

Abkhazia, Kosovo and the right to external self-determination of peoples

by Marco Siddi¹

Abstract

In August 2008 Russia recognized the independence of the separatist Georgian province of Abkhazia invoking the right of self-determination of peoples. Moscow's move was a response to the recognition of Kosovo's independence by some members of the international community earlier that year. Some commentators argued that the independence of Kosovo constituted a legal precedent that could be invoked by other separatist regions, as in the case of Abkhazia. A comparison of events in Kosovo and Abkhazia refutes the argument that Kosovo's independence is a sui generis case. Furthermore, due to insufficient state practice and opinio juris the Kosovo case has not led to the formation of a new rule of customary international law concerning the right of external self-determination of peoples in exceptional circumstances. Therefore, Kosovo's and Abkhazia's declarations of independence and their recognition by some members of the international community constitute violations of international law.

Introduction

On 26 August 2008 the Russian Federation recognized the independence of Georgia's breakaway provinces of Abkhazia and South Ossetia. In the statement that explained the reasons for Russia's recognition, President Dmitry Medvedev referred to the “freely expressed will of the Abkhaz and Ossetian peoples” and to several fundamental international instruments that stress *inter alia* the principle of self-determination of peoples, notably the UN Charter, the 1970 UN General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States (UN General Assembly Resolution 2625) and the 1975 Helsinki Final Act of the Conference on Security and Co-operation in Europe (CSCE). Medvedev also specified that Abkhazians and South Ossetians had the right to decide their destiny by themselves in the light of Georgia's allegedly genocidal policies in South Ossetia and the existence of similar plans for Abkhazia.²

Therefore, in the August 2008 crisis Russia supported the controversial principle of external self-determination of peoples in exceptional circumstances, which it had fiercely opposed until then, most notably in the case of Kosovo's declaration of independence. External self-determination implies “the right of every people to choose the sovereignty under which they live”. The concept of external self-determination is broader than that of internal self-determination, which refers primarily to “the right of

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² *New York Times*, “Text: Medvedev's statement on South Ossetia and Abkhazia”, August 27, 2008, <http://www.nytimes.com/2008/08/27/world/europe/27iht-27medvedev.15660953.html> (accessed January 31, 2011).

peoples to select their own form of government” within a sovereign state.³ Internal self-determination thus concerns the granting of minority rights, regional autonomy regimes or federalism within an existing state. On the other hand, external self-determination refers in particular to the right to establish an internationally recognized independent state to represent a people. In other words, external self-determination implies the separation of a sub-group of a state with the consent of the central government, or its secession without the consent of the state concerned, and the establishment of a new state. Considering that international law is dominated by sovereign states and that secession poses a threat to their territorial integrity, the principle of external self-determination constitutes a very controversial issue.⁴

The controversy is further complicated by the fact that the concept of self-determination is a right granted to peoples. The definition of “people” as enshrined in international documents and court decisions is vague and evasive.⁵ Language, race and religion fail to provide solid criteria for the identification of a people. In addition, so far state practice has favoured the classical territorial approach to self-determination rather than the romantic or ethnic approach, which stresses the relevance of ethnicity, language and religion. Since the nineteenth century, particularly in the context of decolonization and during the break-up of multinational states such as the Soviet Union, Czechoslovakia and Yugoslavia after the end of the Cold War, the principle of *uti possidetis* was applied, which meant that the borders of former colonies or federated republics became the borders of the newly established sovereign states, regardless of whether this implied the separation of communities speaking the same language, professing the same religion or belonging to the same ethnic group.⁶

The legal foundations of the right to self-determination: treaties and practice until 2007

Before analyzing the application of the concept of external self-determination to the Abkhaz conflict, the former will be put into context through an analysis of its legal foundations in international treaties and customary international law.

As far as legally binding international treaties are concerned, the principle of self-determination of peoples is enshrined in Articles 1(2) and 55 of the Charter of the United Nations and in Article 1 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.⁷ However, the UN Charter does not provide any definition for

³ Benyamin Neuberger, “National Self-Determination: a Theoretical Discussion”, *Nationalities Papers*, vol. 29:2 (2001): 392.

