Russian diplomat Gennady Gatilov said his country saw the resolution, as an attempt to influence the outcome of the referenda four days ahead of the vote. "We are certain that the referenda plans must take place freely, without any interference, or pressure from outside," he told the council.³⁰⁰ He was echoed by the Russian Deputy Foreign Minister Yury Fedotov who said that

²⁹⁷ UN Security Council Resolution, 541 (1983), available at:
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/541\(1983\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/541(1983))

²⁹⁸ UN Security Council Resolution, 550 (1984) available at:
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/550\(1984\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/550(1984))

²⁹⁹ Russian veto defeats Security Council draft on Cyprus, 21.04.04, available at:
<http://www.un.org/apps/news/story.asp?NewsID=10481&Cr=cyprus&Cr1=>

³⁰⁰ Associated Press, Russia Blocks UN Cyprus Resolution, 21.04.04, available at:
<https://www.globalpolicy.org/component/content/article/196/42655.html>

"Under these circumstances we had no choice but to apply a technical veto to ensure the conditions needed for further work" on the draft resolution.³⁰¹ The resolution was supported by all other members of the council and the veto was hailed only by the Greek Cypriots who ultimately rejected the unification plan. Several reasons have been named at time by Russian pundits to explain first veto in 10 years, *inter alia*, reminding the EU that Russia has leverage in influencing its enlargement policies and the world of Russia's importance, increase of Russia's popularity in the Republic of Cyprus – home to many Russian businesses and a top destination of offshore financial transfers from Russia.³⁰²

In an interesting twist of events the issue of recognition of TRNC was raised again in the wake of Russian recognition of Abkhazia and South Ossetia. In an interview to Turkish daily Cumhuriyet Russian Ambassador to Turkey Vladimir Ivanovskiy, when answering journalist's question about TRNC recognition, stated:

"We are trying to look at the events from a realistic point of view. Of course, we do not consider the recognition to be very easy. We are aware that this procedure will be a difficult one..... there is a change in the way the world order is perceived after World War II. The climate in global developments is changing. This is not launched by Russia. It is NATO that launched this by bombing Yugoslavia. Perhaps we today are following this direction. Indeed, we are not the ones who launched this."³⁰³

On the question when would Russia recognize TRNC, Ivanonskiy replied that "this issue is frequently brought onto the agenda by colleagues in the Turkish Ministry of Foreign Affairs. Russia shall recognize the TRNC right after Turkey recognizes South Ossetia and Abkhazia. It can be a mutual and simultaneous recognition".³⁰⁴

On October 2, 2008 Russian Foreign Minister Sergei Lavrov while on a visit in Sokhumi was asked to comment on the possibility of mutual recognition mentioned by the Ambassador. He responded that Moscow is no longer inclined to be guided by the "Cold War logic" of trade-offs -

³⁰¹ The Moscow Times, Russia vetoes UN resolution on Cyprus, the Moscow Times, 23.04.04, available at: <http://www.themoscowtimes.com/news/article/russia-vetoes-un-resolution-on-cyprus/231525.html>

³⁰² Ibid.

³⁰³ Press and Information Office of the Republic of Cyprus, Turkish Mass Media Bulletin 30-31.08/01.09.2008, available at: <http://www.moi.gov.cy/moi/pio/pio.nsf/d2f0876e1500506ac2257076004d01cb/1a3c24bb4b8d0647c22574b800312133?OpenDocument>

³⁰⁴ Ibid

- "I will do this for you if you do that for me."³⁰⁵ He went on to argue that the two cases are fundamentally different historically and in terms of international law. He stressed that Abkhazia was once a full-fledged republic within the Soviet Union, and that while Georgian President Saakashvili had tried unsuccessfully since 2004 to bring South Ossetia back under control of the Georgian central government by force, Greece had never attempted any such military action against Northern Cyprus. Taking all those differences into account, trade-offs are inappropriate, Lavrov concluded.³⁰⁶ Thus, Lavrov refuted the possibility of recognition of TRNC in any possible scenario. Frankly, it would have been highly unlikely for Turkey to consider recognition of Abkhazia and South Ossetia in exchange for hypothetical recognition of TRNC by Russia, due to number of weighty reasons: Policy of "Zero Problems with Neighbours" that has been actively pursued by the ruling AKP party, the architect of which Ahmet Davutoglu headed the Turkish diplomacy at the time; Collective non-recognition policy of Abkhazia and South Ossetia adopted by NATO and the EU as well as the rest of the international community; Potential cut of diplomatic relations with Georgia, which would have undermined Turkey's quest for becoming a major route of oil and gas transit from the Caspian to Europe.

The Soviet decision not to recognize TRNC was based on the normative interpretation of illegality of creation of state through use of force and military intervention. Even if Turkish intervention of Cyprus is justified with the provisions of the Treaty on Guarantee of 1960, occupation and subsequent declaration of independence of Northern Cyprus with Turkish military support was clearly a breach of international law. Therefore, Soviet Union and its legal successor Russian Federation did/do not recognize TRNC and declare adherence to territorial integrity of the Republic of Cyprus.

Republic of Mountainous Karabakh (Nagorno Karabakh Republic, NKR)

Conflict in the Autonomous District of Mountainous Karabakh of Azerbaijan was the first ethnic conflict in USSR that led to a full-scale war between the two of the union republics and resulted

³⁰⁵ Radio Free Europe, Russia Rejects Trade-Off With Turkey on Recognition of Abkhazia, South Ossetia, Northern Cyprus, 06.10.2009, available at:

http://www.rferl.org/content/Russia_Rejects_TradeOff_With_Turkey_On_Recognition_Of_Separatists/1844751.html

³⁰⁶ Ibid.

in de-facto establishment of a secessionist entity. Erupting in late years of the Soviet Union, the conflict caused exodus of hundreds of thousands of ethnic Armenians from Azerbaijan and ethnic Azerbaijanis from Armenia in the initial stage of the conflict and later left up to 1 million Azeri refugees without home. Karabakh's predominantly Armenian population demanded from the Soviet leadership transfer of the autonomous district to Armenia, arguing that Karabakh with its majority Armenian population should not have been attached to Azerbaijan SSR in 1921. Kremlin suspended Karabakh's autonomy in 1989 and imposed direct rule from Moscow for a year in an attempt to still the tensions. However, this attempt did not bring any negotiated solution to the conflict. After the defeat of coup d'état in Soviet Union in August 1991 a so-called parade of sovereignties took place – where all union republics including Russia declared sovereignty. Supreme Council of Karabakh also followed the pattern and proclaimed Republic of Mountainous Karabakh on September 2, 1991. Azerbaijan abolished the autonomous status of Mountainous Karabakh in November 1991. In response NKR held a referendum in which 99% voted for independence. At the end of the year USSR ceased to exist and Soviet forces were withdrawn from the region. Newly independent Armenian and Azerbaijani republics armed with ammunition left from Soviet bases engaged in a fierce battle. Sporadically supported by former Soviet militaries³⁰⁷ Armenian forces quickly gained the upper hand and in 1992-1993 occupied the whole territory of the autonomy and seven surrounding regions of Azerbaijan. Although, Armenia claimed that it was the Karabakh forces that defeated the Azerbaijani army, there are enough evidences that Armenian regular forces fought alongside Karabakh insurgents.³⁰⁸ In 1994, the war ended with Russian brokered cease-fire, which set the status-quo. OSCE was called in to mediate between the sides and seek peaceful resolution of the conflict. In more than 20 years the so-called Minsk Group under the aegis of OSCE - co-chaired by Russia, France and the US, failed to bring resolution of the conflict any closer. It is noteworthy that since then Russia and Armenia have entered a mutual defence pact and Armenia is home to large Russian military base and an airfield until 2044. Armenia is also a member of Russian-led security and economic blocs - Collective Security Treaty Organisation and Eurasian Economic Union. Azerbaijan pursues neutral and multi-vector foreign policy and is not member of any integrationist project led by Russia.

³⁰⁷ Cornell, Svante, *The Nagorno-Karabakh Conflict*, 1999, p.56

³⁰⁸ *Ibid.* p.42

NKR's independence is not recognized by any state in the world. Not even Armenia, the ethnic kin-state and major instigator and supporter of Karabakh's secession from Azerbaijan has extended recognition. In the early years after Soviet dissolution, the policy of Russian Federation aimed at keeping the former Soviet republics under its sphere of influence. Creation of the Commonwealth of Independent States (CIS) served exactly this purpose. Symptomatically, the Alma-Ata declaration that dissolved the Soviet Union and created CIS December 21, 1991 explicitly stated that the signatory states recognize and respect each other's territorial integrity and the inviolability of the existing borders.³⁰⁹ Kremlin tried to assuage the fears of former Soviet republics witnessing several secessionist conflicts in the former Soviet space by guaranteeing their territorial integrity if they would join the CIS.

At the international arena, Moscow also always supported territorial integrity of Azerbaijan. Four UN Security Council Resolutions, #822,853,874,884 were passed in 1993 all affirming territorial integrity of Azerbaijan and inviolability of its internationally recognized borders. Numerous OSCE declarations of the Minsk Co-Chairs affirm non-recognition of NKR. Only once, Russia together with its fellow Minsk group co-chairs France and the US voted against Azerbaijani sponsored UN GA Resolution 62/243 in March 2008 reaffirming continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders; Demanding the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan and reaffirming that no State shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan.³¹⁰ Speaking on behalf of the group, the United States said that the Co-Chairs voted against because the resolution did not consider the set of basic principles proposed by them for the peaceful settlement of the conflict in its balanced entirety. However, he reaffirmed the negotiators' support for the territorial integrity of Azerbaijan, and thus did not recognize the independence of Karabakh.³¹¹

It is noteworthy that Russian officials have never mentioned publicly the possibility of recognition of Karabakh in contrast to statements about possible recognition of other secessionist

³⁰⁹ Brzezinski Zbigniew, Sullivan Paige, Russia and the Commonwealth of Independent States: Documents, Data and Analysis, 1999, p.48

³¹⁰ UN GA Resolution 62/243, available at: http://www.un.org/ga/search/view_doc.asp?symbol=a/res/62/243

³¹¹ <http://www.un.org/press/en/2008/ga10693.doc.htm>

entities in former Soviet space, proving that the Kremlin remains adherent to non-recognition of Karabakh in line with OSCE official stance of regulating the Karabakh conflict based on principles of non-use of force, territorial integrity and self-determination of peoples.

Transnistria

Transnistria - a strip of land on the left bank of the Dniester unlike Karabakh did not have autonomous status within the Moldovan SSR during the Soviet period. Transnistria was initially part of Moldovan Autonomous Republic within the Ukrainian SSR from 1924 to 1940. In 1940 Romania ceded Bessarabia to USSR and Moldovan SSR was carved out by merger of Bessarabia and the Moldovan ASSR including Transnistria. In 1950's Transnistria became industrialised region, producing military hardware and bringing about immigration of Russian-speaking labour force. Immigration completely changed the ethnic composition of population in favour of Russian-speaking population – Russians and Ukrainians. Throughout the Soviet period Transnistria provided Moldovan SSR with communist party elites and chief cadres. The national awakening in the union republics after Glasnost and Perestroika urged the Moldovan Supreme Soviet in 1989 to introduce Moldovan as the official language in the republic instead of Russian and change the script from Cyrillic into Latin. This change effectively prevented Russian-speakers from being appointed to managerial positions in state administration, since Russian-speakers did not speak Moldovan/Romanian. Moreover, talks of possible unification with Romania intensified.

This prompted Transnistrian elites to declare independence from Moldova already on September 2, 1990 and proclaim Transnistrian Moldovan Republic. In September 1991 after Moldova declared independence from USSR, TMR adopted its own constitution and started to build its own forces with the support of Soviet 14th Army deployed in Transnistria. A brief war that occurred between TMR and Moldovan forces over the control of Transnistria ended after 14th Army intervened at the point when TMR forces have taken control of all the Transnistria and a strategic town of Bendery on the other side of the river. 14th Army in general, played a crucial role in establishment of a de-facto republic, by refusing to acknowledge Moldovan jurisdiction, declaring loyalty to the Transnistrian leadership, expressing readiness to defend the Transnistrian

region and train and supply the newly created defence forces of Transnistria.³¹² Most of the 14th Army's personnel were in fact native to the region.³¹³

In a pattern similar to Karabakh, Russia mediated a cease-fire between the warring parties in July 1992, setting the status-quo and deploying Russian peacekeepers along the Dniester river. The conflict froze. Chisinau leadership tried three different approaches to solve the conflict over the last 20 years. The first approach combined direct negotiations with Tiraspol and cultivation of good relations with Moscow in order to induce the latter to pressure Transnistria for unification. The second approach focused on reaching the agreement with Moscow by detouring Tiraspol. Third approach combined pressure on Tiraspol with attempts to counter Russian influence by attracting support from the EU and US.³¹⁴ Neither of these approaches yielded any result.

In 1993, OSCE became involved in conflict resolution in a 3+2 formula (OSCE, Russia, Ukraine+ Moldova and Transnistria). The format expanded to 5+2 when USA and the EU joined, however, both times when conflict came close to resolution in 1997 and 2003, the initiative belonged to Russia. In 1997, the then Foreign Minister of Russia Evgeni Primakov offered the two sides to create a common state within the borders of Moldovan SSR, but the proposal was turned down by the Moldovan authorities fearing upgrade of the Transnistrian status. In 2003, the so-called Kozak memorandum named after the adviser to the Russian President, was again rejected by Moldovan president in the last minute after receiving "advisory" calls from the EU and the US not to sign up to the agreement, which would have legitimized presence of Russian troops in Moldova for the next 20 years.³¹⁵ Kozak proposal envisaged Federalising Moldova and entrusting Transnistria with rights to leave federation in case Moldova decided to enter union with any other nation.

Transnistria's mere existence is guaranteed by the presence of the former Russian 14th army unit, which according to OSCE Summit Declaration of 1999 should have been withdrawn from Moldovan territory by 2002.³¹⁶ However, the renamed unit is still deployed in Transnistria.³¹⁷ Along with troop presence, Russia subsidizes gas to the secessionist republic, grants Russian

³¹² International Crisis Group, Moldova: No quick fix, 2003 p.4

³¹³ Ibid.

³¹⁴ Center for Eastern Studies, IDSI "Viitorul": Transnistrian Conflict after 20 years, 2011 p.9

³¹⁵ International Crisis Group, Regional Tensions over Transnistria, 2004, p. 25

³¹⁶ OSCE Summit Declaration, 1999, p49-50 available at: <http://www.osce.org/mc/39569?download=true>

³¹⁷ International Crisis Group, Moldova: No quick fix, 2003 p.21

citizenship to Transnistrians and pays pensions to them, builds social and health facilities, provides material support and training to its armed forces.

Lately, the language of Russian commitment to Moldova's territorial integrity is becoming ambiguous. Russian Prime-Minister Zubkov at the meeting with his Moldovan counterpart in 2008 declared that "Russia supports territorial integrity of Moldova, *at the territory of which Transnistrian issue is not resolved yet*".³¹⁸ Russian government does not shy away from establishing direct contacts with the non-recognised entity, amounting to de-facto recognition of Transnistria. Agencies formally write to Transnistrian counterparts with all the formalities and titles normally accorded to recognised states.³¹⁹ Russian Deputy Prime-Minister participates as an official guest in celebrations of victory day and other commemorative dates in Tiraspol.³²⁰ Transnistrian de-facto President Shevchuk pays official visit to Russia after elections and is greeted by the Head of Presidential Administration Ivanov. Transnistria is often referred to as a republic in Russian official discourse. In a symbolic gesture, after visit to Tiraspol in May, Russian Vice-premier Rogozin brought back to Moscow petition signed by tens of thousands of Transnistrians demanding recognition of their independence from Moscow. According to him, there are 200 000 Russian citizens in Transnistria³²¹ and "it is of utmost importance to show the whole world and to the people of Transnistria that Russia will side with them in providing security of the region, of the *republic* and to support political stability and diplomatic talks".³²² Transnistria carried out two referenda on independence in 1991 and in 2006. In 2006 voters had to answer whether they approved possibility of renouncing independence and integration with Moldova or independence and potential future integration with Russia. In both referenda more than 96% voted for independence/independence and integration with Russia respectively. Russian State Duma unanimously recognized the legitimacy of referendum and stated that "the Russian Federation's policy should reflect results of free expression of will of Transnistrians".³²³ The 2006 referendum question leaves no doubt that Transnistrian potential independence is

³¹⁸ Приднестровье - не Косово, 21.02.08, <http://www.rg.ru/2008/02/21/moldova.html>

³¹⁹ International Crisis Group, Regional Tensions over Transnistria, 2004, p. 8

³²⁰ Rogozin пригрозил прилететь в Приднестровье на бомбардировщике, <http://www.ntv.ru/novosti/962896/>

³²¹ Жителям Приднестровья, родившимся после 1991 года, могут дать российские паспорта, 01.07.15, available at: <http://www.rosbalt.ru/main/2015/07/01/1414381.html>

³²² Rogozin: РФ всегда поможет в обеспечении стабильности и безопасности в Приднестровье, 01.06.15 available at: <http://tass.ru/politika/2009418>

³²³ Госдума РФ: референдум в Приднестровье был легитимным и Россия должна учитывать его итоги, 06.10.06, available at: <http://www.newsru.com/russia/06oct2006/pmr.html>

ephemeral and independence is just a precondition to join Russian federation. In 2009, the Transnistrian President confirmed Transnistria's readiness to join Russian Federation.³²⁴

Russia as a mediator in the conflict and member of OSCE 5+2 team, adheres to the principle of non-recognition of Transnistria despite requests from Transnistrian parliament for recognition, the latest one dated of April 2014.³²⁵ All OSCE resolutions regarding the resolution of the conflict also upheld the principle of Moldovan territorial integrity. However, recently top Russian diplomat declared publicly about the possibility of Transnistrian independence. Lavrov stated in October 2014 that:

“Transnistria will have right to determine its future independently in case Moldova changes its non-bloc status. This is the baseline position that we will stand for. Everyone agreed when we started 5+2 process that if Moldova loses its sovereignty and is swallowed by another country, or if Moldova changes its military-political status from neutral to bloc, Transnistrians have the full right to decide about their own future independently”.³²⁶

This statement demonstrates that Russian adherence to non-recognition of Transnistria is conditional upon Moldova's foreign policy actions. If Moldova decides to join NATO or unites with Romania, Russia would regard this as a “green light” for recognition of Tiraspol. Although, Lavrov did not say this explicitly, but this was a covert message, since Transnistrians have already decided about their future in referendum and they just need external validation in the form of recognition. The unresolved status of Transnistria is obviously used as a leverage against Moldova's westward orientation and Transnistria's strategic importance for Russia has further grown after the 2014 conflict in Ukraine due to its geographical location.

Kosovo

Kosovo is different, Kosovo is a unique case, Kosovo is *sui generis* – we have often heard these expressions mostly from top western diplomats justifying recognition of Kosovo independence

³²⁴ Лидер Приднестровья заявил, что республика готова войти в состав России, 02.10.09, available at: <http://www.newsru.com/world/02oct2009/smironov.html>

³²⁵ Приднестровье хочет от Путина признания, 17.04.14, available at: http://www.gazeta.ru/politics/2014/04/16_a_5995177.shtml

³²⁶ Москва пригрозила признать право Приднестровья на независимость, 20.10.14, available at: <http://top.rbc.ru/politics/20/10/2014/5444cc28cbb20ff8bea16aa4>

from Serbia. We also heard from the Russian President that “Kosovo is a stick with dual edge. One edge will knock on the heads of recognizing states one day”.³²⁷ Surely, Kosovo differs from all the above secessionist entities because its recognition split the international community in two. General impression is that it was Russia and the western countries that disagreed about Kosovo’s future. However, if we take a closer look, we will discover that the disagreement over the status of Kosovo is characteristic to Asia, Africa, Latin America and even one of the main supporters of Kosovo’s independence - EU, where 5 member states still do not recognize Kosovo.

Kosovo was an autonomous region of Serbia, itself a union republic of Socialist Federal Republic of Yugoslavia. After disintegration of SFR Yugoslavia in 1992, Kosovo became part of rump Yugoslavia consisting of Serbia and Montenegro. Kosovar Albanians, who constituted 90% of the province’s two million population hoped that the 1995 Dayton peace agreement, which ended the war in Bosnia, would also address the plight of Kosovar Albanians, who demanded external self-determination. Kosovo assembly first declared independence already in 1990³²⁸, however it was annulled by Belgrade and the assembly was dissolved. Kosovar Albanians created parallel state institutions along Belgrade-led provincial administration and sought support of the outside powers. After Dayton, the peaceful disobedience policy propagated by Kosovar intellectual leaders lost out to demands from more radical wing nationalists from criminal-prone Kosovo Liberation Army, which started guerrilla campaign against Yugoslav forces in the province. KLA attacks became more frequent after the mass protest swept away the government in neighbouring Albania and left arms depots of Albanian army unattended. The weapons got in hands of KLA and increased their capability to carry out guerrilla warfare. Brutal retaliation by Serbian security forces under Milosevic resulted in 1998-99 war, leading to establishment of Serb control over the province and exodus of hundreds of thousands of Kosovo Albanians. In order to stop the violence, ethnic cleansing of Albanians and to avoid spillover of the conflict to neighbouring countries NATO bombed Yugoslavia, albeit without the UN Security Council approval. Milosevic was persuaded by Russia to surrender. Serbia pulled out all its forces from Kosovo and Kosovo Force composed of NATO troops and a small detachment of

³²⁷ Путин о Косове: это палка о двух концах, когда-нибудь она "треснет их по башке", 22.02.08, available at: <http://www.newsru.com/arch/russia/22feb2008/kosopot.html>

³²⁸ Press-Conference of Russian ambassador to Tirana, 20.03.14, available at: http://www.albania.mid.ru/int/int8_ru.html

Russian forces was deployed to keep the peace. The notorious UN Security Council resolution 1244 that ended the conflict, placed Kosovo under interim UN administration, which started to build self-government institutions in the province. Most importantly, the Resolution 1244 affirmed territorial integrity of Federal Republic of Yugoslavia and called for provision of self-government and substantial autonomy for Kosovo and determination of its status.³²⁹ Status negotiations were to start after eight standards *inter alia* relating to effective representative and functional institutions, reinforcement of rule of law, respect for the right of return of all residents, normalization of dialogue with Belgrade were fulfilled by Kosovo provisional self-administration. Even though, these standards were clearly not fulfilled by October 2005, the UN Security Council still commenced the negotiation process over the status.³³⁰ UN Secretary-General appointed Special Envoy for status talks and asked the Contact Group composed of Russia, UK, US, France, Italy and Germany to work side by side with the UN Envoy, former Finnish Prime-Minister Ahtisaari. After a year-and-half-long futile negotiations that would not bring the positions of Belgrade and Pristina closer (Belgrade offered autonomy within Serbia, whereas Pristina insisted on independence) Ahtisaari supported by western countries provided draft settlement report recommending supervised independence for Kosovo. Before the introduction of the report, Russia wary about the independence plan warned:

“It is of principal importance to assume that the decision on Kosovo will be of a universal character. It will set a precedent. Any speculation about the uniqueness of the Kosovo case, is just an attempt to circumvent international legal rules, which distracts from reality. What is worse is that attempts of that kind generate distrust of the international community as it creates an impression of double standards being applied to the settlement of crises in various regions worldwide and of rules being enforced arbitrarily, depending on each individual case”.³³¹

Russia assured Belgrade that she would not support any resolution at the Security Council that would not have Serbian approval. Ahtisaari’s report recommended supervised independence for Kosovo, arguing that “a return of Serbian rule over Kosovo would not be acceptable to the

³²⁹ UN SC Resolution 1244, 1999, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3b00f27216>

³³⁰ Weller, Marc, *Negotiating the Final Status for Kosovo*, ISS, 2008 p. 22

³³¹ *Ibid.* p.40

overwhelming majority of the people of Kosovo. Belgrade could not regain its authority without provoking violent opposition”.³³² Ahtisaari concluded that

“Kosovo is a unique case that demands a unique solution. It does not create a precedent for other unresolved conflicts. In unanimously adopting resolution 1244 (1999), the Security Council responded to Milosevic’s actions in Kosovo by denying Serbia a role in its governance, placing Kosovo under temporary United Nations administration and envisaging a political process designed to determine Kosovo’s future. The combination of these factors makes Kosovo’s circumstances extraordinary”.³³³

The G-8 summit in Germany in June 2007 vividly demonstrated that the western countries had already made their decision in favour of independence for Kosovo, whereas Russia objected to it strongly. Putin blamed western leaders for imposing their will on sovereign states and declared attempts to solve the Kosovo status without Serbian consent illegal and immoral.

Naturally, Ahtisaari’s recommendations were not shared by Serbia either. Russia pressed for continuation of negotiations. A contact group troika, composed of EU, Russian and the US diplomats was dispatched to negotiate with Serbia and Kosovo and achieve a solution until the end of December 2007. Russian Foreign Minister Lavrov said in August 2007 that Russia would support any decision, even division of Kosovo if that is agreed by Belgrade and Pristina - “our aim is to support the sides to come to agreement and not to impose a certain decision on them”.³³⁴

During this round of negotiations, Serbia offered the widest possible autonomy to Kosovo including access to international financial institutions and other international and regional organisations, except UN, OSCE and CoE; right to have trade and cultural representations abroad; its own flag, anthem and national sporting teams.³³⁵ Kosovo rejected this proposal, knowing already that Ahtisaari’s package envisaged independence. Troika mission returned in December 2007 empty-handed.

The deadlock in negotiations and radically different positions of Security Council members on Kosovo status (China did not support unilateral declaration either³³⁶) meant that Kosovo

³³² Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2007/168

³³³ Ibid.

³³⁴ Согласие - залог раздела, 31.08.07, available at: <http://www.kasparov.ru/material.php?id=46D848B425BDC>

³³⁵ Weller, Marc, *Negotiating the Final Status for Kosovo*, ISS, 2008 p. 65

³³⁶ China’s Ambassador at the UN SC session stated that “Safeguarding sovereignty and territorial integrity is one of the cardinal principles of contemporary international law, as enshrined in the United Nations Charter. The issue of

independence could not be acquired through the Security Council. Therefore, the western nations advised Kosovo authorities to opt for unilateral declaration of independence. In anticipation of the declaration, Russian official figures were vocal in pointing out fatal consequences of the unilateral declaration.

In January 2008, Foreign Minister Lavrov stated that “Kosovo independence will set a precedent for 200 regions in different countries of the world”.³³⁷ “We fully understand destabilizing effect of all separatist processes. It is in our interest to preserve stability, not allowing separatism and not allowing violation of international law”³³⁸ – he said.

