



Can Kosovo be a Precedent for South Ossetia and Abkhazia

Recognizing Differences in Dynamics of Recognition

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The issue of whether the recognition of Kosovo as an independent state might serve as a precedent for former autonomous republics of Georgia, South Ossetia and Abkhazia has been often debated. This paper aims at comparing the processes of recognition of these three entities. It illustrates that the international community has been gradually recognizing Kosovo as a State while South Ossetia/Abkhazia have been subjected to the policy of non-recognition. It argues that because the dynamics of recognition of Kosovo and South Ossetia/Abkhazia have been very different, it is less likely that the establishment of Kosovo as a viable state will serve as a precedent for South Ossetia/Abkhazia.

Although the secession of Kosovo from FR Yugoslavia and of South Ossetia/Abkhazia from Georgia has been studied in many respects, the character of the recognition process of the three entities has hardly been compared. But the question arises - is it at all worthwhile to compare who have recognized Kosovo and South Ossetia/Abkhazia and if so, what could we learn from such comparison?

Answers to these questions lie, first of all, in the importance of principles involved in the recognition of states under international law.

Recognition has served international society as a device by which to respond to changes in world public order and the emergences of new states.³ Hence, as we have witnessed the disintegration of two multi-ethnic states in the last two decades, the USSR and FR Yugoslavia, recognition has acquired renewed importance.

One of the most prominent debates in the international law of recognition, i.e. the branch of international law that determines the existence of the state, is a debate between constitutive and declaratory schools of recognition. Scholars aligning themselves with the constitutive theory claim that an entity requires recognition by other States to be endowed with international legal personality. While the declaratory school maintains that a political community meeting the requirements of statehood provided in the Montevideo Convention⁴ automatically qualifies as a "State" and that recognition by other States simply acknowledges (declares) "as a fact something

which has hitherto been uncertain."⁵

It is established, however, that the declaratory doctrine has exercised greater attraction than Constitutivism over the last thirty years.⁶ Yet, even to those that share prevalence of declaratory doctrine, recognition by other states remains important.⁷ For example although the Supreme Court of Canada, discussing the legality of possible secession by Quebec in Canada,⁸ adopted the declaratory theory of recognition, it emphasized "the viability of a would-be state in the international community depends, as a practical matter, upon recognition by other states."⁹

Collective recognition in the form of acceptance to the United Nations, and to a lesser extent to other international organizations, and recognition by other international organizations, as in the case of recognition by EC of Croatia and Bosnia in 1992, may impact upon the whole question of statehood.¹⁰ Some scholars have argued that there is a shift under way from individual recognition by states to collective recognition through international organizations.¹¹ However, the dynamics of recognizing Kosovo, the most recent exercise

in recognition of a new State, attests to the contrary.

Recognition of Kosovo was a highly individualized affair among states. Kosovo declared its independence on February 17 2008.¹² The United States of America was the first country to formally recognize Kosovo as a sovereign and independent state on February 18 2008.¹³ The European Union deferred the question to its individual members.¹⁴ While France, Germany, Italy and the other 20 members of EU individually recognized Kosovo as an independent state,¹⁵ Spain refused to recognize Kosovo's independence as "it does not respect international law."¹⁶ Similarly, Cyprus, Greece, Romania, Bulgaria and Slovakia have rejected Kosovo's independence.¹⁷

As Maldives became the 55th country to recognize the independence of Kosovo, the opinion of Russian Federation that Kosovo stays an indivisible part of Serbia remains unchanged.¹⁸ In line with position of other former USSR countries troubled with secessionist conflicts Moldova, Azerbaijan, Ukraine, Georgia also refrained from recognizing Kosovo.

The United Nations has not had a chance to pronounce on Kosovo's statehood because Kosovo has not applied for UN membership as Russia is threatening to use its seat in the UN Security Council to block Kosovo's membership application.¹⁹ Having being asked to admit Kosovo as a member on July 10 2008, the World Bank and IMF are still silent on the issue although the typical time limit for considering such applications is soon to expire.²⁰

The above-stated chronology of Kosovo's recognition by individual states and inability or unwillingness of international organizations to be at the forefront of this process signifies that the process of Kosovo's recognition was decentralized among individual countries and, contrary to what some scholars suggest, collective recognition did not play a role.

The situation with recognition of

South Ossetia is different. Coordination among international organizations on the non-recognition of South Ossetia/Abkhazia resembles the process of non-recognition thus reducing minimally the possibility of these entities to be established as independent and viable states.

The first clear-cut case of non-recognition took place in the 1930s with respect to a state of "Manchukuo" -- the former Manchuria-- which Japan took over from China in 1931 and where a formal "head of state" was installed by Japan after the takeover. Although some individual states, notably El Salvador, Poland, Hungary, Spain and Italy, did recognize Manchukuo,²¹ the League of Nations refused to do so, specifically declaring that "it is incumbent upon the Members of the League of Nations not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations and to the Pact of Paris."²²

There are a number of precedents where the League of Nations and the United Nations openly urged for non-recognition of aspirant states, including secession of Katanga from the Republic of Congo in 1960, the case of Southern Rhodesia from 1965-1980, secession attempts of South Africa's states of Transkei, Bophuthatswana, Venda and Ciskei, etc. The non-recognition of the Turkish Republic of Northern Cyprus by the United Nations is a more recent example.