⁴ Benyamin Neuberger, “National Self-Determination: Dilemmas of a Concept”, *Nations and Nationalism*, vol. 1:3 (1995): 297-325.

⁵ See, for instance, the frequently cited definition by the Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities Aureliu Cristescu, in Aureliu Cristescu, *The Right to Self-Determination*, (New York: United Nations publications, 1981), 2-16.

⁶ Daniele Archibugi, “A critical analysis of the self-determination of peoples: a cosmopolitan view”, *Constellations*, vol. 10:4 (2003): 489-492; Helen Quane, “The United Nations and the evolving right to self-determination”, *International and Comparative Law Quarterly*, vol. 47:3 (1998): 537; Martti Koskenniemi, “National self-determination today: problems of legal theory and practice”, *The International and Comparative Law Quarterly*, vol. 43:2 (1994): 241-269.

⁷ *Charter of the United Nations*, Articles 1 and 55, <http://www.un.org/en/documents/charter/> (accessed January 31, 2011); *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural*

the concept of self-determination of peoples and does not distinguish between internal and external self-determination. As Antonio Cassese has noted, the debate preceding the adoption of Article 1(2) proves that negotiating States did not intend to include a right of secession in the provision. Article 55 does not include any reference to external self-determination either. Furthermore, Articles 2(1) and 2(4) of the Charter emphasize the concepts of state sovereignty and territorial integrity, which can hardly be reconciled with the principle of external self-determination. Thus, the practical significance of the provisions concerning self-determination in the UN Charter is limited to the idea that internal self-determination should be granted as much as possible. Similarly, the wording of Article 1 of the 1966 Covenants implies exclusive reference to internal self-determination, as is exemplified by its focus on the peoples' right to freely determine their political status and economic, social and cultural development.⁸

Customary international law provides for the right of secession, but only in certain cases satisfying very specific requirements. The formation of a rule of customary international law requires appropriate state practice and the firm belief that this practice meets a legal obligation (*opinio juris*). State practice and *opinio juris* indicate that the right to external self-determination is widely endorsed by the international community in the context of decolonization (namely when colonies declare their independence from a colonial country), or if a state that had been unlawfully annexed by another state declares its independence, as was the case with the former Soviet Baltic republics in 1990. In addition, the existence of a right to external self-determination is widely accepted in cases in which the majority of the population takes the decision of allowing the formation of a new state, and the decision is both anchored in national law and follows the regular constitutional procedures; the secession of Montenegro from the Federal Republic of Yugoslavia in 2006 provides an example in this respect. On the other hand, no state practice existed until 2007 with regard to a right of secession in cases of serious human rights violations. As will be discussed below, the international community was deeply divided when some states claimed the existence of such a right in the context of Kosovo's declaration of independence in February 2008.⁹

The contention that an exceptional right of secession exists as a fundamental principle of international law in cases of serious human rights violations is very controversial too. Advocates of this interpretation usually refer to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (UN General Assembly Resolution 2625), notably its saving clause. The latter reads as follows:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples [...] and thus possessed of a government

Rights, 16 December 1966, Article 1, <http://www2.ohchr.org/english/law/index.htm> (accessed January 31, 2011).

⁸ Antonio Cassese, *Self-determination of peoples: a legal reappraisal* (Cambridge: Cambridge University Press, 1995), 41-43 and 52-53; *Charter of the United Nations*, Articles 1, 2 and 55; *International Covenant on Civil and Political Rights*, Article 1; *International Covenant on Economic, Social and Cultural Rights*, Article 1.

⁹ Heiko Krueger, "Implications of Kosovo, Abkhazia and South Ossetia for international law", *Caucasian Review of International Affairs*, vol. 3:2 (2009): 122-123, http://cria-online.org/7_2.html (accessed January 31, 2011); Archibugi, "A critical analysis of the self-determination of peoples", 488 and 496-8.

