

THE KOSOVO PRECEDENT – DIRECTLY APPLICABLE TO ABKHAZIA AND SOUTH OSSETIA

A COMMENT

by Sebastian Schäffer*

Abstract

The declaration of independence of the Republic of Kosovo on 17 February 2008 led to different reactions in the international community. The United States of America was first to do so among the current 53 states that recognise Kosovo, while the Russian Federation and of course Serbia remain in strong opposition. Whether one supports the independence of Kosovo or not, it is undoubted that the declaration of independence had an impact on the Caucasus. What is also clear is that both the United States of America and the Russian Federation have a selective approach towards the recognition of states. While the USA recognises Kosovo and considers Abkhazia and South Ossetia as being part of the Georgian territory, Russia holds it the other way round. I will argue that the independence of Kosovo, as well as the independence of Abkhazia and South Ossetia, are both as legitimate or illegitimate since all three entities had a certain degree of autonomy during the Soviet era. In all three entities the titular nation makes up a majority of the population, although the Kosovo Albanians in Kosovo surpass the Ossetians in South Ossetia and especially the Abkhazians in Abkhazia by far.¹ Furthermore, Kosovo as well as South Ossetia and Abkhazia had a de-facto regime since the beginning of the 1990s. Territory, nation and government mark the three elements of Georg Jellineks theory of a state. In conclusion I will argue that the United States and the Russian Federation should give up their selective approach and agree on a common position, otherwise the Kosovo precedent will not only have an impact on the conflicts in the Caucasus but also for many other frozen conflicts in the region and the world.

The Kosovo case is highly emotional. To make things clear from the beginning: what the government of the former President Milosevic has done to the Albanians is without any doubt terrible and to be condemned. The systematic killing of the Kosovo-Albanian population through the Serbian army cannot be compared to the actions of the Georgian army, neither in South Ossetia nor in Abkhazia. But the three states can be compared in several other fields. I will present three arguments why the Kosovo case resembles the cases of the disputed Georgian territories and therefore set a precedent for Abkhazia and South Ossetia. I will thereby refer to the three elements of a state by Georg Jellinek – territory, nation and government.

□ **Sebastian Schaeffer** studied Political Science, European Law, Slavonic Studies, and East European Studies in Munich and Regensburg. He is an assistant lecturer at the Institute for Political Science at the University Munich. Additionally he works as a researcher at the Centre for Applied Policy Research (CAP) in Munich in the research group 'Europe'.

¹ About 66% Ossetians in South Ossetia, 44% Abkhazians in Abkhazia and 92% Albanians in Kosovo.

As mentioned above, the ethnicity of South Ossetia and Abkhazia may not be as homogenous as it is in Kosovo, but nevertheless the Ossetians and Abkhazians comprise the majority of the population. Montenegro, the former partner of Serbia in the state union from 2003 to 2006 has only 43% of their inhabitants considering themselves to be Montenegrin, which is about the same number of Abkhazians in Abkhazia. The overall population in Abkhazia and South Ossetia might be smaller than in Kosovo. The estimated 300.000 people of Abkhazia and South Ossetia make up together 6.9 % of the population of Georgia. About 2 million Kosovo-Albanians, on the contrary, amount for 26.6% of the Serbian population, which is roughly 7.5 million. However if you take a look at the territory –one of the three elements of a state in international law – the size of Abkhazia with 8,600 km² constitutes exactly the same percentage of the whole Georgian territory of 69,700 km² that the 10.887 km² of Kosovo accounts for in the Serbian territory of 88.361 km², namely 12.3%. The percentage is even higher in Georgia if the territory of South Ossetia, roughly 3.885 km², is added to the calculation. Then the loss of Georgian territory adds up to 17.9% and is therefore 5% higher than the loss of Kosovo meant for the territory of Serbia.

The population in the disputed territories of Georgia might be smaller than in Kosovo – in absolute and relative figures. Relative figures of the territory, however, can be compared and are exactly the same in the case of Abkhazia compared to the territory of Kosovo. That does not justify the declaration of independence of Abkhazia but justifies a comparison with Kosovo. Absolute numbers of population cannot be an argument for incomparableness.

