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Nation and State-building Processes: Case of Abkhazia

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Preface

This Master's thesis covers the controversial issues of self-determination of peoples, modern state formation and nation-state building in the contemporary world. The example of Abkhazia, which was taken as a case study, reveals multiple contradictions that exist in the international legal system. The choice of the topic is determined by the intention, first, to indicate inconsistency in the regulations of international order; second, to draw attention to the complex case of Abkhazia, which is underrepresented in the European discourse.

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Introduction

This research is focused on the nation-state building processes of the modern world with a case-study of the Republic of Abkhazia. The intention of the Master's thesis is to analyze the phenomenon in its complexity from multiple perspectives, comparing the regulations of the international law with the common practices of the contemporary political reality. We attempt to examine a particular case of a breakaway state that has developed its unique culture and identity throughout long historical period of time. Various issues of nation-state building, namely state formation, ethno-nation, civic nation etc., need to be tackled.

The choice of the case is determined by the fact that Abkhazia appears to be an exceptionally good example of a *de facto* state that is, legally being an integral part of a larger entity but having and being aware of its actual potential for independence and sovereignty, struggles for secession from a parent state and international recognition. Abkhazia has a long history, mostly as a part of Georgia, but with different extent of autonomy, *de jure* and *de facto* sovereignty.

Even though sometimes in academia there is a conceptual problem with distinguishing between state-building and nation-building, as, first, unlike in the nineteenth or first half of twentieth century's, nowadays both processes often occur together. Moreover, there are different interpretations, since it depends on the approach where to draw a line between the concepts. However, Abkhazia represents a case where both nation-building and state-building processes took place. Abkhaz nation was formed within centuries and, whereas primarily it was based on the Abkhaz ethnicity, that has changed and, as we would argue, the community has developed into a multi-ethnic nation in its contemporary interpretation. Nowadays it is a political community that is represented by different ethnicities, viz. Abkhazian, Greek, Armenian, and Russian. This fact became obvious in the Abkhaz-Georgian war of 1992-1993, where Abkhazian residents of the aforementioned ethnicities were fighting together against Georgia for their independent state. Thus, even though the war clearly bore ethnic character, the separatist party was ethnically diverse. The purpose of starting this violent military conflict full of crimes and atrocities was to oppose to Georgian supremacy which was successfully accomplished in an illegitimate and rather brutal manner.

The main research question of this study is whether the Republic of Abkhazia qualifies to be an independent sovereign state or not. There are different dimensions in this regard to be considered. First, there are legal requirements stated in international law. On the other hand, regulations on the self-determination principle and secession right are expectedly vague and rather general, and due to its conservatism international law does not meet the challenges of the reality, otherwise there would be no need to justify the case of Kosovo recognition, which did

not fit into the legal framework, as an exception and by doing this increase the degree of confusion in the area. Second, since in the modern world every state is a part of the international community, the perception of a potentially new member of this community by other states is essentially important. Moreover, the entity is supposed to have a capacity to fulfill its tasks internationally and demonstrate evidence of being able to provide certain stability, security and minimal human rights protection on the given territory. Third factor is a statehood capacity which is a rough estimation of autonomy's potential to be a sovereign state and bear all its economical, political, social and other duties and responsibilities. This factor has to do more with core internal aspects, even though it partially overlaps with the international in regard to capability of being an active member of the international community, accepting and ratifying basic international documents, as well as providing security, stability and ideally non-discriminating political regime with respect to human rights and freedoms. We pursue a goal to estimate the potential of Abkhazia in all the dimensions described above and, based on the outcome, draw a general conclusion about its capacity to be an independent state.

The research is divided into five sections, namely *Theory of Nation-State Building: Methodological Concepts, International Legal Framework, Peculiarities of the Political Processes Development in Abkhazia, External Factor: Russia, NATO, the UN and the EU, and Searching for Solutions*. The structure of the Master's thesis is determined by the following logic: having considered various theories of nation-state building and having defined the working definitions of the key terms that are applied in this study, we analyze the issues of state formation and nation-building from the legal perspective after which we examine and evaluate development of the Abkhaz-Georgian conflict after the Soviet Union demise, paying attention to particular events, personalities and the turning points in the conflict progress; then we proceed to the external actors attempting to estimate their role and contribution and, finally, overview of possible solutions suggested to a situation of a seceding entity looking for recognition, analyzing the particular case of the Republic of Abkhazia in its current state and its perspectives for widespread international recognition.

Within this project we intend to follow the development of the political situation starting from the Soviet Union dissolution which became a point of the conflict escalation. Even though the seceding state received partial recognition only in 2008, we consider it necessary to include the whole period of the last twenty two years as it is highly important in order to understand the logic of the self-determination claims evolution.

Before sifting the chronology of events in Abkhazia, investigating the outcome of these happenings and estimating the role of the actors in the process there is a large theoretical part included. Methodologically we would apply the declaratory concept of state formation and

Fukuyama's theory of reconstruction and development that would be explained later. Also, we would consider liberal and communitarian theories of secession attempting to discover if Abkhazian claims for sovereign statehood can be justified within the framework of any of them.

In order to be able to answer the questions stated above, we would apply criteria of state recognition summarized by M.J. Peterson in *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995* and characterize the Republic of Abkhazia regarding each of the respective criteria separately and create a table reflecting them all. Based on the outcome it would be possible to draw the general conclusion. The criteria are divided into the core ones: defined territory, permanent population, capacity to enter into relations with other states, independence in its formal and real aspects; and extra or additional criteria: popular support, respect for other states' rights, absence of undue violence in the seizure of power, origins in conformity with international law, and respect for human rights.

As we adhere to the declaratory theory of state formation, which we would verify on the case of Abkhazia, following the development of the Abkhaz-Georgian conflict starting from the Soviet Union dissolution, it is vital to explore the evolution of the separatist movement in Abkhazia after the USSR demise. Three periods of Abkhaz-Georgian relationship in the post-Soviet time are distinguished: first, 1991-1995; second, 1995-2008; and third, 2008 – currently. Each of the chronological periods is characterized by its specific socio-political situation. Thus, the first one is extremely hostile and intense, identified with massive human right violations, the military conflict and expulsion of ethnically Georgian population from the Gali region as a result of Georgia's fiasco. The second one can be described by stabilization of the state of affairs in relative terms and military conflict settlement, but at the same time by stagnation as Abkhazian, according to Tbilisi, self-proclaimed government was rejecting any Georgian suggestions based on semi-compromise and was struggling for international recognition without having real basis for these hopes in the beginning but gradually increasing its reliance on Russian aid; while Georgia, enjoying support of the international community, radically refused to consider an option of granting Abkhazia with sovereignty. The third period can be characterized by a new round of conflict escalation in Caucasus, resulted in the Russian-Georgian war of 2008, after which Abkhazia was recognized by the Russian Federation and few other states that supported the initiative and started receiving investments in large amounts.

We proceed from the assumption that the socio-political processes in Abkhazia can be explained from the social constructivism point of view, and we would attempt to do so after having analyzed the development of the conflict, its climax points, and stagnation that resulted in the 'frozen conflict' status quo. At the same time as military conflicts due to secession aspirations of a political community normally happen in states that are politically unstable or

weak, it is necessary to consider the issue of state weakness in regard to Georgia, which was defeated in the war 1992-1993 and failed to manage the conflict effectively, despite the support and amiability of the United Nations, NATO and the majority of states. For this purpose we would apply Fukuyama's matrix of state scope and strength to approximately estimate the scope of state functions and strength of state institutions of Georgia, elaborating on some of the influential factors.

There is another important matter that is logically connected to the Abkhazian statehood issue, which we are going to consider in the research, namely the tension between Abkhazia and Georgia due to the absence of solution which received a status of a "frozen" conflict. Investigating alternative solutions for this unstable situation and evaluating their potential effectiveness is not the major goal of the Master's thesis but we believe it is important to explore this issue, as it seems to be a logically coherent step to do in the spirit of this study, which, however, would leave space for further research in the field. As the political reality and balance of powers in the Abkhaz-Georgian conflict was changing, new proposed solutions were replacing the old ones. However, none of them was considered as an acceptable for all the parties involved so far. We would like, first, to find out if there are any at least hypothetical solutions and, second, investigate reasons why keeping the *status quo* has been the most favorable option for the parties and learn if de facto there are changes despite the "stable instability" *de jure*. We attempt to explore the current state of affairs in Abkhazia and Georgia in order to think of the beneficial strategic lines for each of the sides. In order to keep the research objective, we would need to understand the positions of both parties: their national interests, perspectives, economic potential, political forces, and psycho-cultural aspects, viz. identity, national legend, beliefs and aspirations.

While pursuing the stated goals of this study, we also have few minor aims, namely, to explore the issue of self-determination and its various types in international practice and legal framework; following the evolvement of Abkhaz-Georgian relations, find out main forces and turning points in the conflict development that determined the current situation; estimate the role and impact of the third parties in the secessionist conflict, primarily Russia and the USA, but also the UN and the European Union, particularly focusing on the Russo-Georgian war of 2008; estimate the fact of military conflict happening within geographic borders of Europe in the twenty first century from multiple perspectives, providing reasons and critique in regard to peace and security maintenance; and, finally, question the role of sovereignty in the modern world order. As the concept of sovereignty has been modified due to the integration processes in the modern world, bringing this issue in the discourse might be useful as a contribution to solution-seeking. This shift of sovereignty is currently a widely debated issue by many scholars. Gottlieb,

for instance, mentions it in regard to his concept of “States plus nations.” Hypothetically, since the modernity changes the international political reality in a way that state sovereignty is vanishing while the interconnection between components of states get closer, an idea of creating an association of states might be reasonable. We would elaborate on this idea further.

Unfortunately the Abkhazian issue did not receive much attention on the international scale, at least until the Russian-Georgian war of 2008. Apparently, for the majority of states, which can be classified as the “developed world,” Abkhazia and Caucasus in general did not appear to be an important matter. Caucasus is relatively small but full of contradictions and tensions of ethnical and religious matter that have been going on there for centuries. Since Caucasian countries are unstable, economically under-developed, and not that politically powerful, there was no particular interest for the international actors to get involved. Moreover, due to the remote location of the region, for the European Union there seemed to be no need to actively participate in its matters as lack of stability in Caucasus presumably could not endanger security of the Union. For the USA Caucasus and, in particular, Georgia was the way to potentially expand NATO’s sphere of influence, be present in South-Eastern Europe and to restrain Russia in certain sense. In the beginning of 1990s Russia also had little interest in Abkhazia, which has changed drastically after the Russian-Georgian relations got tense. However, the war of 2008 has affected the attitude of the Western countries to Caucasus. It became clear that unresolved ethnic conflicts bear a threat to national security not only of the neighboring states, but hypothetically for the whole continent and even further, in case those kinds of methods to solve a conflict would serve as an example to follow for other statehood seeking communities and parties involved in the conflict. Hence, the war played its positive role in raising international awareness about “stable instability” in Caucasus and potential outcome this situation might lead to. From 2008 on the forsaken topic gained popularity, albeit knowledge of an average citizen of the EU, US, and other states about Abkhazia and South Ossetia is still very limited. Nevertheless, there are scholars working specifically on the topic and whose work we would refer to: Tim Potier, Tom Parfitt, Ronald Asmus, who analyzed the war in South Ossetia, Celine Francis, who wrote her dissertation in Abkhazia after several months of field study and research, and others.

However, unlike in the case of Kosovo, research about Abkhazia and South Ossetia is not sufficient, especially in other than Russian, Georgian, or Abkhazian sources and languages. There are even less studies and generally information on the regions of Nagorny Karabakh and Transnistria. Thus, currently Caucasus is still under-researched and it has a great potential as a topic to explore for political scientists, experts of the international law, ethnologists, historians, linguists and other specialists.

Also, we would raise a question about international law fulfilling its function of being a regulator of conflicts on the international level and a yardstick of justice. Within the modern world order the United Nations played a role of the designer of the international legal framework. However, it appears to be a contradiction that the same organization has the responsibility of the guardian and custodian of the established regulations. Therefore, it is reasonable to question efficiency of the UN performance in the ongoing conflict and make general conclusions about the effectiveness of international law considering the fact that the sanctions that can be implied by the international community are rather limited. Another vital question that is derived from the dispute about the Abkhazian example is whether international law is coherent enough or it is full of contradictions, as in case of Abkhazia two fighting sides appealed to the regulations of international law, claiming the opposite. Even though in many regards international law is rather flexible and general, the issue of national interests, rather than a struggle for objective justice, should be considered as a factor that defines interpretation of the regulations.

After the Soviet Union breakup state fragmentation in the world was fostered and it remains being one of the acute issues in politics and international relations. Researching specific cases of the seceding entities provides one with understanding of the mechanisms of the phenomenon and gives an idea about counter-measures or, what would be better in terms of international security, measures of preventing secession conflicts that have ethnical reasoning and are rooted in discrimination of a minority that incited a movement for self-determination.

I. Theory of Nation-State Building: Methodological Concepts

Formally nation-state building can be decomposed into two parts that follow from the definition – nation-building and state-building. On the other hand, the process of nation-state building is not merely an arithmetic sum of two elements, as when the internal and the external aspects are combined, the new entity, or process in this case, acquires new characteristics which each of the summands does not necessarily possess. Certainly it increases the complexity of the whole issue.

1. Concept of Nation-Building

Even though it is commonly accepted that while nation-building is primarily an authentically internal process, state-building implies certain influence from the outside. However, it is a very rough and schematic classification. Indeed the processes are often combined in different proportions; therefore, there might be no need to attempt to distinguish between them artificially when they naturally merge in concrete cases. Francis Fukuyama elaborated on the difference between the two concepts having considered a contradiction between American and European interpretations of the phenomenon. Thus, according to Fukuyama, in American context what is referred to as nation-building is mostly state-building with a focus on political institutions and economical development. As he is convinced, “Nations - that is to say, communities of shared values, traditions, and historical memory-by this argument are never built, particularly by outsiders; rather, they evolve out of an unplanned historical-evolutionary process.”¹ In other words, Fukuyama criticizes the “American” understanding of state-building for the wrong use of terms. However, he corrects himself by adding that it would also be a flat assertion to claim that foreigners have never succeeded in nation-building which is also not correct.² Acknowledgement of the outer influence is crucial in this theory. In the framework of this research we accept Fukuyama’s vision on the issue and take the concept that he labels as a European as a starting point with a remark that, even though nation-building is genuinely an internal process, in the global world with numerous interconnection between its political and social elements, consequently, the role of the outside influence is gradually growing. Hence, starting from the second half of the twentieth century the notion of state-building has somehow penetrated the concept of nation-building which is one of the reasons we suggest that the case of Abkhazia should be analyzed as a whole.

In Fukuyama’s theory two kinds of activities are implied in nation-building, namely, reconstruction and development. Even though the distinction is often blurred, the term

¹ Francis Fukuyama, *Nation-Building: Beyond Afghanistan and Iraq* (The Johns Hopkins University Press, 2006), 3.

² Ibid.

“reconstruction” generally refers to the “restoration of war-torn or damaged societies to the pre-conflict situation, while development refers to the creation of new institutions and promotion of sustained economic growth, events that transform the society open-endedly into something that it has not been previously.”³

There is an essential conceptual difference between reconstruction and development. The first implies the process of stabilization and assisting a state in its attempt to return to the level of economic development before the conflict occurred, while development encompasses not just further economic growth but also kind of certain evolution. Development might take place after reconstruction activities only, and not the other way round. “Reconstruction is possible when the underlying political and social infrastructure has survived conflict or crisis; the problem is then the relatively simple matter of injecting sufficient resources to jumpstart the process, in the form of supplying food, roads, buildings, infrastructure etc,” as Fukuyama wrote.⁴ However, this matter is not that “simple” in case of debated territories and unrecognized states. Also, there is a potential trap for statehood-seeking political communities like Abkhazia, as accepting external help does not bring the seceding state any closer to sovereignty, on the contrary, it creates possibilities for the third party to establish its dominance in the region.

Development is more problematic than reconstruction, as the issue is incredibly complex and multidimensional. Approaches to the notion of development and strategies of its application have changed a lot throughout the twentieth century. According to neoclassical growth models, which were common in 1950s and partially 1960s, countries that need development formally can be perceived as developed states lacking resources and, therefore, the most efficient way to fix those countries is sufficient capital investment which is supposed to stabilize the economy and that would demonstrate self-sustaining growth.⁵ If to put it in a simple way, a “state that need development” equals a “developed state minus resources”; hence, by investing money which means adding financial resources, one can achieve a balance in the equation. Later, however, the emphasis was shifted to the important aspects of the socio-political reality without which development would not be possible, e.g. structural changes and adjustment, organization, population control, education, debt relief etc. Recently the focus has been changed again with the institutional approach gaining more popularity, where institutions and governance are considered to be the key success-determining factors. The case of Abkhazia can be an empirical proof that investment strategy by its own without supporting policies does not solve the problem of economic under-development. Properly functioning local institutions and rational governance are the tools to establish self-sustainability; otherwise, investment is a short-term solution only.

³ Francis Fukuyama, *Nation-Building: Beyond Afghanistan and Iraq* (The Johns Hopkins University Press, 2006), 5.

⁴ Ibid.

⁵ Ibid., 6.

However, not all scholars agree on the priority of institutions. Chesterman, for instance, suggests clarity as a key factor:

Clarity is central to the effective management of post-conflict reconstruction. Instead of institutional transformations...a modest but important area of reform would be to require clarity in three key areas: as to the strategic objectives; as to the relationship between international and local actors and how this will change over time; and as to the commitment required of the international actors in order to achieve objectives that warrant the temporary assumption of autocratic powers under a benevolent international administration.⁶

Generally agreeing with Chesterman's notion of clarity, we would, however, oppose that the second and the third point require fairly well functioning institutions. Hence, even without admitting it the author acknowledges the importance of the role institutions play in nation and nation-state building.

Ideally the third party's role should be limited to reconstruction avoiding interference into the development issues. On the other hand, in many cases of the after-war countries this distinction is hard to make because of weak state sectors and lack of institutional organization. Also, certain states might be able to accomplish the development part independently even after reconstruction, if their previous state was also weak and characterized by poor organization. Theoretically, in the perfect case scenario after the reconstruction is done a smooth transition out of this phase should be accomplished, which in reality is a big challenge as the developing states get dependent on the outside support and do not sustain themselves.⁷ That is precisely what has happened to Abkhazia under Russian protectorate. Moreover, there is a certain conflict incorporated between reconstruction and development, as reconstruction "requires rapid, massive outside intervention to stabilize conflicts, rebuild infrastructure, and deal with humanitarian issues, while the development phase requires the eventual weaning of local actors and institutions from the dependence on outside aid."⁸ This transition might never happen for several reasons: the local institutions are still weak; the "nation-builder," enjoying the power, often becomes reluctant to give up its leading role and leave the country; there is general lack of clarity about role division, impact of the third party and other aspects crucial for successful nation-building. The humanitarian goal is to create an effective independent government but indeed in the best tradition of "Realpolitik" pursue their national interests. However, a "nation-builder" is supposed to follow certain principles of nation-building: maintaining commitment, balancing political legitimacy and reconstruction effectiveness, planning reconstruction.⁹

⁶ Simon Chesterman, *You, the People. The United Nations, Transitional Administration, and State-Building* (Oxford University Press, 2004), 240.

⁷ Francis Fukuyama, *Nation-Building: Beyond Afghanistan and Iraq* (The Johns Hopkins University Press, 2006), 7.

⁸ Ibid.

⁹ Francis Fukuyama, *Nation-Building: Beyond Afghanistan and Iraq* (The Johns Hopkins University Press, 2006), 82.

There are four separate activities that are commonly lumped under the heading of nation-building, which may or may not become parts of the actual nation-building process: peacekeeping, peace enforcement, post-conflict resolution, long-term economic and political development.¹⁰ The first two functions are necessary conditions for performance of the latter functions of reconstruction and development. At the first stages of nation-building the security-related functions are predominant, as soon as the situation gets stabilized, they allow further actions. In the latter chapters we would analyze this process on the case of Abkhazia. Reconstruction or construction of political authority should be taken care of after certain security is achieved.

Nation-state is a key concept in the nation-building theory. Simon Caney has analyzed seven various justifications for national self-determination and sorted out three the most valuable arguments, i.e. first, creation of political institutions that increase people's well-being is a value by its own; second, an individual's membership of a nation contributes to the personal well-being; third, a nation-state is a best structural organization for supporting and promoting a nation's culture and traditions.¹¹ Agreeing with the first and the third statements, we would like to bring some counter-arguments against the second reason. Personal well-being is not limited to collective rights and feeling of belonging to a community. Also, well-being of individuals who are somehow different from the majority, for example, have another ethnic origins, should not be of a less importance than of a more homogeneous segment of a nation.

Notions of nation and nation-state continue being not just exceptionally important issues in the world of politics but also, as Outi Korhonen phrases, "highly potent drivers of conflict cycles and their settlement."¹² The nation-state concept has received a fare share of critique in the late twentieth, beginning of the twenty first century. From Anderson's understanding of a nation as an "imagined community" the interpretation of this phenomenon of socio-political life was developed into a social construct concept. Hence, nowadays it is commonly agreed that the core of a nation is an imagined construct that has specific idealized characteristics, viz. ethnicity, shared history, values, language etc., and is built with the help of cultural tools.¹³ According to Korhonen, nation-states in particular and strong emphasis on a nation in general brought such negative consequences as rise of nationalism and even extremism, which produced violence massively in history, or in less brutal cases – to emergence of minorities and stateless nations, secessionist movements and mutual human rights abuse. A large number of political

¹⁰ Francis Fukuyama, *Nation-Building: Beyond Afghanistan and Iraq* (The Johns Hopkins University Press, 2006), 223.

¹¹ Percy B. Lehning, *Theories of Secession* (Routledge, 1998), 162.

¹² Brett Bowden, Hilary Charlesworth, and Jeremy Farrall. *The Role of International Law in Rebuilding Societies after Conflict*. Great Expectations. (Cambridge University Press, 2009), 23.

¹³ *Ibid.*

communities are struggling for secession as they do not identify themselves with the dominant nation on the state territory, feel unrepresented and discriminated against. Different identities of the groups, which were built internally and externally, are the one of the core reasons of the phenomenon. Those identities become a foundation for nationalism and they are designed to play the major role in nation-building, even though human beings have no natural instinct or capacity to identify with such a group as a nation.¹⁴

It is crucial to keep in mind that nation-building process in Abkhazia was influenced by the Western European concept of the nineteenth century which, according to Eva-Maria Auch, was interpreted by Bolsheviks and adopted in its modified version in redaction of J.Stalin.¹⁵ The national question of the Soviet Union was mostly predetermined by Stalin's definition of a nation as "a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture."¹⁶ In the *Organization for Security and Co-operation in Europe Yearbook 2004* E.-M. Auch named this framework and respective policies of the Soviet government as the main factor of influence on the ways political elites justified their sovereignty claims after the Soviet Union dissolution.¹⁷

Later we would investigate how the processes of reconstruction and development were happening in Abkhazia and estimate influence of external actors. Also, we would define the factors that effect the degree of success in the long-term economical and political development of the republic.

2. State-Building and Nation-State Concepts

In the modern era state-building does not happen through unification or merging, the most common way is dissolution when several new states emerge from a bigger one. Fragmentation processes started massively in the post-colonial world and were extremely intensive in 1960s, then slowed down in 1980s but after again were fostered by the Soviet Union dissolution. Nowadays this rate is relatively low; however, still there are political communities like Abkhazia that have statehood demands. Their claims are rarely satisfied and the formal excuse is that those entities fail to meet statehood criteria.

The essential statehood criteria were substantially formulated already in 1930s in the Article I of the Montevideo Convention on the Rights and Duties of States, which are: a permanent

¹⁴ Brett Bowden, Hilary Charlesworth, and Jeremy Farrall. *The Role of International Law in Rebuilding Societies after Conflict*. Great Expectations. (Cambridge University Press, 2009), 23.

¹⁵ Eva-Maria Auch, *The Abkhazia Conflict in Historical Perspective* (OSCE Yearbook 2004), 222.

¹⁶ Marxist Internat Archive., J.V.Stalin, "Marxism and National Question,"

<http://www.marxists.org/reference/archive/stalin/works/1913/03a.htm> (accessed 16 May 2013).

¹⁷ Eva-Maria Auch, *The Abkhazia Conflict in Historical Perspective* (OSCE Yearbook 2004, 223).

population, a defined territory, government, and capacity to enter into relations with other states.¹⁸ Interestingly enough in the first edition of *The Creation of States in International Law* of 1979 Crawford included two more groups of criteria - sovereignty and other criteria which are permanence, willingness and ability to obey international law, certain degree of civilization, recognition and legal order. However, in the second edition he cut that off having left the first five.¹⁹

Philip Cunliffe contributed to the discussion about the rise of state-building in modern international order. Demise of the Soviet Union and, consequently, the end of the Cold War changed the world structure and provided new opportunities for state formation and nation-building. Acknowledging the catalyst effect of the aforementioned events, Cunliffe, however, argues that state-building in contemporary diplomacy is not merely a reaction to the political reality of 1990s, but generally a reaction to the post-Westphalian era politics and its specific feature the new interventionism.²⁰ According to P.Cunliffe, the key process of this time period in the politico-legal dimension is development and consolidation of human rights. The drastic changes in the world order and international relations created a belief that strong states are no longer needed, therefore, caused a search for alternative forms of political legitimacy and ways to implement moral authority. The concept of humanitarian intervention turned out to be not as bright and positive when applied in practice – designed in way that moral imperative is put above the diplomatic consensus, in a long term it failed to provide a sustainable managerial framework and neo-liberal agenda has discredited itself. While humanitarian intervention was criticized, the shift back to state-building occurred and the notion that strong states are vital seems to be more common nowadays than in 1990s.²¹

Normally declared by the third party goals in cases of external state-building are: establishing rule of order, creation of a fairly functioning democratic government and human rights promotion. The problem is high extent of subjectivity as even within international community human rights are the issue of agenda.²² First, the same institution defines human rights and makes decisions if in this particular case the violation of rights took place and if intervention should follow as an adequate response to the fact of human rights violation. Second, political accountability and universal moral accountability are not always compatible and in certain cases the second undermines the first one. Third, it is always the powerful actor, politically, militarily and economically, that proclaims itself to be the guardian of the human rights and exercises its power de facto neglecting actual needs of those whose human rights were abused. The problem

¹⁸ James Crawford, *The Creation of States in International Law* (Clarendon Press, 1979), 46.

¹⁹ *Ibid.*, 71-74.

²⁰ Aidan Herhir, and Neil Robinson, *State-Building: Theory and Practice* (Routledge, 2007), 57.

²¹ *Ibid.*

²² *Ibid.*, 60.

is that capacity is missing in this equation - “as the content of human rights is established independently of the capacity of the subjects of those rights, this contradiction is resolved by yoking in the agency of external power.”²³ Philip Cunliffe uses a term “perversity of human rights” in regard to the NATO campaign in Yugoslavia meaning that human rights are not a universal norm in the international system and political realm but a subject of speculation, interpretation and misuse.

