Regional Security Organizations and Their Role in the Recognition of Newly Independent States: The Case of NATO

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II. Preface

This year, the North Atlantic Treaty Organization celebrates sixty years of existence. Amongst celebrations, there is also concern what the future role of the Alliance should be and where NATO’s mission ends. Global security issues such as the rebuilding of Afghanistan and the fight against piracy in the Gulf of Aden consume vast amounts of resources and require an enduring effort of NATO.

NATO has long ceased to be a static, ‘Eurocentric’ organization, geared exclusively towards deterrence and defense. Although the preface of the Washington Treaty still states the promotion of stability and well-being in the North Atlantic area as a key task for NATO, it has proven to be much more than just a collective security agreement for territorial defense. Since the end of the Cold War, the Alliance has become a flexible and creative instrument for shaping change; as the Secretary-General puts it, the Alliance should become “An instrument that North America and Europe can use whenever and wherever their security interests demand it in today’s changing security environment.”

If NATO is to be relevant in the 21st century, it will require further political as well as a military transformation. This thesis focuses on these political aspects. Part of NATO’s politics deal with its role in the recognition of NIS, the main subject of this paper. Of course, NATO has no unified position on this political topic: it is the opinions of all member states combined that result in NATO’s point of view.

History gives us few examples of a role for NATO in the recognition of newly independent states: Kosovo is the only recent case. Of course, NATO helped to provide conditions for the world’s most recent newly independent state, but this passive role and the intentionality of the Alliance towards a possible independence, assumed by some, is examined in the case studies of chapter VI.

1 Speech made by Secretary-General De Hoop Scheffer in Tokyo, Japan, on 4 April, 2005, NATO online library, http://www.nato.int/docu/speech/2005/s050404a.htm
In some cases, NATO acts as a blocking element in a possible independence. The most recent cases at hand are the two *de facto* independent separatist regions in Georgia: Abkhazia and South Ossetia. This thesis explains that although the independence situation in the Balkans is to some extent similar to the aspirations in the Caucasus, these two cases are quite different.

Whether and how NATO should evolve in order to adapt itself to the problems of the 21st century is not entirely discussed in this work, but it is an important factor to bear in mind when we take a look at the subject at hand: the possible role of NATO in the establishment of newly independent states. This title, by itself, could suggest that there was an influence by NATO, but it states nothing concerning *wanted* political consequences.

### III. Introduction

1. **Regional Security Organizations**

The North Atlantic Treaty Organization is, besides the largest regional security organization in the world, also the most structured of its kind. Regional security organizations are currently the most effective way to militarily intervene in a crisis situation. During the Kosovo crisis NATO managed to do what the UN Security Council was unable to do because of internal disagreement: a large-scale deployment of military infrastructure in the region, which eventually ended the last of the Balkan wars.

Article 52(1) of the U.N. Charter provides that ‘regional arrangements’ can deal with matters relating to the maintenance of international peace and security as is appropriate for regional action. The primary responsibility for maintaining international peace and security thus remains with the UN Security Council, but powers under Chapter VII can be delegated.

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2 Article 52(1) of the UN Charter
It is no coincidence that the parties to the Washington Treaty reaffirm their faith in the purposes and principles of the UN Charter. Very important in the North Atlantic Treaty is the fact that the Alliance characterized itself as a regional collective self-defense organization: by doing so the Alliance avoided the obligation in international law to gain the permission of the Security Council ex ante, before it could act.\(^4\) On several occasions, NATO has been considered as one of the regional security organizations that can be entrusted with specific enforcement actions.\(^5\) This has deepened concerns of the Russian Federation after the Alliance’s operations in the Balkans, and the subsequent attempts by NATO to avoid UN Charter provisions concerning the use of force by regional associations in internal issues facing member states.\(^6\).

2. **Independence of States and Recognition by the International Community**

   i. Defining Independence and Recognition

   a. **Independence and Self-Determination**

   One of the purposes of the United Nations can be found in Article 1 of the UN Charter: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples…”\(^7\) The Principle of Self-Determination as a right of peoples found its largest application in the purpose of bringing all colonial situations to a speedy end.\(^8\) The right of self-determination is not only a ‘purpose’ of the UN Charter, it is a ‘principle’ enshrined in it.

   The Right to Self-Determination is unchallengeably a norm that possesses the character of *Jus Cogens*, but can not lead to independence as such.\(^9\)

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\(^4\) SAROOSHI, D., id., p. 251.


\(^6\) See article 52 j° artt. 33 and 34 of the UN Charter

\(^7\) UN Charter, Article 1, par. 2.

\(^8\) WOUTERS, J and VIDAL, M., Cases van Internationaal Recht, 2005, Intersentia, 607 p., p. 81.

One particular aspect of self-determination is internal self-determination. This principle is of great importance for understanding the legal situation of some of the separatist regions, whether they are aspiring full autonomy or not. All cases discussed under chapter VI are examples of secessionist regions.

A right of secession as an offensive form of self-determination is only of concern with minorities. This is not the case with the dismembratio of a confederation, such as the case of the former Yugoslavia. Simma gives the example of the liberation war of Algeria as a justified use of force, in which an ethnic minority may wage a liberation war to reach secession. A right of secession as such, or as a way of exercising self-determination, was not recognized at the time.

The question at hand is which conditions must be present under which an ethnic minority may be entitled to secede from a state based upon the right of Self-Determination. A right to secede exists if a minority is discriminated against, being exposed to actions by the sovereign state power which consists in an evident and brutal violation of fundamental human rights.

The right of self-determination can only be exercised on the basis of the maxim *pacta sunt servanda*, but this maxim needs the correction of *rebus sic stantibus*. Non-legal arguments against secession based upon self-determination are justly summarized by Heraclides, they include: The fear of Balkanization, the fear of indefinite divisibility, since very few states are ethnically homogenous, and so are secessionist territories themselves; the fear of trapped minorities within the seceding state who presumably cannot themselves secede in turn, and the fear of ‘stranded majorities’ in cases where the seceding territory is economically or strategically crucial to the original state. These arguments must be kept in mind when looking deeper into the case studies.

**b. Recognition of States and the Concept of Statehood**

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10 SIMMA, B., id, p. 65.
11 SIMMA, B., id, p. 66: an important distinction was that Algeria was a ‘Département’ of France, not a colony in the formal meaning of the word.
12 SIMMA, B., id, p. 67-68.
The act of recognition is basically the reaction of other existing states to the establishment of a new one. The extent of the legal importance of a state’s reaction is crucial: Apart from agreement or official statements, a legally significant reaction towards the newly independent state may occur in the form of unilateral acts or conduct, including Estoppel. Recognition of states can be explained by constitutive or declaratory theories. The right to establish a state of one’s own becomes relevant for this thesis where a minority secedes from its state. This situation covers both Kosovo and the conflicts in Georgia.

Before the two different approaches towards recognition can be given, the concept of statehood has to be re-examined briefly: The accepted criteria for statehood are that the entity has to demonstrate that it has a permanent population, a defined territory, a government and the capacity to enter into relations with other states. These are the classic conditions set forth in the Montevideo Convention of 1933. A minority of views within international law claim that if a state has all these necessary aspects of statehood it is independent and recognition by other states is without constitutive effect. This declaratory vision on the establishment of an independent state can not be applied too strictly: it could lead to a cavalcade of newly independent states, having a damaging effect on state practice as a source of international law. Furthermore, this declaratory effect has been established on the basis of the decolonization ‘wave’ in the sixties. In essence, the declaratory theory comes down to a formal acceptance of the existing facts.

The opposite reasoning is a constitutive theory on recognition: recognition serves as a necessity for the establishment of a State, making the act of recognition the one element that creates the new state as an international legal person. This theory stresses the inconsistency of the declaratory vision, bearing no relation to state practice. However, this constitutive theory can not be applied too dogmatically, since recognition could only have constitutive effects if certain lacking aspects of statehood, e.g. a defined territory, hamper the exercise of the right to self-determination for this State. This remains theory, since the proclamation of recognition of a newly independent state would seem void if the would-be subject of international law does not have all elements of statehood.

16 See Montevideo Convention on the Rights and Duties of States (1933)
17 AUST, A., id., p. 17-25.
18 SIMMA, B.id, p. 68.
c. **Obligatory Recognition?**

Brownlie’s approach to the obligation of recognition is realistic: “A legal duty to recognize can only be valid if it is in respect of an entity already bearing the marks of statehood and it is owned towards this entity.”

19 This is objectively granting legal personality to a state. However, as a remark, recognition by a state act remains a question of politics. Therefore, state practice shows the lack of obligation concerning recognition.

Aust uses a division into *de iure* and *de facto* recognition:

20 De facto recognition is merely an acceptance of the current position of the entity, making it provisional, but often long in duration. In the political meaning given to both sorts of recognition, they both can be withdrawn. The division can be seen as merely doctrinal, making it possible for states to recognize the *de facto* control that one state exercises over a specific territory. Western Sahara is an example of a territory generally seen as *de facto* under Moroccan control, although internationally not recognized as a part of Morocco. The final status of the territory has yet to be decided. The UN always stressed the need for a referendum.

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*De iure* recognition means that all the applicable legal criteria for a state are fulfilled. This useful division is, however, discarded by Brownlie. Similar distinctions are to be distrusted since everything depends on the intention of the government and the general context of fact and law. This is true, but the *de facto* versus *de iure* division remains valuable as long as the focus remains on a states’ political intent, certainly if *de facto* recognition is used to accept certain legal consequences that otherwise would have negative implications for that state’s nationals, e.g. in the field of nationality.

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19 BROWNLIE, I., id., p. 90
d. Obligations under International Law Imposing Non-recognition

The problem of non-recognition originates from the UN Security Council itself. On such delicate matters such as recognition of newly independent states its permanent members’ points of view are often divided. In rare occasions, a unified position of the Security Council only concerns the prohibition of recognition towards other UN members. The most recent example already dates back from the Cold War, when the Security Council expressly called upon member states to not recognize the Republic of Northern Cyprus.22

As for the General Assembly, one important principle is applicable: “No state shall recognize as lawful a situation created by a serious breach arising under a peremptory norm of general international law.”23 A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible state to fulfill the obligation.24 This principle was produced during the 53rd session of the International Law Commission, which was recognized by the UN General Assembly in Resolution 56/85. Concerning Kosovo and Georgia’s territorial disputes, this prohibition of recognition is dealt with in Chapter VI.25

The prohibition to resort to the use of force might be one of the prohibitions aimed at by the I.L.C.’s 53rd session, but it is doubtful whether this article 41 has realistic chances of obtaining the status of customary international law.