*representing the whole people belonging to the territory without distinction as to race, creed or colour.*¹⁰

According to Antonio Cassese, the analysis of the Declaration's text and preparatory work warrants that a right to secede is not ruled out for racial and religious groups that are persecuted by the central authorities of a state. Stringent requirements would have to be met simultaneously in order for this right to apply: the state persistently refuses to grant participatory rights to a religious or racial group, it grossly and systematically tramples upon their fundamental rights and denies the possibility of reaching a peaceful settlement. According to this interpretation, internal and external self-determination would be linked in the exceptional circumstances mentioned above, as denial of internal self-determination allows the affected people to demand external self-determination.¹¹

However, Cassese's interpretation displays several weaknesses. The overwhelming majority of states that participated in the drafting of the Declaration opposed the idea that peoples might have a right of secession outside the colonial context. In addition, the principle of territorial integrity was considered inviolable, as is demonstrated by the fact that it is mentioned both in the Declaration's preamble and in the saving clause. The preamble states *inter alia* that any attempt at the partial or total disruption of national unity and territorial integrity is incompatible with the purposes and principles of the UN Charter and with the spirit of the Declaration. Furthermore, the Declaration is not legally binding upon UN member states, as it was adopted as a General Assembly Resolution, and thus it does not represent a solid legal basis for the right to external self-determination, particularly in the absence of relevant and consistent state practice.¹²

Advocates of external self-determination also refer to the 1975 CSCE Final Act. Although the CSCE Final Act only constitutes a political document, its relevance to the concept of self-determination needs to be discussed. The document has been agreed upon by all the main sovereign actors involved in the Abkhaz conflict and has been explicitly mentioned by President Medvedev in his statement accompanying Russia's recognition of Abkhazia. The second paragraph of Principle VIII of the CSCE Final Act is the key part of the document with regard to external self-determination. According to Principle VIII, all peoples have the right to determine in full freedom, when and as they wish, their internal and external political status by virtue of the principle of equal rights and self-determination of peoples. If read alone, the reference to the freedom to determine external political status might be interpreted as an endorsement of the principle of external self-determination. The phrase "all peoples" implies that the principle would not only apply to racial and religious groups persecuted by a state, as can be inferred from the Friendly Relations Declaration, but to the entire population. The expression "all peoples" also indicates that the principle does not only apply to the context of decolonization, a view that was then held by the socialist and Third World states.¹³ Furthermore, the third paragraph of Principle VIII recalls "the importance of the elimination of any form of violation of this principle [self-determination]", which could be interpreted as a call upon the international community to guarantee

¹⁰ *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States*, UN General Assembly Resolution 2625, 24 October 1970, <http://www.un.org/documents/ga/res/25/ares25.htm> (accessed April 2, 2010).

¹¹ Cassese, *Self-determination of peoples*, 118-123.

¹² Krueger, "Implications of Kosovo, Abkhazia and South Ossetia for international law", 127.

¹³ Cassese, *Self-determination of peoples*, 285-286.

that self-determination as defined in the CSCE Final Act is respected in all participating states.¹⁴

However, the interpretation of these paragraphs changes radically if they are read within the wider context of the CSCE Final Act. Principle I of the document is devoted to the respect for the rights inherent in sovereignty and Principle IV enshrines the respect for the territorial integrity of the participating states. Principle VIII itself affirms that the participating states shall respect the right to self-determination of peoples acting in conformity with the UN Charter and the relevant norms of international law, including those relating to the territorial integrity of states. Furthermore, Principle X states that all the principles in the CSCE Final Act “are of primary significance and, accordingly, they will be equally and unreservedly applied, each of them being interpreted taking into account the others”.¹⁵ Thus, the CSCE Final Act, like the Friendly Relations Declaration, upholds the hardly reconcilable principles of self-determination and territorial integrity simultaneously and does not specify the primacy of one over the other. However, the fact that territorial integrity is mentioned in different parts of the document and is explicitly spelled out in the first paragraph of the Principle concerning the self-determination of peoples represents a solid counter-argument for any interpretation of the CSCE Final Act which aims to prove that the document endorses the principle of external self-determination.¹⁶

The Kosovo case: a precedent?

