

## **Recognition of Kosovo, Abkhazia and South Ossetia: What are the Implications for Nagorno-Karabakh?**

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- In my comments I want to explore the question of what the two cases of recognition last year may imply for the settlement of the Nagorno-Karabakh conflict, in particular for the status of the Republic of Nagorno-Karabakh.
- Both cases – that is recognition by mainly Western countries of Kosovo and Russia's recognition of Abkhazia and South Ossetia – were, as you know, controversial and we don't know whether or when either Kosovo or Abkhazia and South Ossetia will end up as functional, actually independent states with no foreigners on their soil. Even Kosovo has been recognized only by 54 of the UN's 192 members and has no chance at present to become a member of any important international organization.
- But as controversial as these cases might have been and as tentative as their results might be, I think both actually reaffirmed the pre-existing international norms of recognition of new states, and this has clear implications for the Nagorno-Karabakh conflict.

- The norm that was confirmed in the Kosovo and Georgia cases guarantees territorial integrity of a state by making unilateral secession as well as external intervention in direct support of that secession internationally illegitimate. The right to self-determination outside the colonial context does not entail a right of a country's sub-unit to secede without that state's consent, or a right of a third party to intervention on behalf of secessionists.
  
- Now, in the wake of the Western recognition of Kosovo last February some observers said that the rule that no entity should be recognized as an independent state without the consent of its parent country, went out the window. They said this despite the fact that the US and EU members justified recognition of Kosovo as being a special exception to the rule of territorial integrity with no precedential value, and despite the fact that almost three quarters of UN members have refused to recognize Kosovo. Contrary to what one might expect, Armenia has not recognized Kosovo and publicly declared that it doesn't view the case as a precedent. I think the view that Kosovo marked a radical departure in the practice of recognition has proved premature.
  
- The clearest evidence of that is that when Russia recognized South Ossetia and Abkhazia, explicitly using Kosovo as a precedent for its unilateral decision to determine an exception to the rule elsewhere, the US, EU, OSCE, G8 and NATO all condemned

Russia's move as violating Georgia's territorial integrity, and other countries stayed silent. Russia's recognition has been followed only by Nicaragua and Hamas, which is not a state.

- This was a rather ironic result for a permanent member of the UN Security Council which in the Kosovo case presented itself as a defender of international legality. Russia was deeply distressed by the unilateral verdict of most Western countries that Kosovo was a special exception to the rule of territorial integrity. Russia, as less vocally other countries, did not accept that the US and EU countries could bypass the UN SC and, on their own, recognize Kosovo despite Resolution 1244's affirmation of Serbia's territorial integrity. There is no question in my mind that this move justified in Russia's mind ignoring UN SC resolutions affirming Georgia's territorial integrity and recognizing South Ossetia and Abkhazia as they saw fit. I don't think we would have seen recognition of South Ossetia and Abkhazia without recognition of Kosovo.
  
- Following the Russo-Georgian war and Russia's bold recognition of Georgia's two-breakaway territories, the US and EU members are bound to be, if anything, even more cautious when facing separatist situations such as Kosovo. They must have learnt the lesson that unilateral decisions on exceptions to major international rules, especially those that are strongly opposed by powerful countries, may come back to haunt you. The US and EU members simply assumed that Russia is going to reconcile itself to the decision,

and did not consider that Russia may do its own unilateral decisions. They may well be more circumspect in the future.

- What do all of these developments of last year, then, mean for the Nagorno-Karabakh conflict? I think they mean that the international norm of territorial integrity has not lost its force and that it will continue to favor the position of Azerbaijan. In fact, throughout last year the UN General Assembly, NATO as well as the Co-Chairs of the Minsk Group (the US, France and Russia) – on Nagorno-Karabakh Western countries and Russia are actually cooperating – kept repeating public declaration of support for Azerbaijan’s territorial integrity. Recognition disputes in Kosovo and Georgia changed nothing about that. Unless Azerbaijan gives up its legal ownership of Nagorno-Karabakh in the course of its negotiations with Armenia, the territory’s international legal status as a part of Azerbaijan and the resultant foreign non-recognition of the Republic of Nagorno-Karabakh are unlikely to change.
  
- Yet Azerbaijan, and with it the international community whose rules support Azerbaijan’s basic position, have a problem. And that problem is that the people who live in Nagorno-Karabakh have from the very beginning refused to be part of an independent Azerbaijan and then during the conflict actively renounced Azerbaijani rule. You may ask: how do I know they renounced it? After all, there has never been any self-determination referendum or some other procedure accepted by all relevant parties by which the inhabitants of the territory declared they do not want to be part of Azerbaijan.

I think I can be reasonably sure of my claim because in the last 15 years the people of Nagorno-Karabakh in their everyday life accepted the rule of the Republic of Nagorno-Karabakh over them, served in its army, paid taxes to its authorities, and generally obeyed its laws. They have not demonstrated any willingness at all to change their mind from 1988-1994 and to accept Azerbaijani sovereignty.

- Prior to decolonization it was *de facto* statehood that formed the basis of foreign recognition because in the absence of agreement on who has a right to independence and/or by what self-determination procedure can the right be exercised, it was the only reasonably objective measure of what the will of the people actually was. (Just like in the last 200 years, this absence of agreement is still the fundamental feature of self-determination conflicts around the world.) The normative premise for the standard of *de facto* independent statehood was that it is not a business of international society to guarantee territorial integrity of countries internally, against their citizens. It was up to each country to earn the loyalty and allegiance of its population. If a country failed at that, and was replaced in a part of its territory by a new functioning, self-sustaining state, that was taken as the conclusive evidence of self-determination at work. The new *de facto* state then qualified for foreign recognition.
  
- I am wondering whether it is not a time to start thinking again about this old rule, which was actually formulated by US founders and classical liberal foreign policymakers of 19<sup>th</sup>-century Britain. I know the Nagorno-Karabakh conflict poses complications for

some of the rule's original assumptions. The rule assumed genuine internal self-determination and therefore external non-intervention, yet Armenia intervened in this conflict virtually from the beginning. As well, the rule assumed that in the course of the self-determination process the inhabitants stayed where they were, yet there has been a considerable number of refugees on both sides of the Nagorno-Karabakh conflict.

- Yet I do not think that these complicating facts challenge the basic reality of the conflict which is that the majority of the Nagorno-Karabakh population renounced Azerbaijani rule and that in the last 15 years showed no sign going back on their decision. Armenia indeed intervened on behalf of its ethnic kin, but prior to 1991 it lived with them in one country and Armenians on both sides of the border line showed recurring unhappiness with Nagorno-Karabakh's inclusion in the Soviet Republic of Azerbaijan. As for the issue of refugees, as disheartening it is, one cannot hope to resolve it in isolation from the issue of Nagorno-Karabakh's status.
  
- Azerbaijan finds itself with current international norms on its side, but with no chance that Nagorno-Karabakh Armenians will voluntarily accept its rule. The current rule of territorial integrity hampers rather helps conflict resolution (including the return of refugees to their homes), because it gives Azerbaijan no incentive to compromise on the most basic issue of the conflict, which is the status of Nagorno-Karabakh. It reserves for the government in Baku the legal right to take Nagorno-Karabakh by force despite the fact that, as an independent country, Azerbaijan never had effective control over, and

therefore observable consent of, its population. That, I am afraid, is a prescription for more hostilities in the future, despite the Moscow Declaration from last November where Armenia and Azerbaijan once again committed themselves to a peaceful settlement of the conflict.