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25 See Chapter VI, 4, ii.
ii. Alternatives to Independence

The right to self-determination does not essentially incorporate independence. The concept of internal self-determination provides an alternative in which ethnic and other minorities have a right to preserve and defend their special characteristics. At first sight this might solve situations in which ethnic minorities strive for autonomy. However, problems are almost certain to arise because ‘internal self-determination’ is no comprehensive solution: On one hand there is the normal duty of citizens to remain loyal towards central government, on the other the potential bearers of the right to self-determination have the right to demand that the central government refrains from radically oppressing them.26

Furthermore, as is described in the case studies under chapter VI, the often violent and long history of oppression of minorities might result in the fact that these ethnic or religious groups see no other possible outcome than full independence. The right to self-determination means only that a people are free to choose how they should be governed, independence is seldom the only option.27 Some authors even state that promoting autonomy as a “less than sovereign self-determination” can best serve as a solution before demands of secession and independence are made.28 One of the best examples of granting a partial autonomy to an ethnic group as a solution to or a prevention of a conflict is the case of the Gagauz in Moldova.29


A double approach further defines unilateral declarations of independence: in the first case the UN Security Council agrees with the independence, causing a swift accession of the newly established subject of international law within the international community.

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26 SIMMA, B., id, p 65
27 AUST, A., id., p.30
29 See Chapter VI, 3.
But most of the recent aspiring independent states fall under a second approach: they can not base their legal status upon a Security Council resolution.

Another option exists if international law does not support secession, but does not prohibit it either. For entities recently claiming statehood this remains a theoretical option. In the cases of Kosovo, Abkhazia and Georgia Security Council resolutions prevent this possibility, since the Security Council took a relatively clear stance upon their separation claims. These circumstances prevent the seeing of these newly emerged would-be states as a ‘primary fact’, upon which third states merely would have to notice their existence.30

3. Humanitarian Intervention within International Law

i. Introduction

Humanitarian intervention is a concept within international law that exists since the late nineteenth century. Basically, the doctrine implies that a state “which had abused its sovereignty by brutal and excessively cruel treatment of those within its power, whether nationals or not, was regarded as having made itself liable to action by any actor or subject within international law that is willing to intervene”.31

It is highly relevant for the cases of Chapter VI, especially because of NATO’s 1999 intervention in Kosovo: it was the 1999 intervention by NATO that provided the catalyst for the creation of the International Commission on Intervention and State Sovereignty (ICISS).32 It was the ICISS that used the humanitarian intervention doctrine to develop a new, broader concept in which former theories were incorporated.

ii. Operation ‘Allied Force’ as an example of Humanitarian Intervention

NATO’s 1999 airstrike campaign in Kosovo can be seen as a second model within the doctrine of Humanitarian Intervention. Several authors, *inter alia* Brownlie, make mention of a preliminary and major difficulty in classifying NATO’s actions under the doctrine of humanitarian intervention. “The authenticity of the claim that this operation had humanitarian motives might be undermined by the fact that, as early as October 1998, the threats of force were linked directly to a collateral political agenda.”

There is indeed a dispute in the classification of NATO’s actions. However, my personal opinion is that there is a more outspoken division between the air campaign on one hand and the occupation of the Serbian province on the other. Brownlie does not argument his point of view extensively and does recognize the separate stages of NATO’s intervention.

An opinion to be completely rejected is the mentioning of Operation Allied Force being “a forcible way of making Yugoslavia (sic) accept various political ‘demands’ being presented under the threat of a massive bombing campaign”.

The objectives of Operation Allied Force were never proven to hold a hidden political agenda. The military objective was to degrade and damage the military and security structure that Milošević has used to depopulate and destroy the Albanian majority in Kosovo.

The Alliance’s statements prior to the operation did not make reference to the UN Charter. In a post-conflict reaction, Yugoslavia (the official title used by the I.C.J.) brought 10 Alliance member states before the International Court of Justice, seeking reparations, also for earlier damages suffered. The I.C.J.’s position on Operation Allied Force was one of hesitation: There was little or no state practice supporting the intervention, in this case carried out by a group of states. There was also no self-defense reason implying the applicability of article 51 of the UN Charter.

Some of the defending parties in those cases; Belgium, Canada, the Netherlands, Portugal, Spain, and the United Kingdom challenged the basis of jurisdiction used by Yugoslavia on the grounds that, pursuant to General Assembly resolutions, Yugoslavia was not a Member of the United Nations and was therefore not an *ipso facto* party to the Statute of the International Court of

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33 BROWNLIE, I, id., p. 743.
34 BROWNLIE, I, id., p. 743-744
35 Rephrasing of a statement by William S. Cohen, U.S. Secretary of Defense, to the Senate Armed Services Committee on 15 April 1999
Justice in accordance with article 93 of the I.C.J. Statutes. Therefore Yugoslavia could not properly initiate an action before the I.C.J.

Belgium was the first country that also scrutinized the law on the use of force, in order to offer a legal justification of the NATO action. The country, not coincidently the location of NATO’s headquarters, argued that the armed intervention was in fact ‘based on’ Security Council Resolutions, saying it was necessary to go further and set out the doctrine of humanitarian intervention.37

An important precedent, also used by Belgium in the Legality of Use of Force-case is a series of UN Security Council-approved operations in Liberia, which were carried out with the consent and approval of the Economic Community of West African States (ECOWAS) and the African Union (AU). These operations are criticized as being no form of humanitarian intervention. The distinction used in the case of Liberia is the lack of an effective government, a factor which was present in the 1999 Kosovo intervention. The fact that Kosovo officially still had a government in Belgrade at the time is hardly worth the ‘distinction’ Brownlie makes. Although the situation in Liberia was different to the one in Kosovo, the underlying necessity for the intervention is comparable: humanitarian urgency.

Opposition against humanitarian intervention rose quickly: on September 24, 1999, a Ministerial Declaration produced by the G77 spoke against the transformation into reality of the humanitarian intervention doctrine. This is one of few official opinions in the discussion that makes reference to state practice. State practice is essential for the humanitarian intervention doctrine to become international customary law.

Of course, the doctrine in its current form is not state practice, due to its selective basis. However, implied in the doctrine, the potential for a parallel concept within international customary law exists. Since the establishment of international customary law is a long and detailed process, I will not discuss the possibilities of the humanitarian intervention doctrine to achieve the status of ius cogens, since there is little chance it will. The doctrine itself is dead, but its heritage holds a new, more powerful, concept: “The Responsibility to Protect”.

4. The Responsibility to Protect

A new concept that partly emerges from the humanitarian intervention doctrine is the ‘Responsibility to Protect’. This theory was developed during the late nineties, finally evolving to a report of the International Commission on Intervention and State Sovereignty (ICISS) in 2001, The Responsibility to Protect. It was the 1999 intervention by NATO that provided the catalyst for the creation of the ICISS itself. The UN backed this theory in the recommendations of the UN High-Level Panel, ‘A More Secure World: Our Shared Responsibility’ in 2004 and in 2005, with the UN Secretary-General’s Report ‘In Larger Freedom’, which supported and strengthened the 2004 recommendations. Since the controversy of the humanitarian intervention doctrine ‘Responsibility to Protect’ might prove to be an alternative path of integrating a doctrinal view on how mass atrocities and large-scale human rights law violations can be stopped.

The responsibility to protect implies a three-step approach to ensure that the obligation for every state to protect its population from severe and continuing human rights violations is respected. This is the first part of the doctrine, the “responsibility to prevent”. This responsibility is the first in a cascade system, and rests first and foremost, with each individual State, whose primary raison d’être and duty is to protect its population. Only when a State is unwilling or unable to protect its citizens the responsibility is a partially shifted towards the international community. The second part is the “responsibility to react”, as the name suggests, the first reactive step by the international community. A third and final stage is post-conflict rebuilding, summarized as the “responsibility to rebuild”.

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The adoption of the final draft document of the World Summit by the U.N. General Assembly in September 2005 included a commitment to the basic principles of the Responsibility to Protect report. Article 139 states: We are prepared to take collective action through the Security Council, in accordance with the Charter, including Chapter VII should peaceful means be inadequate and national authorities manifestly [fail] to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.\footnote{World Summit Outcome Document, G.A. Resolution 60/1 par. 139, U.N. Doc. A/60/L.1, 20 september 2005.} If this is the case, then it is up to the international community to react in an appropriate way, with intervention as one of many possibilities. Intervening is strictly a last resort and always has to be approved by a UN Security Council Resolution authorizing military action. There lies a first flaw in the doctrine, since geostrategic interests and politics always could result in a veto by a permanent member of the Security Council. The final Summit agreement removed proposed language that called on permanent Security Council members ‘to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity’.\footnote{Revised draft outcome document of the High-level Plenary Meeting of the General Assembly of September 2005 submitted by the President of the General Assembly, 5 August 2005, A/59/HLPM/CRP.1/Rev.2, paragraph 119, http://www.un.org/ga/59/hlpm_rev.2.pdf} Permanent members of the Security Council have shown their intention on using their veto or the possibility of a veto in the past, thus this lacuna grants them a powerful negotiating tool, permitting bad faith vetoes.\footnote{BANNON, A.L., id., p 1160.} It is likely that this eventually will lead to more unilateral actions while bypassing the Security Council if the possibility of a veto is used as an element of pressure.

There is no ‘obligation’ for the international community to resort to an intervention, and the concept does not imply a right to act outside the Security Council. This relatively new concept within international law merely holds a common accountability for States in combating human rights violations globally.

The stance of this concept within international law is still merely doctrinal. However, there is a fair chance that it could reach the status of international customary law. The implementation of the concept within international law and human rights law is an evolution to be monitored closely. To this date, the Security Council made various references to the World Summit Outcome Document.\footnote{P.e. Security Council Resolution 1674, U.N. Doc. S/RES/1674 (2006) and 1706, U.N. Doc. S/RES/1706 (2006)
The 12 January 2009 Report of the UN Secretary-General, advanced a three pillar strategy for operationalising the responsibility to protect-doctrine that was principally approved at the 2005 World Summit of the UN General Assembly. The three pillars span the protection responsibilities of the state, the provision of international assistance and capacity-building to vulnerable states, and the promotion of timely and decisive action where prevention fails. The recommendations of the Secretary-General are summarized as follows:

**Pillar one: The protection responsibilities of the State**

(a) Pillar one is the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement. The latter, I would underscore, is critical to effective and timely prevention strategies. The declaration by the Heads of State and Government in paragraph 138 of the Summit Outcome that “we accept that responsibility and will act in accordance with it” is the bedrock of the responsibility to protect. That responsibility, they affirmed, lies first and foremost with the State. The responsibility derives both from the nature of State sovereignty and from the pre-existing and continuing legal obligations of States, not just from the relatively recent enunciation and acceptance of the responsibility to protect.