As has been discussed above, the prevailing view is that international law does not provide any unilateral right of secession for peoples, groups and minorities, with the exception of very few and specific cases in the context of decolonization, regular constitutional procedures or redressing previous violations of international law that involved the forcible annexation of a state. The international treaties that refer to the right to self-determination also stress the inviolability of the principle of territorial integrity. External self-determination and territorial integrity are legal antinomies that cannot be easily harmonized. Consequently, it can be argued that the right to self-determination as enshrined in the documents discussed above entails a right to an adequate democratic representation, but not a right to secession.¹⁷

However, according to Antonio Cassese and Angelika Nussberger an additional case exists in which the right to external self-determination can be granted as *ultima ratio*, namely when a minority group is categorically and permanently excluded from participation in the political process, there are gross violations of its elementary human rights and there is no realistic prospect of conflict resolution, as all peaceful methods have been exhausted. Granting external self-determination in these circumstances would be a last resort remedy (hence, the term “remedial secession” is used in this context) to solve an

¹⁴ *Conference on Security and Co-operation in Europe Final Act*, Principle VIII, <http://www.osce.org/who/43960> (accessed January 31, 2011).

¹⁵ *Conference on Security and Co-operation in Europe Final Act*, Principles I, IV, VIII and X.

¹⁶ Krueger, “Implications of Kosovo, Abkhazia and South Ossetia for international law”, 128; *Conference on Security and Co-operation in Europe Final Act*, Principles I, IV and VIII.

¹⁷ Krueger, “Implications of Kosovo, Abkhazia and South Ossetia for international law”, 128; *Report of the Independent International Fact-Finding Mission on the Conflict in Georgia*, Vol I, p. 17; Angelika Nussberger, “The War between Russia and Georgia – Consequences and Unresolved Questions”, *Göttingen Journal of International Law*, vol. 1:2 (2009): 347-348.

irreconcilable conflict. Cassese contends that in these cases it might be too late to plead for a peaceful solution based on internal self-determination and goes as far as arguing that intervention of the international community is desirable with a view to promoting independent statehood for the minorities at issue.¹⁸ Although an extraordinary right to secede has not found general acceptance so far, contentions such as those made by Cassese and Nussberger became of particular relevance when Kosovo declared its independence in February 2008 and several members of the international community recognized it. In this context, the Kosovo case will be discussed in terms of its impact on the international law concerning the right to external self-determination and its value as a precedent for the secession of Abkhazia from Georgia.

Kosovo was an autonomous province of Serbia until 1989, when its status was revoked by Serbian President Slobodan Milosevic. During the breakup of Yugoslavia, the principle of *uti possidetis* was applied to define the borders of the new states, which meant that the boundaries of the constituent republics of Socialist Yugoslavia became the new international frontiers. As a result, Kosovo remained part of Serbia. However, tensions escalated in the late 1990s, as the Serbian government continued to implement repressive policies and the ethnic Albanians resorted to armed force through the formation of a Kosovo Liberation Army. Increasing brutality by Serbian forces caused civilian victims and a flow of refugees, which eventually led NATO member states to launch an air campaign against Serbia. Under the impact of operation Allied Force, Milosevic agreed to a peace plan proposed by the G-8 and adopted by the Security Council of the United Nations in Resolution 1244. Kosovo was put under international administration, although it formally remained within the Federal Republic of Yugoslavia. This status could have been changed only by another Security Council Resolution, but deadlock in this organ and the failure to achieve a negotiated settlement led the *de facto* Kosovo Albanian authorities to unilaterally declare Kosovo's independence on 17 February 2008.¹⁹

However, so far only 74 out of the 192 UN member states have recognized Kosovo's independence. State practice affects the interpretation of international treaties, therefore a uniform and coherent practice may have influenced the interpretation of the provisions concerning self-determination in the UN Charter and the 1966 Covenants. However, the international community is divided over the issue of Kosovo's recognition and recognizing states constitute little more than a third of all UN member states. Furthermore, recognizing states have not indicated any clear legal reason to justify their conduct. For instance, in the Declaration on the Independence of Kosovo the recognizing states in the Council of the European Union (22 out of 27 EU member states) argued that Kosovo is a *sui generis* case which does not call into question the provisions of the UN Charter, the 1966 Covenants and the Helsinki Final Act. In the light of these considerations, the Kosovo case had no identifiable implications on the interpretation of international treaties.²⁰