Ideally, the percentage of international and local actors should be balanced and the proportion - determined by the current situation as well as by the development of local socio-political institutions and organizations at particular moment. Clear distinction of roles between local and international actors is essential. However, attempts to achieve this clarity cause even more questions, first of all, an issue of ownership. According to Simon Chesterman, in regard to state-building this term is quite often used deliberately incorrectly in order to justify the means or cover up an authoritarian character of international actors’ policy in the region.²⁴ That is something the Russian Federation was accused of by the international community because of its policy in Abkhazia and South Ossetia. So, local ownership, which is supposed to be capable of a direct input into socio-political issues, is the final stage of the transitional administration. The timeframe of the transitional period, degree of international commitment and the amount of power transferred vary and generally depend on the specific case and how much power transition it demands. Under other conducive conditions open discussion and, therefore, clarification of roles division and commitment of the sides between local and international actors would help to reach the synergy in endeavor and operation of the parties by securing transparency of the power transfer processes.²⁵ Another important aspect of clarity in the state-building, pointed out by Chesterman, is recognition of the role of power and coherent policy in this regard. He argues that “the collapse of formal state structures does not necessarily create a power vacuum...rather power comes to be exercised through informal political and legal structures.”²⁶ Under these circumstances establishing truly democratic political institutions and rule of law in general is rather challenging. Therefore, it is highly important that it is stated at the formal level if sovereign or quasi-sovereign powers exercised by the international actors bear a temporary character with the time framework specified. Nevertheless, when it comes to practice, normally there is enough room for maneuver and interpretation. In any case scenario the most important matter is that the goal is achieved and the transfer of power was not a symbolic act but a real outcome of the bilateral process that resulted in an ability of the local government – either

²³ Aidan Herhir, and Neil Robinson, *State-Building: Theory and Practice* (Routledge, 2007), 60.

²⁴ Simon Chesterman, *You, the People. The United Nations, Transitional Administration, and State-Building* (Oxford University Press, 2004), 241.

²⁵ *Ibid.*, 242.

²⁶ *Ibid.*, 243.

national or municipal, to exercise its power in an effective and democratic way with the only constraint of law.²⁷

Since we are dealing with the phenomenon of nation-state building within the framework of this research, it would be reasonable to define what the term “nation” incorporates. As Karl Deutsch expressed it in an ironical way, “a nation is a group of persons united by a common error about their ancestry and a common dislike of their neighbors.”²⁸ Conceptually, there are two major theories in regard to the issue of “nation,” viz. an objective one and a subjective concept. The objective concept is represented by the German school and is named so because it is based on the assumption that nations can be distinguished by objective criteria, namely language, religion, descent, tradition etc. French school opposes it with its subjective theory, according to which, the criteria for being a nation are less solid and a notion of free will as a potential basis of a nation appears. Even though the importance of the criteria proposed by objectivists is acknowledged, subjectivism puts emphasis on the common past as a yardstick.²⁹ Individual will for establishing a nation is considered; however, this postulate is not commonly accepted as if to rely on this criterion only, every community would be able to qualify as a nation in case willing to do so.

Bart Driessen made a fairly successful attempt to reconcile both theories in his definition based on the “objectivised subjectivism” as he labeled it, adding that a nation is “a particular association of human individuals who consider themselves to be a nation on the basis of a shared religion, history, language or any other common feature.”³⁰ Driessen admits that he was not a pioneer in doing so and up to some extent the hybrid of both theories was already created by Ernest Gellner. However, Gellner focused on the issue of shared culture as a determining factor.³¹ Driessen, on the other hand, deliberately excluded this category from his definition justifying his action by saying that this notion is too vague and cannot be used by an expert in law.³² In the aspect of the ontological priority between the entities of a state and a nation he also disagrees with Gellner, who made a claim that “it is nationalism that engenders nations, and not the other way round”,³³ and concludes that historically and ontologically nations existed before a state.³⁴ It is necessary to remark that indeed Driessen did not exclude culture as he claimed, as religion, history, language etc. are actually the elements of the notion of culture, which is rather

²⁷ Simon Chesterman, *You, the People. The United Nations, Transitional Administration, and State-Building* (Oxford University Press, 2004), 243.

²⁸ Walker Connor, “Nationalism and Political Illegitimacy,” <http://easyweb.easynet.co.uk/conversi/legitimacy.pdf> (accessed 6 April 2013).

²⁹ Bart Driessen, *A Concept of Nation in International Law* (T.M.C. Asser Institute, 1992), 9-12.

³⁰ *Ibid.*, 13.

³¹ Ernest Gellner, *Nations and Nationalism* (Basil Blackwell, 1988), 7.

³² Bart Driessen, *A Concept of Nation in International Law* (T.M.C. Asser Institute, 1992), 14.

³³ Ernest Gellner, *Nations and Nationalism* (Basil Blackwell, 1988), 35.

³⁴ Bart Driessen, *A Concept of Nation in International Law* (T.M.C. Asser Institute, 1992), 15.

constructed than pre-given. In fact what Driessen did is eliminating a term that is too broad to be defined precisely; however, since he allowed the components of “culture” to be there, the notion is still present in his definition. Bearing in mind this peculiarity we would accept Driessen’s interpretation of the term “nation” as a working definition for this research.

Another term that would be used excessively is a “people”. In international law there is an important distinction between a “nation” and a “people”. Thus, using legal language a people is “the permanently residing population of a territory with an internationally legal status.”³⁵ These two concepts are rather close and there are a number of cases when they overlap; however, not necessarily every people is a nation. A nation is a more phenomenon of another level, more sophisticated in some sense, as it always bears a political hue. A nation implies notions of a state, a structure, a legal system, administration and rules.

The nation-land relationship is one of the most complex and controversial issues in international law. Sovereignty is exercised over land, which the sovereign rights over its inhabitants are derived from. So, the land is determinant to the people. Driessen argues that it should be the other way round.³⁶

Regarding Abkhazia, we attempt to estimate its sovereignty level – to find out how far it goes *de facto* and if *de jure* sovereignty might be achieved indeed in this particular study case. Considering the stated earlier differences between a nation and a people, we suggest that the Abkhazian multi-ethnic population can be defined as a nation; therefore, one can contest pros and cons of the right of the Abkhazian nation to exercise sovereignty over the given land. In the next chapter we explore what regulations and legal limits on state formation there are in international law, and how the Abkhazian case might be interpreted from different perspectives.

³⁵ Bart Driessen, *A Concept of Nation in International Law* (T.M.C. Asser Institute, 1992), 17.

³⁶ *Ibid.*

II. International Legal Framework

1. International Law and Modern State Formation

There are several theories of state formation and international law relation, where some of them declare the opposite to each other. However, the declaratory and constitutive concepts are the most significant ones. Thus, the major claim of the constitutive theory is that rights and duties in regard to statehood are derived from the recognition by other states, but according to the declaratory theory, statehood as a legal status is independent of recognition.³⁷ So, according to the declaratory theory, state recognition is the mere acknowledgement of a new state coming into existence and readiness to start relations with the new entity which, however, forecloses any discretionary consideration from the recognizing state.³⁸ The constitutive theory, on the other hand, focuses on perception of a new entity by existing states. The correct aspect of the constitutive paradigm, as it has been proven in practice multiple times, is that there is no notice of the entity on the international level and no legal relations with existing states are possible before official recognition, although international law does not assert that a state does not exist before being recognized by other existing states.³⁹

James Crawford rightfully criticized both concepts, as the first one pays very little attention to the legal principle and neglects the power of law, assuming that emergence of a state is merely the matter of fact, and the second theory is limited because of its too formal approach that disables it to go on a general level of universal principles.⁴⁰ Both theories are imperfect and there have been numerous disputes on which of them is more legitimate. However, despite the disadvantages of the declaratory theory, it seems to be more logical and coherent in comparison to the constitutive approach, which is absolutely relevant and does not consider the possibility of illegal recognition. Nevertheless, within this study both concepts would be applied since international recognition that the constitutive theory relies on is an important political act which determines international relations and ways in which states treat each other. In this regard we would disagree with Crawford that combining both methods is possible on the superficial level only, and when it comes to making a decision on the fundamental level, the choice in favor of one of the theories must be done.⁴¹ Indeed the choice is being done after consideration of the specific and often unique combination of factors in a particular case and the fact that the

³⁷ James Crawford, *The Creation of States in International Law* (Clarendon Press, 2006), 4.

³⁸ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 272-273.

³⁹ *Ibid.*, 273.

⁴⁰ James Crawford, *The Creation of States in International Law* (Clarendon Press, 2006), 5.

⁴¹ *Ibid.*, 27.

outcome of the deliberation process fits better into one theory than the other, does not mean that the better suiting theory was taken as the only methodological tool.

International law was established to introduce certain regulations in the relations of states so that there are rules on the international scale that the actors have to be aware of and respect. However, there is no such an entity as “international government.” Even though the United Nations Security Council has enforcement powers, it has no real governing authority, and neither the General Assembly is legislature. Hence, the basis for the public international law is agreement between the states.⁴² Although there is a legal source for the international law in a form of treaties or international custom, the key for the well functioning international system is the consent of states which accordingly means that there must be a high level of willingness to cooperate. As Lee Buchheit correctly points out, in a strict sense international law is “inter-state” law indeed, which recognizes sovereign states as its subject.⁴³

Despite its conservatism, the system of international law was established with the implied notion that the states are not stable. This acknowledged changeability with time made it necessary to make a distinction between state continuity and state succession which might be arbitrary in certain cases.⁴⁴ Secession, according to Marcelo G. Kohen, is “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.”⁴⁵ Also the scholar adds that formation of a new independent state to detriment of a previous sovereign entity undermines the core of the international community and “challenges the very foundations of its main actors.”⁴⁶

In the eighteenth and nineteenth centuries new states – European colonies in both Americas – came into existence not under the regulations of the international law and not as a result of right to independence and self-determination which were still not defined at that time. The concept of decolonization was not invented yet, the new states emerged through the secession process regardless to the existing legal framework and the fact that they were recognized was the basis for their existence as independent states.

Peoples were granted with the right of self-determination after the World War II from the inception of the United Nations epoch. That was a very important innovation in international law – for the first time communities defined as “peoples” were given a right to create their own state. The process of decolonization was launched massively as a consequence of self-determination right. However, secession remained as another way of state formation.⁴⁷ The act of secession can

⁴² Elizabeth Chadwick, *Self-Determination in the Post-9/11 Era* (Routledge, 2011), xv.

⁴³ Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* (Yale University Press, 1978), 31-32.

⁴⁴ James Crawford, *The Creation of States in International Law* (Clarendon Press, 2006), 667.

⁴⁵ Marcelo G. Kohen, *Secession: International Law Perspectives* (Cambridge University Press, 2006), 3.

⁴⁶ *Ibid.*, 1.

⁴⁷ *Ibid.*

be seen as a part of nation-building process. Yet the community might be not even recognized as a people and, therefore, have no potential to become a nation. As Hobsbawm expressed it, “The “nation” as conceived by nationalism, can be recognized prospectively; the real “nation” can only be recognized a posteriori.”⁴⁸

As it was mentioned previously, the end of the Cold War caused new secessionist aspirations. At a first glance, there is a certain contradiction as a decade earlier inception of the globalization era occurred, a process of integration that implies creation of a global space for international actors. However, this combination of processes is not necessarily that controversial since these two developments complement each other, as what was happening is that the states started losing their competences and the power in its traditional sense – having it shifted either to the top (supranational level) or to the bottom as a result of decentralization.⁴⁹

Perceiving territorial integrity as the main priority, logically enough states do not favor the concept of secession and prefer to avoid the term substituting it by “separation of part of a state,” even though secessionist cases are supposed to be regulated by international law. Traditionally the creation of states was understood as a matter of fact where international law is rather limited in having an impact on the process. This underestimation of the role of international law led to a situation when scholars are concerned more about recognition, namely attitude and perception of the countries and international community to the fact of new entity willing to be independent, rather than about providing legal theories for the emergence of the new states. Hence, after the Cold War international law remained “neutral” to the secession movements and a number of states did not benefit from it as it did not provide a legal basis for creation of a new state, even though neither it implemented any sanctions. Thus, the countries, that continued the process of decolonization could use the international legal system and find justification for their initiatives there, while the states that represented secessionist cases could not. According to the common point of view at that time, secessionist movements are an internal affair, unless under foreign control, in case of their success the international legal system was simply recording the fact of the emergence of a new entity.

The status of the disputed territory serves as a distinguishing aspect between the cases when international law provides legal justification for the new sovereign state emergence (disputed territories had an international status e.g. territories placed by international organizations under the sovereignty of an existing state, trusteeships, former mandates) and when it does not (when there is detriment of the independent state’s territory).⁵⁰ Moreover, there are also cases of agreed unification, dissolution and devolution that normally can be solved in a peaceful way and do not

⁴⁸ Eric Hobsbawm, *Nations and Nationalism since 1780* (Cambridge University Press, 1992), 9.

⁴⁹ Marcelo G. Kohen, *Secession: International Law Perspectives* (Cambridge University Press, 2006), 2.

⁵⁰ *Ibid.*, 5.

cause problems and insurmountable obstacles. Secession, however, does by its definition, therefore, it is a serious issue and problem from the legal framework perspective. Respect of the territorial integrity principle, which is “the decision on a political fate of a territorial unit must respect the indivisible unity of that territory,”⁵¹ is the priority for the states which follows from the recognition of their equal sovereign character.⁵²

Furthermore, potential tensions between national interests of other individual states that are involved in the matter and a concern to preserve the existing international system which might get destabilized and, therefore, weaken the international security, complicate the issue. There is a major difference and a conceptual gap between regulations that allow or do not allow granting a political community with statehood and the fact that this decision – positive or negative – benefits interests of other states. The first one is not always superior to the second as it can be used as a tool because of the vagueness of international law leaves this opportunity. In order to understand the legal basis of international principles of nation-state building, we would need to explore the concept of self-determination and the right of secession as the particular case of it.

2. The Principles of Self-Determination and Secession Right

As a liberal idea of international justice self-determination relies on the classic liberal premise that humans are capable of rational thinking and acting, consequently, people should be allowed to organize their individual and collective lives the way they consider to be the most beneficial as they are in the position to make the best decision.⁵³

Classical self-determination can be defined as a search for full independence and sovereignty by a community with the result to redraw international boundaries at the expense of the existing state.⁵⁴ It is both a principle of international law and a rule.⁵⁵ Advertised and praised by Woodrow Wilson the concept itself is actually derived from the French and American Revolutions. However, it has gained popularity and was internationally “recognized” after the World War II, when the ideas of human rights were developed and the new world order was established. There are two dimensions of self-determination: internal (within the state, the right of secession is excluded) and external (right for sovereignty and external relations, including secession).

⁵¹ Bart Driessen, *A Concept of Nation in International Law* (T.M.C. Asser Institute, 1992), 67.

⁵² Marcelo G. Kohen, *Secession: International Law Perspectives* (Cambridge University Press, 2006), 6.

⁵³ Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford University Press, 2010), 9.

⁵⁴ Wolfgang Danspeckgruber, *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World* (Lynne Rienner Publishers, Inc., 2002), 3.

⁵⁵ Karen Knop, *Diversity and Self-Determination in the International Law* (Cambridge University Press, 2002), 32.

Chronologically the first one was recognized earlier as that is how W. Wilson was defining self-determination originally – the right of every people to select the form of government.⁵⁶ Nevertheless, as the World War I went on, Wilson considered the “external” element as well.⁵⁷ The reason why Woodrow Wilson has changed his opinion so drastically might be that he found himself in a political isolation as his proposals of federalizing the political structure and granting peoples with territorial autonomy did not find support amongst international allies of the USA – France and Great Britain. Frustrated by the dodges used by the empires to avoid implementation of self-determination in their colonies, Wilson came to a new understanding of self-determination in its external sense – from the idea of federalizing empires he moved to a notion of deconstructing them and creating new nation-states instead.⁵⁸ On the other hand, as Joshua Castellino remarks, it is crucially important to keep in mind that while the concept of internal self-determination has not made a significant shift in its meaning throughout the time, for external self-determination it was the other way round. Whereas the modern concept refers primarily to the process and ability of a secessionist group to break away from the authority that does not represent the group and get an entry into the international community, previous interpretation focus purely on legitimacy of the government of a state in the international system.⁵⁹ Marc Weller argues that this kind of division is rather controversial due to its dubious assumption that self-determination is a right of no-continuous nature that could not be applied equally in all cases that refer to the interrelation of identity, state and power structure.⁶⁰

Bart Driessen, like some other scholars, objects against this division saying that the internal self-determination is actually “nothing more than a camouflaged aspect of sovereignty, or its mirror-image non-intervention” and it adds nothing to the general concept of self-determination unlike the notion of external self-determination which is the quintessence of the theory that means a right against the metropolitan state.⁶¹ However, making this distinction is logically coherent and legally justifiable. Furthermore, it is important to consider that this distinction is rather formal and it takes place just to indicate the difference between the right of a people to choose its political future and the right to choose its socio-political system within a state on a given territory, where the first one is much broader than the second. Also, the case of Abkhazia which is the focus of this research would confirm the validity of the classification suggested.

⁵⁶ Michla Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (Martinus Nijhoff Publishers, 1982), 1.

⁵⁷ Antonio Cassese, *Self-Determination of Peoples: a Legal Reappraisal*, (Cambridge University Press, 1995), 19.

⁵⁸ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 263.

⁵⁹ Joshua Castellino, *International Law and Self-Determination: the Interplay of the Politics of Territorial Possession with Formulation of Post-Colonial 'National' Identity* (Martinus Nijhoff Publishers, 2010), 14.

⁶⁰ Marc Weller, *Escaping the Self-Determination Trap*, (Martinus Nijhoff Publishers), 23.

⁶¹ Bart Driessen, *A Concept of Nation in International Law*, (T.M.C. Asser Institute, 1992), 49.

Woodrow Wilson believed that the correct implementation of the self-determination principle would minimize the risk of renewed conflict; he underestimated the probability of negative consequences and was naively optimistic about his theory.⁶² Despite the fact that in Wilson's times the idea of self-determination was still under construction and, consequently, it did not play any significant role in reshaping the European map, its connection to the notion of independence and the possible chaos it would surely create made the leaders be concerned and worried about this issue.⁶³ Fairly soon history has shown that they had legitimate reasons to be worried.

After the World War I that caused demise of the colonial world order the German idea of nationalism from the eighteenth century, according to which every ethnic nation has a right to have its state, was rather influential and affected the statecraft process in Europe. However, this concept was not that powerful anymore after World War II when international law underwent radical changes and self-determination primarily meant decolonization.⁶⁴

Establishing the principle of self-determination raised a crucially important question about who actually qualifies to use this right and what are the limits. According to Wilson, there are three elements to be considered, namely, a territorial area, a race, and a community.⁶⁵ Nowadays the element of race would not be considered applicable as this element was replaced by national identity. Margaret Moore tried to answer three big questions that, according to her, are immediately derived from the notion of national self-determination - first, who the people are; second, what the relevant territorial unit in which they should exercise self-determination is; third, if secession has a demonstration effect.⁶⁶ There are ethnic and civic meanings of the term "people". The first one goes back to Woodrow Wilson and "Fourteen Points" speech, perceives a nation in ethnic terms while the latest refers to it as multi-ethnic group of people bound culturally and historically where the majority can exercise the self-determination right. The answer to the second question logically follows from the answer to the first one. Thus, in case of Wilsonian approach the ethnic identity defines where the boundaries should be, while, according to the civic approach to people as majorities, the territories are determined by who counts as people. This dual interpretation leaves room for a potential conflict, as "the principle of national self-determination is unproblematic only in the ideal case that the administrative boundary coincides with the ethnic and national group; the group is territorially concentrated, with no

⁶² Antonio Cassese, *Self-Determination of Peoples: a Legal Reappraisal*, (Cambridge University Press, 1995), 20.

⁶³ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 264.

⁶⁴ Karen Knop, *Diversity and Self-Determination in the International Law* (Cambridge University Press, 2002), 168.

⁶⁵ Michla Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (Martinus Nijhoff Publishers, 1982), 2.

⁶⁶ Margaret Moor, *National Self-Determination and Secession* (Oxford University Press, 1998), 2.

significant minorities; and the members of the groups are strongly mobilized in favor of self-determination.”⁶⁷

According to Danspeckgruber, the process of obtaining greater self-determination has to be understood in four dimensions: vertical, horizontal, bilateral, and internal.⁶⁸ The uniqueness of each entity represented by a community with its specific history, culture, location and socio-psychological aspects makes it difficult to make general conclusions where all cases are supposed to fit in; thus, Danspeckgruber believes no common rule can be applied to the formally similar cases. Even though from legal point of view this premise is not substantial, this approach became rather common in the international practice after the end of the Cold War. The reasons for this phenomenon are, first, a large number of nations, which escaped from the Soviet oppression and simultaneously started a search for their identity and new position in the international system; second, as a positive right self-determination cannot be universal and its application in practice is selective. Initially self-determination right, as a feature of the relationship between international society and political community, was classified as a negative right, i.e. a claim of a subject to be able to pursue its concerns without interference of a third party.⁶⁹ However, later the interpretation was reconsidered and the approach was changed into seeing self-determination as a positive right which caused a lot of skepticism already after the World War II as it meant that self-determination is an inalienable right of a people and entitlement to its provision is a prerequisite for the nation’s well-being.

Referring to James Crawford’s “*Creation of States*” Karen Knop claims that self-determination implies three major principles that are combined together – political principle, legal principle, and legal right, where the first one is a general and rather vague idea while the second one and the third do have a well-defined “core of clear meaning” with a difference in determinacy of the subject, e.g. the definition of a “people.”⁷⁰

After the Cold War with the demise of the Soviet Union the whole structure of the international system got destabilized, the notion of self-determination became wide-spread and struggle for autonomy and secession led to massive destructions and anti-human actions in the world. The objective of self-determination struggle does not change because of the character of the conflict – if it is done in non-violence terms through political negotiation only, or by military means. The goal remains the same – applying the self-determination right in practice, to form an effective

⁶⁷ Margaret Moor, *National Self-Determination and Secession* (Oxford University Press, 1998), 3.

⁶⁸ Wolfgang Danspeckgruber, *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World* (Lynne Rienner Publishers, Inc., 2002), 196.

⁶⁹ Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford University Press, 2010), 10.

⁷⁰ Karen Knop, *Diversity and Self-Determination in the International Law* (Cambridge University Press, 2002), 33.

and legitimate authority over the claimed population on a given territory.⁷¹ Wolfgang Danspeckgruber even names the drive for self-determination as a “one of the major causes of the world’s humanitarian crisis in the post-Cold War era”.⁷² The definition of “self” that is the element determining the political and cultural development of the group of people is not that clear. Besides the problem of a possible contradiction between the individual and collective “self”, there was a notion that unlike for peoples who have been under a colonial rule where the principle of self-determination can be applied in a straight-forward way, the entity is a part of non-colonial “self” that possesses a territorial integrity.⁷³ The democratic theory proposes a rather elegant solution for this contradiction. Thus, according to the democratic theory on political self-determination, adults have the right of personal self-determination and, consequently, freedom of association with other willing parties. Self-determination of a group is derived from personal right of self-determination and the right of a territorial community on the land they inhabit.⁷⁴ Another crucial aspect is that because of globalization and integration the world is drifting away from the nation-state organizational systems to a more flexible and uncertain structure where the issues of sovereignty and frontiers are getting vaguer and the power shifts both up and down. Recognizing the growing role of democracy and human rights, the self-determination concept was designed to provide a legal basis for state formation, allowing oppressed minorities to establish a political autonomy for their socio-cultural autonomy. The quintessence of the idea is to secure possibilities for discrimination avoidance and identity search in a broader political sense. However, in the modern world that is getting highly integrated and decentralized at the same time there might be various interpretations (and misinterpretations) of the idea of self-determination.

Danspeckgruber recognizes a clash of fundamental principles in the world order. According to him it lies in the contradiction between geopolitical norms and actually geopolitics.⁷⁵ It is just and morally correct if all peoples have equal rights to have the benefit of statehood but, on the other hand, further fragmentation of states aggravates or even undermines international security and might decrease efficiency of the world order. The arguments are debatable; however, it is also true that the existing political framework is designed for a specific organizational system of the world with a certain amount of states in it. Even though the number might be not clearly defined, fragmentation of existing states must have its limits in order not to break the existing

⁷¹ Kamal S. Shehadi, *Ethnic Self-Determination and the Break-up of States* (Brassey’s Ltd., 1993), 40.

⁷² Wolfgang Danspeckgruber, *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World* (Lynne Rienner Publishers, Inc., 2002), 1.

⁷³ Michla Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (Martinus Nijhoff Publishers, 1982), 15.

⁷⁴ Percy B. Lehning, *Theories of Secession* (Routledge, 1998), 39.

⁷⁵ Wolfgang Danspeckgruber, *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World* (Lynne Rienner Publishers, Inc., 2002), 31.

system. Moreover, in some cases satisfying one people's claim for self-determination means denying it to another people which the first one happened to be in conflict with. Judgment and resolution-making are often arbitrary and based on national and geopolitical interests rather than on universal moral values and general principles of international law. Also it is hard to speak about universality in this regard as the combination of legal, social, political, ethnical, cultural and other aspects is very complex and the balance between them is unstable, consequently, each case is rather unique and the resolution how to deal with it up to a large extent would depend on the applied approach and chosen focus. Under these circumstances the international community prefers encouraging peoples to search for compromises and look for solution of a conflict within the pre-given framework. However, it is not always possible.⁷⁶ The basis of the international community structure, which is consent, lacks stability.⁷⁷

It might be true to say that the most commonly referred to example of the self-determination and secession issues in the recent history of Europe is Yugoslavia. Among numerous diverse and controversial aspects there is the issue of the European Union Arbitration Commission Opinion No. 2 on Yugoslavia that "the right of self-determination of peoples could never justify changes to the frontiers existing at the times of independence."⁷⁸ So, when in 1992 the Republic of Serbia raised a question about the right of self-determination of the Serbian population in Bosnia-Herzegovina and Croatia, the Arbitration commission stated that in case of ethnic Serbians in Croatia and Bosnia-Herzegovina the self-determination right does not imply any change of borders, unless it is mutually agreed by the parties. The Arbitration Commission Opinion No. 2 was followed by the Opinion No. 3 that elaborated on the previous statement proclaiming that "the stability of borders was a general principle of international law and, as applied to Yugoslavia, transformed the internal borders between republics under the old Socialist Federal Republic of Yugoslavia into the international boundaries of the new state."⁷⁹ Thus, the Arbitration Commission emphasized that the international law remains being conservative in order to avoid destabilization and minimize uncertainty in the world. In other words, in this case self-determination cannot prevail over the state's territorial integrity and the right of self-determination should be exercised in the framework of its narrow interpretation as rights of minorities within a state. So, the Serbian population in Bosnia-Herzegovina and Croatia was legally entitled to the minority rights within the states with a right to search for and choose their identity or community they want to belong to based on the ethnic background beyond the state

⁷⁶ Wolfgang Danspeckgruber, *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World* (Lynne Rienner Publishers, Inc., 2002), 32.

⁷⁷ Gidon Gottlieb, *Nation Against State: a New Approach to Ethnic Conflicts and the Decline of Sovereignty* (Council on Foreign Relations Press, 1993), 20.