**Pillar two: International assistance and capacity-building**

(b) Pillar two is the commitment of the international community to assist States in meeting those obligations. It seeks to draw on the cooperation of Member States, regional and sub regional arrangements, civil society and the private sector, as well as on the institutional strengths and comparative advantages of the United Nations system. Too often ignored by pundits and policymakers alike, pillar two is critical to forging a policy, procedure and practice that can be consistently applied and widely supported. Prevention, building on pillars one and two, is a key ingredient for a successful strategy for the responsibility to protect;

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49 http://www.crisisgroup.org/home/index.cfm?id=4521
Pillar three: Timely and decisive response

(c) Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection. Though widely discussed, pillar three is generally understood too narrowly. As demonstrated by the successful bilateral, regional and global efforts to avoid further bloodshed in early 2008 following the disputed election in Kenya, if the international community acts early enough, the choice need not be a stark one between doing nothing and using force. A reasoned, calibrated and timely response could involve any of the broad range of tools available to the United Nations and its partners. These would include pacific measures under Chapter VI of the Charter, coercive ones under Chapter VII and/or collaboration with regional and sub regional arrangements under Chapter VIII. The process of determining the best course of action, as well as of implementing it, must fully respect the provisions, principles and purposes of the Charter. In accordance with the Charter, measures under Chapter VII must be authorized by the Security Council. The General Assembly may exercise a range of related functions under Articles 10 to 14, as well as under the “Uniting for peace” process set out in its resolution 377 (V). Chapters VI and VIII specify a wide range of pacific measures that have traditionally been carried out either by intergovernmental organs or by the Secretary-General. Either way, the key to success lies in an early and flexible response, tailored to the specific needs of each situation.

When revising consequences the doctrine implies, it is clear that the outcome of the international response must be limited to protecting a population from genocide or other atrocities. State sovereignty is respected in view of the Responsibility Concept, although an infringement upon sovereignty would be a logical outcome of any intervention. Nations still retain their sovereign rights, including territorial integrity, under the U.N. Charter, this can not be diminished. The agreement clarifies that territorial integrity is not violated by international protection, but military interventions must be targeted. A change in the political situation of a state or the possibility of a remedial secessio is not mentioned and can therefore be no option when intervening, although they are not expressly banned in the document. This leads to the conclusion that those measures are only justifiable if absolutely necessary for the protection of populations.

50 UN Charter, art. 2, par. 4
How could this doctrine affect NATO operations? NATO’s unilateral action in Kosovo was not condemned by the Security Council or “in the wider society of states.” However, it is the Alliance itself who stresses that “The effect on the political system of the country targeted should be limited to what is strictly necessary to accomplish the purpose of the intervention.” This implies that the prerequisite of proportionality must be upheld at all times when intervention is used as a last resort. Proportionality must be honored also in the consequences of an intervention. Operation Allied Force’s airstrikes were, in my opinion, proportional when seen on a large scale. The consequences were foreseeable. A deployment of ground troops, however, was not, due to the consequences. A direct cost was a creation of circumstances leading to an independent Kosovo. NATO’s role in these events is discussed under point ii, a, of chapter VI.

In conclusion, the responsibility to protect-doctrine offers promise for populations suffering atrocities from which their government is unable or unwilling to protect them. It has gained increasingly broad support since its initial publication, which bodes well for the future emergence of an international norm regarding interventions on humanitarian grounds.

IV. NATO and current challenges

1. General Outline

Two elements are important to investigate when discussing NATO’s flexibility in addressing current challenges: First there is the element of expansion (discussed in part 3). Secondly, the

Alliance has been in search of a new political mission (discussed in part 4). Before both of these changes are extensively dealt with, a short sketch of the historical evolution of the Alliance is necessary (part 2).

The impact of NATO on newly independent states can not be discussed apart from NATO enlargement. In expanding, NATO strives for a greater influence. Recognizing new states is part of a strategy on promoting liberal democratic values, although NATO itself can not recognize; this is up to the member states. Since the enhancement of stability has been described by the Secretary-General as the precondition for the Allies’ security, this can not be seen apart from the promotion of democratic values.\(^54\)

A key point in this debate is whether expansion is weakening NATO. If it does, NATO risks a declining influence. Some authors suggest that the impact of a NATO enlargement is a weakened alliance.\(^55\) In March 1999 Poland, The Czech Republic and Hungary became members of the alliance. Within one month, the former Yugoslavia was the scene of NATO operations. Several of its neighbors were now Alliance members, a fact that influenced the efficiency of political and military actions. In Hungary political protest against military action rose quickly. The same evolution took place in the Czech Republic. The Kosovo crisis also affected other bordering countries. By then it was clear that there was interest in a Romanian, Bulgarian\(^56\) and Slovakian membership. Albania would follow later on.

At first sight, NATO operations in the Balkans did not diminish the urge of former Warsaw Pact countries to join NATO. The Alliance did its part in this evolution by speeding up the membership process.

Besides geographical expansion, NATO took another course in defining its role in both regional and global security matters. NATO conducted its first ever out-of-area deployments, in Bosnia from 1995 to 2004. In 1999 NATO updated its Strategic Concept to provide for members of the Alliance to defend not just other members but to conduct a full range of “non-article 5 crisis Response Operations” to ensure peace and stability in its region and periphery, at its Prague


\(^{55}\) VACHUDOVA, M.A., The Atlantic Alliance and the Kosovo Crisis. The Impact of Expansion and the Behavior of New Allies, article from: Alliance politics, Kosovo and NATO’s war: Allied Force or Forced Allies, Palgrave, 2000, 246 p., p.203

\(^{56}\) Both Bulgaria and Romania agreed to supply political and logistic support to NATO’s campaign.
conference in 2002, it agreed even more specifically that its forces could be sent “wherever they are needed”, abandoning the restriction of acting in defense of the treaty area alone.57

NATO operations in Bosnia were a landmark: for the first time in history NATO militarily intervened in a non-member’s territory to prevent human rights violations. This, as well as Operation Allied Force, earmarks the partial shift of the Alliance from a collective defense organization in a post-Cold War era to an organization with a global commitment towards defending human rights and fundamental freedoms.58 This shift is the second important part within the process of defining NATO’s new political mission.

2. The Evolution of the Alliance: Towards a New Political Mission

The problems NATO is facing are ultimately political ones. No amount of military resources will change the Alliance’s role if there is no agreement as to how, where, and when those resources should be deployed.59 This agreement is of course of a political nature, and is essential to the member states to initially provide military resources after all. NATO’s vision has been focused too much on Europe in the past. The evolution we see today is that of an Alliance expanding its political vision beyond the old continent, towards today’s problem areas and political situations that pose a realistic threat to NATO’s values and those of its members. The contemporary and shifting fronts in the war on terror are a good way for newly independent states in the Caucasus and Central Asia to seek partnerships with NATO and, perhaps, ways of reaching forms of full partnership in the future.60 Then again, how far from the North Atlantic region can the North Atlantic Treaty Organization expand? Reform aid and a pro-Western position in these countries are a first and logical step in a new political mission while

57 EVANS, G., The Responsibility to Protect; Ending Mass Atrocity Crimes Once and For All, Brookings, 2008, 349p., p.191
59 MOORE, R. R., id. p 108.
avoiding the full membership question. The changing relations with Russia and the challenges that lie therein are a special chapter under NATO’s political mission.

Of course, an enduring commitment towards constructing a stable Europe, alongside with democratic reforms in the Balkans, will remain a key agenda for NATO as well. However, the strategic vision in which peace in Europe remains the Alliance’s most important objective is outdated. The regions from where threats against this prime objective arise today are largely outside Europe: NATO’s new political goals should be as well.

A more democratic, economically prosperous Middle East and Central Asia not only serves the long-term interests of Europe and the United States, it could also be seen as an extension of the principle that drove the Alliance’s first political mission after the Cold War: The construction of a Europe, whole and free.

The command responsibility for the International Security Assistance Force (ISAF) in Afghanistan is just one example of a large-scale operation that proves that NATO has left its Euro-centric focus, geared exclusively towards deterrence and defense. NATO has proven to be much more than just a collective defense organization. The second decade of the 21\textsuperscript{st} century will be crucial for deciding where NATO is headed.

3. **Enlargement as a problem for defining NATO’s political role**

i. NATO’s Partnership Instruments

   a. *The Origins of NATO’s partnership instruments*

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\(^{62}\) MOORE, R. R., id., p. 113.
The original idea behind NATO's partnership policy was to break down barriers after the Cold War and to create an environment of security through cooperation and dialogue. Almost 20 years ago, in July 1990, at a NATO summit in London, Allied nations expressed their wish to break through the dichotomy between East and West through the proposition of new cooperation initiatives to improve relationships with all the countries of Central and Eastern Europe. Approximately one year later the North Atlantic Cooperation Council (NACC) was established, providing a forum to bring together NATO and its new partner countries to discuss a renewed form of dialogue and, eventually, partnership. The timing of the introduction of the NACC was historical and by itself the incarnation of a momentum: as the final communiqué was being agreed, the Soviet ambassador announced the dissolution of the Soviet Union.

At the time, the NACC provided a first step towards the breakdown of political barriers that had existed for nearly half a century. During the first years of its existence, the first focus points of the Council remained security and defense-related issues. Former Cold War security concerns such as the withdrawal of Russian troops from the Baltic States were just a few of the political problems that were dealt with. However, after a few years, the need for a specific approach for each country in its relations with NATO became clear. By the beginning of 1994, a first non-multilateral political programme that embraced individual relations between the Alliance and Central and Eastern European NACC members was launched: the Partnership for Peace-programme.

### b. Partnership for Peace Programme (PfP)

The Partnership for Peace programme (PfP) is a NATO program aimed at creating trust between NATO and other states. It installs and expands practical bilateral cooperation between NATO and individual partner countries, allowing them to build up an individual relationship with NATO, choosing their own priorities for cooperation. In this way, PfP fulfilled the expectations that were not fully met by the installation of the NACC. It was first proposed as an American initiative at a meeting of NATO defense ministers in October 1993, and formally launched in January 1994 on a NATO summit in Brussels, Belgium. Trustworthy relations can be the first step towards a possible accession, but the main goal of the PfP programme is not NATO membership. For instance, Russia and even a strictly neutral country such as Switzerland both joined the PfP-programme shortly after it was installed.
The final goals of the PfP-programme are threefold: It poses a multi-purpose overall framework, succeeds in being an intensification of NATO’s outreach and facilitates joint action. A fourth aspect, suggested by some, is the possibility on NATO membership. This can only be seen in light of the fact that PfP is merely a first natural phase in the long process of becoming a member.