First Vice-Premier Ivanov declared at the Munich Security Conference on February 10, that “Russia does not share the opinion about necessity of recognition of Kosovo independence, not because we stubbornly support Serbia, but because we want to stay within the limits of international law and do not want to create precedents”. He compared recognition of Kosovo with opening of Pandora’s box. “If EU states recognize Kosovo, they will have to recognize Northern Cyprus as well”. Two days later Lavrov stated that the recognition would undermine the principles of order in Europe, principles of OSCE and UN Charter. He warned that the independence of Kosovo will have effect on secessionist regions of Georgia, as well as separatist movements from Moldova to Indonesia, since it will “revise the peremptory norms and principles of international law”. He also ridiculed at western position: “many are sure in their heads that Russia is strongly objecting to Kosovo independence, fearing that it would set a precedent, but in her soul, she just waits for this to happen to recognize everyone around her one by one”.³³⁹ According to him, this is a complete misperception of the Russian position.

Russian representative to NATO even threatened to use force in case of violation of Resolution 1244 and tried to discredit the recognition by asserting that the recognition process is financed by Kosovar drug mafia.

President Putin concluded pre-declaration warnings at the press-conference on February 14, 2008 by emphasizing that Russia will take respective measures:

Kosovo’s status does indeed have its special nature. Nevertheless, to terminate negotiations, to terminate pursuit of a solution acceptable to both parties, and replace such efforts with unilateral action will certainly constitute a serious challenge to the fundamental principles of international law”

³³⁷ Лавров: Косово - прецедент для 200 районов мира, 23.01.08, available at:

http://news.bbc.co.uk/1/hi/russian/russia/newsid_7204000/7204442.stm

³³⁸ Ibid.

³³⁹ Лавров объяснил политику Москвы, 23.01.08, available at: <http://vz.ru/politics/2008/1/23/139824.html>

“We will not start monkeying around, and producing mirror actions, but we have homemade plans and we know what to do. If someone makes a stupid decision, we should not do the same. For us it is a signal and we will react to this behavior of partners to secure our interests. If they think, they have the right, why can't we, but we will not act so straightforwardly. Support to unilateral declaration of Kosovo's independence is illegitimate and immoral. Territorial integrity of states is anchored in basic principles of international law, there is UNSC resolution 1244, which affirms territorial integrity of Serbia and all UN members should follow this decision. Why you Europeans do not recognize Northern Cyprus? Aren't you ashamed? We are told Kosovo is unique case, but everybody understands that there is nothing unique about it. Why are we encouraging separatism? There should be single principles. Political interests of certain countries should not be served. Small nations do not feel secure today. Had there been a strong order, there would have been no fear. We will surely raise this issue at the UN”.³⁴⁰

Despite warnings of the Russian officials, Kosovo declared independence on February 17 and was immediately recognized by the United States and most EU members. Russia condemned the declaration of independence at the UN SC session convened to discuss Kosovo issue and stated that it breached fundamental principles of international law. Putin warned fellow Heads of States of the CIS a week later that Kosovo is a fearful precedent that will result in chain of unpredictable consequences.

Russia once again pointed that Kosovo's declaration of independence contradicted UN resolutions at the hearings in ICJ on legality of independence. Russian ambassador to Netherlands stressed that the regime set under the UN SC Resolution 1244 preserves territorial integrity of Serbia and excludes any unilateral action from Kosovo Albanian as well as Belgrade authorities.³⁴¹ It is noteworthy, that the Russian judge voted against in the ICJ ruling.

Since February 2008, Russian official figures reiterated their stance on non-recognition of Kosovo on numerous occasions. A day after Russian recognition of Abkhazia and South Ossetia, Russian Envoy to the UN Churkin categorically rejected the possibility of recognition of Kosovo.³⁴² Irreversibility of Russia's decisions was confirmed one year later by Deputy Foreign Minister Grushko, who ruled out any trade-off in recognition of Kosovo in exchange of

³⁴⁰ Путин: у нас есть домашние заготовки на случай признания независимости Косова
<http://www.vesti.ru/doc.html?id=163610>

³⁴¹ Независимость Косово: противоположные позиции России и США, 10.12.09, available at: <http://www.golos-ameriki.ru/content/us-russia-kosovo-un-2009-12-10-79016327/663720.html>

³⁴² Сербия и Косово против решения России, 27.08.08, available at:
http://news.bbc.co.uk/1/hi/russian/international/newsid_7583000/7583688.stm

hypothetical recognition of Abkhazia and South Ossetia by the EU or mutual withdrawal of recognition of Kosovo by the EU and Abkhazia and South Ossetia by Russia respectively.³⁴³ Russian Ambassador to Belgrade Chepurin stated in 2013 that Russia will continue to block any attempt of Kosovo to become member of the UN.³⁴⁴ He added that Russian stance will remain the same as long as Serbia's position stays unchanged.

In October 2014, President Putin in a meeting with Serbian President Nikolic underlined that "Russia has a principled position regarding Kosovo and it is based not only on our friendship and closeness, but on international law and justice. This is a principled position and it is not subject to any corrections..... Russia does not trade with friendship"³⁴⁵.

Even though, Russia does not recognize Kosovo, the Russian president used Kosovo's "vivid and fresh"³⁴⁶ precedent on several occasions to justify recognition of Crimea in March 2014. "When I hear that we allowed violation of international law, it surprises me. There is no need to have permission of central authorities to conduct self-determination procedures. Nothing else was done in Crimea that had been done in Kosovo. I am deeply convinced that Russia did not allow any violation of international law".³⁴⁷ Putin added that Kosovo declared independence only by the decision of the assembly, whereas in Crimea the people voted in referendum with "astonishing results".³⁴⁸

Russian stance on Kosovo is a combination of historic, global, regional and internal factors. Russian diplomacy failed in the Balkans in 1990's due to inherent weakness of the Russian state and inability to stand up for Russian interests in preserving Yugoslavian state. The notorious occupation of Pristina airport in 1999 and then hasty withdrawal at the demand of NATO was

³⁴³ МИД РФ: Россия не признает независимость Косово, 02.04.2009, available at: <http://top.rbc.ru/politics/02/04/2009/291704.shtml>

³⁴⁴ Россия признает Косово, если об этом попросит Сербия - посол РФ, 10.11.2013, available at: <http://www.svoboda.org/content/article/25163955.html>

³⁴⁵ Путин заявил, что Россия не признает независимость Косово, 17.10.14 available at: <http://delo.ua/world/putin-zajavil-chto-rossija-ne-priznaet-nezavisimost-kosovo-280887/>

³⁴⁶ Путин сравнил Крым с Косово, 17.11.14, available at: <http://kr.ua/politics/478533-putyn-sravnyl-krym-s-kosovo>

³⁴⁷ Путин сравнил аннексированный Крым с Косово, 17.11.14, available at: <http://www.unian.net/politics/1010112-putin-sravnil-anneksirovannyiy-krym-s-kosovo.html>

³⁴⁸ Путин сравнил Крым с Косово, 17.11.14, available at: <http://kr.ua/politics/478533-putyn-sravnyl-krym-s-kosovo>

symptomatic for the post-cold war period failures of Russia to assert itself in Europe. The decision of the western powers to recognize Kosovo by ignoring Russian position was a final nail in the coffin of Moscow's failed Balkan policy, whose ally Serbia lost not only territories in Bosnia and Croatia, but was losing now its own autonomy. NATO bombardment of Yugoslavia in absence of UN SC resolution and despite Russian opposition marked the beginning of the end of friendly post-cold war era.

The global context in the run-up to Kosovo's unilateral declaration of independence also changed - not in Russia's favour though. NATO enlargement to the East, plans of installation of Missile Defence shield in Eastern Europe and disagreements over the CFE treaty marred the relations between Russia and the West. Furthermore, complete ignorance of UN Security Council by NATO and the US/UK when intervening in Yugoslavia and Iraq respectively, deepened Russian suspicions that similar interventions could take place in its vicinity, in the strategically important regions for Russia. Kremlin feared downgrade of the importance of the Security Council and thus, loss of its influence and veto power on world matters. Therefore, it vehemently opposed any decision that would be made by detouring the UN Security Council.

In the regional context, with the failure to avoid recognition of Kosovo, Russia was losing its only remaining ally in Europe – Serbia. The loss of Serbia meant loss of influence in the Balkans and retreat of Russia to the former Soviet space. It also put under big question mark the ability of Russian claim to lead and protect the orthodox nations, as the Moscow Patriarchate regained its influence under Putin. Therefore, Russia demanded that any decision on the fate of Kosovo should have had Belgrade's approval.

Internally, Russia feared that erosion of the principle of territorial integrity would undermine its own security given separatist feelings in the North Caucasus. It would create a precedent in post-Soviet Europe, when a province rather than a federal/union republic becomes independent. In 2007, Putin stated that he “would have difficulties in explaining to the small nations of the North Caucasus, why in one part of Europe, this right (of independence) is granted and here in the Caucasus – for some reason it is not.”³⁴⁹

³⁴⁹ Антоненко, Оксана, Независимость Косово: почему Россия против?, IFRI, 2007, p16

Last, but not least, Russia considered recognition of Kosovo as a violation of fundamental principles of international law. Kosovars did not have the right for external self-determination in the first place and the basis for status negotiations should have been Resolution 1244, which affirmed territorial integrity of Serbia and prohibited any unilateral action. Standards envisaged by the resolution were not met either. Russia feared that setting a precedent of ignoring international law that USSR/Russia co-authored after 1945 would make Russian interests in the “Near Abroad” and Middle East vulnerable.

3.4 Conclusion

Analysis of Soviet/Russian state practice showed that Kremlin has applied different strategies, when applying right of recognition to emerging states. In the colonial context, it advocated for speedy recognition of new states and was instrumental in developing respective norms in international law. Recognition of emerging states was one of the mechanisms of fight against western camp during the cold war and a tool to project its power in Asia and Africa. In advancing its own interests and supporting the colonial states, USSR however always acted in accordance with international law principles. The only cases of Israel and Bangladesh in the post-1945 history when Soviet Union recognized new state without parent state’s consent did not breach the international law either, since in both cases legal grounds for recognition were present. Soviet position did not differ from the stance taken by the overwhelming majority of international community.

The recent state practice shows that when countries are born according to the due normative course, Russia does not hesitate to extend recognition. Russia has also acted consistently in regard to secessionist entities that are created in violation of international law. Moscow has not extended recognition to them arguing that territorial integrity principle of parent states should be respected. Recently, Russia indicated that Moldova’s territorial integrity is conditional upon her neutrality, suggesting that its stance might be changing, but until 2008 there were no official statements or remarks in this regard. Russian Foreign Policy Concept of 2013 confirms that Russia will seek solution of Transnistrian and Karabakh conflicts based on respect of sovereignty, territorial integrity and neutral status of Moldova and on principles of joint

declarations of Russian, US and French Presidents in OSCE Minsk Group, i.e. respect of territorial integrity of Azerbaijan.³⁵⁰

History of recognition of new states shows that Soviet/Russian actions never transgressed the limits of international law. In the Kosovo case Russia even led the cause of upholding the international law. Latest Russian foreign policy concept names supremacy of law in international relations as one of the top priorities of Russian foreign policy. In particular, it stresses the importance of “strengthening of legal norms in international relations”, “codification and single interpretation of international law” and “prevention of certain states and groups of states from revising well-established norms of international law”.³⁵¹ Russia, according to the concept, will stand against subjective interpretation of principles of state sovereignty, territorial integrity and self-determination of peoples as well as misuse of concept of “responsibility to protect” for military interventions and other interference in affairs of sovereign states.³⁵² True, prior to August 2008, Moscow always acted strictly in accordance with peremptory norms regarding recognition, but as we will see in case of Georgia’s breakaway regions, Russian actions contradicted its own foreign policy concept priority.

³⁵⁰ Концепция Внешней Политики Российской Федераций 2013, Para.49

³⁵¹ Ibid. para 31

³⁵² Ibid.

Chapter IV. Russian Recognition of Abkhazia and South Ossetia

4.1 Introduction

Secessionist conflicts in Abkhazia and South Ossetia which erupted in the early 1990's determined the fate of Georgian-Russian relations in the post-Soviet period. In fact, interstate relations were hijacked by the conflicts and never recovered from a fatal blow delivered by them, despite changes of leaderships both in Georgia and Russia. The conflicts represented a major stumbling block between the two countries even in the short period of relative normalization. Russia as the major mediator in both conflicts failed to produce any breakthrough for peaceful resolution in 16 years, but rather contributed to "freezing" of the conflicts in detriment to Georgia's de-facto territorial integrity. "Freezing" of the conflicts meant that Tbilisi did not have control over major areas in Abkhazia and South Ossetia and up to 250 000 Georgians were not allowed to return to their homes. In Georgian discourse, Russia was seen as a dishonest broker, pursuing its own interests in the rebel provinces and hindering Georgia from restoring its jurisdiction there. Russia's credibility as a mediator was destroyed early on and trust could never be rebuilt. By the time of recognition of Abkhazia and South Ossetia by Russia, the two countries had even fought a war over the breakaway provinces, bringing relations to an all-time low point.

My research would be incomplete without addressing the roots of the conflicts. Therefore, below I give a detailed account of the history of conflicts, evolution of Georgian-Russian relations and causes of the August War, which are covered in the first part of this chapter. The second part is dedicated to recognition itself and explanation of the causes of recognition. In the concluding part of the chapter I dwell on reasons for recognition and provide answers to the two research questions of the thesis:

- Does Russian recognition of Georgia’s breakaway entities represent deviation from its traditional recognition policy and is it compliant with the international law?
- Why did Russia extend recognition to Georgia’s breakaway entities whereas it continues to conduct non-recognition policy towards other secessionist entities?

4.2 History of Conflicts and Peace Processes in Abkhazia and South Ossetia

4.2.1 Status of Abkhazia and South Ossetia within Georgia in Soviet era

Roots of the conflict in Abkhazia and South Ossetia date back to the early years of the 20th century. Even the first Democratic Republic of Georgia (DRG) in 1918-1921 had to fight with secessionists in Abkhazia and Tskhinvali region, who encouraged by Russian “comrades” tried to establish Soviet republics on these territories. In May 1920, uprising of Ossetian Bolsheviks who seized Tskhinvali and declared creation of Soviet republic of South Ossetia on the territory of Inner Kartli was imminently crushed by Georgian National Guard. In Abkhazia, the young Georgian state had to fight interchangeably with Russian white General Denikin’s Army, small group of Abkhaz separatists and local Bolsheviks. However, political groups loyal to Georgia prevailed in Abkhazia and negotiated quite advanced constitutional status of autonomy for that period in history. DRG granted autonomy to Abkhazia in the following spheres: local finances, budget and taxes, public education, local and municipal self-government, public order, public health, local roads and communications.³⁵³ Despite existential threats to DRG statehood from Turkish and Armenian aggression in the south and Bolshevik disruptive actions in and outside Georgia, DRG government managed to control the territories of present-day Abkhazia and South Ossetia throughout its short existence. In 1920 Soviet Russia officially withheld all territorial claims to Georgia by recognizing DRG independence in its borders which included the territories of Abkhazia until river Psou and Tskhinvali region. Subsequent aggression and occupation of Tbilisi by the Bolshevik Red Army units at the end of February 1921, however brought the end of DRG. As the Red Army units entered Tbilisi from the south, a second front was opened in Abkhazia and Bolsheviks marched on Sokhumi from Sochi. Georgian Soviet Socialist Republic (GSSR) was proclaimed by the Caucasus bureau of Bolsheviks and Local Revolutionary

³⁵³ მალხაზ მაცაბერიძე, საქართველოს 1921 წლის კონსტიტუციის შემუშავება და ეროვნულ უმცირესობათა კონსტიტუციური უფლებები, გვ.58 (Matsaberidze, Malkhaz, Elaboration of 1921 Constitution of Georgia and rights of minorities), 2015, p.58

Committees, who formed interim administration to govern Soviet Georgia in the transition period. This transition period saw the establishment of Abkhaz Soviet Socialist Republic in May 1921 and South Ossetian Autonomous District largely in line with Leninist policy of self-determination of nationalities (see chapter II) and as a reward for Abkhaz and Ossetian bolsheviks' fight against Menshevik-ruled DRG. Abkhaz SSR's future status was to be decided at the first congress of peasants and workers in late 1921. On December 16, 1921 Abkhaz SSR did decide by signing union treaty with Georgian SSR and thus effectively becoming part of Georgia again. The first constitution of Soviet Georgia of 1922 stated that "based on voluntary self-determination, Georgian Soviet Socialist Republic consists of Ajara Autonomous SSR, South Ossetian Autonomous District and Abkhaz SSR, which united with Georgian SSR based on special union treaty between these republics".

On December 30, 1922 Soviet republics of Russia, Ukraine, Belarus and Transcaucasus Federation (which consisted of Georgian, Armenian and Azerbaijani SSR) formed Union of Soviet Socialist Republics (USSR). With creation of the USSR and Transcaucasus Federation most of the competences of soviet republics such as defence, foreign affairs, post and telegraph, maritime transport and railways were transferred to either union level or federation level. Therefore, division of competences between Georgian SSR and Abkhaz SSR in the Soviet Union and the Transcaucasus federation constitutions were contradicting the provisions of Georgian-Abkhaz union treaty of 16 December 1921. The first constitution of the USSR of 1924 already referred to Abkhazia as an autonomous republic.³⁵⁴ In order to align republican constitutions with the USSR constitution and to avoid legal confusions caused by existence of earlier treaties it was decided to streamline republican constitutions. That is why the Constitution of Abkhaz SSR which was drafted in 1925 became obsolete and was not even put into effect.³⁵⁵ Abkhazia, even though it was called Soviet Socialist Republic a term usually defining union republic clearly did not represent one, since it was a part of Georgian SSR. Therefore, on February 11 1931 the VI Session of the Soviets of Abkhazia amended constitution of Abkhazia by replacing the term "treaty republic" with "autonomous republic". Three days later this amendment was approved by the VI Session of the Soviets of Georgia. Thus, the status of Abkhazia as autonomous republic

³⁵⁴ Constitution of USSR, 31, January, 1924, Chapter 4, available at: <http://www.hist.msu.ru/ER/Etext/cnst1924.htm>

³⁵⁵ Alexidze, Levan, International Law and Georgia, 2012, p.461

within Georgia was harmonized in all three constitutions – USSR, Georgian SSR and Abkhaz ASSR. Abkhaz secessionists usually wrongly refer to exactly this 1921-1931 period claiming that Abkhazia was a union republic on its own to validate their claims for right to independence. The process of deprivation of rights and responsibilities of union republics reached its apogee in mid-1930's with adoption of so-called "Stalin Constitution" of USSR in 1936. The new constitution abolished Transcaucasus Federation and Georgian SSR became a direct member of the union,³⁵⁶ although with almost no features of statehood. The autonomous republics were even deprived of state symbols. The 1977 "Brezhnev Constitution" of USSR did not change the status of autonomies within Georgian SSR, so that the status-quo was upheld until the beginning 1991 when Soviet Union disintegrated and armed conflicts erupted.

South Ossetia did not make any moves towards secession from Georgia until late 1980's. In stark contrast, in Abkhazia, appeals were made every decade by elites for secession from Georgia and either its incorporation into Russian SFSR or establishment of 16th union republic. In 1957, members of Abkhaz intelligentsia (artists and scientists) addressed a letter to the Secretary-general of CPSU Khrushchev to stop internal migration of ethnic Georgians to Abkhazia and to incorporate Abkhazia into Russia.³⁵⁷ Another address was sent to Kremlin in 1967, which demanded repatriation of descendants of the deported Abkhaz "Muhajers" from Turkey,³⁵⁸ replacement of Georgian toponymy of towns and villages with Abkhaz ones and upgrade of Abkhazia's status into union republic.³⁵⁹ This time intelligentsia was also supported by some members of Abkhaz ASSR government.³⁶⁰ In 1977 when amendments were put into union-republican constitutions after the adoption of new USSR Constitution, 130 representatives of Abkhaz elite addressed a letter to politburo of Central Committee of CPSU and Secretary Brezhnev, accusing Georgians of assimilation and suppression of the Abkhaz and demanding withdrawal of Abkhaz ASSR from Georgia and its incorporation into Krasnodar Krai of Russia.³⁶¹ Despite the fact that Abkhaz requests were not satisfied, these appeals did strain the relations in the autonomous republic and won the Abkhaz certain concessions from Tbilisi, such

³⁵⁶ Constitution of the USSR, 5 December, 1936, Chapter 2, available at: <http://www.hist.msu.ru/ER/Etext/cnst1936.htm>

³⁵⁷ Григол Лежава, Абхазия: анатомия межнациональной напряжённости, ЦИМО, 1999, p. 127

³⁵⁸ About 50 000 Moslem Abkhaz were deported by the Czarist regime in 1867 and 1877 to Turkey

³⁵⁹ Ibid. p.133

³⁶⁰ Ibid.

³⁶¹ Ibid. p.151

as opening of Abkhaz TV, establishment of Abkhaz State University on the basis of Sokhumi Pedagogy Institute and allocation of managerial posts in state enterprises and municipalities to ethnic Abkhazs.³⁶² The last appeal to Moscow to elevate the status of Abkhazia to union republic was made in March 1989. The so-called Likhni Declaration, named after village near Abkhaz stronghold Gudauta was signed even by the Abkhaz functionaries, including the leader of Abkhaz ASSR. Georgians, the largest ethnic group in Abkhazia comprising 46% of population were not even consulted. Allegations of the Abkhaz elite on suppression, however were not quite credible. Abkhazia was the only autonomous republic in the Soviet Union which had the article on state language – Abkhazian.³⁶³ With only 17% of the ethnic Abkhaz population in ASSR, Supreme Council of Abkhazia had 57 Abkhaz, 53 Georgians and 14 Russian members, out of 12 ministers - 8 were Abkhaz, out of 8 district prosecutors-general - 5 were Abkhaz and more than half of Minister's Council staff and Sokhumi city council staff were ethnically Abkhaz.³⁶⁴

Likhni declaration apart from continuing the pattern of appealing to Kremlin every decade represented also a response to the awakening of Georgian national liberation movement that started in 1987. The Abkhaz elite was afraid of losing the privileged status in potentially independent Georgia. The declaration alienated Georgian and Abkhaz populations of Abkhazia. Protest actions and manifestations against Likhni appeal were held by Georgian residents in Sokhumi, Gali, Leselidze and first brawls between Georgians and Abkhaz were recorded. First blood was spilled in July 1989 when Sokhumi branch of Tbilisi State University was opened. Armed Abkhaz nationalists attacked the entry exam commission of the university that resulted in mass fight causing death of 22 persons.³⁶⁵

The other conflicting autonomy South Ossetia was always tied to Tbilisi not only politically but also economically as there was no direct road connection to Russia until as late as 1985 when Roki Tunnel was constructed at Georgian-Russian border in the Caucasus mountains. Ossetians were well integrated into Georgian society and many more Ossetians lived outside the

³⁶² Очерки из истории Грузии: Абхазия, 2009, Р. 529

³⁶³ Alexidze, Levan, International Law and Georgia, 2012, p.477

³⁶⁴ *ibid.* p. 478

³⁶⁵ სტივენ ჯონსი, საქართველო: პოლიტიკური ისტორია დამოუკიდებლობის შემდეგ, 2013, გვ.61, (Jones, Stephen, Georgia: A political history since Independence, 2013 p. 61)

autonomous district in other parts of Georgia then in the district itself.³⁶⁶ Until 1989 Georgian and Ossetian ethnic groups lived peacefully and harmoniously with very high intermarriage rate between them. Head of the autonomous district by default was an ethnic Ossetian. Ossetians also enjoyed cultural and educational autonomy with secondary education available to local youth in Ossetian language and higher education at Tskhinvali Institute of Pedagogy. The first incident which ignited tensions between Georgians and Ossetians was an open letter addressed by the leader of South Ossetian nationalist organization “Adamon Nikhas” Alan Chochiev to the Abkhaz people expressing support for Likhni declaration and their fight for independence from Georgia.³⁶⁷

4.2.2 Outbreak of Conflicts and Subsequent Peace Process

South Ossetia

Relatively calm and stable situation in South Ossetia spiraled out of control in 1989. At that time South Ossetia had up to 100 000 inhabitants, roughly 2/3 ethnic Ossetians and 1/3 Georgians. The decree issued by the Georgian SSR Supreme Council in August 1989 on usage of Georgian language in public life all over the territory of Georgia became the bone of contention between Tbilisi and its autonomous district. “Adamon Nikhas” gathered protest rally against the new law in district capital - Tskhinvali. Local authorities demanded from Tbilisi that Ossetian will be declared as state language on the territory of the district. This marked the beginning of the so-called “War of laws”, which would continue until 1992 between Tbilisi and Tskhinvali. Ossetian demand was turned down by the Supreme Council of GSSR. Soon thereafter, in November 1989 South Ossetian government illegally elevated its own status from autonomous district to autonomous republic just to be annulled by GSSR Supreme Council as unconstitutional. Meanwhile, 15 000 Georgians led by national-liberation movement leaders marched on Tskhinvali on St. George’s Day 1989 in demonstration of solidarity to fellow Georgians living on the territory of district and against separatism. The rally was stopped short of Tskhinvali by

³⁶⁶ According to 1989 Soviet Census, 164 000 Ossetians lived in Georgia, out of which only 65 000 lived in South Ossetia Autonomous District.

³⁶⁷ Газета Адамон Ныхас 1, 1989, Письмо Алана Чочиева Абхазскому народу, available at: <http://aranzeld.com/chtivo/page,1,5,161-samoe-znamenitoe-pismo-kogda-libo-napisannoe-osetinami-ili-istoricheskij-dokument-pokazyvayushhij-propast-mezhdu-nami-i-nimi.html>

local police and the 8th regiment of Soviet army. Georgians and Ossetians started to accuse each other of treason, suppression and intimidation in the national press.³⁶⁸ Georgian nationalist leaders called Ossetians “guests in our country”.