¹⁸ Nussberger, "The War between Russia and Georgia", 348-349; Cassese, *Self-determination of peoples*, 120-123 and 359-362. For a more detailed analysis of the issue of humanitarian intervention, see Hanspeter Neuhold, "Human Rights and the Use of Force", in *Liber amicorum Luzius Wildhaber*, ed. Stephan Breitenmoser et al. (Zürich, St. Gallen and Baden-Baden: Dike, 2007), 479-498.

¹⁹ Hanspeter Neuhold, "The United Nations as a Security Organization: the Balkan laboratory", in *Studies in Applied International Law*, ed. Christoph Benicke et al. (Giessen, 2007), 16.

²⁰ *Council Conclusions on Kosovo*, 2851st External Relations Council meeting (Brussels, 18 February 2008), in Krueger, "Implications of Kosovo, Abkhazia and South Ossetia for international law", 133-134.

The lack of a uniform and prevalent manner of conduct in the Kosovo case also prevented the formation of a customary norm in international law that supports the right of secession under certain conditions. *Opinio juris* was insufficient too, as the community of states was not united in the belief that such a right exists. The countries that refused to recognize Kosovo are those potentially or actually affected by internal separatist movements, therefore only their positive stance would have allowed the creation of a new and meaningful international norm. Furthermore, even if a new customary norm had emerged, opposing states would have to be considered persistent objectors and would be excluded from relying on such a new rule themselves. Even recognizing states were extremely reluctant to support the formation of a customary norm and claimed that Kosovo was a unique case rather than a precedent. Therefore, the independence of Kosovo had no implications on customary international law, as one single case over which the international community is deeply divided does not fulfil the requirements for the formation of a new customary norm.²¹

On the basis of these considerations, and in the light of the evasive answers provided by the International Court of Justice in its recent advisory opinion on Kosovo's declaration of independence, it can be claimed that the independence of Kosovo was unjustified and unlawful due to insufficient legal bases.²² The claim that Kosovo represents a legal precedent is therefore unfounded. In addition, precedents are not a source of international law; they can only give indications concerning the emergence of a new customary law if they are substantiated by general state practice over a certain period of time and if the belief exists that this practice reflects law.²³

The Abkhaz case

Advocates of the *sui generis* nature of the Kosovo case argue that Kosovo is exceptional in several respects, notably the scale of human rights violations, persistent denial of representative government, involvement of the international community and the existence of a multilateral process for the definition of future status.²⁴ However, an analysis of the Abkhaz case shows that the claim that Kosovo is a *sui generis* case rests on fragile foundations.

Strong parallels exist between Kosovo and Abkhazia. Both enjoyed substantial autonomy within a multinational state until 1990 and lost this status during the process of dissolution of the multinational state. The actions of the Georgian government in 1992-1993 and the Serbian government in 1998-1999 resemble each other in terms of escalation of the conflict and military intervention; the ensuing refugee streams, ethnic hatred, ethnic cleansing and mutual atrocities also display numerous similarities. Both the actions of Serbian military and paramilitary groups in Kosovo and the attacks of Georgian regular

²¹ Krueger, "Implications of Kosovo, Abkhazia and South Ossetia for international law", 134-135; *Report of the Independent International Fact-Finding Mission on the Conflict in Georgia*, Vol I, 140-141.

²² On the ICJ advisory opinion, see Heiko Krueger, "Was Kosovo's split-off legitimate? Background, meaning and implications of the ICJ's advisory opinion", *Caucasian Review of International Affairs*, vol. 4:3 (2010), http://cria-online.org/12_7.html (accessed January 30, 2011). The advisory opinion of the ICJ on Kosovo is available at www.icj-cij.org/docket/files/141/16012.pdf (accessed January 31, 2011).

²³ *Report of the Independent International Fact-Finding Mission on the Conflict in Georgia*, Vol II, 140.