Currently, 22 countries have such a partnership. Twelve members are former Soviet republics. Of the total 34 countries that were in the PfP-Programme, 10 have become full members of the Alliance, all of them former Soviet Republics or parts of it. NATO gained three new partners on December 14, 2006, with the accession of Bosnia and Herzegovina, Montenegro and Serbia to the Alliance’s PfP programme. The accession of these three Balkan countries is a great step forward in integrating them into the Euro-Atlantic community, and proves that the PfP-programme is reaching further than mere ‘close’ diplomatical ties. Serbian president Tadić described the Serbian accession as ‘the end of isolation’, claiming that it was a step in bringing the values of both NATO and the European Union to the region. This evolution is also part of renewed efforts to endorse full cooperation of every Balkan state with the International Criminal Tribunal for the former Yugoslavia (ICTY) Secretary-General De Hoop Scheffer stressed that NATO expects Bosnia and Herzegovina and Serbia to fulfill their obligations towards the ICTY. Secretary-General De Hoop Scheffer described this correctly when stating that “Entry into Partnership for Peace for Peace does not mean that there is now no more need for full cooperation with the Tribunal in the Hague, full cooperation for the ICTY,” The most recent partner is Malta, making it the 22nd PfP-programme country.

In 1997, the Euro-Atlantic Partnership Council (EAPC) replaced the NACC, continuing its work but with expanded competences, in order to develop an enhanced and more operational

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63 WILLIAMS, N., Partnership for Peace: Permanent Fixture or Declining Asset?, in ‘NATO’s Transformation, the Changing Shape of the Atlantic Alliance, ed. GORDON, Ph.H., Rowman & Littlefield, 1997, 288p, p. 222-228.
64 NATO topics: The Partnership for Peace, http://www.nato.int/issues/pfp/index.html
65 11 former Soviet republics joined the Programme within one year (February 1994 - February 1995) In chronological order: Ukraine, Moldova, Georgia, Azerbaijan, Turkmenistan, Kazakhstan, Kyrgyzstan, Russia, Uzbekistan, Armenia and Belarus. Tajikistan waited until February 2002 to join the PfP.
66 The ten are: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia
69 NATO update, http://www.nato.int/pfp/sig-date.htm
70 Malta joined the PfP-programme in 1995 but withdrew its membership in 1996. Upon a decision on March 20, 2008 to reparticipate, the Euro-Atlantic Partnership Council accepted the renewed Maltese commitment at the Bucharest summit
partnership. The Euro-Atlantic Partnership Council provides the overall political framework for NATO’s cooperation with partners and the bilateral relationships developed between NATO and individual partner countries within the PfP-programme.

One of the main tasks and an integral part of the PfP-Programme is the Partnership for Peace Trust Fund: Any PfP member country may request assistance from the Trust Fund. Between 2000 and 2008, some €40 million have been contributed to Trust Fund projects, most of them dealing with disarmament and assistance with the safe destruction of stockpiles of surplus and obsolete landmines, weapons and munitions.\textsuperscript{71}

c. **Intensified Dialogue (ID)**

An ‘Intensified Dialogue’ with NATO is a stage prior to the invitation of a Membership Action plan (MAP). Countries that express their aspirations of becoming Alliance members and who have reached a certain level of defense reforms are, in general, fit to engage in an Intensified Dialogue. Although ID is not a membership invitation, The Intensified Dialogue process aims to provide countries with concrete information regarding the rights and obligations inherent to NATO membership. When engaged in an Intensified Dialogue, those countries will have access to a more intense political exchange with NATO allies on its membership aspirations and relevant reforms, without prejudice to any eventual Alliance decision on a further membership process.\textsuperscript{72}

A 1995 Study on NATO Enlargement led to the establishment of the ID-concept at the Meeting of the North Atlantic Council in Madrid in 1997.\textsuperscript{73} This Study was carried out by the Alliance to consider the merits of admitting new members and how they should be brought in.\textsuperscript{74} According to the Study, countries that wish to become Alliance members must meet key requirements\textsuperscript{75}: A functioning democratic political system; treatment of minority populations in accordance with guidelines established by the Organization for Security and Co-operation in Europe (OSCE); commitment to peaceful resolution of disputes with neighbors and internal disputes; the ability

\textsuperscript{71} NATO topics, http://www.nato.int/issues/trust-fund/index.html
\textsuperscript{73} Madrid Declaration on Euro-Atlantic Security and Cooperation, 8 July 1997, paragraph 5.
\textsuperscript{74} NATO online library, interview with Assistant Secretary General for Political Affairs and Security Policy, Ambassador Martin Erdmann, 27 July 2005
and willingness to make a military contribution to the Alliance and to achieve interoperability with other members’ forces; and commitment to democratic civil-military relations and institutional structures.76

Hungary, Poland and the Czech Republic were the first countries to begin an Intensified Dialogue which lead to accession talks with NATO, in the context of NATO’s first post-Cold War round of enlargement in 1999. Slovenia and Romania were mentioned as best potential new members for a second wave of admittance.77

Since 2005, four countries are engaged in an Intensified Dialogue with NATO: Ukraine, Georgia, Montenegro and Bosnia and Herzegovina. Serbia was invited to enter ID-relations with NATO, but has yet to decide upon this invitation, which is a sensitive subject within its domestic policy.

d. Individual Partnership Action Plan (IPAP)

At the Prague Summit in November 2002 the decision was made to deepen cooperation between NATO and Partner countries. A new cooperative mechanism, the Partnership Action Plan, was introduced. The first to be developed was the Partnership Action Plan against Terrorism. Another new initiative was the Individual Partnership Action Plan (IPAP), allowing NATO to tailor its assistance to interested Partner countries which have asked for more structured support for domestic reforms, particularly in the defense and security sector, according to their specific needs and circumstances.

e. Membership Action Plan (MAP)

The Membership Action Plan (MAP) is the final stage in order to reach full NATO membership. Though formally, participation in the MAP does not prejudge any decision by the Alliance on future membership, accession protocols are generally signed within the time span of a few years after the initiation of the MAP stage.

77 ZORGBIBE, C., id, p. 242-243.
MAP is a monitoring phase, in which aspirant members’ progress remains under scrutiny, while NATO can assist and prepare the candidate members.

As for lapse of time in which a MAP-country effectively becomes member, much depends on the willingness of the aspiring member state, and the speed of reforms in domestic and defense policies. Participation in the MAP has helped prepare the seven countries that joined NATO in the second post-Cold War round of enlargement in 2004 (Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia) as well as Albania and Croatia, which joined in April 2009.78

Albania is a textbook example of a relatively fast accession to NATO, considering the country’s poverty, political history and location within Europe. Its reforms show how NATO expects a change in the national defense policy: one of the most important conditions to fulfill in order to achieve NATO integration was the augmentation of the military budget. A growth to 2% of the GDP was sufficient.

This prerequisite was not met until 2008. The Balkan country, which shares a direct border with Kosovo, already joined the Partnership for Peace-programme in 1994. Since 1997 it has been a member of the Euro-Atlantic Partnership Council. Two years later, a Membership Action Plan was established. Albania is actively and officially partaking in the Alliance’s operations since February 2008.79 The country received a membership invitation on 3 April 2008, leading to the signing of accession protocols on July 2008 and full membership since April 1, 2009. The total lapse of time between PfP-established relations and final accession into the Alliance exceeds by far the accession process of, for instance, Croatia, but remains relatively fast in the context of Albania’s institutional and economical situation in the mid 90’s.

Since the accession of Croatia and Albania within NATO, the only current MAP-country is the Former Yugoslav Republic of Macedonia (FYROM). Allied leaders have agreed to invite the country to become a member as soon as a mutually acceptable solution to the issue over the country’s name has been reached with Greece.80

79 Albania first participated in ‘Operation Endeavour’, a large-scale naval exercise in the Mediterranean Sea.
80 http://www.nato.int/cps/en/natolive/topics_37356.htm?selectedLocale=en
ii. Arguments in the Expansion Discussion

a. Arguments Pro Expansion

NATO enlargement was formally intended to promote a security community in Central and Eastern Europe. Informally, the constraint of Russian influence in its former periphery was a consolidation of the changed balance of power after the collision of the Soviet Union. The reaction of Russia on an expanding Western military alliance was not one of a hearty welcome. The Russian point of view and recent events are discussed under point 4, iii of this chapter.

Expansion is often seen as the easiest or direct way in territorial gain or the swiftest path in a larger sphere of influence. The main ‘pro’ argument is the eventual outcome of the Kosovo crisis: Both Hungary and Poland actively supported NATO’s military campaign. For Poland, not being a direct neighbor to the FRY, this was easier than for Hungary: over 300,000 Voidovinian ethnic Hungarians lived in the FRY at the time. Involving Eastern European countries within a general European security policy has proven to be effective in deepening this policy as well. The Czech Republic was, at the time, the least enthusiastic of all new NATO members. Though their infrastructure was used, the political scene opposed firmly against allied action in Yugoslavia. Despite an aged army infrastructure the outcome of the Kosovo crisis proved that all three new members were reliable partners. This is still the situation today. Of course, the new members are located in the South East of Europe, which makes them suitable allies merely because of their position. It is likely for NATO that future action would far more likely take place at Europe’s border areas.

b. Arguments Contra Expansion

Expansion through new Alliance members in Eastern Europe was seemingly contrary to the formal goal of integrating Russia into a new European security network. Criticism arose, stating that former Soviet states would take stances contrary to the European/American axis, thus

weakening political consensus. The integration of Russia is a failed target: the water between NATO and the Russian Federation has no been so deep since the Cold War has ended. Hopes that relations between NATO and Russia might be heading for a period of stability have recently been oppressed by spying scandals and new tensions over Georgia. Russia always strongly opposed to the eastward expansion of NATO. This concern can best be addressed with the words of former Secretary-General Lord Robertson. “The new member countries will not dramatically enhance the overall military capability of the Alliance. Nor will there be a massive shift of NATO forces and infrastructure eastward. But Enlargement will help to consolidate democracy and stability in Europe.”

Secondly, when discussing NATO expansion, there is a visible parallel with E.U. enlargement: more members would simply make it more difficult to reach a consensus. Already, NATO has a staggering number of 27 members. A consensus could be hard to reach in the future, notwithstanding the fact that it is so urgently needed in humanitarian crisis cases, such as the Kosovo conflict and its aftermath resulting in Kosovar independence.

A third point of critique, though disposable because of commitments made, was that the new members’ army infrastructure, obviously still based on a Soviet model, could be incompatible with NATO standards, skeptics used this argument, but the good cooperation during common exercises has proven that incompatibility problems can be overcome within a relatively short timeframe.

4. Viewpoint of the Russian Federation

   i. Disapproval

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The Russian Federation always criticized NATO’s eastward expansion because, in the opinion of Moscow, it was deemed contradictory to earlier agreements. In 1990, expansion was told not to reach any further then reunited Germany. Those spoken guarantees were in no way concluded in treaties or resolutions, so from a legal point of view no argument could be derived.