National-liberation movements gained strength and popular support not only in Georgia, but in other union republics as well, particularly in the Baltics, Moldova and Armenia. In order to stop the creeping disintegration of the country, a landmark law on procedures of exiting from Soviet Union was adopted by the USSR Supreme Council on April 3, 1990. This law was supposed to serve as leverage against pro-independence union republics, by showing a green light to separatism. It provided that the union republic wishing to exit the USSR could do so only based on the results of the referendum. However if the union republic had autonomies (regardless whether a republic or district), autonomies should have organized separate referenda and decide whether they wanted to stay in the Soviet Union or remain part of the exiting parent republic. The law went even further, counting separately votes in those administrative areas which did not have autonomous status but had a strong ethnic minority populations.³⁶⁹ This clause specifically targeted Russian-speaking areas of Estonia, Latvia and Moldova, which did not have autonomy status. This law eroded the constitutional principle of inviolability of union republic’s borders and promoted eruption of several ethno-territorial conflicts in Soviet Union which remain “frozen” until today.

In September-November 1990 the war of laws between Tskhinvali and Tbilisi intensified. Under a new law adopted by GSSR, regional parties not represented nationwide were banned from the upcoming first multi-party elections. In Tskhinvali this was perceived as a signal to prevent Adamon Nikhas from participation.³⁷⁰ On September 20, South Ossetian District Council proclaimed creation of “South Ossetian Soviet Democratic Republic”, thus seceding from Georgia. South Ossetian government also called on citizens to boycott the national elections held in Georgia in October. Thereafter, the newly elected Supreme Council of Georgia led by nationalist Zviad Gamsakhurdia declared decisions of the South Ossetian District Council void and unconstitutional on November 22. Six days later Ossetian District Council reaffirmed its

³⁶⁸ De Waal, Thomas, *The Caucasus*, 2010, p. 138-139

³⁶⁹ The Law on Solution of Issues concerning exit of union republic from the USSR, 03.04.90, available at: <http://constitutions.ru/?p=2973>

³⁷⁰ Human Rights Watch, *Bloodshed in the Caucasus*, 1992, p.7

decision by renaming SOSDR into South Ossetian Democratic Republic. It also appealed to USSR Supreme Council to recognize South Ossetia as a union republic and set the election date in the district for December 9. The final act in the war of laws belonged to Georgian Supreme Council, which on December 11, annulled the South Ossetian Autonomous District altogether, including its administrative organs citing “imminent threat to Georgia’s territorial integrity by holding illegal elections and usurping power”.³⁷¹ State of emergency was declared in Tskhinvali and Java areas and Soviet interior troops were deployed to maintain order. In January 1991, Georgian government also dispatched its own police and security forces to Tskhinvali. Soviet President Gorbachev demanded complete withdrawal of Georgian forces from the region, but Georgian Supreme Council did not follow his orders. Armed clashes between Georgian police forces and South Ossetian paramilitaries started and continued throughout 1991. The fighting concentrated mainly in and around Tskhinvali causing massive flight of Georgian residents once Georgian police units were withdrawn after “consultation” with Soviet interior troops.³⁷² In parallel, ethnic Ossetians also living elsewhere in Georgia and in Tskhinvali fled to North Ossetia - an autonomous republic in Russia - in fear of retaliation. Low-scale armed clashes continued well into 1992. Weakened with internal turmoil and coup d’etat in Tbilisi Georgian forces could not gain the upper hand. South Ossetian paramilitaries received covert support from two regiments of Soviet (later Russian) armed forces deployed in Tskhinvali – combat engineer and helicopter regiments and from their ethnic kin in North Ossetia. Separatist regime survived the first year of conflict thanks to supply of arms and munition from Russian bases and across the border. New reality was set amid fighting when Soviet Union ceased to exist in December 1991 and Georgia regained independence. In January 1992, leaders of the breakaway district conducted a referendum in villages controlled by separatists. Results were in favour of secession from Georgia and unification with Russia.³⁷³ Georgian residents of the district did not participate in referendum. Based on the referendum results, South Ossetian separatists declared independence on May 29, 1992.

³⁷¹ საქართველოს რესპუბლიკის კანონი სამხრეთ ოსეთის ავტონომიური ოლქის გაუქმების შესახებ, 11 დეკემბერი, 1990 (Law of the Republic of Georgia on abolition of South Ossetia Autonomous District, 11 December, 1990), available at: <https://iberiana.wordpress.com/zviad-gamsakhurdia/uzenaesisabcho/>

³⁷² Human Rights Watch, Bloodshed in the Caucasus, 1992, p.8

³⁷³ International Crisis Group, Avoiding War in South Ossetia, ICG Report 159, 2004, p.3

The new head of Georgian State Eduard Shevardnadze, who was invited by Georgian military coup commanders to share the power with them in Tbilisi tried to reach cease-fire agreement in South Ossetia. Russia was also eager to pacify the situation as the conflict spilled over to North Ossetia, where Ossetian refugees from Georgia clashed with the ethnic Ingush in the outskirts of North Ossetian capital Vladikavkaz. Paradoxically the first cease-fire protocol in June 1992 was signed by Shevardnadze and the leader of North Ossetia Galazov. This is a very interesting example in the history of secessionist conflicts when the cease-fire agreement is signed not by the two conflicting parties, but by one conflicting party and the head of neighbouring country's region. Galazov's signature was an indirect recognition of Russia's participation in the conflict. Two weeks later, this protocol was followed by a wider Russo-Georgian agreement on principles of resolution of Georgian-Ossetian conflict (Dagomys Agreement). This time agreement was signed by the Russian President Yeltsin and Shevardnadze, thus elevating it to a highest interstate level. The agreement envisaged creation of Joint Control Commission with participation of "parties involved in the conflict" tasked with securing cease-fire regime, decommissioning of self-defence units and withdrawal of armed forces.³⁷⁴ The cease-fire was to be enforced by each 500-strong Georgian, Russian and Ossetian peacekeeping detachments, commanded by a General appointed by Russian Defence Ministry.³⁷⁵ Joint Control Commission was set up in July 1992 by Georgian, South Ossetian, North Ossetian and Russian members. This format was clearly disadvantaging for Georgia. It meant in practice that Russian side would have twice as many peacekeepers and full control over the course of negotiations. If we refer to the language of the Dagomys Agreement, Russia and its autonomous republic North Ossetia recognized themselves as "party to the conflict" and therefore could not be considered a neutral mediator. The Dagomys cease-fire effectively sealed the status-quo. Tbilisi government controlled Georgian-populated villages around Tskhinvali as well as Akhagori area and western part of Java area. The separatists controlled Tskhinvali, most of Znauri area Ossetian villages and most importantly Java and Roki tunnel, securing direct access to Russia and thus lifeline for the

³⁷⁴ Соглашение о принципах урегулирования Грузинско-Осетинского конфликта, 24.06.92 available at: <http://www.apsny.ge/notes/1127333974.php>

³⁷⁵ International Crisis Group, *Avoiding War in South Ossetia*, ICG Report 159, 2004, p.5

de-facto authorities. In 1993 Conference on Security and Cooperation in Europe was invited to mediate the conflict and achieve “lasting political settlement based on CSCE principles”.³⁷⁶

In the interwar period until 2004 intercommunal relations between Georgians and Ossetians largely restored. The de-facto boundary was open, trade albeit illegal, between the sides flourished and old wounds were gradually healed. Political settlement of the conflict appeared in sight. Shevardnadze and South Ossetian de-facto leader Chibirov almost agreed on the concept of South Ossetia’s autonomy within Georgia in series of meetings in 1997-1999. The document mediated by OSCE and initialled by the two sides at the meeting in Baden (Austria) in 2000 constituted an “interim” agreement on major principles of the final settlement.³⁷⁷ Final points were to be clarified after Chibirov’s reelection to second term as a de-facto president. However, with the rise of Putin in power in Kremlin the external circumstances for peace deteriorated. Chibirov lost the elections due to alleged interference of Russian security officers.³⁷⁸ The momentum for peaceful settlement of the conflict was lost.

The situation in the conflict zone started to deteriorate after 2004, when the “Rose Revolution” government of Georgia tried to bring South Ossetia back under Tbilisi’s control. Georgian government had two-pronged strategy. First, with the closure of market of contraband goods at the de-facto boundary line it tried to cut the income of separatist regime and also win the hearts of Ossetians with humanitarian actions. Second approach aimed at strengthening Georgian peacekeepers’ presence in the district. As this attempt threatened to grow into a full-scale war and the US also signalled that Georgia would have to go for it alone, Georgian forces were quickly withdrawn from the strategic heights they secured short while ago.³⁷⁹

After failed attempt of 2004, Georgian government changed tactics and openly declared about necessity of gradual and peaceful resolution of the conflict. President Saakashvili and Prime-Minister Noghaideli presented peace plan at PACE and OSCE Ministerial Council in 2005, where they offered wide-ranging autonomy rights to South Ossetia. The plan consisted of three stages: demilitarization, economic rehabilitation and determination of political status. As the plan

³⁷⁶ Mandate of the OSCE Mission to Georgia, available at: <http://www.osce.org/georgia-closed/43386>

³⁷⁷ OSCE Secretary-General, Annual Report 2000 on OSCE Activities, p.43 available at: <http://www.osce.org/secretariat/14527?download=true>

³⁷⁸ Illarionov, Andrei, The Russian Leadership’s Preparation for War 1999-2008, In: Svante Cornell and S.Frederick Starr, Eds: Guns of August 2008, 2009, p. 52

³⁷⁹ International Crisis Group, Avoiding War in South Ossetia, ICG Report 159, 2004, p.12-19

did not get any traction, in October 2006 Georgian government decided to set up a provisional parallel administration in South Ossetia elected by residents of Tbilisi-controlled areas. Creation of parallel administration effectively killed the peace process, as South Ossetian de-facto leadership refused to continue peace talks. Thus, JCC with heavy Russian control remained the only negotiation venue as the conflict remained “frozen”. Georgia stopped participating in JCC in March 2008 because representatives of parallel administration of South Ossetia were not allowed to attend the sessions and offered bilateral talks to secessionists. These talks, however, never took place leaving the conflict zone without negotiation format in the run-up to the war.

Abkhazia

Popular Forum “Aidgilara” established in December 1988 became the nexus of separatism in Abkhazia, similar to Adamon Nikhas in South Ossetia. “Aidgilara” played instrumental role in mobilizing Abkhaz public in drafting the “Likhni Declaration” aimed at upgrading the status of autonomy into union republic. Nevertheless, in contrast to South Ossetia, in 1990-91 Abkhaz authorities did not adopt any secessionist acts. This could also be attributed to the public attitude towards the issue. In March 1991, 61% of eligible voters in Abkhazia participated in Georgia-wide referendum on Georgia’s independence and almost 98% of them voted in favour, even though most of the ethnic Abkhaz did not go to the polling stations.³⁸⁰ Another big contributing factor to the relative stability was the compromise formula offered by Georgian leadership under President Gamsakhurdia to the Abkhaz elite in August 1991. The formula envisaged creation of new electoral districts according to which the Abkhaz who made up only 17% of the 550 000 strong population would get 28 mandates in the Supreme Council of Abkhazia, whereas Georgians – (46% of population) only 26 and the other ethnic groups – (37% of population) – 11 mandates.³⁸¹ Although, far from any democratic standard of representation and obviously favouring the minority ethnic group, this compromise preserved peace in Abkhazia for the time being. In order to safeguard the interests of the majority, Gamsakhurdia’s formula provided for 2/3 majority rule for adoption of constitutional acts or organization of referendum on amendments to the constitution of Abkhaz ASSR as well as appointment of ministers. This ensured that neither Georgian nor Abkhaz delegates alone could amend the constitution, change

³⁸⁰ Очерки из истории Грузии: Абхазия, 2009, Р. 538

³⁸¹ Alexidze, Levan, International Law and Georgia, 2012 p. 490

the status of Abkhazia or appoint a government. This formula was officially accepted by the Supreme Council of Abkhazia in August 1991 and included in the constitution. Subsequently, elections to the Supreme Council of Abkhazia in September 1991 were conducted accordingly and Vladislav Ardzinba was elected by Georgian and Abkhaz deputies to the post of the chairman of the SC.

The situation dramatically changed after the military coup d'état of January 1992, when President Gamsakhurdia was ousted from Tbilisi. The military regime annulled 1978 constitution of Georgian SSR and restored the constitution of DRG of 1921. The respective act however stated that with the restoration of DRG Constitution the existing status of Abkhazia and Ajara autonomous republics were not changed. Nevertheless, this act was misused by Ardzinba for justifying violation of 1991 compromise. In March 1992, he signed a decree on creation of regiment of interior troops of Abkhazia – Abkhaz National Guard after bringing all military units deployed in Abkhazia under his command and launched drafting campaign among the Abkhaz. Abkhaz National Guard then was ordered to take strategic objects under control at the end of June. Meanwhile, Abkhaz deputies of SC supported by Russian and Armenian deputies appointed acting government with simple majority of votes amid Georgian deputies' protest. On July 18, 1992 the Abkhaz leader met confidentially with the Russian President Yeltsin in Sochi.³⁸² Five days later simple majority of the Supreme Council of Abkhazia annulled 1978 Constitution of the Abkhaz ASSR and adopted stillborn 1925 Constitution of Abkhaz SSR. Adoption of this constitution was a clear breach of existing constitution of Abkhaz ASSR, since simple majority was not qualified to change the status of the autonomy as stipulated in 1991 amendment. Adoption of 1925 Constitutional draft meant that Abkhaz authorities were seceding from Georgia.

On August 14, Georgian State Council, the interim joint executive and legislative body, ordered Georgian National Guard to enforce state of emergency on railways in Abkhazia. State of emergency was declared due to the fact that trains were constantly assaulted by different criminal gangs, including supporters of the ousted President Gamsakhurdia in Samegrelo and Abkhazia. The Abkhaz saw this only as a pretext for deployment of Georgian armed forces in Abkhazia. Abkhaz National Guard fired on approaching Georgian troops near the seaside town of

³⁸² Очерки из истории Грузии: Абхазия, 2009, р. 545

Ochamchire and the war started. Georgian forces quickly captured Sokhumi and advanced to the Georgian-Russian border at Psou river, leaving behind fleeing Abkhaz administration, which settled in small town of Gudauta – between Sokhumi and Psou. In a matter of few days, Georgian forces controlled almost all of autonomy's territory, except Gudauta and Tkvarcheli enclave in the northeast.

Initial gains by Georgian armed forces were reversed soon after overt and covert involvement of Russia in the conflict on the side of Abkhaz secessionists. At the start of the war, several regiments of Russian armed forces were stationed in Abkhazia as a legacy of Soviet Union - in Gudauta (aviation base), Ochamchire (naval base) and Eshera (military lab). Two weeks later, 345th paratrooper regiment was redeployed from Azerbaijan to Gudauta armed with armour protected carriers.³⁸³ Although, Russia officially declared neutrality of its forces in the conflict, these military bases have been supplying munition and providing planning support to Abkhaz secessionists.³⁸⁴ Vice-President of Russia Rutskoy and Duma Speaker Khasbulatov threatened Georgian leadership with aerial attack on Tbilisi.³⁸⁵ Surprising mix of volunteers from Chechnya, Kabardino-Balkaria, Circassia and Adygea as well as Cossacks and Transnistrian Russians -fresh from similar separatist conflict in Moldova - were mobilized in Russia and started to arrive in Abkhazia to fight against Georgian troops. Confederation of Mountainous Peoples of Caucasus (CMPC) an illegal paramilitary organization itself, openly collected fighters and volunteers from all over the North Caucasus to fight Georgia. The law-enforcement bodies of North Caucasus autonomous republics ignored these illegal activities. On September 3, 1992 Russian President Yeltsin invited Shevardnadze to sign cease-fire declaration and restore peace in Abkhazia. Here, as several months before in South Ossetia, the cease-fire declaration was signed between Russia and Georgia and “agreed” by Russian Vice-Premier, Georgian and Russian foreign and defence ministers, handful of leaders of the North Caucasus republics as well as Abkhaz and Georgian representatives of Abkhaz Autonomous Supreme Council.³⁸⁶ The declaration upheld the territorial integrity of Georgia, provided for downsizing the number of Georgian troops to a

³⁸³ Чхенкели, Люлю - Сила есть -ума не надо, 2003, p.14

³⁸⁴ Human Rights Watch Arms Project, Georgia/Abkhazia: Violation of the laws of war and Russia's Role in the Conflict, 1995, Vol.7, No.7, p.31

³⁸⁵ Очерки из истории Грузии: Абхазия, 2009, p. 551

³⁸⁶ Итоговый документ Московской встречи Президента РФ Б.Н. Ельцина и Председателя Государственного Совета Республики Грузия Э.А. Шеварднадзе от 3 Сентября 1992 г., available at: <http://www.un.org/ru/peacekeeping/missions/past/unomig/24523.pdf>

contingent sufficient to protect railway, disarmament of all illegal armed formations in Abkhazia and creation of a monitoring group to oversee the implementation of cease-fire.³⁸⁷ The cease-fire regime however did not last long. In the first days of October, in the wake of Georgia's withdrawal of heavy equipment from the Gagra district bordering Russia, Abkhaz forces supported by North Caucasus and Russian volunteers violated the cease-fire agreement and launched military operation against lightly armed Georgian positions. The most vivid example of Russia's support to the secessionists in this operation was Russian Deputy Defence Minister Kondratiev's instruction to the naval unit of Russian fleet to prevent Georgian marines from landing in Gagra and secure air defence of Gudauta.³⁸⁸ As a result, Georgian forces lost control on strategically important Gagra district and with it on another segment of Georgian-Russian border after the Roki tunnel. Abkhaz secessionists thus like South Ossetians before, gained direct access to Russian Federation guaranteeing survival of the separatist regime. Gagra district was ethnically cleansed from Georgian population by Abkhaz and north Caucasian irregulars.

After Gagra operation, the battle line moved to Gumista river just outside Sokhumi. There were several attempts by secessionists to take Sokhumi throughout 1993, including large-scale attack in March compounded by aerial bombardment. As Abkhaz forces did not possess a single aircraft, it is evident that Sokhumi was bombed by Russian planes. Georgian forces even downed Russian fighter jet Su-27 during the operation.³⁸⁹ Russian press also reported that Abkhaz forces received tanks and artillery manned by Russian crew.³⁹⁰ Parliament of Georgia demanded from the Head of State Shevardnadze to withdraw Russian forces from Abkhazia, or otherwise declare the territory north-west of Gumista river as occupied by Russian Federation.³⁹¹ Russian President however insisted that it had "special powers as the guarantor of peace and stability in this region".³⁹²

³⁸⁷ Ibid.

³⁸⁸ Чхенкели, Люлю - Сила есть - ума не надо, 2003, p.180

³⁸⁹ Georgia Shoots down Russia warplane over Abkhazia, LA Times, 20.03.92, http://articles.latimes.com/1993-03-20/news/mn-13172_1_russian-air

³⁹⁰ Antonenko, Oksana "Frozen Uncertainty: Russia and the conflict over Abkhazia", In: Bruno Coppieters and Robert Legvold, eds., *Statehood and Security: Georgia after the rose revolution*, 2005, p. 214

³⁹¹ Очерки из истории Грузии: Абхазия, 2009, p. 554

³⁹² Human Rights Watch Arms Project, *Georgia/Abkhazia: Violation of the laws of war and Russia's Role in the Conflict*, 1995, Vol.7, No.7, p.31

The Gumista river remained the line of separation between Georgian and Abkhaz forces as Russia undertook another attempt to mediate a cease-fire. Georgian leadership was desperate to silence the guns in Abkhazia, because its capacities were overstretched not least due to insurgency of Ex-President Gamsakhurdia's supporters and agreed to sign cease-fire despite bitter lessons of previous agreement.

The Sochi Agreement of 27 July 1993 envisaged withdrawal of all armed forces from Abkhazia, creation of joint Georgian-Abkhaz interior troops to protect roads, railways and critical infrastructure and introduction of international peacekeeping forces together with Russian units.³⁹³ It is noteworthy that for the first time Abkhazia was signing the cease-fire agreement on its own behalf (self-proclaimed Chairman of Ministers' Council of Abkhazia) together with Russian Foreign Minister and Speaker of Georgian Parliament. United Nations Observer Mission in Georgia (UNOMIG) was established by the UN Security Council Resolution #858 to monitor the cease-fire. Georgia again implemented the provision of the agreement and withdrew armoured equipment and heavy artillery. Ironically, Georgia even paid Russian fleet to transport tanks from Abkhazia to Poti port. Refugees returned to Sokhumi and schools were re-opened in September, when Abkhaz forces violating the agreement again launched massive attack on Sokhumi from Gumista river and from Tkvarcheli enclave in the east. Defenceless city fell on September 27. Three days later Abkhaz forces appeared at Enguri river - administrative border of the autonomous republic with the rest of Georgia. Georgia lost control over the whole territory of the autonomous republic, except Kodori gorge - the small mountainous area in the north-east.

Fall of Sokhumi resulted in mass exodus of Georgian population from Abkhazia, recognized later as ethnic cleansing by the OSCE.³⁹⁴ The conflict had high human cost. Around 10 000 people died³⁹⁵ and more than 230 000³⁹⁶ were displaced.

³⁹³ შეთანხმება აფხაზეთში ცეცხლის შეწყვეტისა და მისი დაცვის კონტროლის მექანიზმის შესახებ, (Agreement on cease-fire in Abkhazia and control mechanisms of its implementation), 27.07.93, available at: http://www.parliament.ge/files/613_8104_961346_Doc_3.pdf

³⁹⁴ OSCE Budapest Summit Declaration, 1994 <http://www.osce.org/mc/39554?download=true>

³⁹⁵ Human Rights Watch Arms Project, Georgia/Abkhazia: Violation of the laws of war and Russia's Role in the Conflict, 1995, Vol.7, No.7, p.5

³⁹⁶ According to the Ministry of Refugees and Accommodation of Georgia, 260 000 IDPs are registered from Abkhazia and South Ossetia.

The first post-war meeting of the conflicting parties took place in December 1993 in Geneva under the auspices of the United Nations, with participation of Russia as a facilitator and the CSCE. This meeting set the pace for a structured peace process. Several rounds of negotiations were held in 1994 where sides committed to non-use of force, return of refugees and displaced persons, exchange of war prisoners, negotiations on status and supported deployment of full-scale peacekeeping operation in Abkhazia.³⁹⁷ These negotiations also prepared ground for the Agreement on Cease-Fire and Separation of Forces that was signed in Moscow on May 14, 1994. The cease-fire agreement signed this time only by Georgian and Abkhaz sides stipulated creation of a 12km security zone along each bank of the Enguri river, where CIS peacekeeping forces would be deployed to enforce the cease-fire and promote safe return of refugees.³⁹⁸ The agreement also envisaged withdrawal of Georgian troops from the Kodori gorge and patrolling of the area by UNOMIG observers. Interestingly, CIS peacekeeping forces were manned exclusively by Russian military personnel, as no other CIS member state participated in the peacekeeping operation. Thus, the Moscow agreement officially legalized presence of Russian armed forces in Abkhazia and effectively sealed off Abkhazia from the rest of Georgia.

After deployment of peacekeepers Abkhaz authorities started to build institutions of a de-facto state. In November 1994 Constitution of Abkhazia was adopted proclaiming Abkhazia as a “sovereign, democratic republic exercising the right of self-determination of people”.³⁹⁹ There was no mention of Georgia in the document. Supreme Council elected Ardzinba president of Abkhazia. Parliamentary elections were held in 1996. All these actions were declared illegal by Georgia and international community, but nevertheless they helped consolidate the power in the hands of Ardzinba. Abkhaz Autonomous Republic’s government in-exile was formed in Tbilisi by the Georgian members of pre-war Abkhaz Supreme Council and Minister’s Council.

In 1997, in a similar model as in Transnistria, Russian Foreign Minister Primakov proposed resolution of the conflict on the basis of a union state, where Georgia and Abkhazia would have had equal status. Abkhaz leader Ardzinba even arrived in Tbilisi to meet Shevardnadze and

³⁹⁷ ВТКК Research Group, Analysis of Conflict Resolution in Abkhazia, 2008, pp-6-7

³⁹⁸ Соглашение о прекращений огня и разъединений сил, 14.05.94, available at: <http://www.un.org/ru/peacekeeping/missions/past/unomig/94-583.pdf>

³⁹⁹ Конституция Республики Абхазия, 26.11.94, available at: <http://www.apsnypress.info/apsny/constitution/>

Primakov to discuss the details of the plan, but Georgia ultimately rejected the proposal, fearing that this would grant Abkhazia legal right for potential secession.

As no progress was visible in return of refugees and status negotiations, the United Nations Secretary-general informed the Security Council in April 1997 about the necessity to strengthen the UN role in the conflict resolution.⁴⁰⁰ As a result, so-called Geneva process was launched – series of negotiations mediated by the UN with participation of Russia, OSCE and the Group of Friends of the UN Secretary-general on Georgia.⁴⁰¹ Although, in the early stages, the mediators managed to set up a Coordinating Council to implement actions for conflict resolution and convene three confidence-building meetings with high-level participation, these mechanisms died away in 2001.⁴⁰² In almost 10 years of its existence, Geneva process failed to produce any breakthrough.

The only tangible outcome of Geneva negotiations was the document on the Basic Principles for the Distribution of Constitutional Competencies between Tbilisi and Sokhumi, which had received support of all members of the Group of Friends in 2001. The document consisted of five principles for the final settlement of the conflict: 1. Abkhazia was to become a sovereign entity within Georgia; 2. Distribution of competences between Tbilisi and Sokhumi was to be based on a federal agreement, which could be amended only by mutual consent. 3. Constitutions of Georgia and Abkhazia were to be amended in accordance with the federal agreement. 4. Constitutions of Georgia and Abkhazia would endorse the rights of national minorities and the rights of the displaced persons to return to their homes 5. Georgia and Abkhazia were to agree on the composition of the Constitutional Court. Unfortunately, this so-called “Boden document” named after the Special Representative of the UNSG to Georgia Dieter Boden came out too late as Abkhazia had already adopted independence act by then.⁴⁰³ Rejection of Primakov proposal and May 1998 incident in Gali, when Georgian guerrilla groups provisionally took control of some areas in Gali district, may have persuaded Abkhaz leadership to opt for independence. It is also important to note that Abkhazia’s declaration of independence came shortly after appointment of Putin to the post of Prime-Minister of Russia and placement of Kosovo under

⁴⁰⁰ Report of the UN Secretary-general concerning the situation in Abkhazia, Georgia, 25 April, 1997

⁴⁰¹ Germany, France, UK, USA and Russia

⁴⁰² BTKK Research Group, Analysis of Conflict Resolution in Abkhazia, 2008, pp-14-16

⁴⁰³ Abkhazia declared independence on October 12, 1999

international rule. Abkhaz leadership did not even consider “Boden principles” for further negotiations and refused to meet Group of Friends altogether in 1999-2002.⁴⁰⁴ The Security Council has condemned Abkhazia for its uncompromising stance on autonomous arrangements within Georgia.⁴⁰⁵ Similar position has been endorsed by the European Union and the Council of Europe.⁴⁰⁶

Geneva process briefly rekindled in 2004 with several meetings of the Group of Friends to discuss economic affairs, return of refugees and displaced persons and political and security issues. The negotiations however stalled again when Georgia deployed police forces in Kodori gorge in 2006 and relocated the Abkhaz AR government in-exile from Tbilisi to Kodori gorge - officially renamed into Upper Abkhazia.⁴⁰⁷ This was a part of Tbilisi’s policy of creation of parallel administrations on the territories of breakaway regions as practiced also in South Ossetia. The Abkhaz side refused to continue participation in Geneva talks in protest.