²⁴ Wolfgang Benedek, "Implications of the independence of Kosovo for international law", in *International law between universalism and fragmentation, Liber amicorum in honour of Gerhard Hafner*, ed. Isabelle Buffard et al. (The Hague: Nijhoff Publishers, 2008), 411.

and irregular troops resulted in serious human rights violations.²⁵ Furthermore, also the Georgian government denied internal self-determination and prevented a peaceful settlement of the conflict. After resorting to armed force in 1992, Georgia ignored the 1999 referendum in Abkhazia, when the majority of people residing in the secessionist province voted in favour of the proposal to create a federation including Georgia and Abkhazia as independent republics on an equal standing. Moreover, the Saakashvili government decisively disrupted negotiations in July 2006 by removing the main Georgian officials in charge of conflict resolution talks at a stage when significant progress was being made and, most importantly, by introducing armed forces in the Kodori Gorge in violation of international agreements. In August 2008 Saakashvili resorted to armed force in the other Georgian secessionist province of South Ossetia, once again in violation of international law and international agreements. Although the Georgian military offensive was not directed against Abkhazia, it had obvious repercussions on the negotiations and relations between Tbilisi and Sukhumi, resulting in Sukhumi's fear that it would be the next victim of Georgian aggression.²⁶

Advocates of Kosovo's *sui generis* nature argue that in Kosovo at least 90 percent out of a total population of 2 million are ethnic Albanians, whereas Abkhazians constitute only 43 percent of the 200,000 inhabitants of Abkhazia, without counting the 230-250,000 ethnic Georgians that left the country as refugees after the war in 1992-1993.²⁷ Furthermore, the argument is made that in Kosovo there was an exceptional involvement of the international community in status negotiations, resulting in the advice of UN Special Envoy Martti Ahtisaari in favour of "supervised independence". The first of these two arguments is the most convincing: ethnic Abkhazians are not a majority in Abkhazia, particularly if Georgian refugees, who should be granted a right to return and participate in status decisions, are taken into account. The second argument tends to ignore that the international community was actively involved in Abkhazia too since the early 1990s. In 1993 the United Nations Observer Mission in Georgia (UNOMIG) began to operate; a peacekeeping force of the Commonwealth of Independent States was also established in 1994, in accordance with the provisions of the Moscow Ceasefire Agreement. In addition, the Group of Friends of Georgia was created in December 1993, comprising France, Germany, the Russian Federation, the United Kingdom and the United States. The forum was later renamed as Group of Friends of the UN Secretary-General and aims to support peace efforts, which are now taking place within a mechanism known as Geneva Process. The Geneva Process is supported by a wide range of international actors and is co-chaired by the United Nations, the European Union and the Organization for Security and Co-operation in Europe.²⁸

Thus, an analysis of the Kosovo and the Abkhaz cases reveals numerous similarities and casts serious

²⁵ For human rights violations in Abkhazia, see the *Report of the Secretary-General's Fact Finding Mission to Investigate Human Rights Violations in Abkhazia, Republic of Georgia*, 17 November 1993, cited in *Report of the Independent International Fact-Finding Mission on the Conflict in Georgia*, Vol II, 146.

²⁶ *Report of the Independent International Fact-Finding Mission on the Conflict in Georgia*, vol. I, 22-23 and vol. II, 195-197; Benedikt Harzl, "Conflicting perceptions: Russia, the West and Kosovo", *Review of Central and East European Law*, vol. 33:4 (2008): 508; Marc Weller, "Settling self-determination conflicts: recent developments", *The European Journal of International Law*, vol. 20:1 (2009): 134; Nussberger, "The War between Russia and Georgia", 362.

²⁷ Benedek, "Implications of the independence of Kosovo for international law", 403; Dominik Tolksdorf, "Kosovo precedent – applicable in many parts of the world, but not directly in the South Caucasus", *Caucasian Review of International Affairs*, vol. 3:1 (2009): 106-107, http://cria-online.org/6_10.html (accessed January 31, 2011).