Already by 1995 NATO’s intention of going eastwards was clear. A part of the Maastricht Treaty of 1992 worked out a common foreign and defense policy within the European Community (now European Union). This symbolized the will within Europe to further elaborate on the idea of a common policy for Europe, a concept close to NATO’s initial task of establishing a “Europe, whole and free”. The Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation, signed on 27th May 1997 in Paris, was a historic achievement in re-establishing normalized relations with Russia. However, in 2009 it is clear that Russia is more seen as a problem to be dealt with in order to reach the earlier projected stability in Europe rather than a reliable partner in the strive for the realization of it.

ii. Russian Military Presence and Influence in its Border Zone

The subject of research in this paper is influence, by NATO, in the establishment of newly independent states. This research remains unfinished as long as we do not look into pressure instruments used by Russia in exercising influence of its own.

Besides the obvious reference made to the cases of Abkhazia and South Ossetia, we will investigate, in this small chapter, Russian influence in Moldova, a relatively small newly independent state, flanked by Ukraine and Romania. The approach of the Russian Federation of the Transdniester conflict is symptomatic for Russian foreign relations in general. It is a textbook example because of its duration. The problem of Transdniester came into being in 1924, when the then-Soviet authorities created the Moldavian Autonomous Soviet Socialist Republic on the left bank of the river Dniester, alongside the eastern border of Romania.

Part of the independence of a state is recognition of its sovereignty. This includes an absence of foreign troops that are not residing in national territory on the basis of a Status of Forces

84 The Maastricht Treaty on European Union, 1991, entry into force on November 1, 1993
Agreement (SOFA). Moldova’s recently established constitution, adapted in 1994, states that: “Moldova is a neutral state that will not permit the presence of foreign forces on its territory.” 

Notwithstanding the reiterated territorial integrity, Moldova has been forced to accept the stationing of Russian ‘peacekeeping forces’ within its borders.

Moldova is a participant in NATO’s Partnership for Peace program and also is a member of the OSCE. These ties with the Alliance are to be considered important. All of the country’s internal problems have to be seen in the context of the CFE, the Conventional Armed Forces in Europe Treaty. The CFE stipulates the goals it is intended for in its preamble:

“Recalling their obligation to refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes and principles of the Charter of the United Nations,

Conscious of the need to prevent any military conflict in Europe,
Conscious of the common responsibility which they all have for seeking to achieve greater stability and security in Europe,

Striving to replace military confrontation with a new pattern of security relations among all the States Parties based on peaceful cooperation and thereby to contribute to overcoming the division of Europe”

Upon signing the CFE, Russia promised to cease all military presence in Moldova by 2002. The problem was, as stated above, the separatist region of Trans-Dniester. This small region declared independence in 1990, when Moldova declared itself independent from Russia. The self-proclaimed Pridnestrovian Moldavian Republic (PMR) is internationally not recognized.

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85 Constitution of the Republic of Moldova, 29 July 1994, Title 1, Article 1.
The regime in the PMR is not considered democratic, e.g.: Reports in 2001 signalled that current president Igor Smirnov had won the elections in one region with a score of 103.6 %.\textsuperscript{88}

In a NATO-resolution from 18 November 2008, Russia was urged again to respect its commitments which were taken at the Istanbul OSCE Summit in 1999, which were literally repeated two years later by the Russian Defense Minister Ivanov.\textsuperscript{89 90} The resolution stressed again that Russia has to withdraw its illegal military presence from the Transdniestrian region of Moldova in the nearest future. Up to this date, Russia still holds forces in the Transdniester region.

This approach of the Russian Federation is symptomatic for Russian conduct close to its (former) borders. In the Case studies of chapter VI the Russian approach on recent conflicts will be explained, together with comment on the justifications Moscow uses in an attempt to legalize its military presence within international law in these conflict zones.

iii. Recent Developments in NATO-Russia relations

Very recently, on 13 May 2009, Russian President Dmitry Medvedev signed the decree on ‘strategy of national security of the Russian Federation until 2020’.\textsuperscript{91} The document is extremely negative on NATO’s expansion eastwards, considering it as one of the major threats to Russian Security. For now, the national security strategy’s text is only available in Russian and is published on the Russian Security Council website.\textsuperscript{92} The document commented negatively on the nuclear capacity of NATO members, fitting in neatly with previous criticism on U.S. plans for the deployment of a missile interception system for Eastern Europe. President Medvedev argued that:

\textsuperscript{89} Resolution 371 on the future of NATO-Russia Relations, 18 November 2008, presented by the Political Committee and adopted by the Plenary Assembly at its 2008 meeting in Valencia, Spain.
\textsuperscript{90} Arms Control Reporter, sheets 407.B.566-65, 1997.
\textsuperscript{92} See http://www.scrf.gov.ru for a Russian version of the decree
"The threats to military security are the policy by a number of leading foreign states, aimed at attaining dominant superiority in the military sphere, in the first place in strategic nuclear forces, by developing high-precision, information and other high-tech means of warfare, strategic armaments with non-nuclear ordnance, the unilateral formation of the global missile defense system and militarization of outer space, which is capable of bringing about a new spiral of the arms race, as well as the development of nuclear, chemical and biological technologies, the production of weapons of mass destruction or their components and delivery vehicles,"

This is a next logical step in a war of words and diplomatic tensions between Brussels and Moscow, after the expulsion of two Russian diplomats from Brussels, on the accusation of espionage which was answered by Russia through the eviction of two NATO officials. Tensions between NATO and Russia have been rising, reaching a summum with the suspension of the NATO-Russia Council, partly due to NATO’s peace-keeping exercises that started on 5 May, which Moscow deems ‘an overt provocation’.
V. NATO and its political influence in newly independent states

This Chapter deals with the political era after the end of the Cold War. The Alliance was systematically involved in democratic reforms in former communist countries. Examining NATO’s influence in these reforms and the countries independence sheds a better light on how NATO aids in the recognition of newly independent states today. NATO’s main area of reform aid was, of course, defense. As a military organization this needs little explanation. But the politics of shaping institutions and legal rearrangements was also a well-thought contribution.93

In 1999, the Washington Summit came with a comprehensive answer for an all-in membership formula: The Membership Action Plan (M.A.P) became the Alliance’s tool of reform.94 M.A.P. allowed NATO to track and adjust reforms within potential member states, allowing a swifter and faster accession to the organization and its benefits.

Engagements with Partner countries in two strategically important regions proved to be NATO’s focus: the Caucasus (Armenia, Azerbaijan and Georgia) and Central Asia (Kazakhstan, the Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan). The Alliance’s final motives on the degree of cooperation with these states remain unclear, except for Georgia who received a membership invitation at the 20th NATO summit in Bucharest, Romania.

NATO has assigned a special representative for the two regions as well as two liaison officers. Their role is to assist and provide advice in implementing relevant aspects of Individual Partnership Action Plans, where appropriate, as well as the Partnership Action Plans on Defense Institution Building and against Terrorism.95

1. Central Asia and the Commonwealth of Independent States

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93 GHECIU, A., NATO in the ‘New Europe’: The Politics of International Socialization after the Cold War, Stanford University Press, Stanford, California, 355 p, p.1
94 See Chapter IV, 3, 1, d. for elaboration on the M.A.P.
This subchapter will give brief comment on five of the C.I.S. members. NATO’s Individual Partnership Action Plan (IPAP) concerning these countries will be explained, followed by a more extensive background on Uzbekistan and Turkmenistan and a short mentioning of the evolutions in the three other Central Asian states of the C.I.S., Kazakhstan, Kyrgyzstan and Tajikistan. The C.I.S. organization was founded on 8 December 1991 by Belarus, Russia, and Ukraine. Currently 12 states in the Caucasus and Central Asia are a member, though Georgia intends to leave the C.I.S. in August 2009 after the recent war with Russia.

i. Map

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96 Map reprinted with permission, University of Texas Libraries, Perry-Castañeda Library Map Collection, http://www.lib.utexas.edu/maps/commonwealth/georgia.gif
ii. Individual Partnership Action Plans as a tool for reform

NATO serves as an Alliance capable of triggering reform and promoting democracy in the Commonwealth of independent states. Although NATO played an important role in the far from finished political and military reforms in Central and Eastern Europe, the lack of progress in Central Asia proves that democratic reforms outside Europe are a difficult target to reach.97 All of these countries have unsettled border demarcation disputes, and most of them have internal secessionist movements, mostly ethnic, religious or clan-based.

In general, the dominant ethnic group in each state has no overwhelming part of the majority of the population, with an exception for Turkmenistan and Tajikistan. The dominant ethnicities reach the following percentages in the Central Asian C.I.S. states: Uzbek (31%) in Uzbekistan, Kazakh (50%) in Kazakhstan, Kirghiz (51,4%) in Kyrgyzstan, Turkmen (71%) in Turkmenistan and Tajik (81,9%) in Tajikistan. This provides an idea of the ethnic diversity in the entire Central Asian region, in which separatist claims loom for the future.

The level of political repression in these NIS is determining for the way in which secessionist nationalist movements have to undertake action to attempt to reach their political goals. High repression of democratic institutions, such as free elections or the right to assemble is more likely to lead to a rebellion or underground independence movements. These factions do not allow themselves to gain support with members of the international community, seen the fact that they often resort to violence in order to impose reforms.

NATO itself tries to implement areas of cooperation in Central Asia. The main program at hand is the Partnership for Peace-program. The Alliance continues to hold close ties with all five Central Asian countries in the PfP-Program, due to the undeniable geostrategic importance of those countries.98 Slow-paced integration of these NIS within Western institutions is NATO's current strategy, as well as keeping them allies in NATO's operations in Afghanistan.

These Central Asian countries do not have membership aspirations since their location is outside Europe and historical ties bind them with the Russian Federation from which they all gained

97 MOORE, R.R., id., p 125.
independence in the beginning of the nineties. Nonetheless NATO seeks to implement democratic reforms, using the Individual Partner Action Plan (IPAP) as the most influential tool of reform. Kazakhstan entered the IPAP on 31 January 2006 and remains the only Central Asian Country in it today. But what is the actual value of these IPAPs? The military importance of NATO assistance in Central Asia might be overestimated. For example, American-led training programmes on enhancing Kazakhstan’s military capabilities have so far produced little progress on the ground.\textsuperscript{99} NATO’s official interest for the region is the establishment of alliances and aid in the fight against terrorism; however, the real short-term geostrategical importance for the Alliance is upholding a steady route of supplies and air support for ISAF operations in Afghanistan. After all, Central Asia’s recent history is marked by regional competition rather than the cooperation that is a principal objective of PfP.\textsuperscript{100}

iii. Uzbekistan and Turkmenistan

Uzbekistan is a good example of a Central Asian NIS with good intentions, but a lack of democratic reform initiatives. The government is accused of serious human rights violations. The country is at the very bottom of global corruption rankings, listed 166\textsuperscript{th} out of 180 countries on the 2008 Corruption Perceptions Index.\textsuperscript{101} This is symptomatic for all five Central Asian N.I.S.