Frozen peace in Abkhazia was guaranteed by the Russian peacekeeping forces whose mandate was prolonged every year by the Council of Heads of CIS States. Georgian side discontent with peacekeepers’ unwillingness and inaction to create conditions for return of refugees and overall settlement of the conflict tried to modify the mandate of peace-keepers several times but the Abkhaz side rejected any modifications. Georgian Parliament adopted several resolutions in 1997, 2001, 2005 and 2006 appealing to the Georgian Presidents to consider withdrawal of Russian peacekeepers - “effectively serving as border troops and supporting and strengthening the separatist regime”,⁴⁰⁸ and their replacement by international peacekeeping forces.⁴⁰⁹ Neither Shevardnadze nor Saakashvili dared however to demand withdrawal of Russian peacekeepers in

⁴⁰⁴ BTKK Research Group, Analysis of Conflict Resolution in Abkhazia, 2008, p. 12

⁴⁰⁵ UN SC Res. 1339 of 31/01/2001; UN SC Res. 1287 30/01/2000

⁴⁰⁶ CoE PA Resolution of 22/04/1997

⁴⁰⁷ Tbilisi Turns Kodori into ‘Temporary Administrative Center’ of Abkhazia, 27.09.06, <http://www.civil.ge/eng/article.php?id=13654>

⁴⁰⁸ საქართველოს პარლამენტის დადგენილება აფხაზეთის კონფლიქტის ზონაში დსთ-ის ეგიდით მყოფი რუსეთის ფედერაციის შეიარაღებული ძალების შემდგომი ყოფნის თაობაზე, (Resolution of Parliament of Georgia on further presence of Russian Federation Armed Forces under the CIS aegis in the Abkhaz Conflict Zone) 30.05.97, available at: <https://matsne.gov.ge/ka/document/view/38614>

⁴⁰⁹ საქართველოს პარლამენტის დადგენილება აფხაზეთის ტერიტორიაზე შექმნილ მდგომარეობასთან დაკავშირებით (Statement of the Parliament of Georgia on the situation in Abkhazia) 11.10.01, available at: <http://abkhaziajustice.gov.ge/wp-content/uploads/2015/10/211.pdf>

the absence of international community's readiness to dispatch international peacekeeping forces to Abkhazia.

Decisions of the Council of Heads of CIS States were always affirmative of Georgia's territorial integrity and criticizing the Abkhaz side. In 1996 the Council imposed sanctions on Abkhazia underlining that "destructive stance" of the Abkhaz authorities hinder resolution of the conflict. The sanctions covered all trade and economic relations as well as transport communications with Abkhazia, ban on functioning of any representation offices of Abkhaz authorities in CIS member states and on establishment of any official contacts with representatives of Abkhaz government as well as military embargo.⁴¹⁰ The decision meant that Abkhazia would have to continue existence in total blockade. In 1997 the Council supported expansion of security zone in Gali District and redeployment of peacekeepers there to create security guarantees for the return of refugees.⁴¹¹ In 1998, Council recommended establishment of interim administration involving UN and OSCE representatives in Gali. These decisions of the CIS Council should have contributed to the conflict resolution process, but unfortunately they remained only on paper. CIS member states and most importantly Russia showed no political will whatsoever to enforce these decisions. Therefore, Geneva process alike, CIS failed to make any impact on conflict settlement too.

In December 2002, Russia unilaterally violated CIS sanctions on Abkhazia and opened railway line between Abkhazia and Russia.⁴¹² A trilateral meeting in Sochi that followed soon thereafter between Putin, Shevardnadze and Abkhaz Prime-Minister Gagulia decided that restoration of railway line in Abkhazia will be contingent upon return of refugees.⁴¹³ At the unofficial summit of CIS heads of states in January 2003 Putin agreed that termination of mandate of CIS peacekeepers would be dependent on Georgian or Abkhaz side's written request. "We will not keep peacekeepers in Abkhazia at any price. If Georgia requests our withdrawal and CIS council

⁴¹⁰ Решение Совета глав Государств СНГ о мерах по урегулированию конфликта в Абхазии, Грузия, 19.01.96, available at: <http://www.civil.ge/rus/article.php?id=15867>

⁴¹¹ Решение Совета глав Государств СНГ о развитии операции по поддержанию мира в зоне конфликта в Абхазии, Грузия, 28.03.97 <http://www.un.org/ru/peacekeeping/missions/past/unomig/97-268.pdf>

⁴¹² Institute for War and Peace Reporting, Abkhazia: Railway Breakthrough?, 20.03.03, available at: <https://iwpr.net/global-voices/abkhazia-railway-breakthrough>

⁴¹³ Встреча Владимира Путина с Президентом Грузии Эдуардом Шеварднадзе и главой исполнительной власти Абхазии Геннадием Гагулия, 07.03.03, available at: <http://kremlin.ru/events/president/news/28285>

approves, we will go. But this will be dangerous” – Putin warned.⁴¹⁴ The refugees never returned to Abkhazia, but the railway line between Sochi and Sokhumi continued to operate. On March 6, 2008, two weeks after Kosovo’s independence was recognized by the western nations Russia cited “changed circumstances” and finally withdrew from 1996 CIS sanctions on Abkhazia.

In the run-up to NATO Summit in Bucharest in April 2008, where Georgian leadership hoped to get a membership action plan, Georgian President Saakashvili declared about his administration’s readiness to grant Abkhazia wide-ranging autonomous rights. The proposal offered broad political representation for the Abkhaz, including a new post of vice-president of Georgia reserved for an ethnic Abkhaz; Right to veto legislation related to the constitutional status of Abkhazia and to issues related to Abkhaz culture, language, and ethnicity. The proposals also included the establishment of a joint Free Economic Zone in Gali district, including the sea port of Ochamchire, international guarantees of Abkhazia’s autonomy and transformation of existing peacekeeping format.⁴¹⁵ Saakashvili’s proposal was turned down immediately by Abkhaz President Bagapsh dismissing it as “propaganda ahead of NATO summit”.⁴¹⁶

The last pre-2008 war attempt to settle the conflict was undertaken by the German Foreign Minister Steinmeier, in capacity of chair of Group of Friends. He proposed three-stage plan of settlement in July 2008. The plan envisaged signing of non-use of force agreement by parties along with the return of refugees in the first stage; economic rehabilitation of the region with the assistance of international donors in the second stage and determination of Abkhazia’s political status in the final stage.⁴¹⁷ Steinmeier’s plan found some support in Tbilisi and Moscow but was

⁴¹⁴ Люлю Чхенкели - Сила есть -ума не надо, 2003, p.51

⁴¹⁵ Georgia offers far-reaching autonomy to Abkhazia, Eurasia Daily Monitor, Vol.5 issue 61, 01.04.08, available at: http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=33509#.VpFgWBV94U0

⁴¹⁶ Abkhazia rejects Georgia’s offer of autonomy, Deutsche Presse Agentur, 29.03.08, available at: <http://reliefweb.int/report/georgia/abkhazia-rejects-georgias-offer-autonomy>

⁴¹⁷ Ernüchternde Kaukasus-Reise Steinmeiers, Neue Zürcher Zeitung, 19.07.08 available at: <http://www.nzz.ch/ernuechternde-kaukasus-reise-steinmeiers-1.787073>

rejected outright by the Abkhaz President on the grounds that it was “unacceptable to discuss the status of Abkhazia, which is an independent republic”.⁴¹⁸

Overall, the peace process conducted both in Abkhazia and South Ossetia since the early 1990’s to 2008 practically served to maintain the status-quo in detriment to Georgia’s territorial integrity. There has been no progress achieved on any of the vital issues on the agenda, such as return of the displaced persons, economic rehabilitation of the regions and determination of their political status. De-facto governments of the breakaway regions consolidated their control over the territory throughout the period of negotiations as Russian peacekeepers created artificial border. The western countries, unlike Balkan case, showed very little interest in settling the conflicts in Georgia, (and in the whole former Soviet space) leaving the sole mediation function to Russia. In the absence of honest broker between the conflicting sides and meagre international involvement, combined with the lack of “sticks and carrots” for Sokhumi and Tskhinvali, the peace process reached an impasse. Russia hijacked the conflicts to serve her own policy interests vis-à-vis Georgia. Conflict resolution process was taken hostage also by ever deteriorating Georgian-Russian relations. More so, after the rise of Putin to power in 1999. A vicious circle was formed. Breakaway regions became excessively dominated by Moscow as key security and defence positions in de-facto governments of Abkhazia and South Ossetia were filled by Russian officers starting from 2004.⁴¹⁹ The most ironic and revealing of all appointments was the case when former chief of staff of CIS peacekeeping forces in Abkhazia Pavlushko re-emerged as Abkhazia’s deputy defence minister soon.⁴²⁰

In the wake of straining Georgian-Russian relations over Russian armed campaign in Chechnya, Russia started to ignore Georgian jurisdiction over Abkhazia and South Ossetia. In 2000, when Russia introduced visas for Georgian citizens, it was explicitly declared that residents of Abkhazia and South Ossetia will be exempt from visa requirements. Similarly, in 2006 when Russia imposed embargo on Georgian wines, spirits and mineral waters for allegedly failing to

⁴¹⁸ Abkhaz Separatists Reject German Peace Plan, Deutsche Welle, 18.07.08, available at: <http://www.dw.com/en/abkhaz-separatists-reject-german-peace-plan/a-3493198>

⁴¹⁹ Illarionov, Andrei, The Russian Leadership’s Preparation for War 1999-2008, In: Svante Cornell and S.Frederick Starr, Eds: Guns of August 2008, 2009, p. 58

⁴²⁰ International Crisis Group, Abkhazia: Deepening Dependence, Report #202, 2010, pp.5-6

comply with Russian health standards, the ban did not extend to beverages produced in Abkhazia.

Serious blow to resolution of conflicts was dealt by so-called “passportization” process launched by Russian government in 2002. State Duma amended the law on citizenship and started massive distribution of Russian passports to the Abkhaz and South Ossetian residents. In the law that entered force in July 2002, in addition to Soviet citizens who were born in Russia, those former Soviet citizens who were legally stateless were made eligible to acquire Russian citizenship under a simplified procedure – without the need of residency requirement.⁴²¹ The process further accelerated in 2004-5 and more than 90% of Abkhazia and South Ossetia’s residents had acquired Russian citizenship by 2008.⁴²² Sudden hike in the number of Russian citizens at breakaway territories presented Kremlin with another tool of leverage over Georgia. Russian leadership eventually used “protection of its citizens” as one of the pretexts to invade Georgia in 2008.

Conflict settlement and peace negotiations certainly were not standalone activities. They were embedded in a larger context, namely Georgian-Russian ties and changing international environment. These conflict cases are better understood when we look at them through the prism of relations between Tbilisi and Moscow. Therefore, I will dwell on dynamics of Georgian-Russian relations in the next sub-chapter.

4.3 Georgian-Russian Relations in 1991-2008

Georgian-Russian relations have always been tense since the fall of the Soviet Union. In Georgian national-liberation discourse Russia was synonymous to Soviet Union and therefore constituted the main barrier on the way to independence. In Georgian perception, Russian imperialism disguised in communism was the major enemy of Georgia’s statehood. Logically, during Gamsakhurdia’s short tenure at the helm of power, Russia was portrayed as the source of all evil for Georgia. The first Georgian President openly accused Russian “imperial forces” in pulling strings in Sokhumi and Tskhinvali to undermine Georgia’s quest for independence and instigating separatists and opposition forces to destabilize the situation in the country. Both

⁴²¹ Shevel, Oksana, *Migration, Refugee Policy and State Building in Postcommunist Europe*, 2011, p.93

⁴²² Illarionov, Andrei, *The Russian Leadership’s Preparation for War 1999-2008*, In: Svante Cornell and S.Frederick Starr, Eds: *Guns of August 2008*, 2009, p. 54

separatists and opposition politicians were smeared as “agents of Kremlin” - an accusation equivalent of treason. Gamsakhurdia’s sometimes suicidal actions such as an unsuccessful attempt to blockade Russia by closing the railway connection, declaring Soviet/Russian armed forces deployed in Georgia as “occupiers” contributed to a very bad start of Georgian-Russian relations in the post-Soviet era. Gamsakhurdia’s anti-Russian policies did not win sympathy and support in the west either. Wary of consequences of disintegration of the nuclear superpower the west did not rush to support independence movements of the Soviet republics.⁴²³ In 1991 Gamsakhurdia was even warned by the US President Bush that “he was swimming against the current”. Anti-Russian and isolated from the west, Gamsakhurdia dreamt of building a “Caucasian House”, where peoples from North and South Caucasus would fight together for independence. Therefore, he strongly supported Jokhar Dudaev the Chechen leader, who declared Chechnya’s independence in October 1991. Georgia refused to take part in any integration project that was discussed throughout 1991 to replace dying Soviet Union. Consequently, Gamsakhurdia did not sign the Alma-Ata declaration and stayed out of the Commonwealth of Independent States. Gamsakhurdia’s staunch anti-Russian stance was one of the factors that cost him the presidency. Although, there are no clear evidences that the military coup in Tbilisi to overthrow Gamsakhurdia was organized by Kremlin, the arms and munitions to rebel military and paramilitary units were delivered from the arms depots of Transcaucasus Military District of Soviet Army. The armed attack on Governmental Palace in Tbilisi coincidentally was launched just a day after Georgia refused to join CIS. Gamsakhurdia was ousted after two-week siege of the central Rustaveli avenue in Tbilisi and he was sheltered by his Chechen friend Dudaev in Grozny.

The military council established after the coup invited former Soviet Foreign Minister and former leader of soviet Georgia Shevardnadze to lead the country out of chaos, anarchy and international isolation. But Georgia’s new leader also failed to improve relations with Moscow. Although, his former team members in the Soviet Foreign Ministry rose to highest posts in the Russian foreign ministry (Kozyrev, Ivanov), he was disdained as the co-destroyer of the Soviet

⁴²³ In a speech before Ukrainian Rada on August 1, 1991 US President George Bush warned soviet republics that ‘Americans will not support those who seek independence in order to replace a far-off tyranny with a local despotism. They will not aid those who promote a suicidal nationalism based upon ethnic hatred’.

state (together with Gorbachev) and western stooge in Russian reactionary circles, who dominated Duma and power ministries and set the tone for relations with the “near abroad”.

Near abroad is a term coined in 1992 in Russian discourse describing the former Soviet republics. Interestingly, it did not embrace the countries literally bordering Russia, such as Finland, Poland or China, but *inter alia* covered countries which did not border Russia – Armenia, Uzbekistan, Tajikistan, etc. Countries of the near abroad constituted the Russian zone of influence and all of them with the exception of Baltic states and Georgia became members of the CIS. As early as in 1995, the liberal Russian Foreign Minister Kozyrev insisted that “the states of the CIS and the Baltics constitute the area of concentration of Russia’s vital interests and warned “that there may be cases when the use of direct military force may be needed to protect our compatriots abroad”.⁴²⁴

Russian involvement in the wars in South Ossetia and Abkhazia on the side of secessionists both militarily as well as politically did irreparable damage to Georgian-Russian relations. A relative improvement in inter-state relations could be observed after the defeat of reactionary forces in Russia in a failed coup attempt in 1993. However, this improvement was forced on Shevardnadze. In the fall of 1993, overthrown President Gamsakhurdia returned to Georgia from Chechnya and gathered his supporters to “topple the junta” before they conducted parliamentary elections in October. Right after the ousting of Georgian governmental forces from Abkhazia, Gamsakhurdia’s supporters used the momentum and captured several large towns in western Georgia including the largest seaport Poti. Shevardnadze’s regime was on the brink of collapse. He turned to Yeltsin for military support. In Moscow, Shevardnadze was considered a lesser evil than Gamsakhurdia and Russian military was ordered to crash Gamsakhurdia’s supporters to save Shevardnadze. Russian support to Shevardnadze did not come cost-free though. Amidst armed clashes with insurgents Shevardnadze declared that Georgia decided to join the CIS.⁴²⁵ After Shevardnadze’s leadership was legitimized through the parliamentary elections, Georgia not only entered CIS but on December 9, 1993 signed the Collective Security Treaty with 9 other members of the CIS (excluding Ukraine and Moldova) effectively returning into Russian orbit

⁴²⁴ Blackwill, Robert “Russia and the West” In: Robert Blackwill, Rodric Braithwaite and Akihiko Tanaka: *Engaging Russia: A report to the Trilateral Commission*:46, The Triangle Paper Series, 1995, pp.7-8

⁴²⁵ The Moscow Times, Georgia joining CIS looks to Yeltsin, 09.10.93, available at: <http://www.themoscowtimes.com/sitemap/free/1993/10/article/georgia-joining-cis-looks-to-yeltsin/217005.html>

again. Collective Security Treaty was created to fill in the military and security vacuum on the post-Soviet space after the abolition of Warsaw Pact and the fall of the USSR. It was a Russian dominated military alliance, whose members could not join other alliances and had a mutual defence clause similar to NATO.⁴²⁶

This paved the way for the first and up-to-date only visit of the President of Russia to Georgia in February 1994. Yeltsin visited Tbilisi to sign the friendship and cooperation treaty, in which states undertook to respect each other's sovereignty and territorial integrity. The agreement also envisaged support to Georgia's armed forces by Russia and joint patrolling of borders.⁴²⁷ Russian border guards stationed in Georgia from the Soviet times now were legally entitled to protect Georgian-Turkish (NATO member state) border.

Russia's dominance in Georgian affairs was further asserted after Georgia and Russia agreed on 25-year presence of Russian army bases in Georgia in 1995 – in Vaziani, Batumi, Akhalkalaki and Gudauta. The locations of army bases were not just random places. Vaziani base was situated just outside the Georgian capital, Batumi base was located in Ajara autonomous republic ruled by pro-Russian leader Abashidze and several kilometres away from the Georgian-Turkish border. Akhalkalaki base was also located very close to Turkish border in a region predominantly populated by Armenian ethnic minority and Gudauta base - in the heart of Abkhazia. Furthermore, according to verbal agreement, appointment of Georgia's interior, security and defence ministers had to be "approved" by Moscow.⁴²⁸ With legitimization of Russian military bases Georgia's room for manoeuvre for independent policy was very limited.

Normalisation of Georgian-Russian relations helped Shevardnadze to consolidate power in his hands in the country. The failed terrorist attack orchestrated against Shevardnadze in August 1995 by his state security minister Giorgadze was used by the Georgian leader to arrest and depose the members of the former military junta. Giorgadze former KGB officer, was rescued by Russian military plane and got refuge in Moscow.

⁴²⁶ Договор о коллективной безопасности, 15.05.92 available at: http://www.odkb.gov.ru/start/index_azbengl.htm

⁴²⁷ Договор между Российской Федерацией и Республикой Грузия о дружбе, добрососедстве и сотрудничестве, 03.02.94 available at: http://lawrussia.ru/texts/legal_673/doc673a825x382.htm

⁴²⁸ Gordadze Thornike, Georgian-Russian Relations in 1990's In: Svante Cornell and S.Frederick Starr, Eds: Guns of August 2008, 2009, p. 30

After consolidation of power Shevardnadze started to work around the state of affairs created by Russian dominance. He aimed at involving the West more actively into Georgian affairs to balance Russia. He found a natural ally in this endeavour, his former politburo colleague Heydar Aliyev, the President of Azerbaijan. Aliyev and Shevardnadze shared not only communist past. They both came to power in post-soviet era after military coups, both fought wars in their autonomies and both lost. Another common feature was that they both wanted to limit Russian dominance in their respective countries. This could have been realized only by attracting the attention of western countries hitherto indifferent to Caucasus. The best way to do this was to offer to the western nations, participation in exploration of Azerbaijani oilfields and then transportation of Azeri hydrocarbons through Georgia to Europe. As Georgia did not have sufficient capacities to transit forecast volumes of energy, a new pipeline connecting Baku to Turkish Mediterranean port of Ceyhan was needed. This idea already floated as early as in 1993 when the preliminary agreement on transportation of Azeri oil through Turkey was signed in Ankara by the turcophile President of Azerbaijan Elchibey,⁴²⁹ who was later toppled too with the support of Moscow.⁴³⁰ As Aliyev and Shevardnadze lobbied the oil transportation route detouring Russia, they were actively supported by Turkish Prime-Minister Demirel. The United States also signalled its support to the alternative pipeline. In the end, it was decided to transport Azeri oil through two pipelines Baku-Supsa for early oil and Baku-Tbilisi-Ceyhan (BTC) for increased volumes. BTC was destined to transport oil and gas from Central Asia as well, and lead this region out of dependence on Russian route too. Construction of Baku-Supsa started in 1996 with the first oil pumped into pipeline in 1998, in the year which saw start of the construction of Baku-Tbilisi-Ceyhan. The consortium which explored oil in Azerbaijan consisted of 11 companies out of 8 countries. Russia was represented by Lukoil with 10% of the shares.⁴³¹ The BTC pipeline itself was built without Russian participation and is until now operated by British Petroleum.

Meanwhile, Shevardnadze continued to look for ways for navigating towards the West. In 1996 Georgia signed partnership and cooperation agreement with the European Union. In 1999, Georgia acceded to the Council of Europe. US assistance to Georgia more than quadrupled from

⁴²⁹ Karagiannis, Emmanuel, *Energy and Security in the South Caucasus*, 2002, p.155

⁴³⁰ Kornell, Svante *The Nagorno-Karabakh Conflict*, Report No, 46, Department of East European Studies, 1999 pp.55-56

⁴³¹ <http://www.socar.az/socar/en/company/about-socar/oil-history-in-azerbaijan>

1997 to 1998 and since then Georgia has regularly ranked among the top states in terms of per capita U.S. aid.⁴³² In April 1999, when the Collective Security Treaty was up for renewal after its initial 5-year term expired, Georgia did not renew its membership and withdrew from the alliance. Georgia was followed by Azerbaijan and Uzbekistan, who also withdrew from the treaty and established a union together with two other non-members of the CST Ukraine and Moldova. GUUAM which remarkably was officially established during the NATO/EAPC Summit in Washington in 1999 was destined to forge the ties between these former Soviet republics, improve trade and economic relations and support each other at international fora. GUUAM was an attempt to create alternative integration project on the former Soviet space without Russian dominance and tacit US support. Initially GUUAM also flirted with the idea of establishing a defence pact and formation of GUUAM peacekeeping forces, but these plans never materialized. In 2005, Uzbekistan officially withdrew from the organization and it was renamed into GUAM Organisation for Democracy and Economic Development. In general, it failed to develop into a strong integration project, but did contribute to building common front between the four nations at international fora especially on regulation of frozen conflicts.

This westward move of Georgia and defiance to Russian interests cooled Georgian-Russian relations again. Earlier hopes in Tbilisi that strategic partnership with Russia would help restoring Georgia's jurisdiction over the breakaway regions also started to fade away. Georgia tried to play the Chechen card to blackmail Russia for some progress in the conflict settlement. After Chechnya attained de-facto independence in the first Chechen war, Georgian-Chechen contacts intensified in 1997 with several visits of Chechen governmental delegations to Tbilisi and Georgian parliamentary delegations to Grozny. Georgia tried to establish friendly relations with Grozny, which had great influence over the developments in North Caucasus. Georgia also tested the ground for involving Chechnya in the resolution of conflict in Abkhazia. Chechens in their turn saw Georgia as a window to outer world. This exchange of delegations was crowned by the official visit of Chechen President Maskhadov to Tbilisi in August 1997. Maskhadov, who was received in Tbilisi almost like a leader of independent country, openly apologized to Georgian people for participation of Chechen fighters in the Abkhaz war and assured that "the chechens need friendship and fraternal relations with Georgians more than with any other

⁴³² Nichol, Jim, Georgia: Recent Developments and US Interests, Congressional Research Service, 2013, available at: <https://www.fas.org/sgp/crs/row/97-727.pdf>

nation”.⁴³³ Certainly, intensification of Georgian-Chechen relations did not impress the Russian leadership. Although by summer 1998 Georgia distanced itself from Grozny again, after Chechen track was discovered in the armed assault on Shevardnadze and Islamic radicalization of Chechen field commanders, Russia still accused Georgia of supporting separatists. The accusations grew stronger after Russia started second Chechen campaign in 1999 with the new Prime-Minister Putin in power.