²⁸ *Independent International Fact-Finding Mission on the Conflict in Georgia*, Vol II, pp. 80-91. The text of the Moscow Ceasefire Agreement is available at http://www.unomig.org/data/moscow_agreement.pdf (accessed January 31, 2011).

doubts on the claim that Kosovo is a *sui generis* case. Consequently, it is debatable whether a right to secession in exceptional circumstances involving human rights violations, denial of representative government and no prospect of peaceful conflict settlement would apply to Kosovo alone. Benedikt Harzl goes as far as arguing that Kosovo's *sui generis* status is no more than a fairy tale that the West keeps repeating in order to deny reality. In some respects, a stronger argument for independence could be made for Abkhazia, which has enjoyed *de facto* statehood longer than Kosovo, since the early 1990s, and had already existed as an independent republic in the Soviet Union until Stalin unilaterally demoted its status to that of autonomous republic. According to Harzl, Kosovo is therefore a precedent with far-reaching implications for other breakaway regions, particularly in the South Caucasus.²⁹ Harzl's argument is certainly valid in political terms: as the case of Abkhazia shows, the independence of Kosovo encourages other breakaway regions to claim a right of secession in exceptional circumstances, which they themselves define. However, in strict legal terms the Kosovo case does not bear any significance, as it has neither led to a reinterpretation of international treaties where the right to self-determination is mentioned nor to the formation of a new norm of customary international law in favour of the right to external self-determination in exceptional circumstances. This emerges even more clearly in the case of Abkhazia, which has been recognized by four states only, namely Russia, Venezuela, Nicaragua and Nauru.³⁰

Conclusion

The declaration of independence of Abkhazia and its recognition by some members of the international community constitute violations of international law. The Abkhaz case, together with the Kosovo and South Ossetia cases, has therefore contributed to a trend that is seriously undermining the validity of international law. It can be expected that secessionist attempts will increase in the near future; secessionists will be less willing to compromise and will use the *sui generis* argument to justify their demands. Mother states will also show less willingness to compromise and will resort more often to violent countermeasures in order to crush secessionist movements without making concessions. Within this context, third countries will be given more scope to intervene in secessionist conflicts in order to pursue their own interests.³¹ As Antonio Cassese has noted, the risk exists that the most regressive and reactionary features of self-determination gain the upper hand, namely the centrality of the ethno-national self as the principal subject of self-determination and the ethno-national territorial state as vindication of the right to self-determination. As a result, minorities could be seen as long-term aliens and be forced to assimilate, which contradicts the values that the principle of self-determination seeks to promote.³²

According to Benedikt Harzl and Daniele Archibugi, a shared legal framework would be necessary, as self-determination cannot be self-assessed by interested parties. Archibugi advocates the emergence of a cosmopolitan legal order and of bodies with the authority of assessing conflicting claims in the area of external self-determination. Looking at existing institutions, the United Nations could provide such a cosmopolitan framework. However, internal divisions in the Security Council have prevented it from

²⁹ Harzl, "Conflicting perceptions: Russia, the West and Kosovo", 491 and 508-518.

³⁰ Krueger, "Implications of Kosovo, Abkhazia and South Ossetia for international law", 136-137.

³¹ Krueger, "Implications of Kosovo, Abkhazia and South Ossetia for international law", 141-142; Harzl, "Conflicting perceptions: Russia, the West and Kosovo", 513.

³² Cassese, *Self-determination of peoples*, 364.

taking a final decision concerning the status of Kosovo and from responding effectively to the crisis in the South Caucasus in August 2008, despite Russia's speedy action to bring the issue of Georgian aggression to the Council. By simultaneously upholding the principles of territorial integrity and external self-determination in exceptional circumstances, member states have paralyzed the UN Security Council and undermined its authority.³³

³³ Harzl, "Conflicting perceptions: Russia, the West and Kosovo", 502; Archibugi, "A critical analysis of the self-determination of peoples", 488-489; Roman Muzalevsky, "The Russian-Georgian war: implications for the UN and collective security", *Journal of Central Asian and Caucasian Studies*, vol. 4:7 (2009): 35-39.