The United States, as the largest contributor to NATO logistics and troops, refused to openly protest this egregious situation, since the Uzbekistan government is a key player and one of the few actual allies in the ‘War on Terror’ in the region. Recent developments, however, showed no change in the situation of human rights and democracy: on 1 January 2008, the death penalty was abolished, but despite a presidential decree, authorities refused to impose a moratorium on executions.

Uzbekistan is the home of several separatist or religious armed movements, the largest and most dangerous was the \textit{Islamic Movement of Uzbekistan}, but since its dissolution several other


\textsuperscript{100} MOORE, R.R., id. , p 126-127.

militant groups have been formed to take its place. As an ally to the United States in the ‘war on terror’ issued by the Bush administration, Uzbekistan was seen as having a cooperative position towards NATO. Since 2002, Uzbekistan participated in the Partnership for Peace Planning and Review Process (PARP), which aims at attaining interoperability between elements of its armed forces and those of NATO Allies. However, recently, Uzbekistan has taken a different course: The country is minimizing its contact with NATO, notwithstanding the fact that it seemed to have deepening IPAP-aspirations in the recent past.102

The Uzbek government changed its pro-NATO position in 2005. A Status of Forces Agreement (SOFA) concerning a US military base in Karshi-Khanabad was not prolonged. The air base, serving as an essential supply route for NATO operations in Afghanistan, was eventually evicted, despite diplomatic efforts to keep it operational.103

As a reaction, Alliance members have refused to cooperate with planned Uzbek defense reforms. This is also explained by a series of reported acts of repression and other human rights violations. The development of a peacekeeping battalion to work alongside NATO Allies was therefore stalled.

Turkmenistan is in a worse situation than its neighbor, Uzbekistan. President for life Saparmurat Niyazov’s dictatorial and harsh rule over the country ended with his unexpected death at the end of 2006. Afterwards the first elections ever were held, but newly elected president Gurbanguly Berdimuhamedov of the only allowed party, the Democratic Party of Turkmenistan, seems to follow in the footsteps of his predecessor.

iv. Kyrgyzstan, Kazakhstan and Tajikistan

Kyrgyzstan sets an example in the region for a better way to reach democratic reform without an internal conflict or violent coup d'état. In March 2005. The ‘Tulip Revolution’ had, as a result, one of the most democratic countries in the region, however still a feeble democracy compared to Western standards.

102 Statement by H.E. Mr. Vladimir NOROV, First Deputy Minister of Foreign Affairs of the Republic of Uzbekistan at the EAPC Foreign Ministers’ Meeting. NATO speeches, http://www.nato.int/docu/speech/2003/s031205f.htm
Despite this more democratic course, a similar evolution as the Uzbek refusal to cooperate with NATO members active in Afghanistan is noticeable. Recently, Kyrgyzstan prepared the closure of a U.S. military air base which is vital for supplying ISAF in Afghanistan. President Bakiyev announced the base would be shut, shortly after securing financial funds from the Russian Federation.104

This evolution has to be seen in the context of the combined regional efforts of China and Russia to establish an independent regional security organization, the Shanghai Cooperation Organization.105

Kazakhstan's economy is larger than those of all the other Central Asian states combined, mostly due to the country's vast natural resources and a recent history of political stability. The country’s historical ties with the Russian Federation are obvious, but it has been a PfP member since 1994. More recently the country joined the Shanghai Cooperation Organization, in 2005. According to Western opinions, Kazakhstan is seen as a more stable ally in Central Asia in the effort to end illicit drug trafficking within the C.I.S. Its political role will enhance significantly in 2010, when Kazakhstan will chair the Organization for Security and Cooperation in Europe (OSCE).

Of the five Central Asian C.I.S., Tajikistan is the weakest. From 1992 to 1997 the country suffered from a devastating civil war. Since the end of the war, newly-established political stability and foreign aid have allowed the country's economy to grow. The Russian Federation carried out a military intervention as it placed troops in southern Tajikistan, in order to guard the Tajik-Fagan border, officially until summer 2005, but with a prolonged mandate from Moscow. This is a similar interference situation as in Georgia and Moldavia, but hardly known in global media.

105 See Part 4 of Chapter V.
2. South Caucasus Region

i. General Outline

Three countries form the South Caucasus: Azerbaijan, Armenia and Georgia. Geographically and historically linked, these three countries are more or less in the same situation. Each of these states faces important domestic disturbances, along with widespread corruption, poverty, and a hard-hitting recession in the global economy that has devastating effects in the entire region. External powers see the South Caucasus as their zone of influence, especially since energy and security interests are of an increasing importance.

Internally, democratic reform after the cold war has stagnated. Free media are an exception, and democracy still is weak in all three South Caucasian countries. However, besides institutional problems and matters of geopolitical interest, separatist conflicts form the greatest threat to peace and stability in all three states. Armenia faces difficulties in Nagorno-Karabakh; for Georgia Abkhazia and South Ossetia are the greatest menace to its territorial integrity and political stability. The Caucasus situation remains a powder keg, since influential elements in each state favor conflict resolution by force.\(^{106}\)

NATO’s role in the South Caucasus is shifting. At the end of the nineties ensuring oil infrastructure resulted in the possibility of a NATO base in Azerbaijan.\(^{107}\) Up to this date, informal and official talks have still not resulted in allowing NATO to expand its zone of influence through the opening of such a base. Since the difficult Armenian and Azerbaijan cooperation with the Alliance, Georgia remained the only reliable partner until the recent war with Russia in August 2008. NATO still sees Georgia as a potentially reliable partner: from 5 May 2009 the Alliance planned a three-week small-scale military exercise close to the capital, Tbilisi.\(^{108}\) The scale of the exercises has been reduced due to a recent mutiny in a tank battalion of

the Georgian armed forces. Over 1000 soldiers from 19 different countries participate in an exercise claimed ‘an overt provocation’ by the Kremlin. NATO’s efforts to stress the humanitarian nature of the exercise have been in vain, despite the fact that no heavy equipment is used and the ‘war games’ simulate a situation of dealing with a humanitarian crisis.

ii. Georgia

The main focus in this paper is on Georgia, whose internal conflicts have proven to be the most imminent and actual problem in the Caucasus area concerning NATO’s position. Before 2003, Georgia was a weak state, if not a failed state.\textsuperscript{109} 2003 was a turning point in Georgian history: the Rose Revolution, which brought Mikhail Saakashvili to power, has changed the country’s politics notably. Georgia has gradually commenced Western-faced political reforms, as what could be seen as away of finally cutting the ties with a remote Soviet past. In a remote past, Ottoman and Soviet dominance shaped the entire South Caucasus. Now, the European Union and NATO are the two main goals in Georgia’s foreign policy.

Politically, Mikhail Saakashvili was re-elected President on 5 January 2008 with a score of 53,47 percent. A score that was improved in the May 21\textsuperscript{st} parliamentary elections, resulting in a 59,18 percent score for his United National Movement party.\textsuperscript{110} This was before the Georgian-Russian conflict. Now, the momentum used by Saakashvili has faded, and opposition grows and awaits the 2012 elections to see if the consensus of transformation still is strong amongst the Georgians.

Economically, Georgia was heading towards more growth and prosperity until the 2008 South Ossetia war and the global recession that commenced in the fall of 2008. The natural resources in the region are well charted and used, but welfare in this newly independent state is far from abundant: poverty in Georgia is widespread: over half the population lives below the poverty line.\textsuperscript{111}

\textsuperscript{109} COOPS, C.M., Georgia and International Politics in the South Caucasus, NATO Research Paper No. 32, Academic Research Brand, NATO college, Rome, 2007/3, p.6
\textsuperscript{111} U.N. Country Team in Georgia, country profile, http://www.ungeorgia.ge/eng/countryprofile.php
Oil and gas are the two dominant resources in the Caspian region, and Georgia is an important transit country. In 2006, the Baku-Tbilisi-Ceyhan (BTC) pipeline became operational. No longer was Caspian gas or crude only available through Novorossiysk, Russia’s transit port in the Caspian region. The construction on the BTC pipeline, and the Kars-Akhalkalaki Railroad are part of an economical strategy to enhance Georgia's strategic location between Europe and Asia and to develop its role as a transit point for gas and oil. Needless to say, the new pipelines, amongst other projects, are a boost to Georgia’s economy and geostrategic importance, and the plans of improving Georgia’s energy transportation capacities are not welcomed in Moscow.

Georgia’s internal conflicts are extensively dealt with in chapter VI, part 3.

3. **Regional Opposition to NATO Initiatives**

The Commonwealth of Independent States also installed its own Collective Security Treaty Organization (CSTO) which has an official status of a transnational security organization, in theory similar to NATO. Its purpose was to ensure the security of its members, but already in 1999 Azerbaijan, Uzbekistan and Georgia withdrew their membership due to the inability of the organization to realistically operationalize its stated objectives.

It is important to bear in mind that NATO’s political strategies for the Central Asian region and the CIS are not welcomed by two other key players. In 2001, Russia and China came with an antiterrorism initiative, the Shangai Cooperation Organization, including four of the former USSR republics as members. These initiatives are not contributing to democratic reforms in the SCO member states, seen the influence of founding members China and Russia. Recently, the SCO has indicated a willingness to play a constructive role alongside NATO in Afghanistan.

4. **Conclusion on NATO Cooperation in Central Asia**

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113 JIBLADZE, K. Russia’s Opposition to Georgia’s Quest for NATO Membership, China and Eurasia Forum Quarterly, Vol 5, No.1, 2007 p. 47.
114 EVANS, G., The Responsibility to Protect; Ending Mass Atrocity Crimes Once and For All, Brookings, 2008, 349 p., p. 118
As far as concerned cooperation with the Central Asian Republics, can NATO cooperate and strengthen ties with this region without risking a damaging effect towards the values of the Alliance? NATO’s value-based integrity could be at stake. However, remaining inactive is definitely the wrong course of action if the Allies wish to realize democratic reformation in the NIS. In the light of Russian and Chinese cooperation initiatives, such as the SCO, a proactive course remains the right choice although most of NATO cooperation initiatives are in the area of defense. This could be problematic towards those countries that have a history of repression and human rights violations.