⁷⁸ Karen Knop, *Diversity and Self-Determination in the International Law* (Cambridge University Press, 2002), 169.

⁷⁹ *Ibid.*, 171.

they settle in. Considering highly unstable times for the Balkan states in nineties and dubious outcome of self-determination processes in Yugoslavia, the EU Arbitration Commission Opinions expressed on the conferences on Yugoslavia sound both repetitive and ambiguous. On the other hand, the European Union encouraged Bosnia-Herzegovina and Croatia to provide the minorities, including Serbs, with the right of self-determination within the state in various forms, namely, democratic government, diversity and non-discrimination policies, support and promotion of cultures and languages etc. From the European Union perspective an ability and will to provide its minorities with extensive minority rights were the crucially important conditions for the recognition of the new sovereignty-seeking Yugoslav states. Hence, the EU Declaration on Yugoslavia required every Yugoslav republic that was claiming for independence to sign the European Commission Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, expecting them to obey the rules and commitments of the UN Charter, the Charter of Paris and the Final Act of Helsinki and respect human rights and other democratic values.⁸⁰ Nevertheless, there is a certain contradiction that the Serbian population was not recognized as “peoples” and, therefore, could not be granted with a right of self-determination in a sense of establishing its own statehood on the given territory, but as a minority.

The complexity in peacemaking is that a number of other principles should be considered that sometimes conflict with the demands of the self-determination principle – this common problem was experienced already by the “godfather” of the self-determination right W.Wilson.⁸¹ Maintaining peace and military conflict prevention would always be prerogative to self-determination right as the first one has larger destructive capacity.

Despite the mainstream in humanitarian thought, some scholars do not even perceive the self-determination principle in a positive way. Danspeckgruber is fairly negative about self-determination right application: “Ruthless leadership and commercial interests, combined with an increasingly global interaction among organized-crime networks and easier access to weapons of mass-destruction, have made self-determination crisis much more dangerous, costly, and difficult to manage.”⁸² Also, there is polemics about which “self” should be primarily “determined,” and national self-determination principle was criticized for putting collective rights over innate individual human rights that creates a theoretical possibility of violating the second for sake of the first ones.⁸³

⁸⁰ Karen Knop, *Diversity and Self-Determination in the International Law* (Cambridge University Press, 2002), 173.

⁸¹ Michla Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (Martinus Nijhoff Publishers, 1982), 4.

⁸² Wolfgang Danspeckgruber, *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World* (Lynne Rienner Publishers, Inc., 2002), 1.

⁸³ Kamal S. Shehadi, *Ethnic Self-Determination and the Break-up of States* (Brassey's Ltd., 1993), 9.

Elizabeth Chadwick believes that the reason why the UN failed to bring clarity into the Charter right of self-determination is that this lack of clarity allows “rights incorporations” within the principle of self-determination. She states it in the following way: “The post-1945 international order may have formalized the existence of a principle of self-determination, but that principle has remained little more than the poor relation of an individually focused human rights paradigm.”⁸⁴ Another problematic aspect Chadwick points out is a formal approach to equal state sovereignty that is stated on paper and has little relation to the reality. Incorporating international obligations and recommended regulations into domestic laws is the responsibility and authority of the sovereign states; therefore, the states are free to interpret the concepts of equal and unequal sovereignty in the way that satisfies their interests at most. According to her, states favor individual human rights over group ones.⁸⁵ Not all researches in the field would agree with her but there is certain consensus on the issue of contradiction in some sense and even incompatibility in specific cases of the individual and collective self-determination rights. Chadwick critically evaluated the fact that international law is not used as a “legal yardstick” in similar domestic and international matters. However, international law is not that precise either and it leaves enough room for speculation. Cases of self-determination right implication depend on the political reality and, in the spirit of the constitutive approach, are rather often determined by the interpretation of the case by the international community.

G. Gottlieb offers an approach to dealing with ethnic and national conflicts that he calls “states plus nations.”⁸⁶ He claims that the advantage of this concept is that this approach provides alternative solutions by combining two traditionally conflicting strategies: territorial or statehood and juridical that focuses on human and minority rights. Moreover, the notion of sovereignty is reconsidered within this theory. This approach implies a number of other concepts from political science and international relations fields, viz. status, competence (the deconstruction of the sovereignty of a state and, consequently, redistribution of power), borders, citizenship and form of association.⁸⁷ Also, he brings in the idea of the “national home distinct from state” which he explains as recognition of the fatherland or national home which a nation is aware of. This notion appears because rather often state boundaries do not correspond the geographic limits of the “national home”. Gottlieb’s claim about necessity of reconsidering the notion of sovereignty seems to be not solely relevant to the research but also deserving a separate chapter, therefore, we will return to this issue specifically.

⁸⁴ Elizabeth Chadwick, *Self-Determination in the Post-9/11 Era* (Routledge, 2011), 136.

⁸⁵ *Ibid.*, 138.

⁸⁶ Gidon Gottlieb, *Nation Against State: a New Approach to Ethnic Conflicts and the Decline of Sovereignty*, (Council on Foreign Relations Press, 1993), 3.

⁸⁷ *Ibid.*, 4.

There are two major political theories on secession, one of which is divided into two sub-theories: liberal and communitarian, where the liberal approach has a more permissive and a less permissive branch.⁸⁸ The communitarian argument for secession is based on the notion of real community (versus imagined community by B.Anderson⁸⁹) which is a group of people with its specific communal character that is, first, derived from shared political institutions and not shared history, ethnicity or traditions, and second, has civic nationalism as a core foundation of its identity. Scholars of the more permissive branch of the liberal theory argue that a group of people that perceives themselves as an entity with its specific culture, traditions etc. has a right to secede; furthermore, secession can be done in a unilateral way.⁹⁰ So, in this interpretation the right of secession is embedded in a theory of a moral right of self-determination and should inevitably follow from the liberal-democratic principles. The less permissive approach also brings arguments for secession; however, it is being acknowledged that the right of secession and cultural preservation is restricted. An independence-seeking entity should provide valid reasons and strong justification in order to get independence. Thus, generally there is a moral presumption in favor of state integrity and maintaining existing borders, but a political community cannot be denied of secession under certain conditions, e.g. exploitation by the dominating ethnic, political or other group, threat of extermination and/or cultural extinction, discrimination etc.⁹¹ We would argue that both the communitarian approach and the less permissive liberal branch are valid and have important issues as their focus; however, each of the theories does not cover the whole spectrum of the problem. However, when combined together, they allow analyzing a case in its complexity from multiple dimensions. We would exclude the permissive liberal theory and not consider it to be applicable to political reality for several reasons: first, preservation of cultural identity can be successfully accomplished within a parent state and it cannot grant a community with the right of secession automatically; second, self-determination does not equal secession as the latter is a specific case of the first concept; third, this approach is rather unrealistic as it would lead to unlimited state fragmentation in the world which is not a plausible outcome. After having analyzed the case of Abkhazia and evaluating capacities of the independence-seeking state we would find out if any of the aforementioned theories can justify Abkhazian claims for sovereignty.

In fact, there are much more approaches to, theories and sub-theories about the right of secession, and their classification can get very complex and detailed if to consider them all. However, many of them either overlap, or partially repeat each other. Another possible

⁸⁸ Percy B. Lehning, *Theories of Secession* (Routledge, 1998), 2.

⁸⁹ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso, 2006), 6.

⁹⁰ Percy B. Lehning, *Theories of Secession* (Routledge, 1998), 3.

⁹¹ *Ibid.*, 3.

complication is that some approaches are fully applicable only to an ideal-model situation. For instance, there is a classification of theories based on whether the secession right is a primary or a remedial right only. All concepts, according to which a political community can be granted with a secession right, fall into the first category, while the second one is represented by so-called ascriptive and associative theories, where “ascriptive” is another term for theories referring to common descent, language, history and culture and “associative” – for concepts that focus on non-ethnic features and on the voluntary political choice.⁹² However, first, only general right to secede is considered, but there is also a phenomenon of a special secession right; second, this theory classification would barely fit into the post-Cold War reality as this period introduced a notion of exceptional cases and conditional state recognition. Meanwhile, some scholars argue that there is no right of secession as such, for instance, Peter Hilpold supports an opinion that, even though secession is not forbidden, there is no actual right of secession.⁹³ It is correct considering the state-centric nature of international law and, consequently, the fact that if a right of an entity to secede is included in the state constitution, the principle of territorial integrity is automatically undermined; however, as secession is a case of external self-determination right, then there is such right as an element of phenomenon of self-determination right.

The biggest issue of the liberal theory in this regard is how to bring the collective and the individual together. Strictly speaking, liberalism has a precise focus on individual rights and freedoms; however, in regard to secession from a parent state and self-determination of people, individual autonomy is not the only priority while in those matters collective rights step in. Individual and collective “selves” do not necessarily collide but they might be incompatible in some sense. Classical liberalism proposes a way to reconcile them by perceiving social justice as a key so that, firstly, individual autonomy as an important value that should be protected by a just society, secondly, secession can take place but only in case it is proved to be necessary for sake of social justice.⁹⁴

Following the liberal view on secession, six major conditions might justify denial of secession. So, in a liberal view it seems to be legitimate not to grant a political community with sovereignty in the following cases: the independence-seeking group is not large sufficiently; an enclave would be created by the secession of the territory; the territory occupied by the community has a vital interest for the parent state; the share of economic resources concentrated on the territory wishing to secede is high and remarkably disproportional to amount of resources the state has. Moreover, there are two requirements regarding the relationship of the secessionist community

⁹² Percy B. Lehning, *Theories of Secession* (Routledge, 1998), 230-235.

⁹³ Peter Hilpold, *Das Selbstbestimmungsrecht der Völker. Vom umstrittenen Prinzip zum vieldeutigen Recht?* (Peter Lang, 2009), 19.

⁹⁴ Percy B. Lehning, *Theories of Secession* (Routledge, 1998), 20.

and the subgroups on the territory, namely, the separatist group should be able and willing to allow the subgroups within it to succeed under legitimate conditions if they would express their will to secede, and there should be no intention to oppress or exploit a subgroup that cannot succeed. No secession can be permitted in case these requirements are not met.⁹⁵

Formally the UN supports the right of self-determination which was multiply stated in its documents. Thus, all peoples have the right of self-determination, according to Resolution 1514.⁹⁶ However, apparently there should be reasonable limits to this self-determination and while the UN promotes this right and encourages states to exercise it, there are often objections of the Security Council and multiple legal obstacles that automatically follow when self-determination requires seceding in a particular case. The former UN Secretary-General Boutros Boutros-Ghali stated the problem very precisely: “If every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation.”⁹⁷ On the other hand, whereas the UN has repeatedly stated that self-determination is the right of peoples, as it is declared in the UN Charter, self-determination was recognized as a human right by the two international human rights Covenants.⁹⁸

Besides creating a potential threat to the existing political world order and security of other states, there are other difficulties that might follow from the self-determination right. One of the most important limitations of the self-determination right is protection of the rights of the others, primarily the self-determination right of the others.⁹⁹ Another limitation is the aforementioned principle of territorial integrity, which is in other words protection of the rights of the whole community of the relevant state through controlling the ways and extent till which a group can exercise its right of external self-determination. Considering the aforementioned polemic and limitations of self-determinations, one can get an impression of how controversial the issue of state formation might be. Also, nowadays recognition of states has a character that is rather selective than universal, as it is not just legal procedures and international law regulations that matter but the current state of affairs in international relations which in some cases is the decisive power. For this and other reasons for Abkhazia the notion of recognition was and continues to be a stumbling stone. Hence, we would proceed to the concept of state recognition in the next chapter.

⁹⁵ Percy B. Lehning, *Theories of Secession* (Routledge, 1998), 20-21.

⁹⁶ Surya P. Sharma, *Territorial Acquisition, Disputes and International Law* (Martinus Nijhoff Publishers, 1997), 222.

⁹⁷ Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford University Press, 2010), 219.

⁹⁸ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 27.

⁹⁹ *Ibid.*, 33.

3. Recognition of States

Recognition of new states is a complex issue with numerous aspects and perspectives involved; however, the conclusion made as a result of the process is rather straight-forward – a self-determination demanding entity is either recognized or it is not. Bringing in the notions of a *de facto* state and limited recognition helps to avoid binary reasoning as in this case the variety of possibilities is expanded to a range from “non-recognized state” to “*de facto* recognized” one to “*de jure* recognized” state. However, an attempt to create this classification with different degrees of statehood neither solves the problem, nor brings clarity. Due to the lack of consensus on the definitions of the terms and criteria in each of the cases, those intentions did not succeed and, even though partial recognition and *de facto* state remained in the political discourse, in international relations the concept was mostly narrowed down back to the recognized-unrecognized states division.¹⁰⁰

When a new political entity is going through a recognition process, there two objects of recognition, namely, a state and a government, and both are equally important for the successful outcome. The term “state” refers to “a political community that has achieved self-governance,” while “government” – to the “apparatus that maintains a monopoly on the legitimate use of force within the bounds of the state.”¹⁰¹ There is a double-sided relationship between the two entities: functioning ruling apparatus is a prerequisite for the state’s existence and, *visa versa*, a discrete political community is required to establish a government. Thus, a state and a government are like two sides of a coin that can and should be distinguished as they represent different matters, yet cannot exist without each other. Brad Roth, nevertheless, argues with this commonly accepted position by saying that statehood is always a normative fact and not empirical – its legal status is not affected in the same way as a government is.¹⁰² Unlike international political relations, legal relations are bound with a state, not with a government. So, Roth argues that this commonly repeated statement about double binding is false and the government does not define the state but the other way round: “...although a state is a political community whose existence is tied to existing, remembered and foreseen patterns of governance within it, its existence is conceptually independent of and precedent to that of the particular government that purports to rule it.”¹⁰³

Although the United Nations Charter requires multi-ethnic states to promote cultural diversity, provide equality, nondiscrimination and necessary conditions for development of different ethnic

¹⁰⁰ Peterson M.J., *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995* (Ipswich, 1997), 100.

¹⁰¹ Brad R. Roth, *Governmental Illegitimacy in International Law* (Clarendon Press, 1999), 129.

¹⁰² *Ibid.*, 130.

¹⁰³ *Ibid.*, 132.

groups, it still focuses on the territorial integrity and political independence of the existing states, even though classical federalism concept has a number of limitations in terms of self-determination right when it is applied in practice.¹⁰⁴ However, if an inception of a new state is more a political than legal issue, then, according to Edward McWhinney, legal rules and procedures are not directly derived from the law; therefore, the political reality is formed by the decision-makers that normally act out of their interests and simply refer to the carefully chosen statements of international agreements or acts of international peace conferences that could justify the act giving the case some legitimation.¹⁰⁵

In an attempt to bring some organization and order into the issue with of state creation that has a high destabilizing potential *a priori*, rules of state recognition were established in general international law. And again, this process lies in a two-dimensional space as there are internal and external dimensions to be considered.¹⁰⁶ The internal one refers to effectiveness of the governmental authority over given territory of a newly emerged state and degree of power centralization. The focus of the external dimension is on independence of the new entity from the parent state and other external authorities, so that the authority of the new state is exclusive on its territory.¹⁰⁷ Each of the dimensions has a number of specific rules.

Necessity to decide, which territorial entity that claims for sovereignty should be recognized as an independent state and which one not, brings about a set of criteria in accordance with which a decision-making process should go. Albeit agreeing on general terms does not seem to be a challenge, it becomes one indeed when it comes to defining specific rules, including optional criteria.¹⁰⁸ Obviously, lack of common criteria would lead to a situation when states are encouraged to apply different criteria at different time and in regard to similar cases they do not perceive as if they were alike because the impact on their national interests is not the same. Regarding this matter there is a debate between two schools. The first position is that lack of duty to recognize allows states to use additional criteria. Scholars who support the second view promote the idea of a duty to avoid recognizing states that failed to meet the extra criteria.¹⁰⁹

So, the basic criteria for statehood are well-defined and predominantly agreed on - they are a defined territory, a permanent population, a fairly effective government, a capacity to enter into

¹⁰⁴ Edward Q.C. McWhinney, *Self-Determination of Peoples and Plural-ethnic States in Contemporary International Law: Failed States, Nation-Building and the Alternative, Federal Option*, (Martinus Nijhoff Publishers and VSP, 2007), 94.

¹⁰⁵ *Ibid.*, 95.

¹⁰⁶ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 274.

¹⁰⁷ *Ibid.*, 276.

¹⁰⁸ Peterson M.J., *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995* (Ipwich, 1997), 51.

¹⁰⁹ *Ibid.*

relations with other states and independence in its formal and real aspects.¹¹⁰ The additional criteria issue is less clear and significantly more complex. The example of the most widely disputed and commonly proposed additional criteria for state recognition as a government is popular support. The basis for those claims is the democratic nature of the process, so that people first of all should be able to decide their political destiny and have a right of voice when it comes to designing the political institutions. Nevertheless, this aspect remained to be an integral part of democracy promotion rather than a separate criterion. Another suggested addition is legitimacy that took various forms and which was traditionally more supported by theorists and policy-makers rather than by lawyers and legal specialists. The difference in interpretation is determined by which approach is chosen – whereas for the international law specialists state authority is a key element, for those who are actively involved into political reality which is vibrant and dynamic, the issue is questioning and reconsidering authorities.¹¹¹ Further major criterion that is often proposed as an additional is ability and will of a state to fulfill international obligations. However, ability and will do not necessarily correlate as the first one is state administrative capacity and will is intention and eagerness. So, in this formulation the last criterion was appealing neither to policy-makers, nor to academics.¹¹² Other interesting proposed additional criteria for recognition are the following: non-dependence on foreign military support which implies denying recognition in case of dependence of foreign military units (which seems to be particularly relevant to the case of Abkhazia); respect for other states' rights; absence of undue violence in the seizure of power, which means that recognition should not be allowed if a new government came to power and established its rule through massive violence; origins in conformity with international law; respect for human rights. As Peterson correctly remarks, some of these criteria are hard to apply since in international law there are no regulations on correct methods of attaining power, while others require estimating process done by international organizations and special institutions established by international community, which is more likely to be just and effective than the one done by sovereign states independently.¹¹³ Possession of nationality, which might be reasonable as a criterion for the nation-building matter, is not considered as a statehood criterion because of its ethnocentrism.

El Ouali argues that de facto there is no rule in international law that recognizes a territorial right to separate from a mother country, in other words, there is no right of secession.¹¹⁴ Also, he emphasizes the shift of focus within the self-determination concept which determined a new

¹¹⁰ James Crawford, *The Creation of States in International Law* (Clarendon Press, 2006), 45-46.

¹¹¹ Peterson M.J., *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995* (Ipswich, 1997), 57.

¹¹² *Ibid.*, 71.

¹¹³ *Ibid.*, 84-85.

¹¹⁴ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 305.

approach to the issue. According to El Ouali, there two goals that the new paradigm of self-determination requires it to fulfill, viz. to prevent secession through promoting and exercising a democratic regime, and to establish territorial autonomy and share power with minorities or local communities through it.¹¹⁵ Moreover, El Ouali believes that, even though the primary goal of the principle of territorial integrity is to secure the existence of a state, the principle is also meant to protect people, and actually the second but not the first legitimizes it.¹¹⁶ So, the subject of the territorial integrity is peoples, not only the state. Peoples possess a right of self-determination and a state is supposed to respect people's sovereignty; however, interpretation of self-determination is limited to the right of self-government and access to democracy. So, sovereignty is understood in its narrow sense, the broader sense, which incorporates seceding from a mother state, is not even considered.

Martti Koskenniemi supports Troper that sovereignty is not an empirical element, concluding that sovereignty is "neither a historical nor a sociological fact but a part of a political vocabulary whose point is not to register aspects of the world but to achieve them" to preserve or change a status quo, to support or oppose particular contestants."¹¹⁷ The fact that the concept of sovereignty has been changing significantly and this phenomenon in modern political life is different from the nineteenth century concept caused a notion that this process might give answers to the questions of self-determination of political communities in a form of secession. According to McWhinney, "...the declining relevance of State sovereignty in an inter-dependant world community means that transnational political and economic aspirations may increasingly be accommodated without the pathological solution of secession and breakaway."¹¹⁸ When analyzing nation-state building in the contemporary world, it is important to consider the notion of sovereignty erosion that is presumably happening nowadays.

4. Reconceptualizing Sovereignty and Nation-state

As Strauss explains the quintessence of sovereignty in a very laconic way, it is authority.¹¹⁹ Sovereignty comes into existence as a result of the state-territory relationship. However, despite the long-going debate among scholars the dilemma what came first – whether sovereignty is an

¹¹⁵ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 305.

¹¹⁶ *Ibid.*, 310.

¹¹⁷ Hent Kalmo, and Quenti Skinner, *Sovereignty in Fragments. The Past, Present and Future of a Contested Concept* (Cambridge University Press, 2010), 232.

¹¹⁸ Edward Q.C. McWhinney, *Self-Determination of Peoples and Plural-ethnic States in Contemporary International Law: Failed States, Nation-Building and the Alternative, Federal Option*, (Martinus Nijhoff Publishers and VSP, 2007), 94.

¹¹⁹ Michael J. Strauss, *The Viability of Territorial Leases in Resolving International Sovereignty Disputes* (L'Harmattan, 2010), 29.

outcome of a state exercising its power over the territory or this power is a function a state can fulfill because it possesses sovereignty – remains being unsolved. As a consequence of those multiple and mutually exclusive interpretations, the working definition of sovereignty proposed by Strauss is that it is “the totality of the state’s exclusive authority within its territory plus extensions of that authority outside of it.”¹²⁰

In the twenty first century concerns about the future of sovereignty became rather common. Elaborating on the survival of sovereignty Michel Troper names the symptoms of the crisis of the state which are domination of the market and loss of the control of economy by the state, fast development of new very powerful economic forces, increasing privatization of public corporations while public services are declining, growing role and authority of all kind of international organizations, NGOs, increasing capacity of minorities etc. Combination of all these factors limits state’s power which allowed a discussion about the decline of sovereignty in the modern world order to start.¹²¹ The supra-national institution of the European Union is also often seen as a phenomenon undermining the concept of sovereignty as the state authority was partially shifted on the upper level. Being aware of the significant changes that occurred to the concept, Troper, nevertheless, objects to scholars who express their worries about the sovereignty erosion by saying that in its traditional sense sovereignty remains being an essential character of a state and proposes to adjust the interpretation of sovereignty to the reality and start understanding it as a limited, divisible and not supreme power that can be limited not by international law, but also by European law, for instance.¹²² Troper argues that, despite the changes in international law, it neither intends, nor stipulates to demolish state authority or sovereignty. Also, the act of signing and ratifying the treaties by a state that somehow restricts it is based on its sovereignty. We could object to this statement, that if a state has full sovereignty at the stage of input, it does not necessarily mean it would have it up to the same extent merely because initially a state’s ability to do this act was determined by its possession of sovereignty. Troper’s general counter-argument against demise of sovereignty revolves around a notion that indeed sovereignty as state authority is not the exercise of competences actually, but the power and ability to exercise them when the state would want to.¹²³

We might oppose to Troper’s arguments for sustainability of sovereignty in the modern world by proposing that any significant shift in interpretation of a concept in order to adopt it to the changing reality normally would mean that the phenomenon that the theory attempts to reflect

¹²⁰ Michael J. Strauss, *The Viability of Territorial Leases in Resolving International Sovereignty Disputes* (L’Harmattan, 2010), 31.

¹²¹ Hent Kalmo, and Quentin Skinner, *Sovereignty in Fragments. The Past, Present and Future of a Contested Concept* (Cambridge University Press, 2010), 132.

¹²² *Ibid.*, 135-136.

¹²³ *Ibid.*, 143.

and explain has changed. It would probably be too pretentious to debate seriously about sovereignty of states being demolished, yet it is impossible to ignore the process of its erosion. Nowadays sovereignty does not imply absolute and exclusive power of a state in the decision-making process; it is rather a paradigm of ability to arrive at decisions independently.¹²⁴ States are parts of the international system which the majority of them are well integrated into; therefore, this international order establishes certain rules and requirements for the states to follow in, which they have to be considerate about to make the whole system work.

As Kohen states, “the right of peoples to self-determination applies in advance of the primary fact by legitimizing the claim of any ‘people’ that satisfies the conditions that it prescribes to constitute a state,” which means that before the option is exercised the legal effects can apply.¹²⁵ Hence, the issue is partially removed from the jurisdiction of the state and is shifted under the jurisdiction of the international community. However, to balance self-determination there are principles that protect the state as well, namely, prohibition of the use of force, principle of non-intervention, and a principle of permanent sovereignty over natural resources.

Very often the terms a “sovereign state” and a “nation-state” are perceived as different terms for the same concept. However, including the word “nation” introduces new dimensions to the theory of a sovereign state,¹²⁶ as, according to Calhoun, “recognition as a nation clearly requires social solidarity – some level of integration, and collective identity – the recognition of the whole by its members, and a sense of individual self that includes membership in the whole.”¹²⁷

Neil Walker analyzes two arguments for a nation-state: a normative and an empirical one. The normative argument stands for the national community as the best basis for political authority with the self-determination principle as a foundation for democracy.¹²⁸ Moreover, Walker refers to liberals, in particular, to J.S. Mill, saying that from the normative perspective “shared national identity is a condition for a liberal democracy, since it provides the shared values and trust that are needed to underpin a liberal order.”¹²⁹ Thus, the quintessence of the normative approach is that a sovereign nation-state is a necessary condition for democracy, which is a highly debatable statement. The empirical argument does not imply a lot of elaboration and is merely based on observation and it states that in practice states are made of nations.

However, there are a lot of objections to the idea of choosing nationality as a basis for sovereign statehood; first, there is no consensus on the definition of the term “nationality,”

¹²⁴ Joshua Castellino, *International Law and Self-Determination: the Interplay of the Politics of Territorial Possession with Formulation of Post-Colonial ‘National’ Identity* (Martinus Nijhoff Publishers, 2010), 94.

¹²⁵ Kohen, Marcelo G. *Secession: International Law Perspectives*. Cambridge University Press, 2006, 471.

¹²⁶ Neil Walker, *Sovereignty in Transition*, (Oxford, 2003), 196.

¹²⁷ Craig Calhoun, *Nationalism* (University of Minnesota Press, 1997), 4.

¹²⁸ Neil Walker, *Sovereignty in Transition*, (Oxford, 2003), 196.