In 1999 Russia demanded military access to Georgian territory to fight Chechens from the south, but Tbilisi fearful of spillover of Chechen conflict into Georgian territory resisted. Thereupon, citing threat of terrorists transiting through Georgia to North Caucasus, Moscow introduced visa regime for Georgian citizens. After 9/11 as the world united in war on terror, Russia started to justify bloodshed in Chechnya as fight against radical Islamist terrorism and blamed Georgia for harbouring and training Chechen and other Islamist rebels in Pankisi gorge. Russian Foreign Minister Ivanov even suggested that Al-Qaeda leader Osama Bin Laden was hiding in Pankisi to be sharp-wittedly confronted by Shevardnadze, who promised to search for Bin Laden in Ivanov’s house in Akhmeta (Pankisi gorge administratively belongs to Akhmeta district of Georgia, where Ivanov - himself half-Georgian had a family house).⁴³⁴ Although, some Chechen fighters did come to Pankisi gorge along with almost nine thousand refugees, who fled atrocities of Russian regular troops, allegations on existence of training bases were futile. United States offered 64 million USD program to Georgia to train and equip soldiers of Georgian army to keep control in the gorge and deployed US army instructors in Georgia, which was not met with joy in Moscow. In summer 2002, Russia requested Georgia to use its airspace for aerial operations against Chechen insurgents to be denied once again. Russia then bombed the Pankisi gorge twice.⁴³⁵ On the first anniversary of 9/11 Putin told journalists that “if Georgia fails to create security zone at the Georgian-Russian border and to put an end to attacks on adjacent regions of Russia, we retain the right to act in accordance with Article 51 of the UN Charter on self-

⁴³³ Скаков, Александр, Грузино-Чеченские Отношения, 2000, available at: <http://www.ca-c.org/journal/cac-08-2000/21.skakov.shtml>

⁴³⁴ Шеварднадзе решил искать бин Ладена в доме матери главы МИД России, 18.02.02, available at: <http://lenta.ru/terror/2002/02/18/house/>

⁴³⁵ Georgia Hearing Heavy Footsteps From Russia's War in Chechnya, New York Times, 15.08.02, available at: <http://www.nytimes.com/2002/08/15/world/georgia-hearing-heavy-footsteps-from-russia-s-war-in-chechnya.html>

defence”.⁴³⁶ This open threat of intervention persuaded Georgian leadership that it was high time to look for alternative security guarantees and requested joining of NATO. At the Prague NATO Summit, Shevardnadze officially declared that Georgia was seeking membership in the alliance.⁴³⁷ His declaration was preceded by derogatory statement of the then Russian defence minister Ivanov that Russia is not afraid of Georgia’s membership to NATO: “Let them join whatever they want, even the league of sexual reforms”.⁴³⁸

As if not enough, Georgian-Russian relations were loaded with more explosives in the years to come. Signature on adaptation of the treaty on Conventional Armed Forces in Europe in 1999 at the OSCE Summit in Istanbul was another one. According to flank limitations of the treaty Russia was forced to agree on closure of military bases in Vaziani and Gudauta by July 2001 and negotiate on presence of Batumi and Akhalkalaki bases during 2000.⁴³⁹ Although, Russia did close Vaziani base in June 2001, Gudauta base was not ceded to Georgia for obvious reasons of not allowing Georgian troops to enter Abkhazia. Regarding Batumi and Akhalkalaki Russia requested 11 years of grace period to prepare adequate infrastructure and housing for military personnel. Georgia offered only three years.⁴⁴⁰ Negotiations stalled.

The change of leadership in Georgia after the “Rose Revolution” initially ignited hope that Georgian-Russian relations might improve. Saakashvili paid his first official visit to Moscow in February 2004. Reportedly, during the meeting he was asked by Putin not to push for withdrawal of Russian bases and to keep State Security Minister Khaburdzania in office.⁴⁴¹ Saakashvili did not heed to Putin’s request though, he reorganized the ministry of state security and moved Khaburdzania to prosecutor’s office. In May, Russia did not object to Saakashvili in regaining Tbilisi’s control over Ajara, which was ruled by pro-Russian local politician Abashidze as a personal fiefdom. Abashidze was persuaded to step down and depart to Moscow by the Secretary of the Russian National Security Council Ivanov. As it turned out, this was one of the last bright

⁴³⁶ Люлю Чхенкели - Сила есть -ума не надо, 2003, p.42

⁴³⁷ Georgia: Shevardnadze Officially Requests invitation to join NATO, Radio Liberty, 22.11.02, <http://www.rferl.org/content/article/1101463.html>

⁴³⁸ Тонкая дипломатия Сергея Иванова, Nezavisimaya Gazeta, 20.09.02, available at: http://www.ng.ru/cis/2002-09-20/1_ivanov.html

⁴³⁹ OSCE Istanbul Document 1999, Annex 14, <http://www.osce.org/mc/39569?download=true>

⁴⁴⁰ Illarionov, Andrei, The Russian Leadership’s Preparation for War 1999-2008, In: Svante Cornell and S.Frederick Starr, Eds: Guns of August 2008, 2009

⁴⁴¹ Asmus, Ronald, A Little War That Shook the World, 2010, p. 70

spots in relationship between Saakashvili and Putin. According to Saakashvili, he was warned by Putin not to expect similar presents with regards to South Ossetia and Abkhazia.⁴⁴² After Batumi episode, the Kremlin began to tighten its control over South Ossetia and Abkhazia.

Initial structural reforms carried out by the Saakashvili government and his drive to strengthen the Euro-Atlantic integration path of the country, applauded by the United States and the EU were seen with suspicion in Moscow. The Rose Revolution and subsequent Orange Revolution in Kiev were gradually regarded in Kremlin as a western intervention into the Russian “backyard” and an attempt to impose western type of democracy as opposed to “sovereign democracy” model initiated by Putin. Saakashvili’s successful fight against petty corruption and tough economic reforms made Georgia one of the favourites in Washington. Tbilisi accelerated the pace of reforms in the security sector to become eligible for NATO membership and implemented Individual Partnership Action Plan and then Intensified Dialogue on Membership Issues with NATO.⁴⁴³ Georgia’s defence budget increased from 1% of GDP to 8% of GDP and Georgia started to participate in military operations in Iraq and Afghanistan, becoming one of the biggest per-capita contributors to the operations. Saakashvili declared that his goal was to enter NATO by 2009, but the priority of his presidency was to restore territorial integrity.

The last constructive episode in Georgian-Russian relations came in May 2005 when the foreign ministers of the two countries agreed on withdrawal of Russian military bases from Batumi and Akhalkalaki by the end of 2008. Surprisingly, Russia completed withdrawal of troops in November 2007, more than a year ahead of the schedule. The former adviser to Putin, Illarionov argues that the early withdrawal of military bases from Georgia was conditioned by the fact that Russian leadership had already started preparations for war in 2006 and delivered substantial amount of tanks and artillery to South Ossetia and Abkhazia in the course of 2006-07.⁴⁴⁴ Therefore, they did not want to expose Russian soldiers in Batumi and Akhalkalaki to attacks from Georgian forces in case of war. Illarionov’s arguments were attested by Putin himself who

⁴⁴² Саакашвили о предшествующих конфликту с Россией событиях, 25.08.08, available at:

<http://www.civil.ge/rus/article.php?id=17465&search=%EF%F0%E5%E4%F8%E5%F1%F2%E2%F3%FE%F9%E8%F5>

⁴⁴³ <http://www.eu-nato.gov.ge/ge/nato/relations/summits>

⁴⁴⁴ Illarionov, Andrey, Как готовилась война, 26.06.09, available at:

<http://www.novayagazeta.ru/politics/44569.html?print=1>

admitted in 2012 that as early as 2006 Russia had a war plan elaborated by the ministry of defence, which envisaged arming and training of South Ossetian irregulars.⁴⁴⁵

2006 marked hitherto lowest point in relations between the two countries. Series of events orchestrated from Moscow demonstrated that the bilateral relations were heading to a dead-end. The year started with explosions on two gas pipelines in North Ossetia in January and high voltage electricity transmission lines connecting Russian and Georgian electricity grids. Georgia was left without gas and electricity in mid-winter. At the press-conference on January 31, Putin called the stoppage of delivery – misfortune, blamed Georgian leadership for worsening of relations but stated that Russia is ready to strengthen ties with Georgian people “who are most close to us by history and by culture”.⁴⁴⁶ At the end of March, Russia banned the import of Georgian wines⁴⁴⁷ and two months later the import of mineral waters⁴⁴⁸ – major Georgian export commodities to Russia – citing sanitary problems.

Ailing Georgian-Russian relations were certainly not helped with the visit of US President Bush to Tbilisi and his emotional speech of support to Georgia and its government. Hailing Georgia for being a beacon of liberty for the region and the world, Bush promised “that American people will stand by Georgia on the path of freedom”.⁴⁴⁹ He praised the government for inspiring change from the Caspian Sea to the Persian Gulf and assured Saakashvili that he had a “solid friend in America”.⁴⁵⁰ Bush’s visit increased the fears in Russian establishment that United States was encroaching upon its zone of influence in the Caucasus.

On September 27, Georgian interior ministry detained four employees of Russian embassy and charged them with espionage. Russian government summoned the ambassador to Moscow and stopped issuing visas for Georgians. In order to defuse tensions, Georgian authorities did not arrest the spies, but handed them over to OSCE. This act of goodwill did not help though.

⁴⁴⁵ Путин взял на себя ответственность за боевые действия в Грузии, 08.08.12, available at:

http://newsru.com/world/08aug2012/putin_georgia.html

⁴⁴⁶ Press-conference of Vladimir Putin, 31.01.06, available at:

http://archive.kremlin.ru/appears/2006/01/31/1310_type63380type63381type82634_100848.shtml

⁴⁴⁷ Импорт молдавских и грузинских вин в Россию будет запрещен по санитарным соображениям, 27.03.06, available at: <http://www.newsru.com/finance/27mar2006/wine.html>

⁴⁴⁸ Запрет на поставки "Боржоми" из Грузии начнет действовать с 7 мая, 06.05.06, available at:

<http://ria.ru/economy/20060506/47575444.html>

⁴⁴⁹ Bush hails Georgia as 'beacon of liberty', 10.05.05, available at:

<http://www.theguardian.com/world/2005/may/10/georgia.usa>

⁴⁵⁰ Ibid.

Moscow felt insulted and retaliated heavily. On October 3, Russia ceased all transport and postal communication with Georgia and declared total embargo on Georgian products. Russian authorities started targeted campaign against Georgian migrants and companies owned by ethnic Georgians in Russia. According to Human Rights Watch report, Russian officials made anti-Georgian statements. Russian TV stations broadcast anti-Georgian propaganda and calls of official figures to arrest and expel Georgians. Moscow police organized Razzias near Georgian embassy and Georgian church to check identities. Moscow police even asked the schools for the lists of pupils with Georgian last names and their parents. Arrested Georgians were not allowed to hire lawyers, Georgian embassy representatives were denied the right to visit them. On October 6, Russian MIA boarded arrested Georgians on a cargo plane to expel them. 2380 persons were expelled and 2254 left Russia at their own expense after the court decisions (court hearings lasted usually several minutes).⁴⁵¹ Four persons died in detention or during the journey.⁴⁵²

Russian frustration towards Georgia was expressed in the statement of Foreign Minister Lavrov who said that “You can not be fed by Russia and insult Russia at the same time”⁴⁵³, referring to thousands of Georgian “gastarbeiters” in Russia supporting their families back home.

Even though the Russian leadership denied that the campaign was directed against Georgians and claimed it was part of large-scale operation against illegal migration and organized crime, the official documents reveal that the main target were ethnic Georgians.⁴⁵⁴ It is noteworthy that several Russian citizens of Georgian origin were also expelled. In 2007, Georgia lodged a complaint against Russia in European Court of Human Rights for violation of European Convention for Human Rights. The Court delivered judgment seven years later stating that “There had been a coordinated policy of arresting, detaining and expelling Georgian nationals

⁴⁵¹ Singled Out, Human Rights Watch, Vol. 19, October 2007, available at:

<http://www.hrw.org/sites/default/files/reports/russia1007webwcover.pdf>

⁴⁵² ECHR Judgment, Georgia vs. Russia, available at:

[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\"languageisocode\":\[\"ENG\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\"\],\"itemid\":\[\"001-145546\"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\)

⁴⁵³ Лавров:Нельзя кормиться от России и оскорблять Россию, 03.10.06, available at:

<http://ria.ru/politics/20061003/54476701.html>

⁴⁵⁴ Singled Out, Human Rights Watch, Vol. 19, October 2007, available at:

<http://www.hrw.org/sites/default/files/reports/russia1007webwcover.pdf> pp.75-83

and... the Court considered that those arrests had been arbitrary”.⁴⁵⁵ The ECHR decided that there had been a violation of the Convention in respect of prohibition of collective expulsion of aliens; right to liberty and security; right to judicial review of detention; prohibition of inhuman or degrading treatment; right to an effective remedy.⁴⁵⁶

The year 2006 was crowned by the meeting of Saakashvili and Putin at the CIS Summit in Minsk. As Saakashvili recalled, Putin promised him to “arrange Northern Cyprus” in Georgia.⁴⁵⁷ The personal relations of the two presidents reached the lowest point at that time. Russian officials began to referring to the leaders in both Sokhumi and Tskhinvali as presidents.⁴⁵⁸

In the height of tensions defence minister Ivanov warned that “Saakashvili’s meanness transgresses all limits and..... if Georgian leadership attacks our peacekeepers and our citizens and if there will be ethnic cleansing and genocide, Russia will not be staying out”.⁴⁵⁹

In 2007, Putin’s speech at the Munich security conference marked the beginning of open confrontation with the West. NATO eastward enlargement, possible deployment of missile shield in Eastern Europe and ignorance of Russian stance towards Kosovo were cited by Putin as violations of the agreements between Russia and the West in 1990’s. Soon thereafter, Russia suspended the CFE treaty citing “exceptional circumstances affecting its security”.⁴⁶⁰ By that time, it was already clear that the western countries supported unilateral declaration of independence by Kosovo, further alienating Russia (See previous chapter).

As Russia openly declared that Kosovo independence will have repercussions in the world, Georgian authorities sensed that Russia would retaliate in Georgia and tried to avoid this scenario by engaging in direct talks with Russia. In June 2007, at the meeting between Georgian and Russian foreign ministers in Istanbul, Georgia tried to win Russia by offering her to become

⁴⁵⁵ ECHR Judgment, Georgia vs. Russia, available at:

[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\"languageisocode\":\[\"ENG\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\"\],\"itemid\":\[\"001-145546\"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{\)

⁴⁵⁶ Ibid.

⁴⁵⁷ Путин обещал мне устроить Северный Кипр и сделал это – Саакашвили, 08.05.13, available at:

<http://regnum.ru/news/1692990.html>

⁴⁵⁸ International Crisis Group, South Ossetia: The Burden of Recognition, Europe Report, No.205, 2010

⁴⁵⁹ Многослойный кризис, 08.10.06, available at: <http://www.vesti7.ru/news?id=9204>

⁴⁶⁰ Russia suspends arms control pact, 14.07.07, available at: <http://news.bbc.co.uk/2/hi/europe/6898690.stm>

international guarantor of South Ossetia's autonomy and to organize free elections there, but failed.⁴⁶¹

Worrying signals started to happen more frequently. In August 2007, Russian jets violated Georgian airspace and fired a missile at Tsitelubani radar station near South Ossetian administrative line in a sign of warning.⁴⁶²

The first half of 2008 was marked with two major international events that left deep scars on Georgian-Russian relations. Independence of Kosovo and NATO Summit in Bucharest. Kosovo declared its independence in February 2008 and received instant recognition by major western nations. Russia in its turn, quickly withdrew from CIS sanctions on Abkhazia, and Russian Duma adopted declaration calling on Russian President to protect citizens of Russian Federation living in Abkhazia and South Ossetia and to consider the possibility of independence of Abkhazia and South Ossetia, in case of Georgia's armed attack or membership of NATO.⁴⁶³

A month later, President Putin instructed federal ministries and agencies to seek establishment of direct relations with de-facto authorities of Abkhazia and South Ossetia.⁴⁶⁴ Russian government was also tasked to "create mechanisms for the comprehensive defence of the rights, freedoms and lawful interests of Russian citizens living in Abkhazia and South Ossetia". Establishment of direct links with Abkhazia and South Ossetia was the first step taken by Kremlin towards conditional recognition of Georgia's territorial integrity.

NATO Summit in Bucharest failed to grant long-awaited Membership Action Plan to Georgia, the last stage before actual membership. Despite rigorous support and lobbying from Washington, lame-duck Bush was not able to persuade his German and French counterparts in the necessity of granting MAP to Tbilisi. Germans and French feared that granting Georgia membership candidate status would aggravate already problematic relations with Russia and

⁴⁶¹ Asmus, Ronald, *A Little War That Shook the World*, 2010, pp. 83-84

⁴⁶² Georgia: Russia bombed village, 08.08.07 available at:
<http://edition.cnn.com/2007/WORLD/europe/08/07/russia.georgia/index.html?iref=newssearch>

⁴⁶³ Определение самоопределению, 21.03.08, available at:
http://www.gazeta.ru/politics/2008/03/21_a_2674074.shtml

⁴⁶⁴ Russian foreign ministry press release "The Russian President's Instructions to the Russian Federation Government with Regard to Abkhazia and South Ossetia", 16 April 2008, available at:
http://archive.mid.ru//brp_4.nsf/e78a48070f128a7b43256999005bcbb3/b75734bac2796efbc325742d005a6f7c?OpenDocument

bring NATO on the verge of conflict with Moscow over Georgian breakaway regions. Furthermore, Berlin and Paris were not impressed with democratic credentials of Saakashvili and his handling of internal crisis in Georgia in November 2007. As a result, a compromise formulation was worked out by the diplomats in Bucharest, which did not grant MAP to Georgia, but promised eventual membership.⁴⁶⁵

Prior to the Bucharest Summit, Russian officials at different levels warned that invitation of Georgia and Ukraine to NATO membership is a “red line which may not be crossed”. “The emergence of a powerful military bloc at our borders will be seen as a direct threat to Russian security” –Putin said in Bucharest.⁴⁶⁶ Chief of Staff of Russian Armed Forces Baluevski warned that in case of Georgian and Ukrainian membership to NATO, Russia would have to “resort to military and other measures”.⁴⁶⁷ Foreign Minister Lavrov attested to his President and top military several days later in an interview with radio Echo Moskvy saying that “we will do everything possible to prevent the accession of Ukraine and Georgia to NATO”.⁴⁶⁸ In the aftermath of NATO summit the situation in conflict zones worsened. In April-May Russia downed several Georgian drones in violation of Georgian airspace. Although, Russia denied involvement, the investigation carried out by UNOMIG confirmed it. On May 31, Russia dispatched its railway troops to Abkhazia to repair the railway line between Sokhumi and Ochamchire (that had not been used after 1993) under the pretext of humanitarian support to Abkhazia. Georgian side described the deployment as preparation for military intervention. In May-June, Russia increased the number of its troops in Abkhazia and delivered additional armament to conflict zones.⁴⁶⁹ On July 15, forces of North Caucasus military district commenced a large-scale military drills “Caucasus 2008” with participation of ground forces, airforce, paratroopers, black sea fleet and interior troops. Leaflets distributed to soldiers titled “Know your enemy” described main features of Georgian armed forces.⁴⁷⁰ The drills that were

⁴⁶⁵ NATO Bucharest Summit Declaration, http://www.nato.int/cps/en/natolive/official_texts_8443.htm

⁴⁶⁶ Stay away, Vladimir Putin tells Nato, 05.04.08, available at:

<http://www.telegraph.co.uk/news/worldnews/1584027/Stay-away-Vladimir-Putin-tells-Nato.html>

⁴⁶⁷ Украина и Грузия возмущены словами Балуюевского, 12.04.08, available at:

<http://grani.ru/Politics/Russia/m.135535.html>

⁴⁶⁸ Moscow to prevent Ukraine, Georgia's NATO admission – Lavrov, 08.04.08, available at:

<http://sputniknews.com/russia/20080408/104105506.html>

⁴⁶⁹ Report of the Independent International Fact Finding Mission on the Conflict in Georgia,(in Georgian) Volume 3, September 2009, available at: <http://new.smr.gov.ge/Uploads/eb7e7f.pdf> pp.20-22

⁴⁷⁰ Ibid. p.23

conducted in Tskhinvali (on the territory of another state) also continued until August 2, but the troops remained in the region after that date.⁴⁷¹

In a last-ditch bilateral effort to solve the problem, Saakashvili sent a peace proposal on Abkhazia to new Russian President Medvedev, which envisaged de-facto partition of Abkhazia into two zones. The refugees would return to Gali and Ochamchire districts and be placed under mixed or international administration. In parallel, eastern Abkhazia would become free economic zone and enable the Abkhaz to trade with the outside world. Russian peacekeepers would be redeployed to Kodori river between Ochamchire and Sokhumi and Georgia would prolong their mandate. Tbilisi would sign the non-use-of-force agreement and territorial integrity would be guaranteed.⁴⁷² Medvedev's response was negative.

Worried that the escalation might grow into a full-scale war western countries undertook shuttle diplomacy. In July, US State Secretary Rice, German Foreign Minister Steinmeier, OSCE Chairman-in-office Stubb visited Tbilisi and Moscow and invited them to continue negotiations between the conflicting sides. Rice's visit was even compounded by violation of Georgian airspace by four Russian jets "to cool down some hot heads".⁴⁷³ All these proposals were turned down either by South Ossetian or Abkhaz de-facto authorities.

As this account of Georgian-Russian relations demonstrates, in the 18-years preceding the war Georgia and Russia drifted far apart from being fraternal republics. It is a common sense to characterize Russia as a weak state in the first half of the 1990's. However, exactly in this period Russia managed to gain sufficient leverage over Georgia as well as number of other ex-Soviet states through separatist conflicts that are still determining the uneasy relations between them today. Georgian-Russian relations have always suffered from distrust and divergence of interests. Any independent move by Georgia arose suspicion in Moscow. In the eyes of Kremlin, Georgia could afford only limited sovereignty and all its external actions had to be coordinated with the patron at the Red square. Georgia along with other former Soviet republics were the subjects of a new "Brezhnev doctrine" conducted by Moscow. Georgia was the key not only to the South Caucasus, but also to the Russian North Caucasus and therefore Georgia's potential orientation

⁴⁷¹ Ibid. annex 17,18,19

⁴⁷² Asmus, Ronald, *A Little War That Shook the World*, 2010, pp. 160-161

⁴⁷³ "Этот шаг позволил охладить горячие головы в Тбилиси", 11.07.08, available at: <http://www.kommersant.ru/doc/911211>

to the west was regarded as an existential threat for Russian security.⁴⁷⁴ The fact that none of the three post-independence Georgian leaders with totally different political backgrounds managed to establish friendly relations with Russia is symptomatic. Russia simply could not have good relations with independent-minded Georgia. The Russian policy towards Georgia clearly bore the characteristics of a colonial one. Even in mid-1990's, when Georgia succumbed to all demands from Moscow – entered CIS, signed Collective Security Treaty, legitimized presence of Russian troops and border guards and consulted with Moscow on appointment of power ministers, Russia was reluctant to help Tbilisi in solving Georgia's fundamental problem - return of refugees and settlement of conflicts. Conflicts were frozen and put aside for uncertain period in order to use them as a constant reminder to any Georgian leadership of the negative consequences of not following Moscow's footsteps. This policy hardened as Russia grew more assertive on the international arena and as confrontation with the United States and the West in general started to deepen in mid-2000s. By that time Georgia had transformed itself from a dysfunctional, failing state into a top-reformer in the former soviet space and United States' ally in the region. Georgian foreign policy priorities – integration with NATO, integration with the EU and restoration of territorial integrity were in clear contradiction with Russian interests – prevention of NATO eastward expansion, integration of former Soviet republics through creation of Customs Union and later Eurasian Union and keeping the status-quo in frozen conflicts. Radically opposing national interests nurtured antagonism between the two sides. Humiliated with unipolarism, NATO eastward enlargement, ignorance of Russian stance on Iraq and Kosovo, Russia sought to retaliate and Georgia was the best and easiest target. Punishment of a small pro-western nation, with no outside security guarantees and frozen secessionist conflicts would be a showcase not only to the west, but also to fellow CIS members. Georgia wary of the disastrous consequences of the state of affairs, tried to use different scenarios in resolving the conflicts. However, in the absence of strong western support, Georgia alone could not materialize neither peaceful nor military option of the conflict settlement. With the Russian military build-up in breakaway regions, Georgian leadership was faced with losing Abkhazia and South Ossetia completely, that it could not afford either. Hence, the war that led to recognition of South Ossetia and Abkhazia became inevitable.

⁴⁷⁴ See next sub-chapter

4.4 Georgia-Russia War

According to materials handed over by Georgian side to the independent international fact finding mission, South Ossetian irregulars started to shell Georgian peacekeepers' posts at the end of July. On August 2, de-facto authorities declared evacuation of population from Tskhinvali and Ossetian controlled villages. Thereafter, Georgian villages were shelled by South Ossetian irregulars in the course of next four days. The bypass road connecting Georgian villages to each other were bombed, cutting the villages from the rest of Georgia. Three Georgian peacekeepers were wounded. Georgian side provided intelligence information that in early hours of August 7, units of Russian regular troops entered the Roki tunnel.⁴⁷⁵ However, Russians deny this. South Ossetian leader Kokoiti in an interview to Russian TV channel threatened Georgian peacekeeping forces and police with annihilation unless they were withdrawn. In the afternoon of August 7, after shelling of Georgian peacekeeping post, two Georgian peacekeepers were killed and five wounded. Georgian reintegration minister travelled to Tskhinvali to meet commander of joint peacekeeping forces and South Ossetian representatives. South Ossetians refused to meet Georgian minister and the commander of peacekeeping forces admitted that he could not control South Ossetian irregulars. He also refused to give security guarantees to Georgian peacekeeping forces in Tskhinvali. In the evening of August 7, Saakashvili declared unilateral cease-fire in a televised address to the nation and once again offered wide autonomy to South Ossetia under international guarantees. He invited Russia specifically to "act as a guarantor of South Ossetian autonomy within Georgia".⁴⁷⁶ After Saakashvili's address shelling of Georgian villages intensified and Georgian leadership received intelligence reports on additional 150 armoured carriers of Russian regular troops crossing Roki tunnel. Cyber attack on Georgian governmental websites was launched in the evening. At 23:35, Georgian President ordered Georgian armed forces to protect civilian population, neutralize firing positions from which fire against civilians, Georgian peacekeeping units and police originated and halt the movement of regular units of Russian army through the Roki tunnel inside South Ossetia. Georgian units quickly advanced

⁴⁷⁵ Report of the Independent International Fact Finding Mission on the Conflict in Georgia,(in Georgian) Volume 3, September 2009, available at: <http://new.smr.gov.ge/Uploads/eb7e7f.pdf> p. 30

⁴⁷⁶ Saakashvili's televised address on S.Ossetia, 07.08.08, available at: <http://www.civil.ge/eng/article.php?id=18934>

and took control of large parts of Tskhinvali and Ossetian villages, but soon were forced to withdraw from South Ossetia altogether after massive military operation was carried out by Russian ground forces and aviation. Russia put forward “responsibility to protect” to justify intervention. On August 9, speaking at the press-conference Foreign Minister Lavrov stated that

“according to our constitution there is responsibility to protect, the term which is very widely used in the UN when people see some trouble in Africa or in any remote part of other regions. But this is not Africa to us, this is next door. This is an area where Russian citizens live. So, the constitution of the Russian Federation, the laws of the Russian Federation make it absolutely unavoidable for us to exercise responsibility to protect”.⁴⁷⁷

Moscow’s version of official chronology of events has it that President Medvedev officially ordered military operation to “compel Georgia to peace” and to “protect lives and dignity of Russian citizens” in South Ossetia in the afternoon of August 8 after two Russian peacekeepers were killed and five wounded in Tskhinvali.⁴⁷⁸ However, Medvedev gave a totally different account two years later when he said that he took decision on missile attack at 4:00 on August 8, 2,5 hours after Georgian army started military activities.⁴⁷⁹ Russian peacekeepers were surely not killed at that time. Putin immediately accused Georgia of conducting a genocide,⁴⁸⁰ official sources reported death of almost 2000 civilians, allegation that later was refuted by own investigation of Russian Prosecutor’s Office setting civilian death toll at 162.⁴⁸¹

Out of six criteria for responsibility to protect to be enacted that I described in chapter two, Russian intervention barely met only the “just cause” criterion– for protecting its own peacekeepers. The other five – right authority, right intention, last resort, proportionate means and reasonable prospects were clearly absent. Intervention was not sanctioned by the UN, intervention was used for alteration of borders. Diplomatic means of peaceful resolution were not

⁴⁷⁷ Interview by Minister of Foreign Affairs of the Russian Federation Sergey Lavrov to BBC, 09.08.08, available at : http://archive.mid.ru//brp_4.nsf/0/F87A3FB7A7F669EBC32574A100262597

⁴⁷⁸ Report of the Independent International Fact Finding Mission on the Conflict in Georgia,(in Georgian) Volume 3, September 2009, available at: <http://new.smr.gov.ge/Uploads/eb7e7f.pdf> p.438

⁴⁷⁹ Ответы на вопросы журналистов по завершению рабочего визита в Южную Осетию, 08.08.10 <http://archive.government.ru/stens/20283/print/>

⁴⁸⁰ Путин: происходящее в Южной Осетии- - это геноцид осетинского народа, 09.08.08, available at: <http://www.interfax.ru/russia/26152>

⁴⁸¹ Report of the Independent International Fact Finding Mission on the Conflict in Georgia, Volume 1, September 2009, p. 21

exhausted to qualify for last resort and sending 20 000 soldiers and more than 100 tanks into neighbouring country may not be considered proportionate (see below).