VI. Case Studies

1. Strategical Importance of Separatist Regions

In chapter VI, we will focus on the different situations of three main problem areas: Kosovo and the breakaway Georgian regions of South Ossetia and Abkhazia. These are only three examples of separation attempts, but seen the analogy often made between Kosovo, South Ossetia and Abkhazia, and NATO’s interests in these cases, these are our main areas of interest. This chapter will deal with each case study separately, giving a summarized picture of main events in recent history and the current situation. In subchapter 4, a detailed description of the similarities and differences between these case studies will be made.
2. An independent Kosovo

i. Map

Note: current map not fully adequate, since Kosovo is still depicted as an ‘Autonomous Province’ situated within the Republic of Serbia.\textsuperscript{115}

\textsuperscript{115} Map used with permission, details edited, University of Texas Libraries, Perry-Castañeda Library Map Collection, http://www.lib.utexas.edu/maps/europe/kosovo_pol98.jpg
ii. Historical outcome of NATO operations in Kosovo

a. Introduction

On 17 February 2008, the land-locked province in the south of Serbia declared itself independent. By then, the last large-scale eruptions of violence were already 9 years old. It is undoubtable that NATO had and still has an involvement in the course of events. Today, NATO’s operations in Kosovo, KFOR (Kosovo Force), still has over 15,000 peacekeeping troops in the young republic’s territory.

Kosovo is well on its way to become a sovereign state, although the final process and an eventual accession to the UN might take several years, or perhaps, decades, since Russia can easily block Kosovo’s application through a veto. Up to this date, the international UN-led administration still plays an important part in governing the former Serb province. In this chapter the conditions that allowed the Serb province to gain independence will be examined. The role of NATO will be subject to a critical revision, after which a comparison with other separatist region’s independence aspirations will be made, especially with South Ossetia and Abkhazia.

b. The Declaration of Independence

On Sunday, 17 February at 17:20 hours, President of the Assembly of Kosovo in Pristina, Jakup Krasniqi read the following, summarized text:

The Assembly of Kosovo,

Convened in an extraordinary meeting on February 17, 2008, in Pristina, the capital of Kosovo,

(...) 

We, the democratically-elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. This declaration reflects the will of our people and it is in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement.
For reasons of culture, geography and history, we believe our future lies with the European family. We therefore declare our intention to take all steps necessary to facilitate full membership in the European Union as soon as feasible and implement the reforms required for European and Euro-Atlantic integration.

We express, in particular, our desire to establish good relations with all our neighbors, including the Republic of Serbia with whom we have deep historical, commercial and social ties that we seek to develop further in the near future. We shall continue our efforts to contribute to relations of friendship and cooperation with the Republic of Serbia, while promoting reconciliation among our people.

We hereby affirm, clearly, specifically, and irrevocably, that Kosovo shall be legally bound to comply with the provisions contained in this Declaration, including, especially, the obligations for it under the Ahtisaari Plan. In all of these matters, we shall act consistent with principles of international law and resolutions of the Security Council of the United Nations, including resolution 1244 (1999). We declare publicly that all states are entitled to rely upon this declaration, and appeal to them to extend to us their support and friendship.

c. NATO’s involvement from 1999 to 2008

Between March 24 and June 7, 1999, NATO launched operation Allied Force. This was NATO’s first actual war in half a century. By then it was clear that even a fully democratized Serbia would never again exercise total effective control over its former province.116 Federalism in most of its

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forms had showed to be unsuccessful in the Balkans since the beginning of Yugoslavian disintegration.

NATO itself did not have a unified position on Operation Allied Force. Since the UN Security Council was bypassed, some Alliance members argued that the EU was the correct body to undertake action in the Balkans, but by then the EU had already lost its primacy to other international organizations in the conflict.\footnote{BRAWLEY, M.R. and MARTIN, P., Kosovo, Alliance Politics and the Future of NATO, Palgrave, 2000, 246p., p. 3.}

Reactions within the UN were negative; noting that NATO should not have acted outside the Security Council, former UN Secretary-General Annan stated: "It is indeed tragic that diplomacy has failed, but there are times when the use of force may be legitimate in the pursuit of peace." NATO members saw this statement as a tacit endorsement, a view strengthened by the Security Council’s rejection of a Russian draft resolution and the subsequent adoption of Resolution 1203, authorizing a post-war NATO-led peacekeeping mission (KFOR) in Kosovo.\footnote{BELLMAMY, A.J., id., p. 30.}

Meanwhile, the EU struggled with the lack of unanimous consent of all of its members to act in the domain of foreign policy, and was reviving earlier plans for the stability of the region: rejecting the idea of Kosovar independence and open up the possibility of NATO and EU membership to states adjacent to the former Yugoslavia in the short-term future, except for former Yugoslavian republics in the short term.\footnote{DEIGTON, A., The European Union and NATO’s War over Kosovo: Toward the Glass Ceiling?, chapter from: BRAWLEY, M.R. and MARTIN, P., ed., id, p. 58.} These intentions were materialized in Stabilization and Association Agreements and a large contribution in the United Nations Mission In Kosovo (UNMIK).

\textit{In fine}, the EU backed the NATO operations on the diplomatic front, providing support that, if absent, could have been disastrous to the military operations in Kosovo. This has proven to be a useful approach to the crisis situation, but once more revealed the weakness of the EU on deciding a common foreign policy, even though the Yugoslavian dismembratio occurred at its doorstep and took almost a decade, with an additional nine years for the Kosovo ‘problem’ to reach a forced, unilateral solution.
d. Diplomatic tendencies leading to the declaration of independence

Five years after operation ‘Allied Force’ it was unclear which path would lead to peace in the Southern Balkans. The United States favored an independent Kosovo but had trouble to convince their European allies, partly due to the invasion of Iraq. Furthermore, some of the EU members had potentially separatist regions, which lead to the reluctant positions of Spain, Cyprus, Slovakia and Hungary, all countries with substantial minorities.

Strangely, it was the Russian reaction that triggered a shift in opinions. The Russians had always opposed military action against Serbia. Later, when independence became an option, Russia still opposed, waving UN Security Council Resolution 1244, which had always reiterated Serbia’s territorial integrity.120

In the peace process, Russia consequently opposed all UN resolutions that did not make reference to 1244, fearing that a resolution without the reiteration of 1244 would be used as a justification of Kosovar independence. After 2007 there was no further action by the UN Security Council in order to reach an agreement. When further attempts stopped, there was a risk that the Kosovo issue could divide the European Union in a severe way, but besides Cyprus, no EU country eventually opposed. By not allowing a Security Council-backed solution, Russia -intentionally or not- provoked the 17 February declaration of independence.

And even if a consensus amongst EU members was not reached, the few opposing countries did not viably affect the common EU policy that independence was unavoidable. In this way, the EU did develop a common point of view, alongside with the United States.

e. Political Repercussions in Serbia

Quid Serbia? Serbia had no real plan of action to prevent this series of events, besides international protests and relying on the support of Russia. In a first reaction the idea of a ‘Community Assembly of Kosovo and Metohija’ was launched. This illegal assembly was

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120 UNSC Resolution 1244(1999), Preamble: “Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2”.

established but turned out to be a flawed attempt by Belgrade to install a *de iure* local government for the Serbian minority in the Kosovar city of Mitrovica in response to the declaration of independence. The first elections for the Assembly took place on May 11, 2008, but since this government-in-exile initiative has no actual governing powers, its installation remains pointless.

At the time of the declaration of independence, the political situation in Belgrade was complex. Shortly before 18 February 2008 presidential elections were held in Serbia. In the weeks before the elections, a division between Serbia’s two leading politicians became clear: Serbian Prime Minister Koštunica had argued that Serbia could only continue on the path to European integration if the EU states that had recognized Kosovo would withdraw their recognitions, while President Tadić argued that the best way to oppose Kosovar statehood was to continue Serbia’s integration within the EU.121 By now it is clear that Tadić’s approach will not have the results he had hoped. The EU hoped on the election of Tadić, who was eventually re-elected president with 50.31 % of the votes in the second round.122 On March 8, the Serbian government collapsed over an impasse between Prime Minister Koštunica and pro-Western president Tadić about how Kosovo’s independence affects the Balkan country’s pursuit of membership in the European Union.123 Mirko Cvetković replaced Koštunica as Prime Minister on 7 July 2008, indicating that the country will continue the followed course on the long path towards European integration.

iii. NATO’s active or passive role in Kosovar Independence?

a. *Border alignment and institution building*

Immediately after the declaration of independence on 17 February, NATO Secretary-General De Hoop Scheffer stressed, in a press statement on the same day that “KFOR will respond swiftly and firmly against anyone who might resort to violence in Kosovo”.124 This indicates that the Alliance accepted the situation as it was, wisely avoiding any political statements that would

heighten the already tense relations in the region. Nevertheless, NATO reaffirmed it’s obligation under international law to protect the newborn, self-proclaimed state.

The North Atlantic Council backed this position by restating KFOR’s objective: “to continue helping in the development of a stable, democratic, multi-ethnic and peaceful Kosovo.”\textsuperscript{125} Apparently the situation has not changed dramatically for NATO. The Alliance reaffirmed its mission goals and the will to continue in the development of Kosovo as if it was diminishing its own role that aided a process that would inevitably have lead to independence. No reference was made to UN Security Council Resolution 1244.

NATO’s most important role was shaping the conditions for the unilateral separation. By keeping the borders closed any external violent reaction was prevented; this was conform KFOR’s mission. Internally the declaration naturally led to unrest and riots. Most of the violent reactions occurred in the Northern part of Kosovo, were the concentration of Serbian minorities is the highest.

\textit{b. Technical Aid in Shaping a Defense for Kosovo}

New countries that are born out of a conflict commonly need a strong military. This was not different for Kosovo. For a crime-ridden region that still shows the marks of war and where weapons are abundant, a strong security force is more than a conformation of a nationalist identity, it is a necessity.

NATO’s continuing effort and presence in the former province makes it possible for Kosovo to avoid the high burden on its fragile economy. This is why the Alliance holds a great responsibility in the effective deployment of the Kosovo Security Force (KSF). The deployment of over 15000 NATO troops allows Kosovo to keep defense budgets tight.

NATO agreed to start implementing its new tasks in Kosovo on 12 June 2008. First of all in the formation process was the standing down of the Kosovo Protection Corps (KPC), an essential step before the establishment of the Kosovo Security Force (KSF) and the additional civilian structure to oversee the KSF. These tasks were implemented in close coordination and consultation with the relevant local and international authorities.

The KPC diminished its operational activities by the beginning of 2009, and will formally be dissolved by 15 June 2009. As this process takes place, the Kosovo Security Force is formed, leaving no gap in the operational capacities of the instruments protecting national security. NATO provides a continuum: KSF will have reached initial operational capability by mid-September 2009.

KSF is not an army and not a police force: It is deemed the appropriate instrument for the heavy-duty security tasks that are still much needed in the young country: dealing with remnants of explosives, protection of minorities and general emergency response. It may also participate in crisis response operations, including peace support operations. Though its members are more heavily armed than regular police forces, the KSF will not obtain heavy weapons, tanks or artillery. Because of its high costs, armed air forces within KSF are entirely unobtainable.