¹²⁹ *Ibid.*

second, the number of nations or pre-nation formations in the world is significantly higher than the number of states and there is no practical possibility to provide each of them with a sovereign state. Furthermore, it gets even more complex when trying to make a clear distinction between nations, peoples, ethnic groups and picking the criteria to do so. The criteria choice is a particularly challenging task as one has to consider that there many multi-ethnic nations, and in some cases the national identity can be very strong despite the impressive ethnical heterogeneity – the USA serves as the best example.¹³⁰

Speaking in more abstract terms, the whole problem of sovereignty can be narrowed down to an issue of creating unity in a naturally plural world. Also, two important aspects of rule of law are incorporated within the sovereignty issue in general: first, the tension between legality and legitimacy which is often might be transferred into a tension between law and politics; second, the gap between normal law and exceptional law that is connected to an issue of what is determining what – if real politics define the way law should be designed or, the other way round, and law should serve as a normative ideal that politics should rely on and refer to.¹³¹ The aforementioned gap occurs under conditions when the existing legal framework of international law cannot provide an acceptable solution to the existing political problem that demands an answer. Kosovo was the case when this gap emerged, and as one can observe, it created destabilization and disorder. In this regard Neil Walker gives a brilliant comment on the issue of stateless nations claiming for sovereignty in the modern world: “Minority nationalism within democratic states has generally had a bad time from political scientists, regarded at one time as a pathology of the body politic, evidence of ‘failed’ state-building or retarded modernity or at best ‘problem’ to be dealt with.”¹³²

Being a sovereign state implies a high degree of power and prestige for a nation that is another level of international status; therefore, it is agreed that communities pretending for statehood have to provide legitimate reasons to justify their demands for self-government and independence. Walker suggests that there is a conceptual trap that stateless nations tend to get into as in order to get international recognition, they have to prove that their minority is different from the dominating group that populates the state they are intending to secede from.¹³³

There is an intriguing tendency that minorities demonstrate – their nationalism tends to de-ethnicize, “adopting the same inclusive and civic discourse that was previously the property of state-nationalism.”¹³⁴ In case of Abkhazia this transformation took place already during or even before the Abkhaz-Georgian war where the separatists were represented by different ethnic

¹³⁰ Neil Walker, *Sovereignty in Transition*, (Oxford, 2003), 196.

¹³¹ *Ibid.*, 226.

¹³² *Ibid.*, 201.

¹³³ *Ibid.*

¹³⁴ *Ibid.*, 202.

groups, primarily Abkhaz, Russians and Armenians, who all lived on the land of Abkhazia and who were fighting for the independency of their territorial unity. At the same time other scholars oppose to the de-ethnicized nationalism point of view. According to El Ouali , the future potential for states disintegration is huge particularly because of ethnonationalism, and the state plays the role of a conciliator and conflict mediator in a way that faced by the threat of radical ethnic separatists movements that endanger security of a state and its very existence, the state has to confront the threat by creating an alternative form of nationalism.¹³⁵ Hence, the strategy of a state under those conditions might be to try to convince the multi-ethnic population that it seeks to represent them while indeed the body of political organizations is ethnic in its nature; therefore, *de facto* interests of the dominating ethnic group have better representation. El Ouali suggests there are two elements that are important for the matter of nationalism building which are implemented by the states (or pre-state entities) which are willing to develop this phenomenon: first, monopolizing the national identity building tools and stimulating assimilation and homogenization processes through educational and governmental institutions; second, to decrease the importance of traditional authorities and accomplish a shift of power to the state authority.¹³⁶ There also a range of radical methods which are not appreciated by the UN and the international community and normally labeled as illicit, illegitimate and highly immoral and, therefore, which are applied only in extreme cases, are ethnic cleansing, displacement of ethnic groups, or even extermination.

Both Georgia and Abkhazia can be used as examples illustrating this theory fairly well. Abkhazian minority always felt suppressed by Georgians having neither a chance for their self-determination demands to be satisfied, nor a hope to have an access to political power. Continuous oppression caused frustration that was transferred into violence of Abkhaz separatists against Georgian population on the territory of Abkhazia during the Abkhaz-Georgian war of 1992-1993 and a conflict in 1998.

Traditionally there are two main dimensions of reasoning that nations use to justify their demand for statehood – the one that lies in the past and the one that is connected to the present. The first argument is the historical background of the minority, according to which a nation is historically constituted with its well-defined features and culture and it never surrendered to a state. The second one speculates on the self-determination right of a self-conscious community that is sometimes seen as a democratic value and one of the core elements of international law foundation.¹³⁷

¹³⁵ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 294.

¹³⁶ Ibid.

¹³⁷ Neil Walker, *Sovereignty in Transition*, (Oxford, 2003), 203.

According to El Ouali, the civic nation-state model is the way to successfully overcome the antagonism of a multi-ethnic state when the existing variety causes disintegration but the state naturally needs to preserve itself; nevertheless, even after the Soviet Union collapse it was still challenging to fully apply it in the post-communist countries.¹³⁸ The concept implies civil society as a foundation of a democratic state that guarantees minorities with cultural autonomy, minority rights and political participation. Partially due to long-lasting Soviet Union dominance one of the main socio-political trends of the Eastern-European countries is the dissonance between the state and the nation, the state has rarely been representative of people's interests. Hence, logically not integration, but ethnic differentiation was the direction of development in many of Eastern-European countries. Ouali sees this phenomenon as the reason of the "nationalizing state" concept that was brought into political practice, according to which the nation of the state is identified with the prevailing ethnic group and other ethnic minorities either assimilate into the dominant one, or remain marginalized.¹³⁹ The extreme versions of marginalization would be forced displacement and ethnic cleansing that both were the case in Abkhazia.

So, after the bipolar world order collapsed after the Soviet Union dissolution discussions about a global community transcending national borders appeared in the discourse.¹⁴⁰ The concept is rather vague and abstract but it allows rethinking of sovereignty in the modern world.

5. Nationalism and Self-determination

As one of the most influential thinkers of nationalism Karl Deutsch described the core of a nation, "Nationalities turn into nations when they acquire power to back up their aspirations."¹⁴¹ Hobsbawm proposed criteria of a nation, as apparently not every people or political community is one: first, historic association with a current state or one with a fairly lengthy and recent past; second, the existence of a long-established cultural elite, possessing a written national literary and administration vernacular; third, a proven capacity for conquest.¹⁴² When applying these quite relevant criteria to Abkhazia, it would qualify; the case of South Ossetia is more doubtful though, especially because of the third point.

Self-determination of peoples is logically linked to nation- and state-building as it is a tool for a community to grow into a nation and create a state. Nationalism, which might take different forms from ethnonationalism to a civic version, is an important and inevitable feature of the

¹³⁸ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 294.

¹³⁹ *Ibid.*, 295.

¹⁴⁰ James A. Yunker, *The Idea of World Government. From Ancient Times to the Twenty-First Century* (Routledge, 2011), 113.

¹⁴¹ Craig Calhoun, *Nationalism* (University of Minnesota Press, 1997), 101.

¹⁴² Eric Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge Press University, 1990), 38.

process. So, according to Shehadi, “The doctrine of self-determination is the political agenda of nationalism: nation-building. The most popular strand of this doctrine calls for the formation of a nation-state and thus also provides an agenda for state-building. Another strand calls for the revival of the national identity of a communal group and its assertion of political demands within existing states.”¹⁴³

If to focus on ethnonationalism in particular to attempt to define its specific characteristics, then, according to El Ouali, “is spurred on by the inability of the state to achieve proper territorialization and, in case the latter is by miracle established, its inability to “create” the nation, promote and maintain the homogeneity of society and give all citizens the wherewithal to realize their social and economic well-being.”¹⁴⁴ Thus, self-determination principle can be misused to create artificial quasi-states ruled by oligarchs whose interests they would benefit. These pseudo-states fail to create a nation, achieve territorialization and, subsequently, sustain their statehood. It is rather likely that failed states of this kind end up in a deep structural crisis, become a foothold for criminal activities and endanger the neighboring countries’ security.

According to Shehadi, “Nationalism is the ideology which identifies a communal group and legitimizes the creation of political institutions – legal, administrative and sometimes even economic – circumscribed to this community.”¹⁴⁵ Not self-determination itself but its interpretations often demand for nation-state formation on the highest level of political organization. Otherwise it encourages the process of building a federal or/and autonomous entity, or cultural autonomy at least.¹⁴⁶

Traditionally there have been two forms of nationalism – ethnic and civic. Ethical type is older and first of all it refers to shared origins of a group of people. Even though there are core criteria, like language, common culture and religion, the linkage between elements is still questionable.¹⁴⁷ Common ancestry is not always easy to trace, therefore, often it has a more mythological character, than a substantial one. B. Anderson invented a term “imagined communities” for this phenomenon.¹⁴⁸ Another, civic, approach to a nation that came into existence after the Treaties of Westphalia suggests that a nation is a territorial unit, which boundaries are hard or even impossible to define, that exists under the rule of one government. In practice when the theory was applied to the citizenship issue in the past, the major difference between two concepts was that in the first case the residents who did not meet the ethnic criteria

¹⁴³ Kamal S. Shehadi, *Ethnic Self-Determination and the Break-up of States* (Brassey’s Ltd., 1993), 32.

¹⁴⁴ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States’ Quest for Survival*, (Springer, 2012), 289.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*, 33.

¹⁴⁷ *Ibid.*

¹⁴⁸ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso, 2006), 6.

were discriminated against and might have been not even considered to be citizens. In case of civic citizenship, on the other hand, every resident of the state is considered and to be a citizen and at least on the paper all members of a nation have equal rights. Thus, whereas in case of the ethnic form demands for self-determination would bare purely or predominantly ethnic character, while civic nationalism would lead to claims for territorial self-determination.¹⁴⁹

The same simple classification is proposed to the issue of national identity as well. It is directly derived from the definition of “a nation” and its interpretations. The difference is that, unlike a nation, national identity is always subjective and individual versus “a nation” being a collective term. Identity has to do with self-perception first of all rather than community in a certain socio-political reality. However, a state can impose its interpretation of national identity and actively promote with the help of the given tools like education and socialization institutions. Identities are rather constructed and the role of a state in the national identity formation matters is hard to overestimate. Thus, civic identity is irrelevant of ethnicity and it is “based on an implicit social contract between all the members of society: those who reside on the territory are automatically included in the political system and they agree to have their public lives regulated by the political system, its constitution and laws.”¹⁵⁰ Exercising this approach in reality would be a rather effective preventive measure against separatist movements and self-determination claims for multi-ethnic states. However, it is not always possible as in this case the parties should be willing to cooperate which is no longer possible in certain cases, especially in ones with a long history of conflict and encounter.

According to Shehadi, despite the variety of struggling for self-determination strategies, there is a pattern that is typical for this kind of conflicts, and the majority of conflicts go through six stages: mobilization, establishing control, consolidation or institution-building, alliance-building, internationalization of the conflict, and, finally, political settlement.¹⁵¹ The case of Abkhazia proves this pattern, even though the order of the stages is not exactly the same, as internationalization and alliance-building occurred together with establishing control, and there is no political settlement yet. Neither political settlement seems to be reachable in the coming years, which is the sign that the self-determination process is not over. What seems to be extremely important if not for ultimate success but at least for functionality of a political movement for self-determination is a cohesive structure with leadership.¹⁵² Successful institution-building is determined by close structure and good organization of the movement.

¹⁴⁹ Kamal S. Shehadi, *Ethnic Self-Determination and the Break-up of States* (Brassey's Ltd., 1993), 33.

¹⁵⁰ *Ibid.*, 68.

¹⁵¹ *Ibid.*, 41.

¹⁵² *Ibid.*, 38.

Self-determination is a fairly flexible concept and it is often being suggested as a solution to a range of problems: cultural and political oppression, lack of democracy and inequality, systematic human rights a freedoms abuse, economic exploitation, discrimination of ethnic groups or even annihilation threat.¹⁵³ It is also a way to preserve people's culture. Self-determination and secession movements do not start merely because of ideological appeal, even though they might go on like that. The start of a self-determination movement is conditioned by a shared dissatisfaction of a community with the current state of affairs results in frustration and takes a form of a protest – either active, or passive. It is initiated when the leadership emerges and takes over the process.¹⁵⁴

According to James Green and Christopher Waters, it is evident that Abkhazians are a people not only because of their self-determination, but also due to the external identification of them as a distinct people, including an accepted autonomy by the Soviet Union and the Georgian SSR later.¹⁵⁵ We fully agree with Green and Waters and would like to add that, even though Abkhazia and South Ossetia are in the formally same situation and in the international legal framework their cases are perceived equally, indeed there are significant differences in regard to population, resources, territory and economical potential. It appears that if to apply the statehood criteria to the cases, Abkhazia would be able to meet them in a larger extent in comparison to South Ossetia; hence, there are reasons to treat the secessionist regions differently. Also, we suggest that application of the aforementioned civic nation-state model in Abkhazia would minimize the tensions and allow the self-determination right be exercised peacefully in its more balanced and moderate version.

The Security Council repeatedly stated that the self-determination right should be exercised internally. However, it is possible only if a state does not attempt to suppress the process. In case the state does not allow territory's self-determination to happen, consequently the internal self-determination right cannot be exercised as the principle was violated.¹⁵⁶ Whereas in the Soviet Union Abkhazia could enjoy internal self-determination at least in its limited version, after the USSR dissolution Georgian authority mostly has abolished this practice having restricted the policies in regard to South Ossetia and Abkhazia. However, the reality is that states do not treat each other similarly and it causes double standards in international relations that lead to variations in recognition practices.

¹⁵³ Kamal S. Shehadi, *Ethnic Self-Determination and the Break-up of States* (Brassey's Ltd., 1993), 42.

¹⁵⁴ *Ibid.*

¹⁵⁵ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 40.

¹⁵⁶ *Ibid.*

III. Peculiarities of the Political Processes Development in Abkhazia

1. 1990-1994

After Stalin's death the dissident movement started all over the Soviet Union, including Georgia. In terms of the Abkhaz-Georgian conflict this development was incredibly important as it stimulated the nationalism growth – first Georgian and, as a response to it, Abkhazian nationalism. Those processes were evolving for few decades and in the end of eighties were formed in a claim for self-determination and later its extreme version secession. The first serious sign of the future war and a warning about huge tension was a petition that is known in history as an “Abkhaz letter” that was signed by approximately 30.000 people at the enormously large meeting in the village Lykhny.¹⁵⁷ The letter contained a demand for re-establishing the Abkhazian Union Republic and for seceding from Georgia. Instead trying to settle the emerging conflict the Georgian side escalated it by strictly opposing to it and attempting to suppress the separatists, at the same time encouraging Georgian nationalist initiatives.

The Soviet Union dissolution was a chance for Abkhazia to claim for its independence. An interesting aspect is that even though Georgia boycotted the referendum about the future of the Soviet Union in which all other member-republics participated, in Abkhazia and South Ossetia there were polling stations despite the centralized decision. Already in December 1991 within two-chamber system a new parliament with sixty five seats in it was elected in Abkhazia with the following ethnical representation: twenty eight seats were taken by ethnical Abkhazians, twenty six – by Georgians and 11 were allocated to minorities. Since Georgians were deliberately blocking Abkhazian proposals, the interethnic relations were gradually getting tenser and the Parliament itself was ineffective.¹⁵⁸

In March 1991 on the referendum about Georgian future development the majority of participants voted for independence which consequently was restored on legal basis of the Act of Independence of 1918, chronologically the last document that announced Georgian independence. Georgia was an example of a weak state – very unstable and having limited legitimacy. Zviad Gamsakhurdia was elected as the President but, however, had to flee the country in January 1991 because of the putsch organized by the radical nationalist opposition. Gamsakhurdia was planning to use Abkhazia as a tool for coming back to power by proposing a creation of Mergel-Abkhazian Republic.¹⁵⁹ However, his initiative did not work as at that point Georgian government managed to agree with the Abkhazian authority on an opinion that

¹⁵⁷ Eva-Maria Auch, *The Abkhazia Conflict in Historical Perspective* (OSCE Yearbook 2004), 227.

¹⁵⁸ Marcelo G. Kohen, *Secession: International Law Perspectives* (Cambridge University Press, 2006), 115.

¹⁵⁹ John B. Allcock, Guy Arnold, Alan J. Day, D.S. Lewis, Lorimer Poultney, Ronald Rance, D.J.Sagar. *Border and Territorial Disputes* (Longman Group, 1992), 182.

Gamsakhurdia represents a threat for both states. Georgia's Constitution of 1921 was restored by the Military Council and this document did not recognize Abkhazia as a separate entity within the territory of Georgia.¹⁶⁰ This interpretation clearly could not improve the relations between Georgia and Abkhazia. All the laws and regulations introduced during the Soviet era were cancelled and the status quo was restored. Being under this pressure but not willing to give up a hope for independence and actively searching for the most beneficial solution Abkhazian authorities proposed a draft treaty to the Georgian State Council, according to which Georgia and Abkhazia would exist in a form of a federation. This initiative was ignored by Georgia and that probably was the point of no-return. Abkhazian reaction followed in July 1992 when the Supreme Soviet declared Abkhazian sovereignty based on the Constitution of 1925 which, however, did not provide any justification for independence, but recognized the state as the Republic of Abkhazia which is the part of federation having equal with Georgia rights. That was done, first, as a preventive measure to protect the autonomous status, second, to fill the legal gap in the absence of a new constitution; thus it was supposed to be a temporary measure. Nevertheless, it was enough for Georgia to draw a conclusion that Abkhazia starts a secession movement; therefore, the National Guard units were sent to the land of Abkhazia where they faced serious armed resistance. The first President of Abkhazia Vladislav Ardzinba named the act of deploying Georgian troops a threat to the Abkhazian population and the sovereignty of the state.¹⁶¹ That was the beginning of the military conflict which turned into a war with ethnical cleansing and numerous atrocities from both sides. Officially it broke out on the August, 14, 1992, when the belligerency between states was recognized.¹⁶² Even though the first President of Russia Boris Yeltsin officially pledged support for the territorial integrity of Georgia, Georgian officials still blamed Russia (probably very reasonably) for providing Abkhazians with military equipment. Nonetheless, Abkhazian government demonstrated impressive self-organization skills. Abkhazian authorities reacted fast and moved to the north of Sukhum to the city called Gudauta which was a military base.¹⁶³ The Ministry of Defence was created urgently in October 1992 which was not merely a functional institution but also an important feature of sovereignty. Military was centralized and, being well-organized, armed forces were in control of the territory. Abkhaz authorities have demonstrated a higher efficiency and capability of mobilizing power than Georgia. Intensive armed struggles and massive displacement with numerous cases of human rights abuse took place and in September 1993 when Abkhazian forces managed to

¹⁶⁰ John B. Allcock, Guy Arnold, Alan J. Day, D.S. Lewis, Lorimer Poultney, Ronald Rance, D.J.Sagar. *Border and Territorial Disputes* (Longman Group, 1992), 182.

¹⁶¹ Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 85.

¹⁶² *Ibid.*, 84.

¹⁶³ *Ibid.*, 85.

capture their capital Sukhumi. Georgian units were expelled from Abkhazian territory by October 1993.¹⁶⁴ No proof of genocide was found either by the UN special mission, or by the Human Rights Watch that have investigated this issue, even though the aforementioned organizations have recognized the fact of the war crimes, mutual violence and human rights abuse from both sides happening in the conflict.¹⁶⁵ Now it was Georgia's turn to make proposals and get rejected – Georgian authorities suggested extensive autonomy for Abkhazia and this step could have worked if was done earlier but at that particular stage it was too late. Georgian expectations were not satisfied. In February 1994, the debate was brought up to the United Nations level to discuss the status of Abkhazia with the Russian Federation as facilitator and the OSCE as a participant. The outcome was disappointing for the Abkhazian side as the United Nations proposed a draft of a declaration recognizing Georgia's territorial integrity which was rejected by Abkhazia right away. The second round of discussion in March failed as well and in the end of the year Abkhazia adopted a constitution declaring itself to be a “sovereign democratic state” which followed by the protests of Georgia to the United Nations Security Council.¹⁶⁶

According to the report of the General Office of Public Prosecutor of Georgia, 5 738 Georgians died in the ethnic cleansing and 267345 people were expelled from Abkhazia.¹⁶⁷ In the report Georgia gave a strongly negative assessment to the activities of the Russian peacekeeping forces in the region who, according to the General Office of Public Prosecutor, “practically protect the interests of Abkhazian separatists, assist them in implementation of their criminal and abusive intentions” which resulted in “violation of rights of more than 300000 people.”¹⁶⁸

The report is definitely not free of bias and, as it can be expected, contains critique of the Abkhazian side only where the “self-proclaimed republic” is blamed for violation of the international law principles, falsification of legal arguments against the Georgian constitution, adoption of illegal resolutions, arrests and prosecution of Georgian citizens. However, the reasons that lie in inception of the military conflict are not mentioned even once as there is no word about strict limitation of the self-determination right and discrimination against Abkhazians that caused counter-reaction in a form of violence and brutal abuse of ethnically Georgian residents of the region. On the other hand, Georgian claims that the Russian peacekeeping forces failed to fulfill their purpose seem to be correct. Russian forces were deployed in the conflict

¹⁶⁴ Marcelo G. Kohen, *Secession: International Law Perspectives* (Cambridge University Press, 2006), 115.

¹⁶⁵ *Ibid.*, 87.

¹⁶⁶ *Ibid.*, 116.

¹⁶⁷ General Office of Public Prosecutor of Georgia. Office of Public Prosecutor of Autonomous Republic of Abkhazia. *Conclusion on Circumstances Established under Criminal Case Instituted on the Fact of Genocide of Georgian Population in Autonomous Republic of Abkhazia* (Tbilisi, 1992-1999), 37.

¹⁶⁸ *Ibid.*, 38-39.

zone by the Ministry of Defense in June, 1994. The declared aim was to “ensure protection of peaceful population and create safe conditions for repatriating of displaced people in the twelve kilometer security zone.”¹⁶⁹ However, there is evidence that the Russian peacekeeping forces were neglecting the war crimes committed by Abkhazian separatist groups, were not effective in maintaining peace and security and, moreover, there were cases of the Russian military members joining the Abkhazian rebels.

Interestingly enough, according to various sources, there was a large proportion of Chechen “boeviks”¹⁷⁰ among Abkhazian separatists committing different kind of atrocities that were documented in Georgian and international reports. Ignorance of this fact backfired on the Russian government when Chechen separatist, having gotten sufficient practice on the Abkhazian territory, started their own campaign for independence of the Republic of Chechnya.

The most brutal human rights violations and massive assault of peaceful population in the Abkhaz-Georgian war happened in the Gali district in September 1993.¹⁷¹ The separatists were permanently attacking the villages in the notorious region, so that the inhabitants who survived had to leave their homes. Unfortunately, after the deployment of the peacekeeping forces they decided to return which, apparently, was not the right decision as the separatists came back in October, 1994, and, despite the presence of foreign peacekeeping forces started a fire and murdered many of the survivors.¹⁷² Thus, altogether there were eight waves of violence and hostility and four of them (September, 27-October, 2, 1994; October, 25, 1994; March 9-14, 1995; January, 5, 1996) took place in the Gali region in the presence of the United Nations observers and peacekeeping forces.¹⁷³ Russian peacekeeping forces proved to be ineffective in the conflict as a security-providing tool and inefficient against human rights violations. The outcome was that in Gali region only ten thousand residents of not only Georgian but other different ethnicities, such as Russian, Armenian, and Greek, lost their houses and turned into refugees.¹⁷⁴

It is commonly agreed that the war between Abkhazia and Georgia was incredibly violent and deeply anti-humane in the way it was conducted, where both Russia and the United Nations failed their conflict mediator functions. All sides were guilty but in different extents. On the one hand, the Georgian authority was oppressing the Abkhaz population for years depriving its people of the self-determination right, and this fact was perfectly ignored by the UN; on the other hand, the response of Abkhazian separatists in a form of ethnic cleansing was completely

¹⁶⁹ Supreme Council of the Abkhazian Autonomous Republic. *Abkhazia* (1999), 27.

¹⁷⁰ From Rus. “hitman”, a commonly accepted term after the first Chechen campaign.

¹⁷¹ Supreme Council of the Abkhazian Autonomous Republic. *Abkhazia* (1999), 26.

¹⁷² *Ibid.*

¹⁷³ Violations, Committed by the Russian Peace-Keeping Forces in Abkhazia (Tbilisi, 2000), 1.

¹⁷⁴ Supreme Council of the Abkhazian Autonomous Republic. *Abkhazia* (Tbilisi, 1999), 27.

unproportional and illegal. Considering the Abkhaz actions in the war in general and brutal anti-Georgian policies in particular, it would be correct to say that granting the Abkhaz Republic with statehood at that time would mean endangering lives and security of thousands of Georgian residents of the territory. Non-discrimination and equality of all ethnic groups is one of vital prerequisites for a sovereignty claiming state. Clearly, since the Abkhaz government was not able to provide any guarantees for the Georgian population on its territory, claims for statehood could not be considered legitimate. Nowadays, however, the state of affairs is very different and technically Abkhazia might be able to qualify for statehood, as it would be discussed further.

However, besides the official position of the sides and internationally accepted point of view of the UN as the third party, there is some variety of group and individual opinions, some of which are worth to be considered. Although, mostly they partially repeat either each other, or the official version, there are some curious exceptions. For example, a very strongly opinionated Georgian politician Tamaz Nadareishvili accuses Russia of the war in his book *Genocide in Abkhazia* by claiming that “the military and political conflict was inspired” by the Russian Federation which was not a mediator but a party in the conflict and “whose aggression resulted in the occupation of Abkhazia.”¹⁷⁵ Nadareishvili labels the actions of the Russian government as illegal and states the purpose of the Russian conspiracy against Georgia, as he calls it, in the following way:

to stop the formation of the independent Georgian state, prevent Georgia from becoming a western-orientated state, prevent state development on democratic principles, to chain Georgia to Russia and become in future the sphere of its influence only, to categorically prevent Georgia’s integration in NATO, prevent implementation of oil pipeline and other transportation programs.¹⁷⁶

Although Tamaz Nadareishvili cannot be called objective in his estimations as he is emotional and rather bias, some of his points are valid; the remark about a pipeline is especially interesting. On the other hand, in spite of having its geopolitical interests in the region, after the Soviet Union dissolution Russia did not have much power as, like Georgia, it was a weak state; to be even more precise, at that moment the Russian Federation represented a failed state with all its attributes, such as high inflation rate, money deficit, socio-political problems and lack of legitimacy. Moreover, the policies of Yeltsin’s government in the first years were mostly based on doing the opposite of what the communists did, and the administration of the former Minister of the Foreign Affairs Kozyrev favored the West a lot and, therefore, used to silently agree with the American policies. Under all the aforementioned conditions, it is highly questionable if Russia could have had a well-elaborated working “conspiracy plan” against Georgia at that time. What seems to be even more dubious is if the state has money and resources to execute such plan

¹⁷⁵ Tamaz Nadareishvili, *Genocide in Abkhazia* (AZRI Publishers, 1997), 11.

¹⁷⁶ Ibid.

in case it did have it. Nevertheless, it is undoubtful that Russia had its national interests in Abkhazia, which has to be considered when answering the main question in politics *Cui bono* – “to whose benefit”. Albeit Russia was a very weak and unstable state in those times, the *status quo* has changed tremendously within ten-fifteen years. Hence, the role of Russia in the Abkhaz-Georgian conflict has changed as well and Moscow started pulling its interests through in a rather tough manner, which will be discussed in the latter chapters.