On August 10, Russia opened second front in Abkhazia, occupying Kodori gorge as well as Georgian cities of Zugdidi, Senaki and Poti. International community tried to mediate the conflict and called for cease-fire. In the telephone conversation between US State Secretary Rice and Russian Foreign Minister Lavrov, the latter demanded return of Georgian army to the barracks, issue of non-use-of-force pledge and resignation of Saakashvili.⁴⁸² On August 12, as the Russian army conquered Gori and cut Georgia in two, the French President Sarkozy in his capacity of EU rotating president arrived in Moscow to negotiate a peace plan. The negotiations with Medvedev and Putin were hard. As Sarkozy's national security adviser Jean-Davide Levitte recalled Putin wanted to overthrow Saakashvili and "hang him by the balls".⁴⁸³ Sarkozy, nevertheless managed to push through a very vague text of cease-fire agreement with Russian leaders and at the same time at the United States conveyed message to Moscow that democratically elected governments may not be toppled.⁴⁸⁴

Initial version of the so-called six point plan envisaged the following points:

- 1) non-resort to force; 2) cessation of all armed activities; 3) free access to humanitarian assistance;
- 4) withdrawal of Georgian armed forces to their permanent positions; 5) withdrawal of armed forces of Russian Federation to the line where they were stationed prior to the beginning hostilities. Prior to the establishment of international mechanisms the Russian peacekeeping forces will take additional security measures; 6) start of international negotiations on future status of South Ossetia and Abkhazia and ways to ensure their lasting security will take place.

After Georgian leadership's attempt to include the clause on territorial integrity of Georgia failed, Tbilisi objected to the final point on status negotiations. Georgia feared that holding of status negotiations implied that territorial integrity of Georgia was not sacrosanct anymore. Therefore Saakashvili asked for reformulation. As a result, the last point was rephrased as "to start of international negotiations on conditions of security and stability in South Ossetia and

⁴⁸² Asmus, Ronald, *A Little War That Shook the World*, 2010, p.182

⁴⁸³ Vladimir Putin threatened to hang Georgia leader 'by the balls', 13.09.08, available at: <http://www.telegraph.co.uk/news/worldnews/europe/russia/3454154/Vladimir-Putin-threatened-to-hang-Georgia-leader-by-the-balls.html>

⁴⁸⁴ Russia Wants 'Regime Change' in Georgia – U.S. Suggests, 11.08.08, available at: <http://www.civil.ge/eng/article.php?id=19036>

Abkhazia”. This turned out to be a fatal mistake, as it freed the hands for Russia to decide on status of the breakaway regions on her own.

The five-day war ended. After the cease-fire agreement was signed by all parties, Russian forces occupied Akhgori district, which administratively belonged to South Ossetia, but was never controlled by secessionists. Georgia lost control on over additional 127 towns and villages in Abkhazia and South Ossetia that it controlled before August 8, 2008, resulting in additional 30 000 IDPs from these areas. Ossetian paramilitaries bulldozed Georgian villages, de-facto president Kokoiti admitted that Georgian villages were deliberately destroyed not to allow Georgians back.⁴⁸⁵ De-facto Parliament Chairman Gassiev was more explicit: “We did a nasty thing, we burned all their houses in enclaves. Georgians will never return here. There was no other way to stop the war and cut the knot”.⁴⁸⁶ Thus, Russia gained full control over the whole territory of Abkhaz and South Ossetian autonomies in former Soviet administrative borders. Russia never implemented the fifth point of the cease-fire agreement and did not return to positions held prior to hostilities, although Russian forces ultimately withdrew from the rest of Georgia.

The independent international fact-finding mission on the conflict in Georgia (IIFMCG) dispatched by the European Union issued an ambivalent report blaming both Georgia and Russia for violation of international law. The mission concluded that Georgia violated international law by using force against Russian peacekeepers and by shelling of Tskhinvali with Grad multiple rocket launchers, which was found as disproportionate answer to repel South Ossetian attacks on Georgian villages. The mission did not find the proof that there was an armed attack of Russia going on prior to Georgian offensive, therefore the attack on Russian peacekeepers was illegal.⁴⁸⁷ On Russian use of force, the mission had two answers: Russia had the right to defend its peacekeepers and therefore its actions in the first phase of the conflict were legal, however the subsequent military campaign deeper into Georgia was neither necessary nor proportionate and

⁴⁸⁵ Эдуард Кокойты: мы там практически выровняли все, 15.08.08, available at: <http://www.kommersant.ru/doc/1011783>

⁴⁸⁶ Южную Осетию отбили. Что с ней делать дальше?, 22.08.08, available at: <http://www.kp.ru/daily/24150/366813>

⁴⁸⁷ Report of the Independent International Fact Finding Mission on the Conflict in Georgia, Volume 1, September 2009, pp. 22-23

therefore contrary to international law.⁴⁸⁸ The report also concluded that Russian military actions could not be justified with protection of its citizens and as “humanitarian intervention”. Russia was also found guilty of violating international law by using the force in Abkhazia.⁴⁸⁹

There were however dissenting opinions as well. One of the most recognized international legal scholars, whom I cite in first part of this paper extensively, Antonio Cassese argued that none of Russian legal justifications for armed intervention hold water.

“By sending its troops to South Ossetia, Georgia no doubt was politically reckless, but it did not breach any international rule, however nominal its sovereignty may be. Nor do genocide or ethnic cleansing seem to have occurred; if war crimes were perpetrated, they do not justify a military invasion. Moreover, South Ossetians have Russian nationality only because Russia recently bestowed it on them unilaterally. Finally, the 1992 (*Dagomys*) agreement authorises only monitoring of internal tensions, not massive use of military force”.⁴⁹⁰

Western reaction to the war had been largely similar. Presidents of Latvia, Lithuania, Estonia and Poland issued joint statement strongly condemning the action of Russian military forces against sovereign Georgia.⁴⁹¹ Russian invasion was compared to 1968 Prague Spring by Czech Prime-Minister Topolánek in a joint letter with the future Prime-Minister of the UK Cameron.⁴⁹² US President Bush called unacceptable Russian invasion of a sovereign neighbouring state.⁴⁹³ Most of the statements however included caveat that Georgian leadership behaved irresponsibly. “Disproportionate use of force” by Russia was condemned by the EU member states at emergency summit leading to a freezing of relations with Moscow.⁴⁹⁴ Imposing sanctions from the West on Russia were also considered, but later dropped.⁴⁹⁵ But, by then Russia had already recognized Abkhazia and South Ossetia as independent states.

4.5 Reasons for Russia’s Recognition of Abkhazia and South Ossetia

⁴⁸⁸ Ibid. pp. 23-24

⁴⁸⁹ Ibid. p.25

⁴⁹⁰ Cassese, Antonio, *The Wolf that ate Georgia*, Project Syndicate, 2008

⁴⁹¹ Joint Declaration of Estonian, Latvian, Lithuanian and Polish Presidents on the situation in Georgia, 09.08.08, <http://web.archive.org/web/20080814032314/http://www.president.lt/en/news.full/9475>

⁴⁹² <http://www.telegraph.co.uk/news/politics/conservative/2621569/David-Cameron-criticises-Russias-aggression.html>

⁴⁹³ US has only tough talk for Russia, 12.08.08, <http://news.bbc.co.uk/2/hi/americas/7555806.stm>

⁴⁹⁴ Presidency Conclusions of the Extraordinary European Council, 01.09.08, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/102545.pdf

⁴⁹⁵ Interview of the ex-US Undersecretary of State Dan Fried, 17.01.16, Voice of America

On August 26, 2008, the President of Russian Federation Medvedev signed decrees No. 1260 and No. 1261 officially recognizing Abkhazia and South Ossetia as independent states and instructed the Ministry of Foreign Affairs to establish diplomatic relations with them.

The move was so atypical for Russian foreign policy that President Medvedev felt obliged to explain to his compatriots why the decision on recognition was made. Due to importance of his explanation to my research I am quoting the whole text below:

“My dear fellow countrymen, citizens of Russia,

You are no doubt well aware of the tragedy of South Ossetia. The night-time execution-style bombardment of Tskhinval by the Georgian troops resulted in the deaths of hundreds of our civilians. Among the dead were the Russian peacekeepers, who gave their lives in fulfilling their duty to protect women, children and the elderly.

The Georgian leadership, in violation of the UN Charter and their obligations under international agreements and contrary to the voice of reason, unleashed an armed conflict victimizing innocent civilians. The same fate lay in store for Abkhazia. Obviously, they in Tbilisi hoped for a blitzkrieg that would have confronted the world community with an accomplished fact. The most inhuman way was chosen to achieve the objective – annexing South Ossetia through the annihilation of a whole people. That was not the first attempt to do this. In 1991, President Gamsakhurdia of Georgia, having proclaimed the motto “Georgia for Georgians” – just think about it! – ordered attacks on the cities of Sukhum and Tskhinval. The result then was thousands of killed people, dozens of thousands of refugees and devastated villages. And it was Russia who at that time put an end to the eradication of the Abkhaz and Ossetian peoples. Our country came forward as a mediator and peacekeeper insisting on a political settlement. In doing so we were invariably guided by the recognition of Georgia’s territorial integrity.

The Georgian leadership chose another way. Disrupting the negotiating process, ignoring the agreements achieved, committing political and military provocations, attacking the peacekeepers – all these actions grossly violated the regime established in conflict zones with the support of the United Nations and OSCE.

Russia continually displayed calm and patience. We repeatedly called for returning to the negotiating table and did not deviate from this position of ours even after the unilateral proclamation of Kosovo’s independence. However our persistent proposals to the Georgian side to conclude agreements with Abkhazia and South Ossetia on the non-use of force remained unanswered. Regrettably, they were ignored also by NATO and even at the United Nations.

It stands quite clear now: a peaceful resolution of the conflict was not part of Tbilisi's plan. The Georgian leadership was methodically preparing for war, while the political and material support provided by their foreign guardians only served to reinforce the perception of their own impunity.

Tbilisi made its choice during the night of August 8, 2008. Saakashvili opted for genocide to accomplish his political objectives. By doing so he himself dashed all the hopes for the peaceful coexistence of Ossetians, Abkhazians and Georgians in a single state. The peoples of South Ossetia and Abkhazia have several times spoken out at referendums in favor of independence for their republics. It is our understanding that after what has happened in Tskhinval and what has been planned for Abkhazia they have the right to decide their destiny by themselves.

The Presidents of South Ossetia and Abkhazia, based on the results of the referendums conducted and on the decisions taken by the Parliaments of the two republics, appealed to Russia to recognize the state sovereignty of South Ossetia and Abkhazia. The Federation Council and the State Duma voted in support of those appeals.

A decision needs to be taken based on the situation on the ground. Considering the freely expressed will of the Ossetian and Abkhaz peoples and being guided by the provisions of the UN Charter, the 1970 Declaration on the Principles of International Law Governing Friendly Relations Between States, the CSCE Helsinki Final Act of 1975 and other fundamental international instruments, I signed Decrees on the recognition by the Russian Federation of South Ossetia's and Abkhazia's independence.

Russia calls on other states to follow its example. This is not an easy choice to make, but it represents the only possibility to save human lives".⁴⁹⁶

President Medvedev unfortunately failed to explain how Russia interpreted the international norms listed in his address to come to a conclusion that recognition could be legal. It is easy to infer from the list of mentioned documents and mentioned referenda that the reference is made to the principle of self-determination of peoples, but the statement does not elucidate how this principle entitles secession. Medvedev also points at moral responsibility of Georgian government for purported "genocide" and impossibility for Georgians living together with the Abkhaz and Ossetians. This statement resembles the justification used by Ahtisaari in advocating independence for Kosovo, with major difference being that in this case genocide of Ossetians and Abkhaz did not take place. Even assuming that Georgia had "genocide plans" in South Ossetia, Medvedev's address still does not provide a clear explanation why would Abkhazia also qualify for recognition as there was no attack on Abkhazia. The most significant part of this ill-

⁴⁹⁶ Text of Medvedev statement, 26.08.08, available at: <http://www.ft.com/intl/cms/s/0/bb729f26-7373-11dd-8a66-0000779fd18c.html#axzz3xogxvqsQ>

founded explanation, is however the final statement saying that “this was not an easy choice to make” implying that Russia did not want to recognize these entities but was forced to do so as “it was the only possibility to save lives”. The argument of saving lives lacks solid ground, because at the time of recognition, Russian troops were in full control of Abkhazia and South Ossetia, so Georgia could not potentially threaten lives there. Medvedev tacitly admitted that Russian leadership feared Russian troops could not remain in Abkhazia and South Ossetia after the cease-fire agreement to “continue saving lives”. It was clear that Georgia would not prolong the mandate of Russian peacekeepers in either province after the war, thus, recognition and subsequent agreement with the secessionist entities on military bases was the only way to guarantee presence of Russian armed forces there.

Next, I offer to the reader my analysis of the decision-making process, which culminated in the act of recognition. Unfortunately, as already mentioned in the introduction of this thesis, I did not have a chance to carry out research in Moscow due to visa restrictions and my attempts to conduct interviews with Russian decision-makers or members of the academia close to the political elites failed due to sensitivity of the topic. Therefore, I will elucidate the decision-making process by analysing public speeches of Russian political leaders.

The first alarm bells that Russia might abandon its long-time stance on Georgia’s territorial integrity rang as early as in January 2006. At the press-conference in Moscow, President Putin talking about negotiations on the status of Kosovo stated that “if someone thinks that Kosovo could be granted full independence, then why should we deny this to the Abkhaz and South Ossetians?” Putin left Russian intensions open adding that “I am not talking about how Russia would react and I do not want to say that Russia would immediately recognize Abkhazia and South Ossetia as independent states, but such precedents in state practice do exist” referring to Turkish recognition of Northern Cyprus. Putin refrained from evaluating Cypriot precedent, but underlined that “in order to act justly in the interest of all peoples living on this or that territory we need universally accepted principles of solution of these problems”.⁴⁹⁷ It should be highlighted, that prior to recognition of Kosovo by the West, Putin used Northern Cyprus at least twice as a precedence for Georgia (see sub-chapter on Georgian-Russian relations).

⁴⁹⁷ Стенограмма пресс-конференции для российских и иностранных журналистов, 31.01.06, available at: http://archive.kremlin.ru/appears/2006/01/31/1310_type63380type63381type82634_100848.shtml

Putin's statement was followed by another alarming declaration of the official representative of Russian Ministry of Foreign Affairs Kaminin in June 2006 putting question marks over prevalence of Georgia's territorial integrity principle over South Ossetian self-determination. "We respect the principle of territorial integrity. However, this integrity in respect to Georgia is rather a possibility than existing political-legal reality. This possibility could only turn into reality as a result of difficult negotiations with South ossetians. Baseline of South Ossetian stance, however is principle of self-determination which is no less respected in international law".⁴⁹⁸

First Deputy Foreign Minister Karasin warned about universal application of decision on Kosovo in August 2006: "Imposition of forced independence of Kosovo on Serbia by our western partners would lead to clear international legal precedent that will be projected to situation in other frozen conflicts, not only in post-Soviet space, but in other regions too".⁴⁹⁹ Karasin added that Russia would protect its citizens in Abkhazia and South Ossetia in case of threat to their security.

Putin underlined universality of international principles again at the "Valdai Club" meeting in September 2006. "International actions should be universal. How is the situation in Kosovo different from Abkhaz or South Ossetian one? It is not. As soon as we start manipulating public opinion we would face problems. People will feel deceived, in South Europe and in South Caucasus. Such policy may not be considered moral and it does not have future perspectives".⁵⁰⁰

In October 2006, after spy scandal and expulsion of Georgians from Russia Putin chose more conciliatory tone to try to defuse tensions a bit. At the press-conference during the informal EU-Russia Summit in Lahti, after emphasizing on Georgia's attempts for restoration of its territorial integrity by military means, called on conflicting sides "to show patience, restore trust to each other and build common state."⁵⁰¹ He also tied improvement of Georgian-Russian relations to the normalisation of Georgia's relations with its rebel provinces. Ambivalence in Russian position was once again demonstrated when State Duma declared in December 2006 that it will support

⁴⁹⁸ МИД РФ не считает территориальную целостность Грузии реальностью, 01.06.06, available at: <http://lenta.ru/news/2006/06/01/integrity/>

⁴⁹⁹ Россия допускает распространение косовского прецедента по всему миру, 23.08.06, available at: <http://www.rosbalt.ru/main/2006/08/23/264677.html>

⁵⁰⁰ Путин: Одни правила в отношении Косово, Абхазии и Южной Осетии, 13.09.06, available at: <http://www.rosbalt.ru/main/2006/09/13/267244.html>

⁵⁰¹ Путин призвал Абхазию и Южную Осетию не выходить из Грузии, 21.10.06, available at: <http://www.newsru.com/world/21oct2006/finl.html>

quest of Abkhazia and South Ossetia for independence in response to referendum results in South Ossetia and appeal of the Abkhaz parliament. Provided that Putin and his party had a total control in Duma, we could not speak of differences in approaches by the executive and legislative bodies in Russian case.

In August 2007 Foreign Minister Lavrov on a visit to North Ossetia assured the locals that Russia would not spare efforts within the framework of international law to enable all Ossetians to live together. His vague statement that “unification of south and north Ossetians should take place despite the location of state border”, left large room for interpretations.⁵⁰²

Towards the end of 2007, as it became clear that the West was prepared to let Kosovo into independence, statements made by Russian leaders did not leave any doubt that Kosovo’s independence would have repercussions in the world. President Putin published an article in Bulgarian newspaper in January 2008 asserting that any decision on Kosovo will create precedent for international practice.⁵⁰³

Few weeks earlier, Lavrov stated that the obvious consequence of recognition of Kosovo’s independence without Serbian approval would amount to gross violation of international law and would create the precedent not only for the Balkans.⁵⁰⁴ In January, he reiterated the precedence argument (“If something is allowed to someone, the others would demand the same”) but when asked about Russian intention to apply the precedence to Abkhazia and South Ossetia replied that “Russian leadership had never declared that it will immediately recognize Abkhazia and South Ossetia in case of Kosovo recognition”,⁵⁰⁵ raising hopes in Georgia that the country’s territorial integrity could be preserved.⁵⁰⁶ First Vice-Premier Ivanov attested Lavrov’s words at Munich Security Conference by saying that “there is a misperception in the west that Russia is waiting for Kosovo’s recognition by the EU or the US to use this and recognize independence of Abkhazia and South Ossetia. Russia is not going to recognize independence of Abkhazia and

⁵⁰² МИД РФ выступил за объединение жителей Южной и Северной Осетии, 14.08.07, available at:

<http://www.kavkaz-uzel.ru/articles/121062/>

⁵⁰³ Еще раз о трубе, 18.01.08, available at: <http://www.rg.ru/2008/01/18/bolgaria.html>

⁵⁰⁴ Станет ли независимость Косова прецедентом?, 13.12.08, available at:

http://news.bbc.co.uk/hi/russian/international/newsid_7141000/7141479.stm

⁵⁰⁵ Лавров: Косово - прецедент для 200 районов мира, 23.01.08, available at:

http://news.bbc.co.uk/hi/russian/russia/newsid_7204000/7204442.stm

⁵⁰⁶ Президент Грузии приветствует слова Лаврова о непризнании Россией Абхазии и Южной Осетии, 24.01.08, <http://www.kavkaz-uzel.ru/articles/131153/>

South Ossetia next day after recognition of Kosovo. However Kosovo's recognition will open "pandora's box".⁵⁰⁷

At a notorious press-conference in the run-up to Kosovo's unilateral declaration of independence Putin angered with disregard of his position from the west promised that Russia will not be "monkeying around and producing mirror actions" but he assured that Russia prepared "homemade plans and knows what to do".⁵⁰⁸ What these homemade plans were became evident the next day when Russian Foreign Minister hinted at possible recognition at the meeting with the de-facto leaders of Abkhazia and South Ossetia in Moscow. The statement of the Russian foreign ministry after the meeting read that unilateral declaration of independence by Kosovo and its recognition would place Russia before necessity to change its policy line in regard to Abkhazia and South Ossetia, whose populations are predominantly Russian citizens.⁵⁰⁹

Even more clarity to the essence of Putin's "homemade plans" is provided by Saakashvili's testimony to the Georgian parliament's investigation commission on the causes of war. On February 22, Putin and Saakashvili met at the informal CIS Summit in Moscow. According to Saakashvili, Putin explicitly told him that there was an urgent need to react to Kosovo and Russia was thinking how to deal with this problem.

"We do not understand why the Americans have started their campaign of islamicizing Europe. After the Albanians have swallowed Kosovo, they will try to expand further at the expense of Macedonia. You know we have to answer the West on Kosovo. And we are very sorry, but you are going to be part of that answer".⁵¹⁰

Putin went on to say that the answer was not directed at Georgia but at the West – United States and NATO. "What we will do will not be directed against you but will be our

⁵⁰⁷ Иванов: Россия не признает независимость Абхазии и Южной Осетии сразу после признания Косово, 11.02.08, available at: <http://www.kavkaz-uzel.ru/articles/131948/>

⁵⁰⁸ Путин: у нас есть домашние заготовки на случай признания независимости Косова, 14.02.08, available at: <http://www.vesti.ru/doc.html?id=163610>

⁵⁰⁹ МИД России намекнул на признание Абхазии и Южной Осетии, 15.02.08, available at: <http://www.pravda.ru/news/world/formerussr/15-02-2008/256046-russia-0/>

⁵¹⁰ Asmus, Ronald, *A Little War That Shook the World*, 2010, p.106

response to them”.⁵¹¹ After the meeting, Putin made notorious statement about the decision on Kosovo knocking on the heads of recognizing states one day.⁵¹²

After Kosovo’s independence, de-facto parliaments of Abkhazia and South Ossetia appealed to Russia to recognize their independence. The State Duma called on Russian President to take measures to protect citizens of Russian Federation living in Abkhazia and South Ossetia and to consider the possibility of independence of Abkhazia and South Ossetia, in case of Georgia’s armed attack or joining NATO.⁵¹³ The Head of Duma Committee on International Affairs Kosachev did not hide that Russia considered recognition as one of the scenarios. In an interview shortly thereafter he said that recognition of Kosovo creates new reality, since part of the international society sets principle of self-determination on a par with the principle of territorial integrity:

“We are ready to discuss the issue [of recognition]. Any normal person in this situation would support recognition of Abkhazia and South Ossetia, including myself. On the other hand I am sure that decisions should not be emotional, but rather well-analysed in legal terms as well as in terms of possible ramifications that it would have for the Russian Federation”.⁵¹⁴

At the NATO Bucharest Summit Russia threatened again that Georgia’s membership to NATO might result in Russian recognition of Abkhazia and South Ossetia. Lavrov made clear that insulting Russia by neglecting her interests would have consequences: “NATO expansion would not be left without response. But we will react pragmatically, not like little schoolboys who got insulted, slammed the door, escaped from the classroom and started to cry somewhere in the corner” – Lavrov said, underlining that the government will consider Duma’s proposal on recognition very attentively.⁵¹⁵ According to “Kommersant” reports, President Putin told his western counterparts at the closed session of the NATO-Russia Council that NATO expansion to Russian borders is considered as a real threat to state interests and promised adequate measures.