Following a military coup by Greek officers which called into question the internationally guaranteed constitutional framework of Cyprus, Turkey sent in troops on 20 July 1974 and occupied the northern part of the island. Although the intervention was clearly aimed at supporting the Turkish minority, it was only on 15 November 1983 that the "Turkish Republic of Northern Cyprus" was proclaimed. Both the invasion and the declaration of independence were immediately denounced by the UN Security Council as a violation of the sovereignty of the Republic of

Cyprus and as an invalid attempt to create a new state.²³ Security Council Resolution 541 expressly deplored “[...] the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus” and called “[...] upon all States not to recognize any Cypriot State other than the republic of Cyprus.”²⁴ TRNC has been recognized only by Turkey.

Former Autonomous Republics of Georgia, Abkhazia²⁵ and South Ossetia²⁶ declared independence after secessionist conflicts with Georgian forces²⁷ where secessionist troops were largely aided and backed by Russia.²⁸ Russian troops invaded the territory of Georgia in August 2008, justifying the action by defense of South Ossetia’s population from Georgian aggression, and have announced plans to establish permanent military bases on the territory of South Ossetia.²⁹ South Ossetia (together with a secessionist republic of Abkhazia) was recognized by the Russian Federation on August 26 2008.³⁰ Although Belarus and Venezuela were supporters of Russia’s recent intervention in Georgia, only Nicaragua³¹ so far has joined Russia in recognizing the two secessionist entities.

International organizations have been engaged in the collective policy of non-recognition of statehood of South Ossetia and Abkhazia. According to Hersh Lauterpacht

“non-recognition is based on the view that acts contrary to international law are invalid and cannot become a source of legal rights for the wrongdoer. That view applies to international law as one of the “general principles of law recognized by civilized nations.”³² The list of decisions by international organizations confirming the territorial integrity of Georgia and urging non-recognition of the two entities is boundless. Due to Russia’s veto, the Security Council of the United Nations could not arrive at a condemning resolution but the EU³³, NATO,³⁴ Chairman of OSCE³⁵, and Council of Europe³⁶ have all reaffirmed support for Georgia’s territorial integrity, condemned recognition by Russia of two secessionist entities and called upon withdrawal of this decision. It is evident that the international community has implemented a policy of non-recognition vis-à-vis South Ossetia/Abkhazia.

Overview of practice of recognition of Kosovo and South Ossetia/Abkhazia illustrates that the three entities have gone on two different paths. Kosovo was gradually and individually recognized by more than fifty states while the international community extended a policy of non-recognition with respect to South Ossetia/Abkhazia. Therefore, it could hardly be claimed that in this respect the case of Kosovo represents a precedent for statehood of South Ossetia and Abkhazia.

Endnotes

1 Interview of the *De Facto* President of South Ossetia Eduard Kokoity, March 05, 2008, available at <http://www.rferl.org/content/article/1079593.html>; President of the Russian Federation Vladimir Putin, February 1, 2006, [http://www.rferl.org/South Ossetia Is Not Kosovo](http://www.rferl.org/South%20Ossetia%20Is%20Not%20Kosovo), *The Economist*, August 28 2008, available at http://www.economist.com/opinion/displaystory.cfm?story_id=12009678; Christopher Hitchens, *South Ossetia Isn't Kosovo*, August 18, 2008, available at <http://www.slate.com>; Zeyno Baran, Thomas de Waal, *Abkhazia-Georgia, Kosovo-Serbia, Parallel Worlds?* August 01, 2006, available at http://www.opendemocracy.net/democracy-caucasus/abkhazia_serbia_3787.jsp, retrieved on February 20, 2009

2 In 1936, the Institute of International Law defined recognition as “[...] the free act by which one or more States acknowledge the existence on a definite territory of a human society politically organized independent of any other existing state, and capable of observing the obligations of international law, and by which they manifest therefore their intention to consider it a member of the international community.” (1936) 30 AJIL Supplement 185.

3 Thomas Grant, *THE RECOGNITION OF STATES. LAW AND PRACTICE IN DEBATE AND EVOLUTION*, Westport, Connecticut 1999.

4 Article 1 of the Montevideo Convention on the Rights and Duties of States provides an oversimplified list of criteria for statehood: a permanent population, a defined territory, a government and a capacity to enter into relations with other States, 165 L.N.T.S. 19.

5 John Dugard, *RECOGNITION AND THE UNITED NATIONS*, Cambridge Grotius Publications Limited 1987. pp.7.

6 Thomas Grant, *supra* note 3 at 19; see also James L. Brierly, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE*, Sir Humphrey Waldock Ed., 6th ed. (Oxford: Clarendon Press, 1963), p. 139; Ian Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 3rd ed. (Oxford: Clarendon Press, 1979) p. 90-91; D.J. Harris, and perhaps for the most comprehensive defense of the declaratory doctrine, Ti-Chiang Chen, *THE INTERNATIONAL LAW OF RECOGNITION, WITH SPECIAL REFERENCE TO PRACTICE IN GREAT BRITAIN AND THE UNITED STATES*, London: Stevens & Sons Limited, 1951.

7 In general, see John Dotard, *RECOGNITION AND THE UNITED NATIONS*, Cambridge Grotius Publications Limited 1987.

8 20 August 1998 Advisory Opinion of the Supreme Court of Canada Reference Re: Secession of Quebec, [1998] 2 S.C.R.217; 37 ILM 1998, 1342.

9 *Id.* at 142.

10 Malcolm Shaw, *The Role of Recognition and Non-Recognition with Respect to Secession: Notes on Some Relevant Issues*, in *SECESSION IN INTERNATIONAL LAW*, Julie Dahlitz ed., TMC Asser Press 2003, p. 251-252.