2. 1995-2008

Positions of Georgia and Abkhazia were diametrically opposite and could not be reconciled in a way that would satisfy both parties. While Tbilisi perceived Abkhazians as separatists who dared to violate the state integrity and the law, Sukhumi found its claims for sovereignty and independence perfectly legitimate and considered Georgia to be the aggressor.¹⁷⁷ So, while before the war 1992-1993 Abkhazia was a state within a federation in the form of an autonomous republic (at least *de jure*) with a broad variety of rights and powers, excluding the right of secession and changing the territory status unilaterally, during the war Abkhazia became a state *de facto*. However, for the international community and the United Nations it remained a part of Georgia and *de jure* status was not changed. From 1994 Abkhazian government focused on developing institutions a sovereign state has, primarily judiciary, legislative and executive bodies. Establishing proper government structure meant a new stage in the whole process – by shaping its regime and legislative apparatus Abkhazia has clearly stated that after the war there can be no other resolution for the conflict considered by their side other than becoming a sovereign and independent state. The degree of determination was so incredibly high that even the competent opinion of the United Nations could not change the political initiative of Abkhazia. Georgia, on the other hand, was not going to tolerate the separatist movement and was refusing to accept any solution that would be more radical than a federation between Abkhazia and Georgia with no right to secede.¹⁷⁸

Russia made an attempt to solve the conflict in February 1995 by suggesting a draft that provided for federative relations between Abkhazia and Georgia. Unexpectedly enough Georgia accepted it and Abkhazia declined as Abkhazian demands have shifted already from having autonomy within the federative structure to a confederation relations where both states would have equal membership.

¹⁷⁷ Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 91.

¹⁷⁸ *Ibid.*, 100.

That was a stalemate as Georgia claimed for its territorial integrity right and was supported by the major powers and the UN and Abkhazia decided to firmly stand for its independence and for kept on rejecting all the drafts of potential solutions suggested by Georgia and third parties as none of them could satisfy the ambitions Abkhazia had. In July 1996 the Security Council stated very clearly that Abkhazia would not be granted with the secession right in its Resolution 1065 emphasizing the “unacceptability of any action by the Abkhaz leadership of these [sovereignty and territorial integrity of Georgia] principles”.¹⁷⁹ The Council of Europe and the European Union agreed with this interpretation of international law and supported the Security Council.¹⁸⁰

The conflict was escalated again after the parliamentary elections of 1996 that were condemned both by the European Union and the Security Council. The fact that in 1998 Abkhazia expelled a number of Georgian refugees, who have spontaneously returned a year before, also turned the international community against Abkhazia and the act of expulsion was labeled as ethnic cleansing. After the civil war and till this expulsion of ethnic Germans from the Gali district ethnic groups have coexisted surprisingly peacefully in Abkhazia.¹⁸¹ Nevertheless, Abkhazian government went further and made an attempt to justify its secession within the international law framework. In order to do so the Act of State Independence of the Republic of Abkhazia was issued and, even though it was designed to be a formal proclamation of Abkhazian independence under international legal standards, the international community ignored this initiative and Abkhazia remained being unrecognized for the next ten years.¹⁸² However, despite being not recognized as an independent sovereign state internationally, Abkhazia could enjoy its independence *de facto*. The fact that the Security Council has condemned Abkhazia for its illegitimate politics multiple times had very little impact on Abkhazian’s decision to be an independent state.

According to Marcelo Kohen, this international position, when Georgia was supported and Abkhazia – not, can be explained by the failure of Abkhazia to meet the criteria to be considered qualified for the right of secession. Although Abkhazia was not denied of having the self-determination right, the self-determination process was supposed to take place within Georgia without undermining its territorial integrity. In Tbilisi’s view Abkhazian authorities were very biased against Georgian government and any kind of privilege offers they proposed. Violation of human rights was mutual from the Abkhazian and Georgian sides but each party accused the

¹⁷⁹ The UN Refugee Agency, “On the situation in Abkhazia, Georgia Resolution 1065 (1996),” Adopted by the Security Council at its 3680th meeting, on 12 July 1996, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3b00f15112> (accessed 30 May 2013).

¹⁸⁰ Ibid.

¹⁸¹ Tom Trier, Heggvig Lohm and David Szakonyi. *Under Siege: Inter-Ethnic Relations in Abkhazia* (Hurst&Company, 2010), 15.

¹⁸² Marcelo G. Kohen, *Secession: International Law Perspectives* (Cambridge University Press, 2006), 117.

opponent only. Technically the fact that Abkhazian referendum was condemned by the Security Council and widely criticized by the international community means that Abkhazia was rejected of the right of secession in a unilateral way.¹⁸³

Abkhazia became a so-called *de facto* state which is an “organized political leadership which has risen to power through some degree of indigenous capability, has popular support, the capacity to provide services to a given population in a specific territorial area, over which effective control is maintained for a significant period of time.”¹⁸⁴ A *de facto* state possesses the following attributes: first, a given population; second, a specific area; third, organized leadership with popular support; fourth, the ability to provide basic services; and finally, effective control.

Theoretically a *de facto* state might be able to provide state services sufficiently and in some cases even better than a recognized one. However, in reality because of weak economy, unstable political situation, embargo put by the recognized states on the disputed territory claiming for its sovereignty and other reasons normally *de facto* states have very limited capacity to provide basic services for the population. But they should be able to provide them at least at the minimum level to qualify to be considered a *de facto* state. Celine Francis argued that “these public goods may be very limited, and the *de facto* state could be a weak state, but it must at least guarantee security on its territory.”¹⁸⁵

To be qualified as a *de facto* autonomy an independence-seeking entity should demonstrate, first, internal supremacy, and, second, external independence.¹⁸⁶ Thus, a state actually should be externally independent of any superior politically and juridically, and have supremacy over any other authority on its own territory. In other words, a *de facto* state should have demonstrated that it is substantially capable of maintaining its independent existence, managing the society, governing the state and population and, having accepted international regulations and principles, carrying its duties internationally.¹⁸⁷ The notion of *de facto* statehood was caused by the phenomenon of unilateral secession which was perceived as an illegitimate act.

“Recognition of a *de facto* state” and “*de facto* recognition” should be distinguished indeed as these two similar-sounding terms are intended to describe different issues. The first one characterizes the act of recognition, while the second refers to the status of the recognized

¹⁸³ Marcelo G. Kohen, *Secession: International Law Perspectives* (Cambridge University Press, 2006), 119.

¹⁸⁴ Scott Pegg, *International Society and the De Facto State* (Ashgate, 1998), 26.

¹⁸⁵ Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 92.

¹⁸⁶ Michael Ross Fowler, Julie Marie Bunck. *Law, Power, and the Sovereign State. The Evolution and Application of the Concept of Sovereignty* (Pennsylvania State University, 1995), 37.

¹⁸⁷ Mikulas Fabry. *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford University Press, 2010), 9.

entity.¹⁸⁸ Nevertheless, these terms have been blended and the distinction is no longer made even at a high level. Hence, to avoid confusion we would accept both concepts as roughly equal as they are nowadays in the common usage.

First we need to answer a question what exactly a *de facto* state is and how it might be defined. Actually it is a state-like entity seeking for independence and acting in a way like it had sovereignty, which in reality having no diplomatic recognition despite its succession aspirations. Organized political leadership, that considers this entity to be able to enter into relations with other states independently, claims for sovereignty and international recognition, and find public support is a basis for a *de facto* state.¹⁸⁹ A *de facto* state is always a part of another already recognized state; consequently, because of territorial integrity principle it might not have a juridical right to seek for sovereignty, but empirically determined reasons for these claims. The main characteristic that distinguishes a *de facto* state is non-recognition by other states or, in other words, its external sovereignty is not recognized.¹⁹⁰ At the same time a *de facto* state can demonstrate, at least up to a certain extent, that it possesses all other key features of a state, such as territory with a local government characterized by internal sovereignty, organized economy which proves to be self-sustainable, basic infrastructure, support of population, etc. Thus, after the military conflict with Georgia Abkhazia has turned into a *de facto* state but kept aspirations to get international recognition and become an equal member of the international community. However, for years no legal changes occurred to the status of Abkhazia and the government had to deal with the stalemate situation.

Three years before the culmination of the conflict between Russia and Georgia in 2005 the UNSC issued two resolutions on Abkhaz-Georgian problem – resolutions 1582 and 1615, expressing regrets about Abkhazian reluctance to negotiate on the proposed conditions and at the same time emphasizing that international status of Abkhazia can be defined only within the territory of Georgia.¹⁹¹ The situation can be described as a vicious circle: none of the parties would agree to make a step towards each other, but without even a slight concession no positive development was possible as the sides claimed for the opposite and reconciliation seemed to be non-achievable.

The Security Council of the United Nations remained persistent throughout the whole confrontation period: the territorial integrity of Georgia was the main concern for the SC, the

¹⁸⁸ P.K. Menon, *The Law of Recognition in International Law: Basic Principles* (The Edwin Mellen Press, 1994), 160.

¹⁸⁹ Dov Lynch, *Engaging Eurasia's Separatist States: Unresolved Conflicts and De Facto States* (United States Institute of Peace Press, 2004), 15.

¹⁹⁰ *Ibid.*

¹⁹¹ Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford University Press, 2010), 189.

Abkhazian authority was not recognized, the elections were considered to be not legitimate and separatist policies illegal. However, there was an important change introduced in October, 2007, namely, in the resolution of the Security Council of the United Nations Georgia was classified as a “divided country.”

3. 2008 - Present Days

As in the post- Abkhaz-Georgian war time Abkhazia has declared its independence, Tbilisi started favoring the concept of an asymmetric federation, even though from the beginning Georgia was rather cautious about this idea. Meanwhile after the war any option that does not grant Abkhazia with “international legal personality and the right to secession” was unacceptable. Possibilities of forming a confederation or some kind of free associated state were still present in the discourse and debated in the post-war period, however, they came to naught within few years.¹⁹²

August 2008 became a turning point in the history of Abkhazia and South Ossetia. On August 7, 2008, according to the information provided to the Georgian President Saakashvili by his intelligence, there was one column of Russian military moving from the Russian-Georgian border in the direction of Tskhinvali, which is considered to be one of the centers of the separatist enclaves in South Ossetia; other column was detected coming through the Roki Tunnel.¹⁹³ Saakashvili ordered to suppress the movement of separatist groups and indeed launched shelling not only against the South Ossetian militia but also against the Russian forces. Despite Georgian proclaimed intentions to “minimize civilian casualties”, a number of civilians and peacekeepers were injured or killed.¹⁹⁴ Thus, the five days long war broke that so far has been the biggest political conflict between the West and the new Russian since the Soviet Union collapse. Technically Georgia provoked Russian to return fire by attacking its troops on the northern border South Ossetia. On the other hand, the aim of relocating Russian forces in the region was unclear and, therefore, rather suspicious. Saakashvili could have tried to manage the issue by using soft power rather than military tools, as he was advised by the western states but he preferred the alternative of getting into a war with the *a priori* superior opponent. After having spoilt the relationship with the Russian authority the Georgian President could not rely much on the means of diplomacy and at the same time could not allow procrastination in making a decision because of being deeply concerned about Russian movements in the problematic

¹⁹² Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)*, (VUVPRESS, 2011), 98.

¹⁹³ Ronald D. Asmus, *A Little War that Shook the World. Georgia, Russia, and the Future of the West* (Palgrave, 2010), 19.

¹⁹⁴ *Ibid.*, 19-20.

regions of South Ossetia that could have been Moscow's peaceful semi-latent attempts to annex the territory of unstable enclaves.¹⁹⁵ The conflict bore international character from the start.¹⁹⁶ Even though the Russian Federation was commonly labeled as an aggressor in the Western media first, already after a superficial scrutiny Saakashvili lost credibility as well. In mid-September 2008 *Spiegel* stated the following:

...the NATO officers believed that the Georgian attack was a calculated offensive against South Ossetian positions to create the facts on the ground, and they coolly treated the exchanges of fire in the preceding days as minor events. Even more clearly, NATO officials believed, looking back, that by no means could these skirmishes be seen as justification for Georgian war preparations.¹⁹⁷

Russian military intervention received a lot of attention and was widely debated internationally. Generally military intervention by invitation, which is a request for foreign troops to help to restore the order, made by the recognized government, is a very controversial issue.¹⁹⁸ When a request for military support comes from a state which is partially recognized or disputed, the international community is more than likely to condemn this act and label it as a violation of international security and regulations. Therefore, it was not surprising that the decision of the Russian government to bring its military forces to the Abkhazian territory internationally was recognized as an occupation.

However it did not stop the President of the Russian Federation at that time Dmitri Medvedev from stating that Russia's actions were guided by the provisions of the United Nations Charter, the 1970 Declaration on Principles of International Law Governing Friendly Relations between States, the CSCE Helsinki Final Act of 1975 and other fundamental international documents.¹⁹⁹

In the Russian-Georgian war the West did not meet Georgian expectations regarding support provision up to an extent Saakashvili's administration would like to, but apparently, actively stepping in the conflict as a third party did not seem to be a reasonable option. Moreover, western allies have repeatedly warned Saakashvili not to get into a fight with Russia under any circumstances. Despite these recommendations, the President took the challenge. The outcome of the short war, which appeared to be a result of a profound long-lasting crisis in the international relations between the countries, was quite negative for Georgia. Tbilisi lost to the Russian-Abkhazian-South Ossetian allies and had to retreat its troops. It was not only a military fiasco but, more importantly, strategic defeat. Permanently insisting on its humanitarian purposes as

¹⁹⁵ Ronald D. Asmus, *A Little War that Shook the World. Georgia, Russia, and the Future of the West* (Palgrave, 2010), 25.

¹⁹⁶ Peter W. Schulze, "Geopolitics at Work: the Georgian-Russian Conflict," *Göttingen Journal of International Law* (2009): 335.

¹⁹⁷ Ralf Beste et al., "Did Saakashvili Lie? The West Begins to Doubt Georgian Leader," *Der Spiegel*, 38 (2008), <http://www.spiegel.de/international/world/did-saakashvili-lie-the-west-begins-to-doubt-georgian-leader-a-578273-2.html> (accessed 28 April 2013).

¹⁹⁸ Brad R. Roth, *Governmental Illegitimacy in International Law* (Clarendon Press, 1999), 186-188.

¹⁹⁹ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 34.

establishing peace and protecting minorities in the region, per se after the war Russia got one more excuse to justify its actions, viz. victory in a war which *de jure* was a result of another state's aggression. Under this justification framework the Russian authorities established buffer zones around Abkhazia and South Ossetia and left its forces stationed in the seceding regions. Second, Georgia proved to be an unstable state with questionable leadership. Therefore, theoretical prospects of Georgia joining NATO or the European Union were automatically prorogued and put aside. Indeed that was one of the most significant losses for the Georgian administration as westernization of the country was set up as one of the primary goals and initially its orientation towards the West became a stumbling block in the relationship with Russia which, being concerned about western expansion to its sphere of interests, started its anti-Tbilisi policies in the separatist regions of Abkhazia and South Ossetia. And the third, probably the most dramatic for Georgia in a short and mid-term, consequence is that Abkhazia and South Ossetia accomplished a shift from *de facto* dismemberment to *de jure* independence.²⁰⁰ Followed by some minor states like Nicaragua, Venezuela, Nauru, Vanuatu, and Tuvalu, the Russian Federation recognized Abkhazian and South Ossetian independence and, moreover, affirmed it would protect the territories of the new-born states in case of the outside aggression.

Nowadays one of the most important ongoing issues between Russia and Georgia is restoration of the Abkhaz-Georgian railway, to be precise, its Zugdidi-Ochamchire section, as the connection between Georgia and Abkhazia was terminated as a result of Abkhazian-Georgian armed conflict of 1992-1993. This part of railway is essential not only because of trade purposes, infrastructure and other economical reasons, but, most and foremost, it is also perceived as a crucial political issue that might be a big step forward in the Abkhaz-Georgian conflict settlement. And as a factor that has a huge potential to improve Russian-Georgian relations. Moreover, this railway would connect Armenia, which is blockaded by Turkey and Azerbaijan, with Russia and would provide the country with a railway access to Europe.²⁰¹ Thus, the Abkhazian part of railway is incredibly important both economically and politically. The Ochamchire-Gagra segment of the railway that is fully in Abkhazia was just recently rebuilt, the next logical step would be to rebuild the connection between Ochamchire and Zugdidi, which is incredibly important geopolitically, and renovate the infrastructure.

In March 2003 an agreement about restoration of the Abkhaz railway and renovation of the Ingur hydropower station was achieved between the Presidents V.Putin and E.Shevarnadze in

²⁰⁰ Ronald D. Asmus, *A Little War that Shook the World. Georgia, Russia, and the Future of the West* (Palgrave, 2010), vii.

²⁰¹ Expert Club, Simon Kiladze, "Abkhazian Railway – Road to Nowhere?" 22 November 2012, http://eng.expertclub.ge/portal/cnid_12985/alias_Expertclub/lang_en/tabid_2546/default.aspx (accessed 30 April 2013).

Sochi.²⁰² This initiative seemed to be a very positive development in the trilateral relations between Abkhazia, Georgia and Russia and, if the plan was accomplished, it could have fostered the cooperation between parties and even brought to the resolution of the conflict eventually. However, despite the discussions and temporary progress made, the project was failed. Since Saakashvili, who expressed an opinion that renovating the railway serves only Russia's national interests, came to power, Georgia's position in this regard became significantly less coherent. Even though the railway was not the priority for Georgia anymore, idea was not even up completely and was still discussed by Georgian authorities. The initiative was naturally cancelled with the newly accelerated inter-ethnic tensions and Georgian-Russian war of 2008.²⁰³ It was quite unfortunate that the project failed as it bore a lot of economical potential. There are multiple reasons why it was not successful. First, Georgia demanded that there must be joint customs not only on the Abkhazian- Georgian border but also on the Abkhazian-Russian one on the river Psou. However, letting Georgian enter their territory and allowing establishing some sort of official bureaucracy there would mean creating an extra threat for its declared sovereignty for Abkhazia. Second, having started as a trilateral agreement the conditions of participation have changed, and only two parties remained – Georgia and Russia. Abkhazia and Armenia were supposed to enjoy the observing role. Moreover, in the Black Sea Railways Consortium protocol of 2006 this part of railway was perceived as “Georgian Railways,” or Abkhazian part of it, to be precise.²⁰⁴

While earlier the Minister of Georgia's Reintegration Paata Zakareishvili claimed, that Georgian authorities are ready to rebuild the railway between Abkhazia and Russia under the “Strategy of De-isolation of Abkhazia” program, later, however, he stated that this issue is not being considered as the Abkhazian side did not reveal a substantial interest to the project.²⁰⁵ On the other hand, Abkhazia shows coherence in its position and lack of Abkhazian interest in restoring the railway connection with Georgia can be explained. At the moment it seems that this railway most of all would benefit Georgia and Armenia and not that much Russia. Naturally Russian officials are interested in having an opportunity to provide its military base in Gyumri with the necessary goods and equipment, but rather moderately, as it is clear that the Georgian side would carefully control all the cargo and not allow delivery of certain types of cargo like

²⁰² Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 157.

²⁰³ Expert Club, Levan Kiknadze, “Abkhaz ZhD – Vihod iz Tupika,” 12 December 2012, http://expertclub.ge/portal/cnid_13100/alias_Expertclub/lang_ru/tabid_2546/default.aspx (accessed 27 April 2013).

²⁰⁴ Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 158.

²⁰⁵ RIA-Novosti, “Vopros Zh/d Soobshenia mezhdyy Gruziei s Abkhaziaei Aktivno ne Reshaetsya,” <http://ria.ru/world/20130213/922684295.html> (accessed 28 April 2013).

military.²⁰⁶ Russian position on a problem is often criticized by the Georgian party. Abkhazians, on the other hand, get everything they need from their primary supplier the Russian Federation, while restoring train connection with Georgia would mean to ease the coming back process for the displaced Georgians who have not returned yet, which does not seem to be a favorable option for Abkhazia. Therefore, currently Georgia is the main actor who is interested in having this connection again and not only Georgian government but also public intellectuals are very concerned about this issue. The former Deputy Head of the State Intelligence Department of Georgia and the former Minister of Security of Abkhazia, General Levan Kiknadze in cooperation with other former Georgian security service employees has established the so-called “Club of Experts” as a side project of the non-governmental organization “Abjari.” The club provides the media with pro-Georgian analytics as it is designed to contribute to the restoration of territorial integrity of Georgia. Railway is one of the most debated notions within the “Club of Experts.” Russia is criticized for having double standards and just pursuing the goal of being able to deliver military cargo to the base without really considering Armenia and Abkhazians are accused of being reluctant to the idea of restoring the Zugdidi-Ochamchire railway as, according to the “Club”, the separatists want to prevent massive repatriation of ethnic Georgians.²⁰⁷ Kiknadze has valid points, yet he forgets to mention the state of affairs in the beginning and middle of 2000s when Shevardnadze was not enthusiastic about the idea. Unfortunately, lack of agreement and coherence leads to procrastination of making an important step towards reconciliation between the parties.

In 2008 Russia recognized Abkhazia as a sovereign state relying on the concept of secession (or remedial self-determination, according to Weller) as justification for this act, even though it used to reject it in 1990s opposing to Chechnya.²⁰⁸ Remedial self-determination might be seen as an artificial concept invented to avoid the term “secession.” M.Weller defines it as a right to secede “in a constitutional compact...or a right which is generated through subsequent constitutional practice.”²⁰⁹ This right can be exercised in case of systematic oppression of a people by the central government when a people finds itself being discriminated against and excluded from the decision-making process with no access to the political sphere.

On the other hand, there is a hypothetical negative consequence of self-determination that becomes a reality in case of pseudo-states, which is a state formation failure resulting in inability of the government to provide its monopoly on the legitimate violence. This condition causes

²⁰⁶ Expert Club, Simon Kiladze, “Abkhazian Railway – Road to Nowhere?” 22 November 2012, http://eng.expertclub.ge/portal/cnid_12985/alias_Expertclub/lang_en/tabid_2546/default.aspx (accessed 30 April 2013).

²⁰⁷ Ibid.

²⁰⁸ Marc Weller, *Escaping the Self-Determination Trap*, (Martinus Nijhoff Publishers, 2008), 67.

²⁰⁹ Ibid., 59.

crime, terrorism and civil war and, therefore, creates a threat for national security of other states and international security in general.²¹⁰ In other words, the principle of territorial integrity implies more than simply preservation of the given territory which borders remain being not violated as it also means having proper control over the territory and ability to sustain the order.

4. Georgia as a Weak State

One of the reasons Abkhazia managed to break away relatively easily is weakness of the state of Georgia – not merely military, but, even more importantly, political and institutional. However, the question is how one can measure weakness or strength of a state. Francis Fukuyama attempted to conceptualize the issue and suggested his methodology to analyze it. He distinguishes between two crucial aspects of statehood that define how strong or weak the state is. He labels strength of a state with a term “scope” of state activity and gives two dimensions to this concept, namely, strength and capacity.²¹¹ He also created a matrix that is designed to differentiate the degrees of statehood of countries around the world which is subjective as there is no general consensus on hierarchy of state functions, especially in regard to social policy and redistribution matters. At the same time Fukuyama points out that in some sense the hierarchal structure is determined by the logic and the majority would agree that providing public order and defend the territory and its population from the external invasion is predominant to social issues like provision of universal public health as the second cannot take place without establishing the first one.²¹² Fukuyama’s model is very demonstrative and descriptive and at the same time it remains rather simple and understandable, due to these reasons we would apply it. So, two main dimensions are taken into account in this model, which are strength of state and scope of state functions. Fukuyama borrows the approach from the World Bank that operates with the list of state functions that range from the category “minimal” to “intermediate” to “activist” and applies it in his model placing the scope of functions as an X-axis which progresses from no state functions at origin to minimal, then intermediate and activist afterwards. The minimal functions include providing following goods and services: pure public goods, defense, law, public order, property rights, macroeconomic management, and public health. Also, the issues of the poor protection and disaster relief belong to this category. The second group of intermediate functions is represented by the functions of addressing externalities (education, environment), overcoming imperfect information (customer protection, social insurance, financial regulation), and

²¹⁰ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States’ Quest for Survival*, (Springer, 2012), 288.

²¹¹ Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Cornell University Press, 2004), 7.

²¹² Ibid.

regulating monopoly. Only few states successfully perform functions of the third category which are industrial policy, wealth redistribution and coordinating private activity through fostering markets and cluster initiatives.²¹³

The second dimension that Fukuyama puts as Y-axis is capabilities of the state institutions. The following criteria were chosen for this dimension, namely, ability of a state to formulate and carry out policies and enact laws, to conduct efficient administration with the minimum of bureaucratic apparatus, control of graft, corruption and bribery, maintenance of a high level of transparency and accountability in government institutions, and laws enforcement which is the most essential ability of a state.²¹⁴ Again, like in case of the state functions dimension, there is no commonly accepted measure of the state capacities which is a limitation of the model. Another limitation is that generalization is unavoidable within this model which in some cases does not cause any distortion of the final results, but there are examples when the effect is rather tangible. However, since we do not aim to do precise calculations, it might be reasonable to borrow Fukuyama's matrix in order to have a methodological tool how it is possible to perceive changes and state scope and strength. We assume that Georgia of 1990s (as well as modern Georgia) belongs to the quadrant III next to Russia in 1990s-2000s in Fukuyama's graph, as after the Soviet Union breakup institutions were incredibly weak in the former Soviet Union states (see Figure I).²¹⁵ However, in comparison to Russia Georgia should have a shift to the left on the X-axis as the scope of state functions was very limited (labeled as "minimal" on the graph) due to the fact that the Soviet Union was a state with a highly centralized structures and Moscow had an advantage in this sense as the infrastructure and hierarchy were established already and finances were concentrated there unlike other capitals of former USSR member-states had to start from a scratch in certain regards. Data about Georgia, provided by the Foreign Policy proves it.²¹⁶ In *the Annual Special Report by Foreign Policy and the Fund for Peace on Failed States* Georgia is traditionally listed as one of the world's fifty nine failed states based on twelve primary political, social, and economic indicators. Despite certain progress Tbilisi has achieved due to the foreign investment by now in comparison to the after-war situation (this year Georgia's rank is 55), the country still belongs to the category of failed states with narrow scope of state functions it can

²¹³ Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century*, (Cornell University Press, 2004), 7-9.

²¹⁴ Ibid., 8-9.

²¹⁵ Francis Fukuyama, "The Imperative of State-Building. *Journal of Democracy*," *Journal of Democracy* 15 (2004): 25.

²¹⁶ "The Annual Special Report by Foreign Policy and the Fund for Peace on Failed States," 2013 Edition, *Foreign Policy*, http://www.foreignpolicy.com/articles/2013/06/24/2013_failed_states_interactive_map (accessed 2 June 2013).

successfully fulfill and limited institution capabilities.²¹⁷ Quadrant III represents failed and weak states.