⁵¹¹ Saakashvili Testifies Before War Commission, 28.11.08, available at:

<http://www.civil.ge/eng/article.php?id=20043>

⁵¹² See sub-chapter on Kosovo

⁵¹³ Заявление Государственной Думы о политике Российской Федерации в отношении Абхазии, Южной Осетии и Приднестровья, 21.03.08, <http://duma.consultant.ru/documents/953940?items=1&page=6>

⁵¹⁴ Константин Косачев: Я не говорил, что Россия исключает признание Южной Осетии и Абхазии, available at:http://osinform.ru/4542konstantin_kosachev_ja_nikogda_ne_govoril_chno_rossija_iskljuchaet_priznanie_juzhn_oj_osetii_i_abhazii.html

⁵¹⁵ Безответное признание, 03.04.08, available at: <http://www.newizv.ru/world/2008-04-03/87747-bezotvetnoe-priznanie.html>

He hinted that if Georgia gets MAP, then Russia would recognize Abkhazia and South Ossetia based on Kosovo precedent.⁵¹⁶

As NATO failed to grant MAP to Georgia, the imminent recognition of Abkhazia and South Ossetia came off the agenda for a little while. Russia chose to establish direct relations with the breakaway entities amounting to de-facto recognition and deployed additional troops but stopped short of de-jure recognition. Chairman of the Committee of relations with CIS countries of the Russian Federation Council (upper chamber of the parliament) Gustov even expressed support to Georgia's territorial integrity. "Kosovo example is a bad example for unrecognized republics of South Ossetia and Abkhazia. Kosovo – is an example of sick policy. Despite the fact that leaders of South Ossetia and Abkhazia appealed and are appealing to Russian Duma, Russia is not recognizing their independence. We support territorial integrity of Georgia" – he said during visit in Tbilisi in May 2008.⁵¹⁷

Already, in the very first days of the August war, Russian top officials started to express doubts about Georgia's future territorial integrity. Putin, this time in capacity of Prime-Minister was the first to state on August 9 that "fatal blow has been inflicted on the territorial integrity of Georgia and a great damage to its statehood. It is hard to imagine after what happened, how South Ossetia could be persuaded to become part of the Georgian state".⁵¹⁸ Putin was recited by the Chairman of the Federation Council Mironov on August 11: "after what happened at night of 7 to 8 August, it is hard to imagine South Ossetia and Abkhazia as parts of Georgia in the future".⁵¹⁹ At the joint press-conference with Sarkozy after the cease-fire negotiations on August 12, President Medvedev on the question whether he recognizes Georgia's territorial integrity did not give a straight answer. He said Russia recognizes Georgia's sovereignty and independence, but

"Regarding the issue of territorial integrity, this is a separate concept. Sovereignty is based on the people's will and on the constitution, but territorial integrity is generally a reflection of the real state of affairs. On paper everything can look fine but the reality is far more complex. Territorial integrity is

⁵¹⁶ Блок НАТО разошелся на блокпакеты, 07.04.08, available at: <http://kommersant.ru/doc/877224>

⁵¹⁷ Густов: Россия никогда не признает независимости Абхазии и Южной Осетии, 20.05.06, available at: <http://www.kavkaz-uzel.ru/articles/136669/>

⁵¹⁸ Путин: Грузия нанесла себе смертельный удар, 09.08.08, available at: <http://www.vesti.ru/doc.html?id=199795&cid=9>

⁵¹⁹ Сергей Миронов: "Российской Федерацией принимаются легитимные меры по понуждению Грузинской стороны к миру", 11.08.08, available at: http://archiv.council.gov.ru/print/inf_ps/chronicle/2008/08/item7945.html

a very complicated issue that cannot be decided at demonstrations or even in parliament and at meetings of leaders. It is decided by people's desire to live in one country".⁵²⁰

He again mentioned the Kosovo precedent and referred to the right of Abkhaz and South Ossetians to decide on what they want: "It is not for Russia or any other country to answer this question for them".⁵²¹ In a press-conference on August 13, Foreign Minister Lavrov said that it is impossible in present situation not to talk about the status of Abkhazia and South Ossetia.⁵²² He clarified what he meant a day later when he told reporters that "one can forget about any talk of Georgia's territorial integrity because, I believe, it is impossible to persuade South Ossetia and Abkhazia to agree with the logic that they can be forced back into the Georgian state".⁵²³ On the same day, President Medvedev met with de-facto Abkhaz and South Ossetian leaders. At the meeting, where the breakaway entities also signed the six-point plan, Medvedev openly declared that the decision on status was now in the hands of separatists:

"We will support any decision taken by the peoples of South Ossetia and Abkhazia in accordance with the United Nations Charter, international conventions of 1966, and the Helsinki Act on security and cooperation in Europe. And we will not only support these decisions but will guarantee them in the Caucasus and in the world".⁵²⁴

Medvedev's statement served as a clear signal to de-facto authorities to use self-determination as a justification for independence. They appealed to State Duma once again for recognition of their independence. Duma met on August 25 and with 99,3% majority adopted an address to the President Medvedev on "necessity of recognizing Republic of South Ossetia and the Republic of Abkhazia".⁵²⁵ The address stated that recognition of Abkhazia and South Ossetia would be legally and morally justified. The document further underlined that "restoration of territorial

⁵²⁰ Press Statement following Negotiations with French President Nicolas Sarkozy, 12.08.08, available at: http://archive.kremlin.ru/eng/text/speeches/2008/08/12/2100_type82912type82914type82915_205208.shtml

⁵²¹ Ibid.

⁵²² Стенограмма выступления и ответов на вопросы СМИ Министра иностранных дел России С.В.Лаврова, 13.08.08, available at: <http://russiaun.ru/ru/news/200808130723>

⁵²³ Russia Says Georgia Can 'Forget' Regaining Provinces, as Troops Cripple Georgian Military, 14.08.08, available at: <http://www.foxnews.com/story/2008/08/14/russia-says-georgia-can-forget-regaining-provinces-as-troops-cripple-georgian.html>

⁵²⁴ Meeting with the President of South Ossetia Eduard Kokoity and President of Abkhazia Sergei Bagapsh, 14.08.08, available at: <http://en.kremlin.ru/events/president/transcripts/1091>

⁵²⁵ Хроника заседания Государственной Думы, 25.08.08, available at: <http://api.duma.gov.ru/api/transcriptFull/2008-08-25>

integrity of Georgia by political means has no perspective” and Abkhazia and South Ossetia have more reasons to obtain international recognition than Kosovo.⁵²⁶

Presidential decree on recognition was issued on the next day. In the first months ensuing recognition, all Russian top officials gave identical explanations to the causes of recognition. In an interview to CNN Medvedev denied allegation that recognition of Abkhazia and South Ossetia is a challenge to the West, but rather called it a well-thought stance. He named two reasons for recognition. First, Russia was forced to make this decision after the blood was spilled again and Saakashvili killed all hopes of uniting Ossetians, Abkhaz and Georgians in a common state. “It was the only possibility to prevent further escalation of the conflict, further bloodshed and annihilation of peaceful citizens”.⁵²⁷ The second reason according to him was that every people has right to self-determination and every state has the right to extend recognition. “Our counterparts were saying Kosovo is *sui generis*, fine, but Ossetia and Abkhazia are also *sui generis*”.⁵²⁸

Secretary of the National Security Council Patrushev confirmed that Russia still adheres to fundamental principles of international law, but “they could not watch calmly how Georgia carried out genocide and killed Russian citizens and peacekeepers under the cover of territorial integrity”. He also referred to remedial secession right implied in 1970 Declaration on friendly relations and underlined that “from the moral point of view and our international obligations we had to protect peoples of South Ossetia and Abkhazia. Saakashvili violated international humanitarian law and destroyed Georgia’s territorial integrity himself”.⁵²⁹

In September 2008, Putin gave another reason for recognition when he told Valdai Club members in Sochi that had Russia not reacted to Georgian aggression, it would have shaken the Northern Caucasus, where western NGOs were encouraging autonomous republics to secede

⁵²⁶ Постановление Об обращении Государственной Думы Федерального Собрания Российской Федерации "К Президенту Российской Федерации Д.А.Медведеву о необходимости признания Республики Южная Осетия и Республики Абхазия", 25.08.08, available at:

<http://pravo.gov.ru/proxy/ips/?docbody=&nd=102123879&rdk=&backlink=1>

⁵²⁷ Интервью телекомпании Си-Эн-Эн, 26.08.08, <http://archive.kremlin.ru/text/appears/2008/08/205774.shtml>

⁵²⁸ Ibid.

⁵²⁹ Интервью Секретаря Совета Безопасности Российской Федерации Н.Патрушева газете "Известия", 01.10.08, available at: <http://www.scrf.gov.ru/news/352.html>

from Russia.⁵³⁰ In a gang-type language, Putin stated that the ones who started this should realize that they will get smacked in the face. “What else should we have done? Wipe our bloody snots and bend our heads?” – he asked ironically. Whether deliberate or accidental a noteworthy argument was put forward by Putin at the meeting with his French counterpart: “We recognized the independence of Abkhazia and South Ossetia in a similar fashion as many European countries recognized independence of Kosovo, which from our point of view was absolutely unfounded and in violation of existing norms of international law. It was not us, who opened the Pandora’s box”.⁵³¹ Literal analysis of this statement leads to the conclusion that Russia knew it was violating the international law, but nevertheless emulated Europe in doing this.

Russian actions and justifications represent a mirror image of actions of the West in regard to Kosovo. Although, Putin had promised that there will be no “monkeying around and mirror actions” explanations for intervention – responsibility to protect - and justifications for recognition – moral responsibility of Saakashvili, genocide, impossibility of Ossetians and Abkhazs living in Georgian state - are clearly copy-pasted from western states’ justifications in the Kosovo case.

As the situation stabilized and initial emotions dissipated, more details of the triggers for Russian recognition became available. In July 2009, Foreign Minister Lavrov admitted that Russia did not want to recognize South Ossetia and Abkhazia even at the time of war.

“Moreover, we offered in Medvedev-Sarkozy plan to discuss the issue of status of Abkhazia and South Ossetia in international format. When President Sarkozy brought this plan to Tbilisi, Saakashvili not only deleted the first part proving that Russia is not part of the conflict, but demanded to delete international discussions on status issues. Then everything became clear to us and we made a decision that we made. In addition, right after Medvedev-Sarkozy plan [was signed], bellicose rhetoric for revanche in Tbilisi re-started. Thus, recognition of Abkhazia and South Ossetia by Russia was not a planned step. First of all we thought of saving people, but then we realized that for saving them it is

⁵³⁰ В. Путин - об агрессии Грузии: «Нам что, надо было утереться кровавыми соплями?» 12.09.08, available at: <http://www.kp.ru/daily/24162/376143/>

⁵³¹ Путин сравнил Южную Осетию с Косовом, 21.09.08, available at: http://news.bbc.co.uk/1/hi/russian/international/newsid_7627000/7627723.stm

not enough to suppress the aggression and leave them in Georgia. Survival of people of these two republics in Georgia with such a president would have been in danger”.⁵³²

Lavrov re-confirmed this a year later at the plenary session of PACE. “We did not want to recognize independence of Abkhazia and South Ossetia, even after Kosovo was unilaterally recognized. This was our decision made in suffering”- he said.⁵³³ According to him, Russia made decision on recognition after Saakashvili deleted the point on discussion of the status issue from Medvedev-Sarkozy plan and Moscow “realized that war in his head was not over”.⁵³⁴ “I am plagued by that because I was part of those events”- he concluded.

At the first anniversary of recognition Putin answering the question whether he is embarrassed that only Nicaragua emulated Russia in recognizing Abkhazia and South Ossetia replied that “the fact that most countries do not recognize Abkhazia and South Ossetia does not harm them, because even recognition from Russia was needed only to legalise our efforts to preserve peace. International instruments did not work, so we had to replace them. We can not risk lives of our citizens anymore and recognition created conditions for their protection”.⁵³⁵ Putin argued as a constitutivist of recognition theory that from international legal point of view recognition by Russia is enough for South Ossetia and Abkhazia to become subjects of international law and there is no difference between Kosovo case and these cases. “The international community has to agree about the rules. Either we put territorial integrity principle on top – then Kosovo needs to remain within Serbia, or we put self-determination principle on top and then grant this right to all little nations striving for independence like peoples of South Ossetia and Abkhazia”.⁵³⁶

New unexpected revelations emerged out of Russian political leadership on the reasons for intervention and recognition three years later. President Medvedev told officers of Southern Military District who fought in Georgia that in 2008 in fact they stood up against NATO:

⁵³² Интервью Министра иностранных дел России С.В.Лаврова телеканалу «Вести», 28.07.09, available at: http://www.brno.mid.ru/press/pr_20.html

⁵³³ Сергей Лавров дал признательные показания, 30.04.10, available at: <http://www.kommersant.ru/doc/1363159>

⁵³⁴ Ibid.

⁵³⁵ Председатель Правительства России В.В.Путин и Президент Южной Осетии Э.Д.Кокойты провели пресс-конференцию, 26.08.09, available at: <http://embrus-az.com/vneshnaya-politika/539-predsedatel-pravitelstva-rossii-vvputin-i.html>

⁵³⁶ Ibid.

“If we had quailed in 2008, we would have different geopolitical landscape now. And quite a few states that were practically artificially being dragged into NATO most likely would have been there. What does this mean? We are not against anyone’s membership anywhere, but it means one thing: it is not only the armed forces of the neighbouring country that are stationed next to us, but also a military bloc, which understandably creates certain discomfort to us. We have departed from direct competition, but we have to acknowledge that we still have different understanding of solving tasks in security field”.⁵³⁷

Russian permanent representative to NATO Rogozin added that those who stood behind Saakashvili’s back encouraging him for aggression did not calculate that decision of Russia’s political leadership on starting operation of compelling Georgia to peace would have come up so quickly. According to him, they did not expect that Russian army would act either.

“Dear comrade officers we, diplomats and military diplomats working in Brussels, felt how the attitude towards us changed after the military success of August 2008. This is a big lesson to those who thought that Russia is weak, it is not capable of reacting to aggression. If we had not won back then, I think that by the end of 2008, NATO would have expanded to the East, including Georgia and maybe even Ukraine. So, everything was done perfectly”⁵³⁸.

Medvedev agreed that they (in NATO) expected different reaction – both political reaction and military reaction. And they miscalculated on both of these reactions.

Prime-Minister Putin soon after Medvedev’s statement gave even more revealing account of why it all happened:

“Georgians who live in Russia and many Georgians in Georgia understand the motives of Russian actions. It was not us who violated international agreements. What did we have to do? There are constant debates about the deployment of US missile shield. We are not indifferent to where these systems will be stationed near or far from our borders. Finally, it matters if they are stationed in Georgia or not. And then what, we have to target our missiles towards Georgian territory? Can you imagine this? It is nightmare. And do we have any guarantees that this will not happen? No. When I

⁵³⁷ Встреча с офицерами Южного военного округа, 21.11.11, available at: <http://kremlin.ru/events/president/news/13605>

⁵³⁸ Ibid.

was proposing to Georgian counterparts let's do this, let's do that, they always objected. Plus, they took aggressive actions against South Ossetia. Now, what did we have to do?"⁵³⁹

This account of public speeches and declarations shed light on the triggers motivating Russian leadership to take decision on recognition. It enables us to conclude that recognition of Abkhazia and South Ossetia was caused by combination of three factors. These factors were: 1) recognition of Kosovo by the West in ignorance of Russian position 2) necessity of legalization of Russian troops in Abkhazia and South Ossetia after the war and 3) prevention of Georgia's potential membership to NATO. Prior to more detailed discussion of these conclusions I would like to look at theoretical framework of my research case.

4.6 Theoretical Framework

As I have mentioned above, my research represents a combination of historical descriptive and historical explanatory types of dissertation. Historical explanatory dissertations aim at applying certain theories to a research topic to explore whether the hypothesis could be endorsed. Therefore, next I turn to application of theory. In order to analyse Russia's move towards recognition of Abkhazia and South Ossetia, I apply the game theory and especially its standard example the Prisoner's Dilemma (PD). Game theory is embedded in a larger theory of rational choice. Rational choice theory explores social phenomena that are caused by human actions. Humans are agents whose actions are directed by their beliefs, aims, values, prohibitions and doubts. Therefore, social regularities are different from natural regularities, because the latter stems from constant natural laws, whereas the former from intentions of agents. Social phenomena, thus can be explained as an aggregate result of targeted actions of individuals. Rational Choice theory analyses the process of decision-making based on individual beliefs and aims. Rational choice theory, which is primarily an economic theory found its way to international relations too. Today, game theory is widely used to explain state behaviours and to argue about the possibilities and limits of international cooperation under international anarchy.

⁵³⁹ Встреча Владимира Путина с руководителями российских СМИ, 18.01.12, available at: <http://echo.msk.ru/blog/echomsk/850032-echo/>

According to Shubik, game models assume that the identified players are rational, conscious decision-makers having well-defined goals and exercising freedom of choice within prescribed limits.⁵⁴⁰ The player is perforce the basic decision unit of the game and also the basic evaluation unit.⁵⁴¹ Different number of players could be assigned to a game depending on a research topic. Game theory and its most popular example Prisoners' Dilemma is generally concerned with the problems of strategic rationality – problems in which the rational decision-maker must take into account the fact that outcome of various possible actions available are influenced by the choices made by other rational decision-makers. In case of strategic rationality, gains received by one player depends on choices made by another player and therefore each agent should consider rational calculations of others and choose the option which brings maximum payoff with the assumption that all other players also make rational decisions. Strategic rationality is particularly interesting for social sciences, because it deals with social behaviour. Agents make their choices based on the information or prediction of other players' choices and the results are dependent on other players' actions.

Two-player game theory assumes that each player has rational self-interest to make gains. Game theory differentiates between the zero-sum and positive-sum games. Zero-sum game is one in which each player's gain is equivalent to other's loss. The sum of the two players' payoff is zero. It is evident that zero-sum games do not promote cooperation between the players because each player's gain is offset by others' loss. A zero-sum game is a game of pure competition. A positive-sum game on the contrary, permits cooperation. For example, the winner may secure the loser's cooperation by compensating him for his loss and still come out ahead. This type of games is a blend of competition and cooperation.

Two-level zero-sum games can be divided into different baseline situations. The simplest strategic situation is when each player has a dominant strategy, meaning that it is the best strategy for the player regardless of the choice of the other player. In this case, strategy of the player does not change and the result can be easily foreseen. Similarly, when one player has dominant strategy over the other, the other player would choose the strategy that brings maximal payoff under these circumstances.

⁵⁴⁰ Shubik, Martin, *Game Theory in Social Sciences*, 1982, p. 16

⁵⁴¹ *Ibid.* p.18

There are two types of zero-sum games ones which have equilibrium points and the other without equilibrium points. Nash equilibrium is a point at which current strategies chosen by players bring certain payoffs and these payoffs would not increase for any of them in case they change strategies. The optimal strategy for this case is the one leading to the equilibrium. The games without Nash equilibrium are more difficult to predict. Here, none of the action pairs leads to equilibrium and therefore each player should be prepared for any scenario.

Many games of strategic interdependence are not zero-sum. Positive-sum games provide gains for each player if they cooperate and thus encourage to negotiations and coordination of activities. Achieving cooperation in world politics however is difficult. There is no common supranational government and international institutions are weak. As neoliberals Axelrod and Keohane write cheating and defection are endemic, but still cooperation is sometimes attained, thus world politics is not a homogeneous state of war: cooperation varies over issues and time.⁵⁴²

Charles Lipson argues that cooperation can be strategically rational if the Prisoner's Dilemma is potentially infinite or if it is simultaneously linked to a wide variety of other games with the same players.⁵⁴³ According to him, in international relations, international law and regime rules represent coordination conventions, from which each player can benefit and they form baselines for interaction despite chronic condition of international anarchy.

Three situational dimensions affect the propensity of actors to cooperate: mutuality of interest, shadow of the future and the number of actors. We will now turn to one of the simple non-zero-sum games Prisoner's Dilemma which has surprising properties. Duncan Snidal even suggested that PD represents an archetypal international problem.⁵⁴⁴

PD models a number of common strategic situations. Each player has two strategic options: to cooperate or to defect. Payoff structure is essential to the level of cooperation. As Axelrod writes the greater the conflict of interest the greater is the chance that the player will choose defection over cooperation. Obviously, payoff structures often depend on events beyond the control of

⁵⁴² Axelrod, Robert and Keohane, Robert. "Achieving cooperation under anarchy: Strategies and Institutions"; In Baldwin, David ed. "Neorealism and Neoliberalism", p.85

⁵⁴³ Lipson, Charles, "International Cooperation in Economic and Security Affairs"; In Baldwin, David ed. "Neorealism and Neoliberalism", p.65

⁵⁴⁴ Snidal, Duncan, "Relative gains and the pattern of international cooperation"; In: Baldwin, David ed. "Neorealism and Neoliberalism", p.175

players, but they also depend on mutuality of interest which in its turn is based not only on objective factors but on perceptions of players' interests. Let's consider the game matrix:

		Player B	
		Cooperate	Defect
Player A	Cooperate	1; 1	-2; 2
	Defect	2; -2	-1; -1

Player A's strategies are listed on the left, Player B's on the top. A's payoff is the first quantity; B's payoff is the second quantity. As we can see if both choose to cooperate they get 1 point each, if they both choose to defect they lose 2 points and if one cooperates and the other defects the defector gets 2 points and the one which cooperated loses 2 points. As we see, the primary strategy is to defect when the other cooperates in order to make maximum gain.

The greater the conflict of interest between the players, the greater is the likelihood that the players would opt for defection. Perception plays an important role, as payoff structure determining mutuality of interests is not only based on objective factors, but is caused by the actors' perception of its own interests. "Perceptions define interests. Therefore, to understand the degree of mutuality of interests, we must understand the process by which interests are perceived and preferences determined".⁵⁴⁵

Actors can move from PD to more conflictual games. If both players decide that mutual cooperation is worse than mutual defection, the game becomes deadlock, where the dominant strategy of both players is to defect regardless of what the other player does.

Now let's turn to the second dimension - shadow of future. In Prisoner's Dilemma the more future payoffs are valued against the current payoffs, the players have more incentive to cooperate, because of the fear of retaliation in the future. Axelrod and Keohane identify four factors for promoting cooperation: 1. Long-time horizons; 2. Regularity of Stakes; 3. Reliability of Information about others' actions; 4. Quick feedback about others' changes in actions. A state bearing in mind iterative character of PD would continue to cooperate if it has reliable

⁵⁴⁵ Ibid. p.88

information on other player's actions, can monitor the other player's behaviour in order to predict his possible moves and in a situation that payoffs from cooperation are regular and would continue in the future.

Lipson however concludes that strategic interaction in international security issues differs from international economic affairs by the extent of immediate and potentially grave losses to a player who attempts to cooperate without reciprocation and risks associated with inadequate monitoring of other's decisions and actions. The costs in unreciprocated cooperation in security affairs together with uncertainty about others' intentions, fuels suspicion and fosters anxiety to strike first.⁵⁴⁶ The crucial difference, according to him lies in the cost of betrayal, the difficulties of monitoring and the tendency to comprehend security issues as strictly competitive struggles. Therefore, potential for political-economic cooperation are typically greater than military-security ones.

The third dimension is the number of actors. Axelrod and Keohane argue that cooperation is most effective when the number of actors in the game is limited. When there are many actors involved it is difficult to identify the defector and therefore cooperation incentive is lessened. The problem of retaliating against the defector in multi-player situation is called "sanctioning problem". There are three forms of "sanctioning problem" - identification of defector; inability to focus retaliation on defectors and lacking incentives to punish defectors. When sanctioning problems are severe, cooperation is in danger of collapsing and they are even more severe in politico-military rather than economic cooperation.

Context of interaction is also important. In our game-theoretical perspective there could be other aspects important for world politics rather than the above three dimensions. These are: issue linkages, domestic and international connections and incompatibilities between games among different sets of actors. As most issues are linked to other issues, issue linkages can be used as leverage by making one's behaviour on a given issue dependent on other's behaviour on other issue. "Issue linkage may be employed by powerful states seeking to use resources from one issue area to affect the behaviour of others elsewhere; it may be employed by outsiders

⁵⁴⁶ Lipson, Charles, "International Cooperation in Economic and Security Affairs"; In Baldwin, David ed. "Neorealism and Neoliberalism", p.73

attempting to break into what could otherwise be a closed game”.⁵⁴⁷ The most important factor here is the contextual issue-linkage. In this situation a certain bargain is placed in the context of long-term relationship in a way that it affects the outcome of the bargaining process.

In certain cases domestic policies could influence foreign policy and even inhibit cooperation at international level. Interference in domestic political game to compensate international weakness is also a form of domestic-international linkage. There are many different games going on in the world politics. Existence of more than one game with different but overlapping sets of actors could be promoting cooperation but in large number of cases it proves to be complicating cooperation.

Robert Axelrod also points the strategy of reciprocity or – TIT for TAT- for multi-level games. This argument suggests that in Prisoner’s Dilemma governments may have incentives to practice reciprocity to yield relatively high payoffs. But this strategy also can perpetuate conflict: “If other player defects once, TIT-for-TAT will respond with defection, and then if the other player does the same in response, there would be an unending echo of alternating defections”.⁵⁴⁸ TIT-for-TAT usually starts with cooperation and then retaliates each time for each defection by the other player.

Lipson maintains that cooperation becomes less feasible in times when players’ status and obligations shift from fixity to ambiguity and routinized spheres of action become problematic. This is a period when the old relationships are outdated and should be reconsidered in the view of new realities considering the status and relative strength and weakness of the players.

Now, let’s apply PD to the case of recognition of Abkhazia and South Ossetia by Russia. For this reason, I combine major NATO powers – USA, UK, Germany and France into one group and call them – West. Another player in the game would be Russia. This framing stems from the post-1945 division of the players into two opposing camps that remained unchanged in 2008. Obviously, there are many games played out by these players on different international issues. One of them is cooperation in upholding international law principles that were jointly developed by these players themselves. Starting from 1945 Russia and its predecessor Soviet Union

⁵⁴⁷ Axelrod, Robert and Keohane, Robert. “Achieving cooperation under anarchy: Strategies and Institutions”; In Baldwin, David ed. “Neorealism and Neoliberalism”, p.99

⁵⁴⁸ Ibid. p.106

together with the western powers agreed on the fundamental principles of territorial integrity when extending recognition to new states. As we have seen in previous chapter, for 63 years the two camps cooperated and neither of them recognized illegal secessions. So, as Lipson pointed out international law provided grounded convention for reciprocal exchange from where all players benefitted. In 2008, the West defected and recognized independence of Kosovo, despite warnings from the Russian side that such a move would not be approved by Moscow. Furthermore, Kosovo was part of the country – Serbia, which Russia considered as a last ally in the Balkans. Russian stance was completely disregarded by the West. In TIT-for-TAT manner described above, Russia shortly retaliated by also defecting from the cooperation scheme and extended recognition to Georgia’s breakaway entities, using similar justifications that the West had on Kosovo case and disregarding the opinion of the West. Although, the game was played between Russia and the West, the West itself consisted of several states, which resulted in sanctioning problem and Russia retaliated not against the defectors themselves directly but against the territorial integrity of defectors’ perceived proxy. Liminal period argument also holds true, because as we argued after Putin’s ascension to power Russia started to reassert itself again as a major player on the international arena, so the relationships that were set between Moscow and the West in mid-1990’s were being reconsidered.