However, numbers can always be interpreted in certain ways to fit an argument. A hard factor for the comparability of the cases is the parallel during the times of socialism. All three entities had substantial autonomous rights during the Cold War era. The Socialist Autonomous Province (SAP) of Kosovo was established through the Yugoslav constitution of 1974. The SAP of Kosovo gained a seat in the federal Yugoslavian Presidency and held the annually elected chairmanship, which was established after the death of Tito, twice before the break-up of the Socialist Federal Republic of Yugoslavia (SFRY). Furthermore, in 1984/85 Ali Shukrija from the SAP Kosovo was President of the Presidium of the League of Communists of Yugoslavia, which was the name of the Communist Party in Yugoslavia from 1952. Abkhazia was first a Socialist Soviet Republic for ten years between 1921 and 1931 and later on an Autonomous Socialist Soviet Republic (ASSR) within the Georgian Soviet Socialist Republic (GSSR) until the break-up of the Soviet Union. Between 1922 and 1936 Georgia, Armenia and Azerbaijan were members of the Transcaucasian Socialist Federative Soviet Republic (TSFSR) in which Abkhazia had the status as an equal constituent of the federation. South Ossetia had the status of an autonomous oblast – an administrative unit – within the Georgian SSR.

Again, Abkhazia in particular resembles the Kosovan case. The relatively high level of autonomy while being part of the Georgian SSR or SFRY respectively can be seen as one of the reasons why after the break-up of these states Abkhazia, South Ossetia and Kosovo established their own state structures and declared independence.

Both in South Ossetia and Abkhazia there has been a de-facto regime since the dissolution of the Soviet Union. Even if the international community did not recognise them, the administrative sovereignty lay in the hands of the government of Abkhazia and South Ossetia

and no longer in the hands of the government in Tbilisi, even more so after the war in August of 2008. During the 1990s the Georgian government tried to gain back control over those territories by force, and even if the cruelties done by the Serbian army to the Kosovo-Albanians do not resemble the use of force of the Georgian army neither in Abkhazia nor in South Ossetia, as mentioned before, the actions of both governments to gain back control resemble each other.

So the cases of Kosovo and Abkhazia/South Ossetia are comparable. But does that make the declaration of independence of Kosovo a precedent? Not necessarily. The precedent set here was not the declaration itself but the recognition by the United States of America and the majority of the European Union member states. Especially the US administration has made a set of mistakes without needing to take action at all. The promise of independence to the Kosovo-Albanians by George W. Bush² created desire in other countries striving for independence, and incomprehension why the desire of the Kosovo-Albanians was more special than their own. The last minute inclusion into the final communiqué of the NATO Bucharest summit declaration that Georgia will become a NATO member sometime in the future probably misled the Georgian government to believe that the USA would come to assist them in a war with Russia. This was another promise given by the Bush administration, which pressured NATO during the Bucharest summit to include the issue of future membership into the declaration without any necessity. The Russian government is, however, on no account better than its US counterpart. It denies its own federal subjects independence - as in the case of Chechnya - and did not recognise Kosovo due to close ties to the Serbian government on the one hand, whilst being one of the two countries (the other being Nicaragua) to recognise Abkhazia and South Ossetia on the other hand. If the Kosovo case can be compared to the disputed territories in Georgia as I have argued before, Russia should recognise Kosovo as well.

Kosovo set a precedent. Territories seeking independence will now try to argue why their case is a case *sui generis*, as the Kosovo case is often described. The arguments above have proven that if you want to find a connection you will find it, and the governments of the affected states will find arguments. To prevent the establishment of many small and micro- states and, more importantly, bloody secessionist wars, the United States and the Russian Federation should refrain from the tit-for-tat game that they are currently playing. Recognising one country as a reaction for the recognition of another country destabilises many regions around the globe and bears a potential explosive force that neither the USA nor Russia can afford. Promising countries either independence or territorial integrity without transparent criteria pose an additional unnecessary global threat. It is time to control emotions and stop searching for which arguments are more logical for the recognition of a certain state. The international community should find a common position for the cases of Kosovo, Abkhazia and South Ossetia and set a new precedent.

² Traynor, Ian, “Bush insists Kosovo must be independent and receives hero's welcome in Albania”, *The Guardian*, June 11, 2007