Russia of the first half of nineties was a failed state, but the same and even up to a higher degree refers to other former Soviet Union states. Georgia was recognized by the United Nations as a sovereign country shortly before the war 1992-1994. And even though the UN made this decision, the country was still full of contradiction and political instability. Lack of rule of law, heavy bureaucratic apparatus, inner tensions and quarrels characterized the state of Georgia in the beginning of nineties as well as other post-Soviet states. Under these conditions it was barely possible to perform effectively in the war against Abkhazia which, on the other hand, was highly-organized and closely-knit in the struggle for its independence.²¹⁸

After the Soviet Union dissolution Georgian leader chose to follow a path towards democratization which was favored by the West but mostly in a rather passive form with an exception of the Revolution of Roses. While for the USA the region was interesting primarily because of Russia and an opportunity to establish its control up to some degree in the area that was traditionally pro-Russian, for the European Union it seemed to be a remote territory on the periphery of Europe that had no impact and could not possibly have it on the realities of the European Union. In spite of being generally concerned with the Abkhaz-Georgian war of the early nineties and massive human rights abuse that it caused, it seemed to be reasonable not to get actively involved into a conflict which was going on in the constantly unstable region of Caucasus between the parties and because of the reasons Europeans had not much knowledge about. Unlike Yugoslavia that is undoubtedly a part of Europe and which is dangerously close to the borders of the EU, Georgia was perceived as a very distant full of instability state involved in conflicts with two separatist territories at the same time which were unlikely to have a direct effect on state of affairs in the EU. Georgia lacked so-called international personality which is, according to Crawford, “a capacity to be bearer of rights and duties under international law.”²¹⁹ Previous oppression of Abkhaz population resulted in the violent resistance against Georgian authorities in a form of a war and ethnic cleansing of Georgians. The state has poor control of the situation as it could neither solve it diplomatically, because of the neglected tensions the conflict was escalated up to a point where ineffective negotiations were not perceived as a tool for a conflict settlement by the Abkhazian side, nor suppress it by military means as this capacity was not sufficient.

²¹⁷ “The Annual Special Report by Foreign Policy and the Fund for Peace on Failed States,” 2013 Edition, *Foreign Policy*, http://www.foreignpolicy.com/articles/2013/06/24/2013_failed_states_interactive_map (accessed 2 June 2013).

²¹⁸ Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 86.

²¹⁹ Crawford, James. *The Creation of States in International Law* (Clarendon Press, 2006), 28.

After the war the ongoing unsettled conflicts with Abkhazia and South Ossetia kept on weakening Georgia politically. Neither the economical situation in the country was getting better. Since consolidation and centralization of power in Russia after the inauguration of Vladimir Putin, the Russo-Georgian relations were gradually getting worse because of the contradiction between growing Russian ambitions and Georgian Western orientation as well as cordial dislike between the leaders and their administrations on professional and personal levels. Thus, if to go back to Fukuyama's model, from 2001 on Russia started rapidly moving towards quadrant II due to petrodollar super-profits and Putin's centralization of power. Georgia, on the other hand, had no resources to improve significantly.

As Georgia is a state with a negative trade balance with an export annual growth -29, 1%²²⁰, which means that import exceeds export several times and the Russian Federation used to be one of the most important buyers, there was this manipulation tool which Russian government did not hesitate to use.²²¹ The trade became very limited and in 2006 Georgian wine, important agricultural export product, was banned by the Chief Medical Officer of the Russia Federation Gennady Onishenko. Moreover, an aggressive propaganda campaign against Georgian wine, which was traditionally consumed in the Soviet times, and mineral waters was started. The official reason was high concentration of pesticides in the grapes used for the wine production and, consequently, the poor quality of Georgian wine which was labeled as a health-damaging product.²²² The ruse with the wine ban appears to be a well-thought through act as it brought about large income losses for Georgia as Russia used to be the primary wine export target. At the same time this policy was an uncovered insult as wine is one of major agricultural products which has a long history and traditions in the region and which the Georgians are particularly proud of. The changes in trade did not affect Russia that much but for Georgia it turned out to be an important issue. Turkey, Azerbaijan and Ukraine became main trade partners for Georgia. The European Union actively expressed interest relatively recently after the Russo-Georgian war. Hence, on May, 7th, 2009, a trade agreement between Georgia and the EU was signed which can be seen as a big step forward.²²³ Furthermore, the relations with Russia get stabilized

²²⁰ Food and Agriculture Organization of the United Nations, "Georgia 2011," http://www.fao.org/fileadmin/user_upload/Europe/documents/Publications/AI_briefs/Georgia_ai_en.pdf (accessed 5 June 2013).

²²¹ Ministerstvo Inostrannih Del Rossyiskoi Federacii, Oficial'nyi Sait. "Gruzia," <http://www.mid.ru/ns-reuro.nsf/348bd0da1d5a7185432569e700419c7a/c2e1129b451dc9e2c32576b3002b13c7?OpenDocument> (accessed 4 June 2013).

²²² RBK, Onoshenko protiv "Borzhomi" i Gruzinskih Vin," (2013) <http://top.rbc.ru/story/610709.shtml> (accessed 7 June 2013).

²²³ Economy Watch - Follow the Money, "Georgia Export, Import and Trade," (2010), http://www.economywatch.com/world_economy/georgia/export-import.html (accessed 8 June 2013).

deliberately, so the government is slowly opening the borders for the Georgian goods again.²²⁴ Thus, modern Georgia is improving economically after the disastrous years.

After the Rose Revolution in Georgia there was a real hope for democratization of the state and, consequently, stability and better position internationally. However, aid and support from the West were not sufficient. At the same time the weak state of Georgia, that was full of contradictions and needed a set of reforms rather than brutal revolutions, was oppressed by its big Russian neighbor-state which was rapidly getting stronger politically and economically. Also, after forcing the President Eduard Shevardnadze to resign, the leaders of the Rose Revolution had to deal with the conflicts in the society, including the frozen conflict of Abkhazia and South Ossetia, and the state which they did not create and apparently were not fully aware of.²²⁵ Saakashvili was not successful in solving the problems that have accumulated in Georgia. Generally under these circumstances, despite the good intentions of democratizing the system, such blind faith in soon great Georgian future as a part of western democratic world was destined to fail. Hence, Georgia was put in a rather difficult condition and the starting point for Saakashvili was not favorable. On the other hand, as Ronald D. Asmus points out when estimating the reasons and consequences of the Russo-Georgian war, “Prudence and consistency were often in short supply in Tbilisi.”²²⁶ Asmus emphasizes the paradoxical situation of Georgia: “This government was pro-Western and reform oriented at home and which proudly flew the EU flag as a symbol of its pro-European orientation could work with Washington, but it could never translate those sentiments into a relationship of mutual trust and confidence in dealing with the European Union.”²²⁷ Inconsistency was the cornerstone of the failures of the Georgian administration. Ronald Asmus proposed Georgian diplomacy as an example of Richard Nixon’s madman theory about threatening to act irrationally in order to attract attention of a third party.²²⁸ Emphasizing the possibility of going to a war with Russia, the Georgian leader probably hoped to get the attention of the Western partners. The attention was certainly received but not the support, at least not up to the expected extent. Besides other factors, poor support was the result of inconsistent diplomacy when Tbilisi was changing its mind very rapidly from first claiming that it would delegitimize the Russian presence in South Ossetia and Abkhazia, even though the territories asked and approved the presence of the peacekeeping forces, to suddenly offering secret deals to the Russian government without considering the break-away states as

²²⁴ Rosyiskaya Gazeta. Ekonomika, “Vozvrashenie Gruzinskoi Produkcii v Rossiy,” (2013), <http://www.rg.ru/sujet/2460/> (accessed 3 June 2013).

²²⁵ Ronald D. Asmus, *A Little War that Shook the World. Georgia, Russia, and the Future of the West* (Palgrave, 2010), 10.

²²⁶ *Ibid.*, 11.

²²⁷ *Ibid.*

²²⁸ *Ibid.*, 10.

participants.²²⁹ Georgian defeat in the war was predetermined as, despite the intention, Tbilisi did not manage to get closer to Washington and NATO, while it was not ready for the war itself because of lack of military capacity. Thus, in the Russo-Georgian war of 2008 Georgia has fully demonstrated its political weakness and a certain degree of diplomatic incoherency.

Following the chronology of events in the Post-Soviet Abkhazia, while attempting to analyze shifts in policies and new developments in the process, is important in order to discuss potential solutions of the “frozen conflict” of Abkhazia. However, before doing so, influence of external factors should be explored, as there are several actors in the political process that have their own interpretation of the conflict due to the interests they pursue.

²²⁹ Ronald D. Asmus, *A Little War that Shook the World. Georgia, Russia, and the Future of the West* (Palgrave, 2010), 10.

IV. External Factor: Russia, NATO, the UN and the EU.

1. The Role of Russia

For the Russian Federation the region where Abkhazia is located belongs to the sphere of national interests, and its significance only increased since the Georgian-Russian War. The breakaway region is a neighboring territory; hence, the Russian Federation a priori has its strategic interest there. Also, Abkhazia is a part of Caucasus which is traditionally unstable and full of contradictions. For reasons of military security and trade Abkhazian government found itself in a situation when the de facto state has to rely on Russia a lot which under the circumstances of international isolation and economic embargo resulted in its political, economic and military dependence on the Russian Federation.²³⁰ There amount of Russian investment and business entering the relatively undeveloped Abkhazian market is growing rapidly, especially after the war. It probably reaches its peak now, before the winter Olympic Games 2014 in Sochi. The process is multisided – on the one hand, it gives certain economic securities, while on the other, by doing so Russia increases its influence in the region. And, even though Russia is commonly seen as a lesser evil compared to Georgia, Abkhazian nation stated very clearly that they would prefer to be a sovereign independent state.

Even though during the War 1992-1993 Russian authorities did not perform in a unified way, according to C. Francis, that was agreed within the government that Russia should lead the conflict settlement process.²³¹ Thus, all negotiations between the conflicting parties during the war took place in the presence of Russia that played the role of a mediator. Being determined primarily by the current state of political reality and relations with Georgia at the particular moment in history, Russian policy in regard to this conflict and the disputed territory was changing over the time. Since the conflict was taking place directly at the Russian-Georgian border on the territory that the Russian government considered its sphere of interests, Russia did not stay impartial but, on the contrary, got involved to a large extent. Abkhazia had potential danger of destabilizing Russian Caucasian republics which a priori were culturally very different from the rest of the country with their strong and unique identity. Therefore, the Russian Federation had to support Georgian integrity because of its own national interests, as the precedent of secession in Caucasus right on the Russian border could have brought similar consequences within the state of Russia. On the other hand, partially supporting Abkhazian insurgency was a great opportunity to manipulate Georgia up to some point and push own

²³⁰ Tom Trier, Hegvig Lohm and David Szakonyi., *Under Siege: Inter-Ethnic Relations in Abkhazia* (Hurst&Company, 2010), 14.

²³¹ Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)*, (VUVPRESS, 2011), 124.

conditions of the agreement through.²³² This policy worked rather well in the fall 1993 when the Russian-Georgian agreement was finally signed by Shevarnadze on the conditions of Russia despite the earlier rejection of it twice. Hence, Russian military presence on the Georgian territory was allowed, and Georgia had to join the Commonwealth of Independent States (CIS).

After the agreement was achieved Russia started exercising its power in the region in an attempt to stabilize the region. A number of sanctions against Abkhazia were implied. Those were mostly economical measures including cutting the electricity supply off, but also closing the Russian-Abkhazian border and taking particularly good care of young and middle-age men not crossing the border to prevent the hypothetical collaboration of Abkhaz and Chechen separatists. The outcome was that both Abkhazian and Georgian parties were unsatisfied with Russian actions as each of the sides was seeking for the full support while Russian Ministry of Foreign Affairs was focusing on pursuing its national interests trying to maintain fairly good relations with both sides. That was a tricky and unstable position *a priori*. Georgia granted the Russian Federation with the right of military presence on its territory because of the one main reason - Tbilisi needed military support and needed to restore its territorial integrity which it was too weak to do using its own resources. The protocol of February 1994 allowed Russia to deploy its units on three military bases, namely, Akhalkalaki, Batumi and Vaziani.²³³ However, the Russian Federation was already highly involved into dealing with the separatism movement in the Chechen republic on its own territory; therefore, it Russian government had neither will, nor capacity to actively participate in Georgia's territorial integrity restoration process. So, Tbilisi's expectations of Moscow were not met, dissatisfaction with the Russian policies was growing and this fact raised a question about vainness of sacrifices made by Georgia.

If a state makes a request to another state for military support and protection, it is already a rather tricky situation that is not appreciated by the international community in case it is not commonly agreed that the goals are perceived as legitimate. However, if this kind of request is made by a state which did not even receive full international recognition, then the state of affairs is even more complicated. An "invited" sovereign state violates territorial integrity of the parent state a secessionist territory is trying to break away from. Therefore, this support might be interpreted as military intervention or occupation.

In 2008 Russia happened to be in a situation described above. The Russian government claimed that by positively replying to the request of Abkhazia it, first, was acting in accordance with the international law and, second, was concerned about protection of Russian nationals

²³² Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 124.

²³³ *Ibid.*, 125.

abroad, therefore, exercised its self-defence right.²³⁴ Considering the policy of issuing Russian passports to Abkhazians and South Ossetians, the “protection of the nationals” justification might be correct in some sense as high percentage was granted with the Russian citizenship. On the other hand, the policy of Russian passportisation is rather dubious at least. For the Georgian government it was a warning alarm of a quiet territorial annexation of the secessionist regions that are *de jure* Georgian. The Independent International Fact-Finding Mission on the Conflict in Georgia found the passportisation initiative and offer of benefits to the vulnerable populations of Abkhazia and South Ossetia to be unlawful, as it is stated in its Report.²³⁵ Also, according to the Report, neither the humanitarian arguments of the Russian government, nor the claim of the self-defence necessity were valid. Even though the aspect of defending the peacekeepers was acknowledged to be a legitimate action, the reaction and extent of the force use still was interpreted as unlawful.²³⁶

As Green and Waters point out, the extent of using the force was disproportional to the stated goal.²³⁷ It was predictable that the Russian side would justify this act as self-defence as the UN Charter provides only two exceptions for the use of military force, namely, a military action authorized by the Security Council and self-defense. As it is stated in the Article 51, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.”²³⁸ It was rather clear that under no conditions the United Nations would ratify the act of Russian intervention; hence, the only option left was self-defence. Otherwise, without the Security Council authorization this kind of action could have been legitimate as a unilateral humanitarian intervention.²³⁹ The Russian Minister of Foreign Affairs Sergei Lavrov and the President at that time Dmitri Medvedev repeatedly appealed to humanitarian concerns; hence, also because of a lot of use of the humanitarian language and accusations of ethnic cleansing and human rights violations conducted by the Georgian government, the principle of unilateral humanitarian intervention could have been used. However, it was not, at least it was not stated so officially, even though there were cases in media when the use of this concept was prescribed to the actions of the

²³⁴ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 54.

²³⁵ Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG - CEIIG). 2008. <http://www.ceiig.ch/Index.html> (accessed 30 May 2013).

²³⁶ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 169.

²³⁷ *Ibid.*, 55.

²³⁸ Charter of the United Nations and Statute of the International Court of Justice, San-Fransisco, (1945) <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (accessed 27 May 2013).

²³⁹ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 55-56.

Russian government. *De facto* the Russian Federation did not claim to use this paradigm, probably because in Russian practice of international relations since the Soviet Union time unilateral humanitarian intervention was traditionally rejected as an element of customary international law.²⁴⁰

Despite the fears of Tbilisi in 2008 that Moscow might *de facto* annex South Ossetia, which resulted in Georgian hasty reaction and the war outbreak, it does not seem that there were such intentions. Rather, the purpose was to maintain and improve the presence in the region, keep it as a sphere of Russian influence. Hence, the goal was not to allow further westernization and disintegration of the post-soviet space and Abkhazian and South Ossetian separatists with their claims for the self-determination rights were merely used as pawns in the ongoing geo-strategic game.

The Russian government pursued a number of goals when the decision to enter the war was made. Even though there is no doubt that in military terms Russia is more powerful than Georgia, there were other risks to be considered. First, there was a slight theoretical possibility that the West might step in the conflict. Albeit the probability of this scenario was low, hypothetically it was not impossible. The second risk, however, was more real and, furthermore, unavoidable in case of getting involved into a military conflict with Georgia, which was a damage of country's international reputation. In the West Russia was seen as an aggressor, a bully with imperialistic intentions and obsession about controlling its borders. Losing reputation is not merely an ethical question. Lack of trust to the state's authority because of its unpredictability and policies that are questionable in regard to democracy and human rights causes such negative consequences as investor confidence loss.²⁴¹ Thus, foreign investors who became convinced in the stability of the Russian economy only in mid-2000s, when the interest from abroad increased and the market was boomed with the foreign business, recognized another problem – not financial but political this time. Hence, the investment decreased significantly and it had a strong negative impact on the Russian economy later as the country was struggling with the international economical crisis which was rather severe in Russia. Two months after the war the foreign currency exchange rate changed tremendously and the ruble fell by 30%. Strategically 2008-2009 appeared to be a very inconvenient time period for reputation damages.

However, apparently the goals justified the risks taken, which were: first, establish control over South Ossetia and Abkhazia, eliminating Georgian pockets there; second, remove Georgian forces from the Kodori Gorge and support Abkhazia in establishing its control over Gali region

²⁴⁰ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 56.

²⁴¹ Ronald D. Asmus, *A Little War that Shook the World. Georgia, Russia, and the Future of the West* (Palgrave, 2010), ix.

which is mostly Georgian-populated; third, sign a document renouncing use of force with Georgia; fourth, prevent Georgia from joining NATO; fifth, have a Russian security zone on the western side between Georgia and Abkhazia and, finally, demonstrate Saakashvili's weakness to Georgia and to the international community.²⁴²

2. The Role of NATO and the United Nations

Because of the long-term plans of NATO expansion to the East Georgia was seen as a point of interest for the United States of America and the perception of the Russian intervention in 2008 by Bush's administration was strongly negative. The Secretary of State Condoleezza Rice labeled the methods of the Russian government as "barbarian".²⁴³ Georgian authority had a goal of NATO membership and American support seemed to be very promising as potentially it could bring finances and open a gate to the Western world. Considering this Georgian intention, the American side played this card well, keeping Georgia as a partner and declaring in April 2008 that Georgia would get NATO membership someday which was against Russian strategic interests in the region.²⁴⁴ Nevertheless, Georgian NATO Membership Action Plan was refused. In 2008 Russian-American relations became incredibly tense. Also, that was a very particular year for both countries: whereas in Russia it was the first year of Medvedev's Presidency who back in time seemed to be a promising political figure that was perceived by the western states as a force that has a potential to turn the country towards democracy, in the USA 2008 was a year of the Presidential elections where Republicans tried hard to do their best to maintain their position in the government.

The UN is entitled to be the mediator in the international relations conflicts, including the sovereignty conflicts. However, its role is rather ambiguous, as the United Nations is an "authority recognizing new states and the watchdog of state rights"²⁴⁵ at the same time. So, the paradox of the United Nations authority in regard to the disputed newly-emerging states is that it bears two diametrically opposite functions. On the one hand, the United Nations is supposed to preserve the existing world organization and the state system being the watchdog of the state rights; on the other hand, the UN has the right to recognize and legitimize sovereignty of the state internationally.

²⁴² Ronald D. Asmus, *A Little War that Shook the World. Georgia, Russia, and the Future of the West* (Palgrave, 2010), 108.

²⁴³ Andrew E. Kramer, and Clifford J. Levy, "Rice, in Georgia, Calls on Russia to Pull Out Now," *The New York Times*, 15 August 2008, 1.

²⁴⁴ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 166.

²⁴⁵ Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 126.

The United Nations are obliged to be very careful with granting political communities with statehood for the reasons of preserving the world order; therefore, Abkhazian separatists were always recommended to exercise the self-determination right without breaking away from Georgia. On the other hand, in spite of seeing Georgia's territorial integrity as the main goal, the UN "never intended to coerce the Abkhaz regime into compliance by threats or punishment."²⁴⁶

International involvement and the mechanisms of conflict settling applied in Abkhazia and South Ossetia proved to be inadequate and ineffective. The United Nations had sister missions in both separatists states since early nineties.²⁴⁷ The goal was to monitor ceasefire and encourage peaceful conflict resolution. The evidence of the past twenty years shows how unsuccessful they were, because the intention was never really transformed into a support system or a real working strategy. Numerous resolutions and endless discussions without a strategic plan led to a failure of the international community in the conflict resolving and peace-building. On the other hand, as Asmus points out, those mission initiatives provided Russia with a legal excuse to get involved in the issue and use them as "a cover for its own goals."²⁴⁸ Hence, the outcome of the missions was rather negative and the purpose was not reached.

3. The Role of the European Union

Multiple times the European Union has stated that it is committed to the territorial integrity of Georgia and encourages the parties to find a peaceful solution for the conflict, however, was not actively participating in the conflict settlement process in nineties. The EU changed its position in 2001 when it was concluded that the role of the European Union in Caucasus should be increased. Thus, Troika has officially visited South Caucasus, the EU became a member of the Control Commission for South Ossetia and from 2004 after Javier Solana's visit representatives different structures of the European Union started to come to Abkhazia and South Ossetia regularly.²⁴⁹ In the Russian-Georgian opposition the European Union was less opinionated in comparison to the United States and not as negative about the Russian Federation. The EU did not support the idea of Russia being a neutral mediator of the Abkhaz-Georgian conflict, but it did not oppose to it either until the Russian-Georgian war started.²⁵⁰

Hence, the EU got engaged in Caucasus, which appeared to be a great contrast to the previous neutrality, and also introduced CFSP Joint Actions in support of border guards and supported the

²⁴⁶ Celine Francis, *Conflict Resolution and Status: the Case of Georgia and Abkhazia (1989-2008)* (VUVPRESS, 2011), 127.

²⁴⁷ Ronald D. Asmus, *A Little War that Shook the World. Georgia, Russia, and the Future of the West* (Palgrave, 2010), 11.

²⁴⁸ *Ibid.*, 10.

²⁴⁹ Ingo Peters, and Jan Bittner, *EU – US Risk Policy in the European Neighborhood: The Cases of Moldova and Georgia* (Freie Universität Berlin, 2006), 18.

²⁵⁰ *Ibid.*

establishment of a Georgian-Ossetian police force.²⁵¹ On the other hand, all these initiatives can be described only as “engagement without recognition,” which is in any case better than ignoring.²⁵²

To sum up the issue of the external factor, we should conclude that Russia is the most influential actor, which is active in the region because of its multiple national interests in the area. NATO, supporting Georgia and opposing to Russia, has its strategic goals in Caucasus as well, even though American interest in the issue has decreased in the recent years. The European Union was limiting its involvement to providing recommendations and commenting on the situation, indeed neglecting Caucasus; however, the last decade is characterized by a positive shift in the EU policy toward a higher degree of involvement. The UN did not succeed to perform effectively as a conflict mediator. Although in case of Abkhazia Russia performed as a determinant factor that influenced the development of the process, it is necessary to emphasize that the attitude of the international community and its respective policy is mostly defined by the western perception of the problem and the political course the West chooses in this regard.

²⁵¹ Ingo Peters, and Jan Bittner, *EU – US Risk Policy in the European Neighborhood: The Cases of Moldova and Georgia* (Freie Universität Berlin, 2006), 20.

²⁵² Abkhaz World, Liana Kvarchelia, “Abkhazia's Foreign Relations,” <http://www.abkhazworld.com/articles/analysis/944-abkhazias-foreign-relations-by-liana-kvarchelia.html> (accessed 14 May 2013).

V. Searching for Solutions

1. Proposed Solutions

There is a difference between solving a conflict in a short term and serving justice in a case.

Ingo Peters

Often solutions are concluded in a rash in order to avoid the conflict escalation. Sometimes that is not even a solution but a kind of compromise between the parties where justice is not the main criterion. However, a long-term solution is supposed to include justice in legal terms at least, since it is a rather subjective category.

There are several solutions to the problem of an interethnic conflict that resulted in demands for the self-determination right in its full and extreme version including claims to secede from the state. All of them presume a certain extent of independence and normally a wider range of rights. Those hypothetical solutions are autonomy, federation (symmetric or asymmetric), and state union. The term “confederation” is deliberately avoided in this study as this term causes some misunderstandings as there are entities like Switzerland that have the word “confederation” in its official name but, however, *de facto* represent a federative state. Confederation implies a condition under which independent states form a new supra-national entity without giving up their sovereignty. Therefore, to avoid confusion and misconception, the term “states union” is used within this research.

Since the international community does not accept secession as an option, with an exception of cases of massive and repetitive human rights violations, autonomy is the most commonly proposed solution as a tool for ethnic conflicts settlement.²⁵³ This kind of autonomy is based on the concept of decentralization that includes three major objectives, namely political, administrative and economical.²⁵⁴ Weller proposes that the issues of decentralization and autonomy are fundamentally different, despite the fact they are logically connected and the second might follow the first one, although it does not have to happen necessarily. So, the core difference between the theories is that while “decentralization merely facilitates the local implementation or execution of decisions which have been taken centrally,” local self-government in a form of autonomy “generates space for the adoption of original decisions at the local or regional level.”²⁵⁵ However, both can be considered to be legitimate only under the constitutional order of the state.

²⁵³ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 331.

²⁵⁴ Marc Weller, *Escaping the Self-Determination Trap*, (Martinus Nijhoff Publishers, 2008), 89.

²⁵⁵ *Ibid.*

On the other hand, often autonomy is not a real solution to the existing problem but a common way to reconcile self-determination and state territorial integrity principles, which might turn out to be a delusion in practice. Even a successful implementation of the autonomy concept with an achieved temporary agreement does not guarantee continuity of the result. Granting the concerned minorities with self-government might easily lead to a situation of claiming for more rights and power this time for the autonomous entity.²⁵⁶

There are also different types of autonomy that can be applied in practice. The first option is creating a federacy which is a small territory that has internal sovereignty up to a high extent, but its external sovereignty is performed by the parent state on the behalf of the territory.²⁵⁷ So, in this case scenario autonomy is an anomaly. The second type of autonomy is when more than one territory or state unit is granted with an autonomous status, while the mother state is maintained as a unitary state. In other words, a sovereignty-seeking entity enjoys federation-like relations with the state and federal center whereas the political structure of the state stayed unitary. A formal federation is the third option with several units having an autonomous status and internal sovereignty, but there are core restrictions on how far the unit's rights can extend.²⁵⁸ The fourth type of asymmetry is an actual federation in its two versions, namely symmetric (the USA) and asymmetric (the Russian Federation). Because of complexity and prevalence as a proposed solution of the federalist kind of autonomy we allocate it in order to put its special case of asymmetric federation separately in the group of possible strategies of separatist conflict settlement. Division of sovereignty between central and local authorities is a particular characteristic of a federal state system, where neither of them can change the existing structure in a unilateral way. Additionally, sovereign competences of a local power are derived from the constitution rather than from the federal center.²⁵⁹ The major difference between the third and the fourth types is that in case of fully federative state may also have some external sovereign authorities unlike in the situation of a formal federation.

Thus, an asymmetrical federation is another possible solution for the secession problem. That is a federation where a particular region (or several of them) is granted with a special status and more autonomy. States do not favor this concept much as this structural organization might either encourage nationalism growth of the dominant ethnic group in the region or cause tensions between certain ethnic groups that inhabit the autonomy because of inequalities and real or

²⁵⁶ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 332.

²⁵⁷ Michael J. Strauss, *The Viability of Territorial Leases in Resolving International Sovereignty Disputes* (L'Harmattan, 2010), 43.

²⁵⁸ Marc Weller and Nobbs, Katherine, *Asymmetric Autonomy and the Settlement of Ethnic Conflicts* (University of Pennsylvania Press, 2010), 8.