Context of interaction is also important for our case. As the theory argues, linkages play a major role in the game. Another game played out in this context was cooperation between the West and Russia on security issues. Russia cooperated with the West on security in Europe under the premises of bilateral “gentlemen agreement” of the early 1990’s that limited NATO expansion to the borders of Russia’s “privileged zone of influence” - the Commonwealth of Independent States. This “gentlemen agreement” had been put under big question mark by the Bucharest declaration of NATO Summit promising eventual NATO membership to Georgia. In Russian perception this declaration amounted to preparation of defection from the cooperation scheme on NATO expansion. The cost of the West’s defection from cooperation would have been deleterious for Russian national security perceptions, therefore it fostered Moscow’s “anxiety to strike first”. By invading Georgia, Russia defected from cooperation regime envisaging non-use of force and non-aggression in Europe and by recognising Abkhazian and South Ossetian independence and stationing its troops there permanently, Georgia was made non-eligible for immediate NATO membership. Furthermore, domestic and international linkage of the case is

also evident. As Kosovo recognition and Bucharest declaration were perceived by Russian political circles as insult and defeat at hands of major rival on international arena, interference in Georgia's domestic affairs compensated for Russia's international weakness and strengthened Russian government domestically.⁵⁴⁹ Russian decision on recognition also should be seen as an attempt of an outsider to break into a closed game within NATO and influence its decisions.

4.7. Conclusion

Five main principles of Russia's foreign policy elaborated under Medvedev would be helpful to understand the Russian decision on recognition. These principles are: 1) primacy of fundamental norms of international law; 2) Multi-polarity of the world order; 3) lack of confrontation and friendly relations with all states; 4) protection of lives and dignity of Russian citizens everywhere; 5) Privileged interests of Russia in certain regions of the world, not only bordering ones.⁵⁵⁰

Humiliated after unilateral recognition of Kosovo's independence by the West in complete ignorance of Russian objections and in violation of territorial integrity principle of Russia's last ally in Europe - Serbia, Russian leadership signalled that it will revenge elsewhere. Russia saw Kosovo's recognition as another unipolar decision (Yugoslavia bombing, NATO expansion, Iraq, Missile Shield deployment plans) undermining the multipolar world order that she aspired. Georgia with its breakaway regions represented a perfect target for retaliation for several reasons. First of all, the breakaway regions were completely dependent on Russia for their de-facto existence. Apart from 2004 elections in Abkhazia, which did not go Russia's way and therefore annulled, Russia exercised effective control over these territories throughout the whole post-conflict period. Russian grip tightened more and more after 2004 and the regions were

⁵⁴⁹ Putin's Popularity rose to all-time high 88% after August 2008, whereas Medvedev's rate increased from 65% to 76% from July to August 2008. Рейтинг Путина – реальность или вымысел социологов?, 08.07.15, available at: <http://www.levada.ru/old/08-07-2015/reiting-putina-realnost-ili-vumysel-sotsiologov>

⁵⁵⁰ Медведев назвал "пять принципов" внешней политики России, 31.08.08, available at: <http://ria.ru/politics/20080831/150827264.html>

staffed by Russian military and security personnel. Population of the regions acquired Russian citizenship through “passportisation”, which enabled Kremlin to claim that it had constitutional right to guarantee their security. De-facto leaders had appealed several times to Russia for recognition and conclusion of association agreements (Abkhazia) or even incorporation into Russia (South Ossetia). Secondly, Georgia was just promised eventual membership to NATO, even though it was denied MAP. There were intensive rumours travelling that Georgia might get MAP at the NATO Foreign Ministers meeting in December 2008. Another eastward expansion of a hostile alliance deep into its zone of influence was regarded in Moscow as another insult to Russia and complete ignorance of the “gentlemen agreement” that Russian elites alleged was reached in 1990 about NATO’s non-expansion to the east.⁵⁵¹

Apart from NATO issue, Georgia positioned itself as number one ally of Washington in the CIS and openly challenged Russian dominance in the region. Georgia’s participation in projects of transporting oil and gas from the Caspian to Europe undermined Russian monopoly in the field that provided more than half of Russian state revenues. History of relations between Georgia and Russia was dismal and personal relations between their leaders at the lowest point, at times showing full disrespect to each other.

Nevertheless, Russia did not recognize Abkhazia and South Ossetia straight away. One reason was to keep this option handy as a leverage against Georgia and the West as it did in Bucharest. Secondly, Russian elites feared that recognition of Abkhazia and South Ossetia would thwart federal Russian state, since erosion of territorial integrity principle was not compatible with Russian administrative setup. Thirdly and I most importantly, the de-facto authorities did not control the entire territories of the “states to be recognized”. With large portions of territory under Georgian central governmental control in upper Abkhazia and more so in South Ossetia, as well as presence of still formidable Georgian minority population despite previous expulsions created obstacles for full secession and recognition of these provinces. Russia and its proxy regimes in Sokhumi and Tskhinvali needed to have effective control over the whole territory

⁵⁵¹ Interview of Deputy Foreign Minister of Russia Karasin to Spiegel, Information Bulletin of Russian MFA, 27.08.08, available at: [http://archive.mid.ru//bdomp/bl.nsf/78b919b523f2fa20c3256fa3003e9536/85cb1419550619ceec32574b20049f56f/\\$FILE/27.08.2008.doc](http://archive.mid.ru//bdomp/bl.nsf/78b919b523f2fa20c3256fa3003e9536/85cb1419550619ceec32574b20049f56f/$FILE/27.08.2008.doc)

within the former administrative borders of autonomies before being recognised as independent states.

The August war created perfect scene for altering the status-quo and served as antecedent condition for recognition. Russian units moved onto Kodori gorge in Abkhazia without a single sign of existence of Georgia's plans to attack Abkhazia and without single shot being fired there by Georgian forces. Even after the cease-fire was declared by Medvedev and the six-point plan was signed by all parties, Russian troops continued to move to occupy Akhagori district, villages in western Java district and Mamisoni pass – all areas that administratively belonged to South Ossetia in Soviet times, but were not included in the security zone and had not been controlled by de-facto authorities at any time.

Conclusion of Medvedev-Sarkozy plan precluded the possibility of Russian-aspired regime change in Tbilisi and left Russia with the perspective of deprivation of peacekeeper's status. After aggression and in light of Georgian leadership's statement that Georgia was withdrawing from the CIS it was obvious that Russia lost its mediator status. Thus, Russia was losing legitimate ground of having its troops deployed in South Ossetia and Abkhazia. In order to legitimize the stay of Russian armed forces in these regions, recognition of their independence and subsequent conclusion of military treaties with them was the only possible solution. This legitimization was guised under the argument of saving lives, providing security and stability in the region and neutralising potential new "aggression" by Georgia. Recognition also justified Russian interpretation of badly worded six-point plan too, enabling Russia to maintain that it had implemented all points of the agreement and withdrew troops from Georgia. Recognition ultimately crowned Russian victory in the August War and burned the bridges for reversal of the war results.

Prevention of Georgia's NATO membership was the third factor triggering recognition. It was however very much dependent on the second factor, which created the reality on the ground. Russian leadership realized that unresolved territorial dispute and permanent Russian military bases in disputed regions killed perspectives of Georgian membership to the alliance for the foreseeable future. Recognition bought time and equipped Russia with an "unofficial" veto power over NATO enlargement in the Caucasus (Similar scenario was played out in relation to

Ukraine in 2014). To re-phrase Medvedev's statement, recognition was essential in order not to "quail" before NATO.

It served as a warning signal to the West that Russia is prepared to go to war if its zone of influence is encroached. It sent signal to fellow CIS states – "members of the influence zone" that dangerous rapprochement to the Atlantic alliance bears unpleasant consequences. However, as recognition of Sokhumi and Tskhinvali sent shock waves in the former Soviet republics with secessionist conflicts, Lavrov said that "in case of South Ossetia and Abkhazia, it happened because Saakashvili regime undermined all earlier agreed negotiation formats, conflict resolution mechanisms, constantly provoked peaceful citizens and peacekeepers and sought change of situation in conflict zones created in 1990's".⁵⁵² He assured that recognition of Abkhazia and South Ossetia will not create precedent for Karabakh and Transnistria as long as Russian-led negotiation formats are in place.

Russia called on the international community to emulate Russian decision and initially put certain diplomatic effort in encouraging and financially stimulating other countries to recognize Abkhazia and South Ossetia independence. However, as only Nicaragua, Venezuela and Nauru followed suit in the first two years and the other two tiny pacific nations Tuvalu and Vanuatu extended and soon withdrew their recognitions, Moscow abandoned this policy because it gradually turned largely counterproductive and embarrassing for Russian leaders.

Expectedly the European Union, the United States, NATO and Council of Europe condemned Russian recognition of Abkhazia and South Ossetia and called on Moscow to retract its decision. In the CIS the reactions were mixed. Georgia's allies in GUAM, Ukraine, Moldova and Azerbaijan all rallied behind Georgia's territorial integrity. Armenia wary of its relations with Moscow took a careful stance: "With the existence of Karabakh conflict, Armenia can't recognize another entity in a similar situation, until Armenia recognizes Karabakh" – President Sargsyan said.⁵⁵³ Kazakhstan, condemned Georgian actions as political mistake, but stated that Kazakhstan adheres to the territorial integrity principle and therefore did not recognize Kosovo

⁵⁵² "Признание Абхазии и Южной Осетии – не прецедент, 18.09.08, available at: <http://www.interfax.ru/russia/33598>

⁵⁵³ Армения не может признать Абхазию и Южную Осетию до признания Карабаха, 04.09.08, available at: <http://ria.ru/politics/20080904/150952045.html#ixzz2g5QDrdSt>

and will not recognize Abkhazia and South Ossetia.⁵⁵⁴ Tajikistan supported complex measures taken by Russia in the Caucasus but did not go beyond that.⁵⁵⁵

Belarus - member of a union state with Russia – was closest to recognition. President Lukashenko in a letter addressed to his Russian colleague two days after Russian recognition stated that Russia did not have any other moral option than to recognize Abkhazia and South Ossetia⁵⁵⁶ and promised that the newly elected parliament of Belarus would discuss the issue of recognition soon.⁵⁵⁷ In June 2009, as the issue of recognition was not included in the spring session agenda of the parliament, Lukashenko declared that Belarus was blackmailed by Russia to recognize Ossetia and Abkhazia in exchange for Russian credit of 500 million USD, but “we do not want to sell any issues and any positions, we will solve it ourselves”.⁵⁵⁸ Then, Belarusian Ministry of Foreign Affairs warned its citizens to take note of Georgia’s laws on “occupied territories” while travelling causing bewilderment in Russian diplomatic circles. Belarusian parliament dispatched a group of deputies to Georgia for a fact-finding mission and therefore put off discussion of recognition until spring 2010. Lukashenko then openly admitted that the EU was advising him not to extend recognition and threatening with financial consequences, whereas Russia did not want to compensate losses and therefore the decision on recognition was not made.⁵⁵⁹

Serbia- parent state of Kosovo and Russia’s erstwhile ally declared that it will not recognize “these so-called new countries”. President Tadic said that Serbia is not going to do something that is against its interest, because “we are defending out territorial integrity and sovereignty by

⁵⁵⁴ Казахстан не станет признавать Южную Осетию , 02.10.08, available at:

<http://www.orenburg.kp.ru/online/news/147460/>

⁵⁵⁵ Заявления для прессы по итогам российско-таджикских переговоров 29.08.08, available at:

<http://kremlin.ru/events/president/transcripts/1256>

⁵⁵⁶ <https://archive.is/20120805102758/www.president.gov.by/press61238.html%23doc>

⁵⁵⁷ Белоруссия скоро признает независимость Абхазии и Южной Осетии, 08.09.08, available at:

<http://ria.ru/politics/20080908/151063444.html>

⁵⁵⁸ Лукашенко: Минск не будет "продавать" свою позицию о признании Абхазии, 05.06.09, available at:

<http://ria.ru/politics/20090605/173359837.html>

⁵⁵⁹ Пресс-конференция Президента А.Г.Лукашенко российским СМИ, 02.10.10, available at:

<http://www.sb.by/stenogramma-vystupleniya-prezidenta/docs/press-konferentsiya-prezidenta-a-g-lukashenko-rossijskim-smi.html>

using international law”.⁵⁶⁰

V. Conclusion

As this paper draws to the close, I will recapitulate on provisions of international law, history of Russia’s recognition policy and triggers for recognition of Abkhazia and South Ossetia in this chapter to provide conclusions for this research case.

International law does not furnish the right of ethnic or religious minorities to self-determination. Where self-determination concerns a sovereign state, the self-determination is exercised by the rule against intervention in the domestic affairs of the state and in the free choice by its population of the form and composition of the government of the state. The customary law provides that the right to self-determination may not be partitioned and belongs to the whole population. Thus, right to self-determination is not granted to ethnic or religious minorities of a state exclusively, but rather together with the majority of the population. In Georgia’s case, this means that the right to self-determination is attributed to the whole Georgian population and not to its ethnic or religious minorities. The right to self-determination rules out any action that might disrupt the territorial integrity of Georgia. Internal self-determination of ethnic minorities could be achieved through various levels of autonomous arrangements within the sovereign state,

⁵⁶⁰ Serbia Won't Recognise Georgia Regions, 03.09.08, available at: <http://www.balkaninsight.com/en/article/serbia-won-t-recognise-georgia-regions>

with full access to participation in the government. Both Abkhazia and South Ossetia exercised internal self-determination in Georgia through respective autonomy provisions. The Abkhaz and Ossetians enjoyed not only access to governments in their autonomies, but clearly were overrepresented in local governments. Access to elementary, secondary and high education in their native languages as well as regional press and TV and autonomy in cultural affairs were guaranteed. One might argue, that with the abolition of South Ossetian Autonomous District Ossetians were deprived of internal self-determination right. This argument, however does not hold ground, because abolition was a result of unconstitutional actions of the autonomous district's leadership and throughout the internationally-led conflict resolution process, Georgia was prepared to again grant wide autonomy to South Ossetia. It was the South Ossetian side that rejected the autonomy proposals. In a similar vein, Abkhazia also rejected all autonomy offers including the ones originating from the UN. The remedies for internal self-determination of Abkhazia and South Ossetia within the Georgian state were not only not exhausted, (as it should be the case to qualify for remedial secession) but not even accepted by the secessionists. Furthermore, both treaty law and customary law clearly state the inviolability of borders of sovereign states and their territorial integrity over self-determination. Therefore, self-determination in independent, sovereign states as Georgia is limited only to its internal character - autonomy, unless there are grave violations of human rights to the particular racial or ethnic group that could invoke the right for external self-determination – secession.

Now, let's turn to the right of remedial secession to see whether Abkhaz or South Ossetian secessions were justifiable under this account. First of all we should remember that the international law, as it stands now, recognises neither a general nor remedial right to secede and international practice predominantly supports self-determination inside the existing state even when grave violations of minorities' rights do occur. As described in the sub-chapter on secession, the normative due process through which the inferred right of remedial secession could be granted envisages that: a) secession should take place without direct or indirect military support of foreign states, b) secession should be founded on the results of referenda or plebiscite, where majority of population expresses wish for secession and c) seceding entity must respect *uti possidetis juris* principle. Whenever one of these aspects is absent, the secession and subsequent creation of state is regarded as illegitimate. Abkhazia and South Ossetia seceded from Georgia after both indirect and direct military support from Russia. If in the 1990's the Russian support

was mostly indirect, in 2008 it culminated into an all-out Georgian-Russian war. Even though both South Ossetia and Abkhazia held referenda on independence in 1992/2006 and 1999 respectively, they were against the constitution of Georgia -part of which these entities constituted at the time - and did not embrace the whole population of the autonomies, because large part of the population was already expelled. Furthermore, these referenda were declared void by international organisations. As for, *uti possidetis juris*, according to this principle, only former constituent parts - such as Georgia - are granted independence during dissolution of larger entity - such as USSR - but not constituent part's administrative-territorial units. According to ICJ, borders achieved at independence are inviolable. Since none of the three principles of due process are present, South Ossetian and Abkhazian cases could not be considered as normative even if they had qualified for remedial secession due to oppression from the metropolitan state. Abkhazia and South Ossetia do not however qualify for remedial secession rights either. Even though, there had been human rights' violations committed from the Georgian side during the armed conflict, there are no evidences that it attributed to genocide, intent of genocide or one of its forms – ethnic cleansing. On the contrary, according to resolutions adopted by OSCE and the UN as well as EU and NATO bodies, it was the Georgian population who suffered from ethnic cleansing both in Abkhazia and South Ossetia. Furthermore, there were no signs of central government suppressing fundamental rights of ethnic Abkhaz and Ossetian citizens and barring them from governmental institutions. The historical evidence demonstrates that both entities turned down several internationally mediated offers of internal self-determination and there are still remedies for their self-determination within Georgian constitutional arrangement. Hence, I conclude that creation of Abkhazia and South Ossetia as states did not follow the normative due process and is therefore illegal. The IIFMCG in its legal appraisal also concluded that South Ossetia and Abkhazia did not have right to secede from Georgia.⁵⁶¹

The third aspect that we need to discuss from the international legal perspective is whether Russian unilateral act of recognition complied with international law. As described in the sub-chapter on recognition, the fundamental problem in the field of recognition is absence of well-defined criteria for recognition. This, of course makes recognition subject of political

⁵⁶¹ Report of the Independent International Fact Finding Mission on the Conflict in Georgia, Volume 1, September 2009, p. 17

manipulation. There exists a guideline for the EU developed by Badinter commission where non-aggression, democracy, minority rights, security and regional stability are considered to be decisive factors for extending recognition to a new state in addition to so-called Montevideo criteria. In the absence of universal criteria for recognition, I will assess Abkhazia's and South Ossetia's recognition against these criteria, assuming that they fulfil Montevideo criteria. Here, again at least three out of four eligibility criteria are missing. Both Abkhazia and South Ossetia de-facto authorities gained full control over their territories after Russian invasion and continuous occupation of Georgia. In August 2008, at the time of Russian recognition, Russian troops were occupying large swathes of Georgian territory. So, these entities were formed as a result of aggression. Neither Abkhazia nor South Ossetia represented a democratic state in August 2008, since the majority of the population was deprived of the right to return home and participate in free and fair elections. And an ethnic cleansing of Georgian population had been orchestrated just recently by the de-facto authorities in Kodori gorge of Abkhazia and all of South Ossetia, rendering even consideration of protection of minority rights obsolete. Therefore, according to European criteria Abkhazia and South Ossetia should have never been recognised.

Taking into consideration however that there is no single international law norm which lists the universal criteria for recognition and Russia is not obliged to adhere to the EU criteria of recognition, it is a sovereign right of Russia to extend recognition at its own discretion based on its own assessment and political will. Although, international law does not prevent Russia from extending recognition to Abkhazia and South Ossetia, still due to the fact that these entities were created contrary to international law, qualifies Russian decision as disrespect and undermining of territorial integrity of a sovereign state - Georgia, which in itself is violation of peremptory norm of international law.

Analysis of Soviet/Russian state practice in chapter three showed that Kremlin always acted in accordance with international law principles and its recognition policy has been coherent. When countries were born according to the due normative course, Russia did not hesitate to extend recognition. Russia also acted consistently in regard to secessionist entities that were created in violation of international law. Here, Moscow conducted non-recognition policy arguing for primacy of territorial integrity principle of parent states. History of recognition of new states shows that Soviet/Russian actions never transgressed the limits of international law. Primacy of

international law and strict observance of fundamental principles of the UN charter had always been named as priority in successive foreign policy concepts of the Russian Federation.⁵⁶² Russian foreign policy concept adopted shortly before recognition of Abkhazia and South Ossetia also listed maintenance of primacy of law in international relations particularly, of the norms regulating sovereignty, territorial integrity and self-determination, as one of the top priorities of Russian foreign policy. The concept stressed the importance of “strengthening legal basis of international relations”, “adherence to international law for safeguarding interests of Russia” and “countering the attempts of certain countries and groups of countries from revising universally accepted norms of international law such as UN Charter, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter, as well as in the CSCE Final Act of 1975”.⁵⁶³ Russia warned against erosion of the basis of international law and inflicting a lasting damage to its authority through “arbitrary and politically motivated interpretation by certain countries of fundamental international legal norms and principles such as non-use of force or threat of force, peaceful settlement of international disputes, respect for sovereignty and territorial integrity of States, right of peoples to self-determination, as well as the attempts to portray violations of international law as its "creative" application”.⁵⁶⁴

Considering the above-mentioned, Russian decision on granting recognition to Abkhazia and South Ossetia represented an obvious deviation from Russian traditional policy on recognition. For the first time, in Soviet/Russian post-WW II history, Russia recognised the entity without parent state’s prior approval, the entity that was created in violation of international law, simultaneously ignoring the priorities of its own foreign policy concept.

Reasons for such deviation from traditional recognition policy lie in a broader context than conflicts in Abkhazia and South Ossetia. Combination of causes led Russian political leadership to extend recognition. Firstly, recognition of Kosovo by the West, in blatant disrespect of Russia’s position, which was one of the mediators of the Balkan conflicts and by detouring the UN Security Council deeply insulted Russian elites. This decision brought back the memories of

⁵⁶² Compare Foreign Policy Concepts of Russia 1993,2000, 2008, 2013

⁵⁶³ The Foreign Policy Concept of the Russian Federation, 12.07.08, available at: <http://archive.kremlin.ru/eng/text/docs/2008/07/204750.shtml>

⁵⁶⁴ Ibid.

1999 when NATO bombed Serbia in disregard of Russian position too. Russia perceived this as another sign of attempt to establish unipolar world order, which contradicted Russia's foreign policy objectives. Putin, Lavrov, Ivanov and other Russian officials warned on many occasions in the lead-up to Kosovo unilateral declaration of independence that Kosovo's recognition would have repercussions elsewhere, especially with regard to Abkhazia and South Ossetia. Russian recognition of Abkhazia and South Ossetia represented a typical example of a TIT-for-TAT action from Prisoner's Dilemma game. Russia used same justifications for recognition of Georgia's rebel provinces as the West did for Kosovo. As I have cited above Putin even inadvertently admitted that they followed the example set by the West in violating principles of international law.

Situation on the ground, however was not ripe for recognition in Spring and early Summer 2008, as Georgian forces controlled substantial parts of the territories of its breakaway entities. Therefore, Russia did not recognize Abkhazia and South Ossetia immediately, but rather waited for a better chance, until it occupied the whole territories of Abkhazia and South Ossetia during the war and extended recognition only thereafter.

The second cause for recognition was the fear of Russian leadership that Georgia was on its path to NATO membership once NATO Bucharest declaration officially promised membership to Tbilisi. As Georgia's joining of the Atlantic alliance "crossed red lines" for Russian national security interests, this had to be averted by all means. Russian leadership did not hide its intentions on this matter either. Statements about "privileged zone of interests" or "zone of influence" in "near abroad" have been made since the fall of USSR. Georgia's quest to join NATO disregarded not only the borders of this "zone", but was seen as the biggest threat to Russian security and as complete ignorance of promises made to Moscow in 1990 on NATO's non-expansion to the east. Recognition of Abkhazia and South Ossetia with subsequent establishment of additional Russian military bases in these regions was a tactical move to make Georgia practically ineligible for NATO membership, as the Atlantic alliance does not invite countries with territorial disputes and foreign troops on its soil for membership.

With this enters the third cause of recognition – legitimization of presence of Russian armed forces. Once Medvedev-Sarkozy plan was signed Russia lost the status of sole mediator in the conflict. As Russia failed to change the regime in Tbilisi and Georgia officially declared about

withdrawal from the CIS, it became clear that peacekeeping status of Russian forces would not be extended. The only way for Russian armed forces to remain in Abkhazia and South Ossetia was to recognize independence of these territories and sign with them long-term agreements on military bases.⁵⁶⁵ Thus, recognition provided the only solution for legal underpinning of Russian army presence. Considering the proximity of South Ossetian administrative boundary line to strategic east-west highway in Georgia, which is less than 2 kilometres away, Russia retained the leverage for destabilizing the situation in Georgia at any moment if required.

Therefore, I conclude that the three root causes of granting recognition to Sokhumi and Tskhinvali were: 1) response to the West on Kosovo, 2) prevention of Georgia's membership to NATO and 3) establishment of military bases in Abkhazia and South Ossetia.

This act of recognition led Georgian-Russian relations into dead-end. Even though, communications, trade, economic and cultural ties between Tbilisi and Moscow largely restored in 2013-2014, diplomatic relations are still cut. Russia on many occasions asserted that it is not going to retract its decision on recognition of Abkhazia and South Ossetia. For any Georgian government restoration of diplomatic relations with Moscow having embassies in Sokhumi and Tskhinvali would be suicidal step. Therefore, the chances of full normalization of Georgian-Russian ties are at least very dim, if not non-existent.

Apart from Georgian-Russian relations recognition had other global implications too. For a time being it severed Russian relations with both the EU and the United States. NATO-Russia Council was suspended, EU-Russia talks on new framework agreement ceased. Although, relations returned to "business as usual" after reset in US-Russian relations several months later, when the sides agreed that they disagreed over Georgia's borders, 2008 events still left deep scars on mutual ties.

International law principle of territorial integrity was eroded. Moscow continued to apply "Brezhnev Doctrine 2.0" in relation to former Soviet republics and none of them now could be sure of inviolability of their borders. Russia openly threatens these republics with territorial problems. Moscow's support to territorial integrity of Moldova is contingent upon Chisinau's

⁵⁶⁵ Russia signed agreements with Abkhazia and South Ossetia on establishment of Russian military bases for 49 and 99 years respectively, plus deployed border guards to protect "borders" with Georgia

neutrality status. Armenia was forced to reject initialling of Association Agreement with the EU. Kazakhstan hinting at possible withdrawal from Eurasian Economic Union was reminded by Putin that the Kazakhs never had statehood before 1991 and are to remain part of “large Russian world”.⁵⁶⁶ In Ukraine, after the fall of pro-Moscow regime in February 2014 Russia wary of new leadership’s rapprochement with NATO and the EU, in-line with scenario already played in Georgia, instigated secessionist conflict in Eastern Ukraine leading to proclamation of people’s republics of Luhansk and Donetsk and annexed Crimea. Six years after Bucharest, Russia accomplished its threat made at NATO-Russia council meeting there, that if NATO decides to expand to Georgia and Ukraine, Georgia would lose Abkhazia and South Ossetia and Ukraine would cease existence as a unified state.⁵⁶⁷

Unregulated status of breakaway entities in the world and especially in the former Soviet space will remain a pressing problem of international relations in the near future. Role of Russia would still be instrumental in negotiations on Karabakh, Transnistria and Donbass conflicts and Moscow’s stance on them will also shape its relations with the West. Launching of investigation into 2008 events by the International Criminal Court and other ongoing developments however open new, challenging avenues for further research of international relations of our region.

⁵⁶⁶ В Казахстане озадачены словами Путина о русском мире, 02.09.14, available at: http://www.bbc.com/russian/international/2014/09/140901_kazakhstan_putin

⁵⁶⁷ Блок НАТО разошелся на блокпакеты, 07.04.08, available at: <http://kommersant.ru/doc/877224>

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