²⁵⁹ Michael J. Strauss, *The Viability of Territorial Leases in Resolving International Sovereignty Disputes* (L'Harmattan, 2010), 42.

imputed discrimination. Moreover, there is a consequence that is probably perceived by a state as the most menacing for the state integrity, which is creating a precedent. So, since asymmetrical autonomy constructs inequality between the regions, that is neither unpredictable, nor surprising that other regions that did not claim for a special status and, consequently, were not granted with it, are likely to appear to have similar demands. Furthermore, radicalization of this regional or ethnic identity can escalate the tension up to a point of separatists trying to break up of the state.²⁶⁰ Naturally, when the number of claims for autonomy from other regions is growing, the state starts a resymmetrisation process if it has a power to. Thus, what might be seen as an obstacle by the state when allowing to reestablish the relationship agreement with its unit and create a federative state, even if this federation is asymmetric, is that achieving stability within such formation is a bigger challenge than within a more centralized structure. There can be no guarantee that the independence-seeking entity would not take further steps to struggle for its potential sovereignty which theoretically would be easier to accomplish under new conditions. Another important issue is whether to include a right to secede in the new agreement or not. There is no need to say that no state that is trying to preserve its territorial integrity would favor this initiative. On the other hand, even symmetrical federalism might lead to the state break up and in any case scenario the balance of power distribution is very fragile as more a federation provides its regions with autonomy and self-determination, more it fosters the national identity of the minority that gradually develops certain self-confidence in legitimacy of its demands.²⁶¹

History knows several cases when neither of the aforementioned solutions is possible. That is a situation when an autonomy or federalization is not acceptable for the state that is trying to secede and the “dominant” state strongly rejects the option of secession.²⁶²

Federalism as a solution to secessionist movements has its limits, especially in regard of adopting an asymmetrical system. First and foremost, federalism has a goal of achieving the right power balance through the division of power. Accommodating all national minorities in a multiethnic state and granting them with special rights is hardly possible and might undermine the initial idea of creating a federation. Moreover, it does not help to solve a problem of indigenous people who are represented in a form of a small ethnic or national minority that would not be able to create a majority in any of the federal subunits. There are also administrative and procedural finesses as amending a constitution of a democratic federal state is normally a quite complicated procedure.²⁶³

²⁶⁰ Abdelhamid El Ouali, *Territorial Integrity in a Globalizing World: International Law and States' Quest for Survival*, (Springer, 2012), 333.

²⁶¹ *Ibid.*, 334.

²⁶² Marc Weller, *Escaping the Self-Determination Trap*, (Martinus Nijhoff Publishers, 2008), 113.

²⁶³ Percy B. Lehning, *Theories of Secession* (Routledge, 1998), 136.

2. Perspectives of Abkhazian Recognition: Pros and Cons

Deferral of the issue is a common practice in this stalemate situation. Just liked in the case of Abkhazia, the conflict is frozen to provide space and time for diplomatic negotiations and decision-seeking process. The state of affairs remains so unless there is potential if not for finding a solution but at least leaving the dead point. Thus, recognition of a problem, accompanied by acknowledgement of necessity to search for a possible conflict resolution, is an alternative for an actual solution in a short term. However, for the sovereignty respect reasons legally there are no constrains to make the conflicting parties negotiate in a constructive way.²⁶⁴ Existence of so-called frozen conflicts is the direct outcome of this situation. Especially in a case when one of the sides enjoys its new position and benefits from the status quo, the chances for the conflict resolution are minimized. Case of Abkhazia, that receives sufficient support nowadays, proves this statement. After 2008 when it was recognized by few states and primarily by the Russian Federation, Abkhazian officials lost any interest in searching for a solution that could have satisfied both Georgia and Abkhazia preferring to remain in the status quo position that nowadays is considerable more beneficial for Abkhazia rather than Georgia.

Procedurally the mechanism of addressing the claims for self-determination and secession is the following: first, ceasefire takes place in case of the armed confrontation; otherwise, the process can be started directly with the step two; second, acknowledgement of the self-determination issue needed to be considered stated in ceasefire or provisional agreements between parties; third, recognition of applicability of self-determination principle in the particular case and further elaboration according to the outcome.²⁶⁵ Typically the procedure allows self-governance for the transition period that is also the preparation time for a referendum. It is not the intention of making concessions, as this kind of settlements is normally exercised in practice only when it is impossible to act otherwise, but there might be a latent expectation that the self-governance experience would naturally annihilate the secessionist movement, and the referendum would legitimize the working union of states or federation. However, the majority of cases prove that, if referendum is allowed to take place in the region seeking for sovereignty, with a high degree of certainty one can say that the result would be for independence.²⁶⁶

Technically the easiest case of conflict settlement would be when the right of self-determination of a state attempting to secede is stated in the constitution *a priori*. However, international practice shows it is not less complex than in cases where the pre-state entity is not

²⁶⁴ Marc Weller, *Escaping the Self-Determination Trap*, (Martinus Nijhoff Publishers, 2008), 113.

²⁶⁵ *Ibid.*, 149-150.

²⁶⁶ *Ibid.*, 151.

constitutionally granted with this right (example of Chechnya in 1990s). Constitutional self-determination is an internal law, even though it correlates or it should do so with the international principles. The international community might say its word in defense of the independence-seeking state, but it is still hard to affect the central government in its policy towards the seceding state.²⁶⁷

Kosovo case, even though it was perceived as an “exception” afterwards, created a range of potential possibilities for the conflicts of the same nature resolution. Kosovars were expecting to be granted with statehood by the UNSC despite the strong objections from the Serbian side. However, in 1999 it did not happen the way Kosovo was expecting it to occur and at that time the Security Council did not go further than placing Kosovo under the United Nation supervised international administration for the transitional time period, restraining the Yugoslav Republic from violence, bringing its peacekeeping forces and issuing the Resolution 1244 that did not intend to undermine the territorial integrity of Yugoslavia.²⁶⁸ However, it led to a success of Kosovo in the next decade. Since the Security Council found itself in a cul-de-sac position when the veto-power Russia has been permanently rejecting any proposals that would not consider the interests of Belgrade, Kosovo declared its independence in February, 2008 under conditions of limited sovereignty in a unilateral manner. After this decisive step Kosovo got international recognition by a large number of states including major western democracies, although there were some objections and Russia labeling this recognition illegal.

Even though accepting Kosovo’s independence was a contradiction to the dominating territorial integrity principle that is normally cherished by the western democracies, they managed to find a way out of this logical trap by proposing that Kosovo is a special case of an outside-of-norm situation and because of its very unique conditions the western states supported Kosovo in its claim for independence.²⁶⁹ This interpretation, which was labeled as a ruse by some states, increased the level of confusion in practice of state recognition and self-determination concept that was already rather disorganized. That was a chance for Russian authorities to use the same loophole and declare that Abkhazia and South Ossetia also qualify to be considered unique cases with very particular circumstances; therefore, they should be granted with sovereignty on the conditions of an exception.

²⁶⁷ Marc Weller, *Escaping the Self-Determination Trap*, (Martinus Nijhoff Publishers, 2008), 151.

²⁶⁸ Pellumb Kallaba, and Violeta Ferati, “Mapping the UNSCR 1244 Legacy in Post-Independence Kosovo: between Contestation and Recognition,” *Kosovar Center for Security Studies*, Pristine, May (2012) <http://www.fes-prishtina.org/wb/media/Publications/2012/English%20version%20-%20Mapping%20the%20UNSCR%20%201244%20final.pdf> (accessed 1 June 2013).

²⁶⁹ Mikulas Fabry. *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford University Press, 2010), 207.

Yugoslav states brought another innovation into the concept of self-determination as a basis for nation-building and state formation which is a so-called conditional self-determination, where external conditionality refers to the external circumstances as an initiator or trigger for the self-determination movement and internal – the obligation to perform according to the good governance criteria accepting certain international regulations and rules.²⁷⁰ Richard Caplan in his work on recognition of the new states in Yugoslavia by the European Union supported European policy in regard to Kosovo, however, he acknowledged the problem caused by the application of conditional recognition in the post-Cold War world, which is further state fragmentation driven by the self-determination force.²⁷¹ The Kosovo case raised an important question whether the principle of territorial integrity should continue to have normative superiority over the right of self-determination in order to preserve democracy and fragile stability in multi-ethnic societies and avoid human rights abuse, or if this approach should be reconsidered.²⁷² At the same time this position lacks logical coherence as, while it is claimed that the primary goal is to maintain democracy and secure peace and human rights, the right of self-determination is being abused, or at least seen as a not that important issue. Unfortunately, no clear solution for this dilemma was found. Hence, states like Georgia, which are not capable of preventing secessionist movements but, however, are determined to preserve their territorial integrity, are doomed to deal with an unsettled conflict on its territory.²⁷³

However, despite a number of similarities between the Kosovo and Abkhazia case, the international community and, first of all, the West interpret the nature of the conflict differently. Therefore, Abkhazia found itself in a less favorable situation when the maximum it could enjoy is the status of a frozen conflict. On the one hand, Abkhazia gains time while the situation remains being a “frozen conflict” and its government is free to conduct their political course, despite the actions of unilateral secession and refusing to negotiate with Georgia under their conditions were condemned by the UN and many western states. On the other hand, by rejection of further negotiations on the matter of keeping territorial integrity of Georgia and finding suitable options under this condition Abkhazian government has blocked the possibility of the plausible for it solution.²⁷⁴ Hypothetically if in those negotiations the Abkhazian side could have persuaded Georgia and the international community that its claims are legitimate and Georgia cannot offer an opportunity to exercise the right of self-determination internally sufficiently or

²⁷⁰ Marc Weller, *Escaping the Self-Determination Trap*, (Martinus Nijhoff Publishers, 2008), 150.

²⁷¹ Richard Caplan, *Europe and the Recognition of New States in Yugoslavia* (Cambridge University Press, 2005), 186.

²⁷² Mikulas Fabry. *Recognizing States: International Society and the Establishment of New States since 1776* (Oxford University Press, 2010), 207.

²⁷³ *Ibid.*, 14.

²⁷⁴ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 42.

up to an extent that can be considered satisfactory, then other states would have to accept it as a matter of fact and likely correct their approaches to the Abkhaz-Georgian conflict. Thus, the people of Abkhazia may be able to exercise its external self-determination right only if “all negotiation carried out in good faith break down, and all avenues of resolution were truly exhausted.”²⁷⁵ In theory this would bring Abkhazia closer to its goal. However, it is a model of an ideal type situation which is less probable in reality. *De facto* the Abkhazian authorities realize that the position of all sides are rather solid and the western states will be persistent in supporting Georgia regardless Abkhazian attempts to provide any further arguments to justify its separatism, and the “good faith” would probably not make a difference in reality.

Another reason why Abkhazian government favors the *status quo* of a frozen conflict rather than carrying on negotiation with Georgians is that even if it would be acknowledged that the people of Abkhazian deserves to right of external self-determination, it does not necessarily follow that it would take a form of secession. Therefore, the Abkhazian position is quite understandable and predictable as well. As there is no guarantee of full sovereignty and further recognition by the states which are reluctant to do so, the risk of moving away from a frozen conflict stalemate is too high, especially when support of Russia provides certain comfort and a feeling of security.

However, what could have been an option is an idea of a free association proposed by Green and Waters: “...there could be an exercise of a free association with Georgia or with Russia in which Abkhazia and South Ossetia have sovereignty over all matters except over their defence and foreign affairs, or the possibility of the merging of South and North Ossetia into a single autonomous region within Russia.”²⁷⁶ Despite the existing cooperation between the Russian Federation and the land of Abkhazia and vast capital investment in Abkhazia because of the upcoming Olympic Games 2014 in Sochi, which demonstrates that some kind of partnership between the entities already exists, we doubt that formation of an associate state of Abkhazia and Russia would be ratified by the UN and accepted by Georgia as in this case the principle of territorial integrity would be abused. Moreover, it would probably be the least favorable option for Georgia as internationally legitimized Russian protectorate over the territory would mean increase of its authority in the region. The other option of an associate state with Georgia mentioned by Green and Waters seems to be more reasonable and realistic.

Abkhazia does not need recognition from the West in order to survive, as Russia would not withdraw from the region and would keep on strengthening the bonds with the Abkhazian authority and population, investing money in the region and developing small and medium

²⁷⁵ James A. Green, and Christopher P.M. Waters, *Conflict in the Caucasus. Implications for International Legal Order* (Palgrave Macmillan, 2010), 43.

²⁷⁶ *Ibid.*

business, stabilizing the financial situation. On the other hand, its recognition by western countries is essentially important to terminate isolation which is the current state of Abkhazia.²⁷⁷ According to the survey conducted by the International Alert, the majority of Abkhazian officials have stated that at the current stage international recognition is not a necessary condition and with the close strategic partnership with the Russian Federation it is possible to communicate with the outside world through its governmental and private structures.²⁷⁸ However, Russian authorities and the Abkhazian officials do not give up and they have been repeatedly referring to the Kosovo precedent when justifying the necessity of secession of the state. Even though the UN and the United States decisively reject any comparison and claimed that there is no legal basis to treat the cases in a similar way, there are certain similarities objectively. Besides obvious geopolitical parallels between Abkhazia and Serbia, e.g. both states were integral part of their parent states *de jure* but with a strong identity that is different from the dominant in the country striving for external self-determination, there are other similarities that are not discussed that often but were summarized in the Kosovo Compromise Project.²⁷⁹ First, starting from 1990s there were international peacekeeping forces in the regions; second, “unprecedented military deployment” of US forces - multiple in Balkans and two military bases in Georgia that were built after the Rose Revolution: Senaki near Abkhazian border and Gori not far from South Ossetia; third, both conflicts happen in the areas that are strategically important because of the oil and gas delivery.²⁸⁰

Despite the obvious reluctance of the international community, during the first year after the Russian-Georgian war of 2008 in both Abkhazia and Russia there were expectations of the recognition process to continue.²⁸¹ However, it did not happen so far and at the moment there are no real perspectives for Abkhazia in this regard. Yet, Georgia with its “unrecognition policy” is not in a stable position either, therefore, Tbilisi cannot feel secure. It is rather obvious that the Abkhazian leadership is determined to continue its political course for independence and, although nowadays is not reluctant to interact with Georgia anymore, any compromise on Georgian conditions seems to be a very unlikely scenario. The most reasonable strategy for Tbilisi under the existing conditions is to maintain the current situation till the circumstances for reuniting the country would improve and become more favorable for Georgia. Meanwhile, the goal would be to preserve the state of isolation of Abkhazia from the international community

²⁷⁷ International Alert, “Politika Nepriznaniya v Kontekste Gryzino-Abhazskogo Konflikta,” Understanding Conflict, Building Peace (March 2011), 14.

²⁷⁸ Ibid.

²⁷⁹ Aleksandar Mitić, *Unilateral Independence Sent to the World Court...and Other Nine Top Kosovo Stories for 2009* (The Kosovo Compromise Project, 2009), 4.

²⁸⁰ Ibid.

²⁸¹ International Alert, “Politika Nepriznaniya v Kontekste Gryzino-Abhazskogo Konflikta,” Understanding Conflict, Building Peace (March 2011), 33.

and using soft power to re-establish the broken links between Abkhazia and Georgia. There are two major aspects to be considered in order to achieve the goal, namely transformation of the conflict that implies developing mutually beneficial cooperation in different spheres of life including economical, political, cultural and humanitarian, and preventing potential further recognition of Abkhazia and South Ossetia, making sure that the unrecognition policy sustains.²⁸² An alternative strategic line for Georgia would be trying to enforce self-awareness of the Abkhazian nation, emphasizing Russian “occupation” of the independent region. Unlike South Ossetia, which is too weak economically and politically, Abkhazia has a stronger economical basis, resources, charismatic leadership and very distinctive identity. Even though the territory receives financial support and military aid from Russia, and many of Abkhazian residents enjoy having social benefits after being granted with the Russian passports, Abkhazian authority has stated it very determinately that the goal of seceding from Georgia was to establish its own statehood, therefore, dependence on any other political entity should be avoided.

The notion of Russia taking over Abkhazia appeared in discourse few years ago and has turned into an influential idea. Hence, in 2010 Sergey Bagapsh claimed that the amendments to the law about purchase of Abkhazian immovables by foreign citizens are ready and will pass through the Parliament by 2011. This legal initiative met strong resistance of the opposition who recognized a potential threat in this amendment, providing the following counter-arguments: first, Russians would start buying Abkhazian real estate intensively which will cause rapid increase of prices; second, Abkhaz ethnicity will be assimilated; third, two decades of exhausting struggle for independence would be worth nothing as Abkhazia would sell itself to Russia.²⁸³ The self-awareness level of Abkhazians increased, which was reflected in slogans like “Abkhazia’s economy is like a drug addict on Russian help. We want real help to support our economic development, not “façade” assistance.”²⁸⁴ Ignoring the voice of opposition, Bagapsh pointed out that the current situation is unfair as Abkhaz citizens are allowed to buy Russian property while Russians are denied of this right. Since the interest for property in Abkhazia was extremely high among Russian investors because of low prices and perfectly mild subtropical climate of the region, the initiative was very welcomed. However, this change of the property rights legal framework never happened as because of cancer Sergey Bagapsh died on 26 May, 2011, before finishing his Presidential term, and the new President Alexandr Ankvab announced that no

²⁸² International Alert, “Politika Nepriznaniya v Kontekste Gryzino-Abhazskogo Konflikta,” *Understanding Conflict, Building Peace* (March 2011), 33.

²⁸³ Kommersant-Online, “Rossiyane Smogyt Priobretat’ Nedvizhimost’ v Abkhazii,” (2010), <http://www.kommersant.ru/doc/1324522> (accessed 1 June 2013).

²⁸⁴ International Crisis Group Working to Prevent Conflict Worldwide, *Abkhazia: the Long Road to Reconciliation*, Europe Report #224, 12 April, 2012, [http://www.crisisgroup.org/~media/Files/europe/caucasus/georgia/224-abkhazia-the-long-road-to-reconciliation.pdf](http://www.crisisgroup.org/~/media/Files/europe/caucasus/georgia/224-abkhazia-the-long-road-to-reconciliation.pdf) (accessed 10 May 2013).

changes in this regard are possible and Abkhazian real estate cannot be sold directly to foreign citizens.²⁸⁵ In this fashion the Abkhazian government clearly communicated its intention to secure independence of the state. Indeed Russians used to purchase property before and keep doing it in any case scenario – it is accomplished either through local residents or by registering a legal body in Abkhazia in a form of some small business and do the purchase through it.²⁸⁶ However, both ways are very complicated and bureaucratic with a high fraud probability in the case of the first option. Thus, no legal changes that would expedite the procedure happened while the interest for Abkhaz property has only increased, mostly because of the upcoming Winter Olympic Games 2014 in Sochi where the prices on immovables are far beyond affordable. Not allowing purchase of its real estate by Russians massively is a survival matter for Abkhazia as, if to pass Bagapsh’s amendment Abkhazia might quickly turn into a *de facto* Russian unit. On the other hand, prohibition of selling real estate to foreigners inhibits the GDP growth which is the primary goal for a country with a budget that is for 70% composed of Russian subsidies.²⁸⁷ Hence, there is a situation of a vicious circle in Abkhazian economy – the state needs investment, yet cannot allow it being concerned about a consequence of becoming dependant on Russia and ultimately be dominated by it.

At the same time already in the *OSCE Yearbook of 2004*, shortly after the anniversary of Abkhazian self-proclaimed independence, it was acknowledged that Abkhazia has managed to establish its own state institutions and non-governmental organizations that function rather well. Yet, it is emphasized that the level of corruption is still very high.²⁸⁸ On the other hand, one may object that the same refers to Georgia; consequently, it cannot be seen as a reason for not granting with statehood, although it is a serious obstacle for democratic initiatives and development. Also, it might be true to say that it is Russian investments that are fostering corruption.

Besides economical reasons, there are some valid anti-recognition points regarding respect of human rights in Abkhazia. As a result of Georgian-Abkhazian war of 1992-1993 roughly 250 thousand Georgians were expelled from the place of their residence. Since international law does not allow forces expulsion, formally Abkhazia has violated the rule. The whole campaign was qualified as ethnic cleansing, therefore, as a brutal human rights abuser on the international level

²⁸⁵ KM.RU, “Novyi President Abkhazii ne Razreshit Inostrancam Pokupat’ Zhil’e v Respublike,” <http://www.km.ru/bssr/2011/08/27/otnosheniya-rossii-i-abkhazii/novyi-prezident-abkhazii-ne-razreshit-inostrantsam-po> (accessed 13 May 2013).

²⁸⁶ Azar, Il’ya, “Respublika Priznalas’ I Prodaetsya,” *Gazeta.RU*, http://www.gazeta.ru/politics/2010/02/18_a_3326540.shtml (accessed 6 June 2013).

²⁸⁷ KM.RU, “Novyi President Abkhazii ne Razreshit Inostrancam Pokupat’ Zhil’e v Respublike,” <http://www.km.ru/bssr/2011/08/27/otnosheniya-rossii-i-abkhazii/novyi-prezident-abkhazii-ne-razreshit-inostrantsam-po> (accessed 13 May 2013).

²⁸⁸ Eva-Maria Auch, *The Abkhazia Conflict in Historical Perspective* (OSCE Yearbook 2004), 234.

it cannot be granted with external self-determination. The referendums on the issue of sovereignty that were conducted in Abkhazia could not be considered legitimate, even though the prevailing majority supported the idea of independence. Indeed the voting took place without voices of refugees considered, albeit the expelled Georgian population would be a large percentage of the total amount of inhabitants. Moreover, even in case the procedure of referendum was perfectly democratic and transparent, it would not change the negative perception of the unilateral secession in international law. Also, Abkhazian government has deprived Circassian minority (Adyghe) of Abkhaz citizenship. Circassian question has been an issue for the past century and a half since Caucasus war and resulted from it genocide and expulsion of Circassians conducted by the Russian Empire.²⁸⁹ Even though that is guilt of the Empire and not Abkhazia, there are ongoing debates about Abkhazian role in this matter which escalate because of the Olympic Games. Abkhazian authorities are accused of not granting Circassians with citizenship automatically based on the fact that this area historically was their territory of settlement as well and generally not paying enough attention to the issue.

Furthermore, the international community is not interested in creating more precedents of secession that happens on a semi-ethnic basis and is not classified as an ex-colony. The Kosovo case that was arguably justified as a unique case that cannot possibly serve as an example for other secession-seeking entities. Poor western argumentation of the Kosovo scenario did not prevent the world from destabilizing, stimulating discriminated political communities to claim for self-determination. Therefore, radical solutions are dangerous and if a system would like to preserve itself, unavoidable negative consequences should be understood and carefully considered.²⁹⁰

A *de facto* independent state, which the Republic of Abkhazia is at the moment, does not equal to a sovereign state. Thus, although self-proclaimed independent states Abkhazia and South Ossetia possess *de facto* independence, they lack not only actual sovereignty but also a capability of being sovereign. Economically, politically and militarily the independence-seeking territories depend on the Russian Federation, South Ossetia to a lot greater extent in comparison to Abkhazia, but none of the states can be called sovereign.²⁹¹ Even considering the new understanding of sovereignty in the world of the twenty first century, when state sovereignty is getting dispersed because of multiple connections and interdependence of the elements in the system of a globalized world, the seceding territories do not have a capacity to sustain

²⁸⁹ Abkhaz World, "The Circassian question and Abkhazia: historical factors and contemporary challenges by Arda Inal-Ipa," (2012), <http://www.abkhazworld.com/articles/analysis/863-the-circassian-question-and-abkhazia-by-arda-inal-ipa.html> (accessed 13 May 2013).

²⁹⁰ International Alert, "Politika Nepriznaniya v Kontekste Gryzino-Abhazskogo Konflikta," Understanding Conflict, Building Peace (March 2011), 36.

²⁹¹ *Ibid.*, 35.

themselves without external Russian support. On the other hand, the *de facto* states are at different stages of their development. If in case of South Ossetia this capacity appears to be remarkably undeveloped, Abkhazia has it up to some extent and, more importantly, has a potential for further development. As a result of these aspirations the Abkhazian nation raised its voice so that debates about a need to avoid the policy of Russian dominance in the region have appeared in the discourse which was not the case before the Russian-Georgian war. At the same time there are a number of aspects in which Abkhazia depends on Russia either entirely or excessively. For example, providing Abkhazian security with its own military does not seem to sound realistic. Neither does the economical situation in Abkhazia, although we need to acknowledge the huge potential that this land has because of its geopolitical position, mild climate and potential recreation facilities. Thus, secession of an integral part of a parent state cannot be approved by the international community, as it is against the nature of international law to ratify independence of a state that has been (or still is) under a strong external control or dominance.

International isolation, which was a direct consequence of Abkhazian obsession with secession when all negative causes were perceived as less evil in comparison to the Georgian dominance, logically led a socio-economic crisis, despite the great resources that the land of Abkhazia has. The only way out of this stalemate for Abkhazia was relying on Russia which was interested in increasing its influence as, first, the Russian authorities were concerned about Georgian intentions to establish close partnership with the West, primarily with the USA, and second, whose relationship with Georgia was getting gradually worse. The circumstances compelled Abkhazia to choose pro-Russian political orientation which brought security and improved living standards but naturally increased political and economic dependence on the Russian Federation. Moreover, since the majority of countries do not recognize Abkhazian passports as a legal travel document, the most of Abkhazians received Russian citizenship which was generously given by the Russian government.²⁹² It appeared to be a mutually beneficial deal and a deliberate stratagem that was a part of the Russian strategy – Abkhazian population got legal documents, an access for social welfare and an opportunity to go abroad, while Russia has expanded its sphere of influence, having created a condition of having its citizens abroad which the state has a legitimate right and responsibility to protect in case of an external aggression.

Both sides' belief in the historical legitimacy of their claims, the superiority of their nation, and the uniqueness of their mission have often rendered them incapable of making rational political decisions. The fighting that claimed so many victims, created so many refugees, and destroyed infrastructure and trade links between August 1992 and October 1993 has left deep wounds in

²⁹² Eva-Maria Auch, *The Abkhazia Conflict in Historical Perspective* (OSCE Yearbook 2004), 234.

not only the Georgian and Abkhazian populations, but also among the other minorities in Abkhazia, such as Armenians, Greeks, and Russians.

Another legal obstacle for further recognition of Abkhazia, detected by the international community and the UN is the issue of refugees whom the Abkhazian government does not take sufficient care of. After the second expulsion of the ethnically Georgian population of Abkhazia people started to come back and they did so throughout 2000s. Even though the Abkhaz government did not prevent them from doing so, there was no support offered for the earlier expelled population and the process of returning was poorly organized with no security provided.²⁹³

Apart from human rights violations, general lack of democracy might be named as a reason of not granting Abkhazia with sovereignty. It is correct to say that division of power branches is not sufficient, democratic institutions are underdeveloped and political transparency is rather limited in Abkhazia. However, the same arguments refer to Georgia, which was granted with statehood. The common presumption is that the political regime characteristics are crucial for the nation- and state-building processes. We would agree with this statement in general, but disagree in particular. What appears to be arguable is the linkage between sovereignty and democracy that is often being made automatically. And even though we assume that creating and maintaining a well-functioning democratic regime with a developed system of checks and balances should be the goal of every government and democratic values of human rights and freedoms are commonly seen as the primary value, it is impossible to deny that there is a number of autocratic states in the modern world that fully enjoy their sovereignty and independence. Despite their “anti-democratism”, it does not seem to be possible to deprive those entities of their statehood in a legitimate way. In the most severe cases international community might apply certain sanctions, mostly economical, or even intervene, but it does not possess a legal right to prevent a state from being a sovereign entity and deny its independence in a unilateral way based on the dissatisfaction with the state’s political regime that neglects the democratic values. Therefore, even though democratic development is tremendously important for various reasons, viz. prosperity of the state, provision of secure environment and self-development opportunities for its citizens etc., democracy does not equal state strength and capacities. Hence, nation-building and democratic development are different processes, although they overlap; therefore, it would not be correct to say that the pre-state entity lacking democratic characteristics is a sufficient and legitimate argument for denying a people of statehood. In this regard the main focus is put on the ability of a state to sustain itself, state capacities, and degree of efficiency.

²⁹³ Eva-Maria Auch, *The Abkhazia Conflict in Historical Perspective* (OSCE Yearbook 2004), 234.

The Abkhazian Prime-Minister Sergey Shamba believes that it would be possible to start negotiations about diplomatic recognition with the EU in ten years and in order to achieve that it is vitally important to work on building connections with Europe and develop the relationship. Moreover, according to Shamba and Chirikba, western support could have catalyzed the political modernization processes in the region, while Russia provides security and financial support. Therefore, it would be a mistake to turn away from the EU; the other way round, a lot of work should be done in “changing Abkhazia’s image as an occupied by Russia territory that does not seek for real independence – situation, in which it is difficult for Abkhazia to develop in a democratic direction.”²⁹⁴ This attitude appears to be a good starting point; however, this overwhelming optimism needs to have a basis and at the moment Abkhazian initiative to cooperate with Georgia does not seem to be sufficient for the European Union members to suddenly reconsider their position on the issue. In order to convince the West that recognition of the seceded state is necessary Abkhazia needs to improve the state of human rights institutions in the country, solve the Circassian issue instead of ignoring it and, encouraging democratic developments get closer to the western standards of a modern democratic state.

To crown it all, in the Table 1 (see Appendix) we analyze Abkhazian statehood capacity based on the criteria summarized and proposed by M.J. Peterson in *Recognition of Governments: Legal Doctrine and State Practice*. As it follows from the Table 1, three statehood criteria are met by the Republic of Abkhazia, three are not satisfied and four are partially met. This outcome confirms and justifies the situation of the frozen conflict as well as it demonstrates that Abkhazia needs further development in order of its struggle for wider international recognition to be successful.

²⁹⁴ International Alert, “Politika Nepriznaniya v Kontekste Gryzino-Abhazskogo Konfliktka,” *Understanding Conflict, Building Peace* (March 2011), 14.

Conclusion

We can't solve problems by using the same kind of thinking we used when we created them.

A. Einstein

The conclusion that we come to in this research is that the state of a frozen conflict in Abkhazia is fairly comfortable for all parties involved; therefore, it is very probable that the *status quo* will be kept for a long time. Apparently, after receiving recognition from Russia, Nicaragua, Venezuela and few minor states in 2008, Abkhazia had high expectations of this tendency to continue, so that the breakaway state would have become an equal member of the international community. However, those aspirations did not have any real basis which Abkhazia experienced relatively soon. Answering the research question, we have to acknowledge that, judging by the sum of factors, Abkhazia only partially fulfills the statehood requirements and justification of claims for further international recognition is not sufficient, although the state demonstrate its potential to improve this condition. On the other hand, the Abkhazian government managed to find a way to take advantage of this situation. Sukhum was acting as if the breakaway state already had sovereignty, ignoring Georgian repeatedly expressed discontentment and multiple resolutions of the United Nations encouraging the Abkhazian authorities to give up the separatist movement and limit their self-determination with the confines of the Georgian state. With the Russian active involvement Abkhazian isolation is significantly less problematic than if the state was left on its own with no chance to enter into international relations with other members of the international community due to its un-recognition policy. Russian impressive investments bring Abkhazian living standards up, while the Russian passportization policy provided large population with social benefits and an opportunity to travel abroad, which is not possible to do with a passport of a non-recognized country. At the same time Moscow, generously spending economic resources in Caucasus, pursues its national interests rather successfully - Russia has increased its presence and influence in the region: while NATO did not expand despite Saakashvili's ambitions to join the North Atlantic Treaty Organization, legitimate reasons to justify deep involvement, including such forms as invasion and occupation, were created through policy of granting the Abkhazian population with Russian citizenship

The case of Abkhazia proves that the neoclassical growth model that was mentioned in the subsection I.1 *Nation-Building Concept* appears to be not universal at least and, very likely, not fully correct, albeit there might be cases in which this theory would find support. Hence, as it is possible to observe on the example of Abkhazia, just investment by itself as an attempt to make up for lack of economical, human, political, natural or other resources does not prove to be an

effective strategy to achieve economical growth. The potential of investment can be truly revealed and exercised in case it is accompanied by the well-elaborated development strategy. In the ideal case model the goal of the state-builder is to accomplish reconstruction, assist in institution-building and withdraw from the state as soon as the institutions appear to be self-sustainable, the government – functioning in a rather efficient way and the political situation stable. Therefore, properly operating institutions are the key, and establishing local ownership is a part of it. On the other hand, once a nation-builder is actively involved, satisfying its interests in a certain way, it might lead to an unfavorable situation for the new-born entity that bears a risk to stay under patronage. Russia did not claim to be a state-builder of Abkhazia, even though its certain actions and policies might make one assume that the Russian Federation does actually take this role occasionally. The way Russia attempts to present itself in the conflict between Georgia and the seceding states of South Ossetia and Abkhazia is a role of a peacekeeper and protector of its citizens abroad who appear to be vulnerable under the given conditions. Even though the formulation remains to be questionable and the West has voiced its negative opinion on the Russian occupation of the regions, Moscow did not withdraw its forces.

Regarding a question of whether Abkhazia would be able to build a nation-state if it got recognition up to a larger extent, or what kind of model would actually be preferable and more probable considering the circumstances, we conclude that ideally a multi-ethnic state with a dominant idea of civic nationhood rather than ethnocentrism would be a reasonable solution. According to Hobsbawm, only culturally and certainly economically viable nations can be let exercise the right of self-determination.²⁹⁵ Despite the validity of the argument, it is still a challenge to apply this attitude in practice, as there is no other authority that might evaluate potential of a nation besides the UN that demonstrated certain incoherency in cases of Kosovo and Abkhazia.

We would argue that ethnically diverse Abkhazian population already proved to be a nation in the Abkhaz-Georgian war of 1992-1993; however, there are several essential issues in regard of nationality that need to be considered. First, it is non-discrimination of Georgians that implies encouraging Georgian residents of Abkhazia to participate in social and political life which is not the case, acknowledging the genocide of ethnically Georgian population of Gali region and illegitimacy of expelling Georgians from Abkhazia. Second, the Circassian problem, which receives more attention nowadays due to increase in Abkhaz-Circassian tensions and the upcoming Winter Olympic Games in Sochi, demands for its solution to be found. Tbilisi tends to refer often to massive human rights violations against ethnically Georgians in Abkhazia and the

²⁹⁵ Eric Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge Press University, 1990), 32.

Georgian side is correct claiming that disrespect to human rights and freedoms, especially when it is expressed in such extreme ways like expulsion from the territory of settlement and prior genocide-like policies, is a remarkable obstacle for state recognition. Even according to a very flexible liberal concept that generally favors external self-determination, oppression of an ethnic group is one of five valid reasons to deny secession right. On the other hand, Georgia also violated international regulations multiple times. Furthermore, according to the UN Charter, multinational states should promote cultural diversity and support its minorities, which Georgia did not intend to do with regard to Abkhazia. Tbilisi considered allowing Abkhazians limited self-determination only after being defeated in the war, so it was an after-measure.

The aforementioned Olympic Games are a potentially good opportunity for Abkhazia as the interest to the region and investment into it are growing. Abkhazia needs long-term strategies of economic and political development, rather than episodic and not elaborated investment that fosters bribability and increases prices.

It is extremely important that the Abkhazian government demonstrates a will to look for a solution of Circassian issue and would be eager to negotiate about it, if it is concerned about presenting the nation in front of the international community as mature, responsible, having respect for human rights and orientated towards democratic development. Otherwise, the attention of the world caused by the Olympics would only turn against Abkhazia confirming the legitimacy of denial to grant the *de facto* state with sovereignty. Russian investment into real estate and boosting small business have their positive role in wakening up underdeveloped Abkhazian economy, but the negative sides of this development are that, first, the inflation rates go up; second, corruption level has increased tremendously; third, again, the ties between Abkhazia and Russia get closer and Abkhazian dependence on its bigger neighbor expands. On the other hand, we admit that from the beginning of Ankvab's rule Sukhum has corrected its policy towards Russia partially due to the reasonable voices of opposition which was warning the Abkhazian society about a threat of losing its sovereignty to Russia before actually gaining it. So, Ankvab canceled the initiative of the previous President Bagapsh to change the law in a way that foreigners would be able to purchase Abkhazian real estate. Moreover, more attention is being paid to Abkhazian military – authorities try to increase its importance and prestige of serving in the army. One has to acknowledge that the Abkhazian army already proved once to be battleworthy in the Abkhaz-Georgian war. These two aspects demonstrate the growing self-awareness, on the one hand, and consciousness of Russian dominance menace, on the other. However, Russian citizens manage to purchase property in Abkhazia in semi-legal ways and the arms in the military are provided by the Russian Federation, which is interested in Abkhazian and South Ossetian sovereignty only up to a point when it fits in the framework of its national

interests. Therefore, decreasing actual Russian influence in the region does not seem to be possible under the current conditions, even though Abkhazia should be given a credit for its attempts to do so (South Ossetia, for instance, has neither capacity, nor political will for that). Existence of the *de facto* state of Abkhazia correlates well with the declaratory theory of state formation and its growing capacities prove validity of the concept.

If theoretically the Russian Federation withdraws from the region, Abkhazia at its current level of development would be unlikely to sustain itself. However, there are multiple states in the world that are not able to do so either (Somalia would be the most extreme example), and, despite this fact, they were granted with sovereignty. At the same time one of the main goals of the UN is to maintain the level of instability in the world as low as possible to provide international security; therefore, not encouraging further state-fragmentation is reasonable. Nevertheless, Georgia is unstable itself and while other former Soviet Union state-member have improved significantly within the last decade, according to the fairly trustworthy investigation of *Foreign Policy*, Georgia remains a failed state. From this point of view granting the seceding entity with independence would be indeed beneficial for Abkhazia. However, since the EU has initiated a program to support development in Georgia the situation might change relatively soon, or at least there is a theoretical possibility for improvement. Another aspect is that state and government are two different, even though interlinked entities; therefore, we would agree with Brad R. Roth in this sense that they are rather independent from each other. From this point of view it follows that not everything regarding the government necessarily refers to the state as well and one should separate two issues, treating them differently, which both Georgia and the international community do not do.

As we intended to research what Abkhazian demands for sovereignty are based on and whether the republic is capable of meeting the actual criteria of statehood, we estimated Abkhazia's potential and capabilities in regard to every criterion. Since the fundamental criteria of statehood of the Montevideo Convention on the Rights and Duties of States are very basic - a permanent population, a defined territory, government, and capacity to enter into relations with other states; we applied a more elaborated and precise version of it, suggested by M.J. Peterson, which can be adopted as a set of state recognition criteria with five core and five additional elements. The outcome was the following: two out of five core criterion were met, other three – only partially; in regard to additional criteria – two were not satisfied, two – partially satisfied, and only one – fully met (summing up both, three – approved, three – not met, four- partially). The main anti-recognition points are Abkhazian increasing dependence on the Russian Federation and systematic human rights violation. Also, appeal to the case of Kosovo by the Russian Federation and Abkhazia was not perceived as legitimate by the West, as Kosovo was considered to be an

exception, but not precedent. No reasons, however, were provided why Abkhazia cannot become the second exception.

The whole history of Abkhaz-Georgian contradiction was shaped by a conflict. Both parties demonstrated a very poor ability to negotiate and lack of will to search for a peaceful solution. Also, each of the sides was interpreting the regulations of international law to its benefit, not hesitating to violate principles of the international law in case they conflicted with their national interests, especially when the situation was not defined clearly; therefore, different interpretations were possible. The conflict can be studied from perspectives of social constructivism or political realism and in the introduction it was assumed that the first one would decipher the process completely. However, while social constructivism explains the strive for self-determination, nation-building and statehood aspirations as well as cultural issues like national identity, difference in traditions, language etc., political realism point of view is useful in understanding the logic of this conflict development. Historically tensions between the communities provided a fruitful soil for the military conflict and the Soviet Union demise anticipated it, as once the conditions allowed, Abkhazian separatists started a movement for independence. None of the sides was really concerned about following the spirit of international law, and both political elites were pursuing their goals brutally infringing human rights and paying significantly less attention to the legal regulations than to their interests, appealing to high morality in international relations only when finding themselves in a vulnerable position. On the other hand, the world order system allows doing so and, moreover, double standards are an element of international relations when it comes to a clash of national interests of powerful political actors. Also, the political reality changes faster than changes in international law can be introduced. Law is designed to be conservative and stable. Another issue is that regulations of international law might seem contradicting in particular cases. Thus, the conflict of territorial integrity versus external self-determination cannot be simply reconciled.

The United Nations performed rather poorly in Caucasus and did not fulfill its tasks, which lets to question efficiency of the organization as a human rights watchdog. The situation was repeated in 2008 when international rules barely constrained actions of Georgia, Russia and Abkhazian separatists. The European Union had neither initiative, nor will to participate in the conflict settlement. Complicated political processes in the remote regions of South Ossetia and Abkhazia, which an average European Union citizen would probably not even be able to find on a map easily, presumably had no direct impact on the EU from the point of view of the European officials. However, after the war there was a shift in awareness about Caucasian problems and now the EU is getting moderately involved which is a positive sign for Abkhazia.

We doubt that Abkhazia would receive further recognition in the middle-term perspective; however, even under current circumstances, being a state with limited international recognition, it has a high degree of independence and potential that is awaiting to be realized. Hence, Abkhazia might take advantage of the *status quo* of the “frozen conflict” for rather substantial period of time, which does not benefit Georgia. Regarding Russian-Georgian relationship, recent positive development is a good signal that further constructive dialog between the parties is not impossible. The reconciliation would be accelerated by the agreement on the railway reconstruction, which would get other Commonwealth of Independent States (CIS) countries involved. Unfortunately, the agreement has not been achieved yet, and that proves lack of interest of the sides to search for a compromise. Thus, there is a long way to go before the conflict could be truly resolved.

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Appendices

Figure 1.

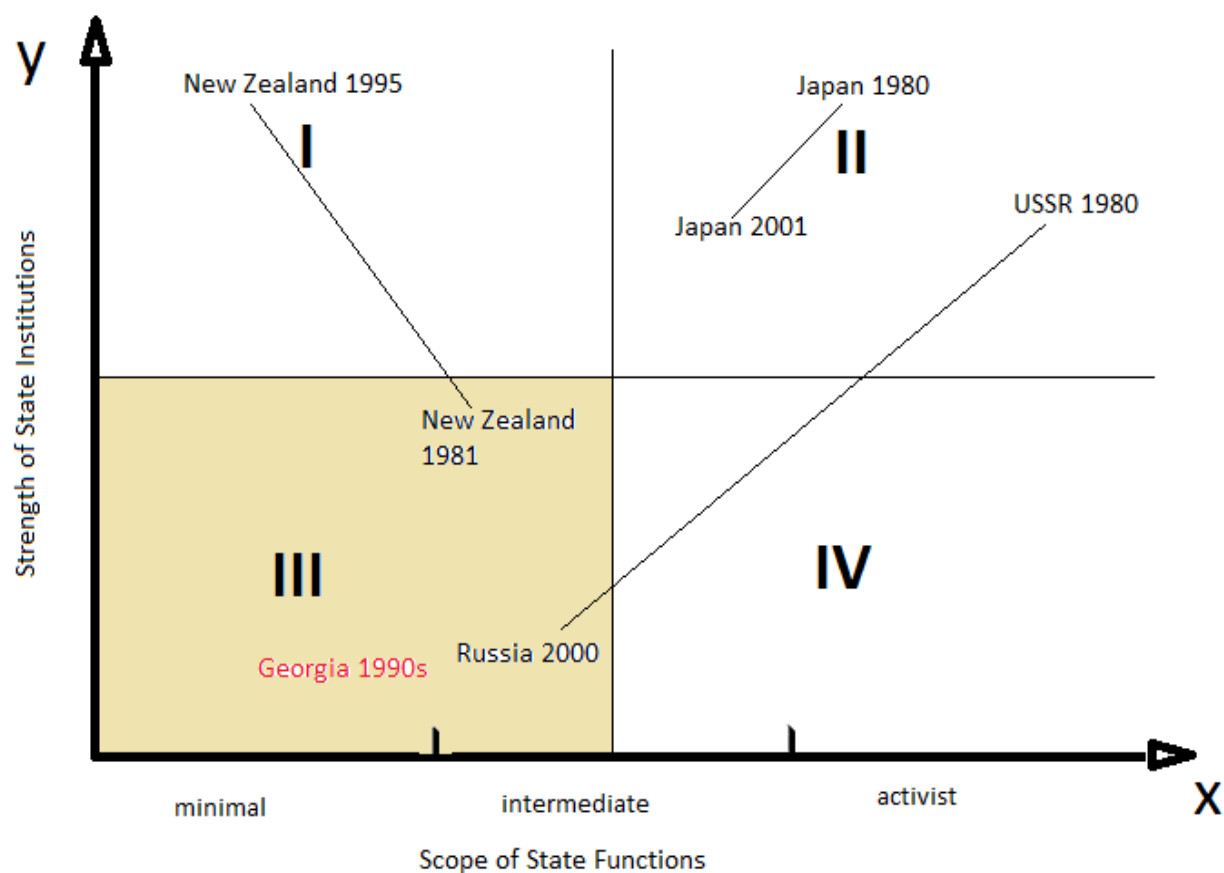


Table 1.

Factors of Statehood	Characteristics of Abkhazia	Estimate
Core Criteria		
Defined territory	Even though the status of the territory is disputed, the borders are not as they are clearly defined. Abkhazia is located on the southwestern side of the Caucasus, the eastern coast of the Black Sea.	+
Permanent population	Multi-ethnic population – the largest groups are Abkhazians – 50.8%, Georgians (the majority are Mingrelians) – 19.3%, Armenians – 17.4%, Russians – 9.2%. Also, Greek, Ossetian,	+

	Tatars, Turks and some Slavic minorities like Ukrainians and Byelorussians. ²⁹⁶	
Capacity to enter into relations with other states	<p>Legally is recognized by six UN member states: Russia, Nicaragua, Venezuela, Nauru, Tuvalu²⁹⁷ and Vanuatu that, according to Georgian media was about to cancel its recognition but in the end did not²⁹⁸;</p> <p>and three UN non-member states that also seek for sovereignty and international recognition: South Ossetia, Transnistria, Nagorno-Karabakh.</p> <p>With the exception of six states, the international community perceives Abkhazia as an integral part of Georgia; therefore, no international relations out of Georgian framework are possible. Abkhazia found itself in economic and political isolation with Russia as the only link to the outside world. As Abkhazian citizenship and, consequently, passports are not recognized internationally, Sukhum adopted the policy of Russian passportization in order for Abkhazians to be able to travel abroad and be protected in a third country in case of emergency.</p> <p>Thus, Abkhazia is eager to enter into relations with other states and that would be an effective incentive for further political development; however, since the majority of countries are reluctant to establish political relations with the breakaway state, Abkhazia is condemned to rely on Russia in the international affairs issue.</p>	~ limited
Independence in its formal and real aspects	<p>Situation of limited sovereignty or “asymmetrical independence”:</p> <p>Abkhazia is dependent on Russian excessive money investment that has brought the living standards up and on a superficial level stimulated stagnated economy but, on the other hand, boosted corruption tremendously. Financially Abkhazia is overwhelmingly dependant on Russia. Russian government has spent about eleven</p>	~ limited sovereignty

²⁹⁶ Ethno-Caucasus, “Naselenie Abkhazii,” <http://www.ethno-kavkaz.narod.ru/rnabkhazia.html> (accessed 8 May 2013).

²⁹⁷ Posol'stvo Respubliki Abkhazia v Bolivarianskoi Respublike Venesuela. *Strani, Priznavshie Nezavisimost' Respubliki Abkhazia*. <http://www.abjasia.org/recognition.html> (accessed 1 May 2013).

²⁹⁸ Ministerstvo Inostrannih Del Respubliki Abkhazia, Rasprostranenoje Gruzinskimi SMI soobshenie ob Otzive Vanuatu Oficial'nogo Priznaniya Abkhazii yavlyaetsya ne bole chem Fantaziei Gruzii,- Zamministra Inostrannih Del Iraklyi Hintba, (2013), <http://mfaapsny.org/news/?ID=1168> (accessed 8 May 2013).

	<p>billion rubles or \$350 million on the aid program for the socio-economic development of Abkhazia, including agricultural projects and rebuilding infrastructure.²⁹⁹ Because of the upcoming Winter Olympic Games in 2014 in Sochi Russian business has come to the market, which, on the one hand, awakens the economy, on the other hand, preserves the situation of the Russian dominance. However, having realized the danger, Abkhazian authorities concluded that no changes to the real estate regulations would be introduced and foreigners, including Russians, cannot purchase property Abkhazia.</p> <p>Abkhazia's main trade partners are Russia and Turkey and its export is confined to these two states (Russia - 64% and Turkey 6%).³⁰⁰ The state has good potential as recreational and agricultural area due to its climate and nature.</p>	
<p>Non-dependence on foreign military support</p>	<p>Abkhazia has its own army which is an “unlawful military formation”, according to Tbilisi, and fleet. Every male has to serve in the army and stays in reserve until the age of fifty five; moreover, officers are hired on the basis of military service contract.³⁰¹ In Abkhaz-Georgian war of 1992-1993 the army proved to be battleworthy. However, the arms are provided by the Russian Federation which has invested \$465 million in 2008-2012 into rehabilitation and construction of military infrastructure of the Republic of Abkhazia.³⁰² Furthermore, there are approximately 5,000 Russian military personnel in Abkhazia with a residence in Gali town located in the Gali region which used to be ethnically Georgian, and it is Russian military who conducts the border patrol.³⁰³ Because of Russian military bases, its permanent</p>	<p>-</p>

²⁹⁹ International Crisis Group Working to Prevent Conflict Worldwide, *Abkhazia: the Long Road to Reconciliation*, Europe Report #224, 12 April, 2012, <http://www.crisisgroup.org/~media/Files/europe/caucasus/georgia/224-abkhazia-the-long-road-to-reconciliation.pdf> (accessed 10 May 2013).

³⁰⁰ Abkhaz World, “Russia and Turkey Remain Abkhazia’s Main Trade Partners,” (2012), <http://www.abkhazworld.com/news/misc/900-russia-and-turkey-remain-abkhasias-main-trade-partners.html> (accessed 13 May 2013).

³⁰¹ Levon Arzanov, “Secret Abkhazskoi Armii,” *Segodnya.RU*, 27 August 2012, <http://www.segodnia.ru/content/112823> (accessed 6 May 2013).

³⁰² International Crisis Group Working to Prevent Conflict Worldwide, *Abkhazia: the Long Road to Reconciliation*, Europe Report #224, 12 April, 2012, <http://www.crisisgroup.org/~media/Files/europe/caucasus/georgia/224-abkhazia-the-long-road-to-reconciliation.pdf> (accessed 10 May 2013).

³⁰³ Ibid.

	presence in the region and the self-chosen role of a watchdog international community has concluded that Abkhazia is under the Russian occupation. The fact that Abkhazian officials invited the Russian forces does not play a role, since this invitation for military intervention during the war and occupation later is internationally perceived as an illegal act.	
Additional Criteria		
Popular Support	The popular support is exceptionally high. 97.7% of Abkhazian voted for the Abkhazian Constitution on the Referendum of 1999 which was condemned by the UN. Expelled Georgian did not get a chance to participate in the Referendum.	+
Respect for other states' rights	For the past twenty years Abkhazia is violating territorial integrity of Georgia which for a state is one of the most important international principles. Moreover, Abkhazian authorities have recognized other breakaway territories of Transnistria and South Ossetia. However, it is a reaction to oppression and, otherwise, Abkhazia respects the rights of other members of the international community.	~
Absence of undue violence in the seizure of power	The war 1992-1993 was very cruel with massive violations of human rights where actions of both Georgian and Abkhazian side were brutal. A massacre exercised by the Abkhazian separatists was perceived as ethnic cleansing. Moreover, the conflict led to an illegal expulsion of ethnically Georgian population from the Gali region, which happened again later, when in the spring 1998 Abkhaz military entered Georgian-populated villages and forced them to leave their place of settlement.	-
Origins in conformity with international law	Depends on the interpretation. However, there is no contradiction with the international law (besides the unproportional measures taken against ethnically Georgian population of Gali and expulsion) and <i>de jure</i> people of Abkhazia can claim for their self-determination right even in a form of secession as for decades they were deprived of any form of self-determination	~
Respect for human rights	In 2000s the issue of human rights and freedoms in Abkhazia has improved and in sense of stabilizing the situation and preventing local ethnic conflict Russian presence has its positive effect.	-

	<p>However, there are at least three prominent problems remaining: first, in 1990s Abkhazian separatists violated rights of ethnically Georgian population massively and repeatedly; second, the expelled Georgian population that has not returned yet does not receive any sufficient support from the Abkhazian government; third and currently the most importantly, the Circassian question is not solved. The conflict between Abkhaz and Circassian minorities is rooted in the ethnic cleansing of Circassian and deportation of Abkhaz and Circassian population organized by the Russian Empire after the Caucasus war in the mid-nineteenth century. The Abkhaz-Georgian war brought the ethnicities together for a while but did not solve the existing contradiction. The conflict renewed in November 1997 with the Resolution of the Abkhazian Parliament on the deportations resulting from the Caucasian War that mentioned only Abkhaz minority; the question of recognizing the genocide of the Circassian was not included. This act brought about intense debates about the fundamental difference between nation-state building projects of Abkhaz and Circassians and misunderstanding about potential collaboration in future. According to the Abkhaz citizenship law, besides the permanent residents of the territory, only Abkhaz, Abaza and Ubykhs can be native citizens of the Republic of Abkhazia, so a minority of roughly ten million people was denied the right of citizenship.³⁰⁴ The upcoming Olympic Games stimulate the discussion about the destiny of the Circassian minority and draw attention of the international community to the issue.³⁰⁵</p>	
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“+” – the criterion is satisfied;

“-“ – the criterion is not met;

“~” – the criterion is partially met.

³⁰⁴ International Alert, *The North Caucasus Factor in the Georgian-Abkhaz Conflict Context*, (2012), 12.

³⁰⁵ Abkhaz World, “The Circassian question and Abkhazia: historical factors and contemporary challenges by Arda Inal-Ipa,” (2012), <http://www.abkhazworld.com/articles/analysis/863-the-circassian-question-and-abkhazia-by-arda-inal-ipa.html> (accessed 13 May 2013).