Kosovo still has budget problems, so it can not be foreseen to what extent it might expand its military capabilities in the remote future, but, seen its modest size and thwarted economy, Kosovo can not obtain the goal of an expanded military. This would upset allies and would have serious consequences for the post-conflict, cautiously peaceful climate that is currently visible in the entire Balkan region.

NATO has an active role in the establishment of this security force: The Alliance will uphold its standards while training and equipping the KSF, providing a professional and adequate training. This professional, all-volunteer force is placed under civilian-led, democratic control. Recruits are chosen from across society and the security force will have two official languages: Albanian and Serbian. The entire KSF will hold no more than 2 500 active servicemen and 800 reservists.

Since the KSF will hold no more than 3300 troops, NATO books a two-fold success that helps Kosovo in obtaining aspects that are viable for the organization of its internal and external security: The newly independent state has standing security force, which is, in its numbers and capacities, non-threatening to neighboring countries. Secondly, this security force does not weigh excessively on Kosovo’s GDP.

Furthermore, NATO reaches two objectives in the prevention of further conflicts in the Balkans: First of all, the Alliance prevents the establishment of an actual army. Secondly it holds control as to how this force is formed and what its capabilities are. Obviously this is important to reach a final closure of remnants of the Kosovo Liberation Army (KLA) that was active during the initial conflict.
c. Critical Evaluation

A critical Evaluation of NATO’s role can only be given if the role of Serbia is examined as well. A turning point in the evolution towards Kosovo’s autonomy was the rise to power of Slobodan Milošević in the late eighties. In ’89 Milosevic removed the relative autonomous status of the province. It took ten years and five other Balkan wars for the Kosovo conflict to fully erupt. The root problem was that Kosovo was a province in the former Yugoslavia, not a state in the Yugoslav Federation. Consequently, it was denied self-determination during the first round of Yugoslavian dismembratio in the early nineties.

In the end, as is suggested by Jamie Shea, NATO's spokesman during the 1999 Kosovo campaign, there was almost complete consensus amongst NATO members: a large majority agrees that independence was the only viable way forward.\textsuperscript{126} Shea states that the dynamic of the conflict forced the Kosovar Albanians towards the reasoning that full independence was the \textit{conditio sine qua non} to end open conflict and widespread violence. It hardly can be said that it was NATO’s military presence that fulfilled all of the conditions for the independence. KFOR (Kosovo Force) ensured security and the departure of Serbian forces, but the mission didn’t meet the prerequisites to perform a broad array of policing duties.\textsuperscript{127}

Kosovar independence is perceived by some authors as a form of \textit{remedial secessio}; self-government as a necessity.\textsuperscript{128} If a state is responsible for the harsh repression towards a part of its population, it can no longer exercise the right of territorial integrity. Subsequently, the minority may apply a remedy: secession conform the right of self-determination of peoples.\textsuperscript{129}

There are opinions stating that a declaration of independence should have been announced shortly after the repression exercised by Serbia.\textsuperscript{130} These are incorrect. The psychological effects of the injustice towards Kosovar Albanians is still present today, and the fact that the Serbian Republic

\textsuperscript{127} Id., p. 6
\textsuperscript{128} HILPOLD, P, id., HJIL 68/3, 2008, p 796.
\textsuperscript{129} CASSESE, A, Self-Determination of Peoples; A Legal Reappraisal, Cambridge University Press, 1995, 375 p., p 118.
\textsuperscript{130} WIRTH, K.A., Kosovo am Vorabend der Statusentscheidung: Überlegungen zur rechtlichen Begründung und Durchsetzung der Unabhängigkeit, HJIL 67/2, 2007, p. 1110-1130.
might be willing to grant its former province a (substantial) form of autonomy is now irrelevant. Furthermore, the breakaway province did not express any new opinions in 2008, since it already attempted to declare its independence in the fall of 1991.131 Albania was the only country to recognize Kosovo then, and the attempted secessio failed.

In almost a decade from its de facto independence from Serbia in 1999, Kosovars were growing towards self-government. Shaping the conditions for a willingness amongst a population to declare independence is a slow process. Provincial institutions and other aspects of a deepening form of self-government created the conditions for the 2008 declaration of independence. In its own way, NATO contributed to the psychological conditions that could only lead to independence in a unidirectional way. In June 1999, a ground operation was absolutely necessary, but the consequence was that a return to a previous situation with regional autonomy for Kosovo within a federal Serbia was impossible. NATO’s part in the establishment and upholding of these conditions was indeed essential.

The alleged precedent that Kosovo shaped raises the question whether the 1999 military intervention and subsequent occupation by a peace-keeping force in a way helped recognizing the right of the province to a remedial secessio. Some authors suggest that this right was even recognized by the heads of state of those countries participating in the intervention.132 The military operations clearly stressed the urgency to resort the crisis and answered the call for a durable solution for the Kosovo problem, but it is my opinion that the main reason for intervention needs to be found in humanitarian considerations. This does not diminish the doctrinal concept of remedial secessio within international law.

Recognizing a remedial secession was definitely not NATO’s goal, but unfortunately the Alliance had little time to examine the possible consequences of its lasting presence on secession aspirations. By 1999 it was clear that KFOR would be upholding peace on the ground for a period of years, if not decades. NATO had little choice: A withdrawal or premature ending of KFOR’s mandate was not an option. Without NATO’s military forces in Kosovo, Serb revanchism and Albanian extremism could have easily resulted into the next Balkan war.133

133 ALLIN, D.H., id., p.95
Seen the fact that the province already attempted to separate itself from Yugoslavia in 1991, NATO obviously fell short in examining the possible consequences of its actions. However, could the Alliance foresee that an independent Kosovo in 2008 could be discussed as a possible precedent within international law? To my opinion it could have, and consequently, the cost paid for ending mass atrocities in Kosovo was a case with undeniable precedential value.

History has yet to decide whether Kosovo is a viable subject of international law, and essentially it is Serbia that holds the main responsibility for the situation as it is today. NATO’s role in the entire process is examined and the final examination reveals a passive but clear influence. NATO served as part of an instrument, which was the concern of the international community. Nine years later it was clear that those instrumentalized commitments in the field provided a momentum, which resulted in an independent state.

d. A New Concept: Conditional Independence?

A set of recommendations concerning peaceful solutions for the Balkans suggested granting Kosovo a ‘conditional’ or ‘supervised’ independence. Minchev suggests the use of this proposed conditionality as a tool for enforcing a satisfactory level of reform and stabilization of all aspects of life in the ex-province.

Although this idea seems noteworthy, it is not executable in reality. Independence is declared, and in this case is the result of the self-determination of the Kosovar people. This is not a reversible concept. Once a State has gained independence it exercises, in the case of Kosovo, partly, all aspects of territorial integrity and sovereignty.

A further suggestion, that “The threat of resumption in ‘Western’ (sic.) control over the province is real”, is highly controversial. The political implications of such a ‘recall’ are unthinkable and could result in great unrest and possible new eruptions of ethnic violence. Extending this conditionality “until the day Kosovo faces the realistic prospect of integration into the EU” would render the current situation even more complex and ungovernable.

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135 MINCHEV, O, id., p. 15
The concept of having conditions forced upon a sovereign state, with the illegal and non-executable sanction of a removal of its sovereignty as a Damocles’ sword has to be discarded. The final flaw in the concept of Conditional Independence is the remaining question where the redeclared ‘province’ should return to if foresaid conditions are not met.

iv. An isolated case or a precedent?

a. Conformity with UN Resolutions

As from 1998, the UN Security Council adopted numeral resolutions in which it attempted to deal with the status of Kosovo. A unilateral declaration of independence was rejected in all resolutions. Most of the concerns in the Security Council resolution deal with the prevention of violence. In 1998, The UNSC reaffirmed in several resolutions on Kosovo,

“That the principles for a solution of the Kosovo problem should be based on the territorial integrity of the Federal Republic of Yugoslavia and should be in accordance with OSCE standards, including those set out in the Helsinki Final Act of the Conference on Security and Cooperation in Europe of 1975, and the Charter of the United Nations, and that such a solution must also take into account the rights of the Kosovar Albanians and all who live in Kosovo, (…) for an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration” 136

UNSC resolution 1244 of 10 June 1999 reaffirmed Serbian Sovereignty after the Serbs were forced to withdraw from the contested territory. But seen the situation, a return to the previous situation or a form of regional autonomy was no option: In no way would the Albanian majority in Kosovo accept any direct or indirect government from Belgrade.

This is also the situation in Abkhazia and South Ossetia, who have been de facto cut loose from Tbilisi’s central governing powers since the beginning of the nineties.

From a legal point of view, each act of the Kosovo institutions, and definitely such a decisive act like a declaration of independence, has to be founded on a legal title, a the Security Council decision.\footnote{CORTEN, O, id., p. 733.}

Even after the declaration of independence, most states recognizing the newly independent state held that this would not derive Resolution 1244 from its applicability, even though 1244 did not, in any way authorized a declaration of independence.

But the main lacuna, allowing an attempt to declare independence, can be found in Security Council Res. 1244 itself: it does not exclude options, it only reaffirms old possibilities. The Rambouillet peace agreements are also mentioned, leaving room for interpretation. In Rambouillet, the possibility of a referendum for Kosovo was agreed upon, and the proposed agreement contained provisions for Kosovo's autonomy. The refusal by Belgrade to accept the Rambouillet peace accords served as a justification for NATO to intervene.

It is correct to state that the unilateral independence is not conform any of the resolutions of the Security Council, but this is no surprise, because of the fact that suggested solutions incorporated in these resolutions were not honored due to stubbornness in Belgrade. The conformity with international law of the 17 February declaration of independence can only be investigated by a competent international court.

\paragraph{b. Proceedings before the International Court of Justice}

On 8 October 2008, the UN General Assembly adopted a resolution drafted by Serbia, to seek an advisory opinion from the International Court of Justice (ICJ) on the legality of Kosovo’s declaration of independence.\footnote{UNGA draft resolution, document A/63/L.3 (2008)} The adopted UNGA resolution A/63/PV.22 states:

\begin{quote}
‘Reflecting on the goals and principles of the UN, bearing in mind the functions and power in line with the UN Charter, we recall that on February 17, 2008 the provisional institutions of self-government of Kosovo proclaimed independence from the Republic of Serbia.

Aware that this act was received differently by UN members in relation to its
\end{quote}
harmonization with the existing legal order,

We decide to request from the ICJ, in line with Article 96 of the UN Charter and Article 65 of the ICJ Statute, to give an advisory opinion on the following question:’

"Is the unilateral declaration of independence by provisional institutions of self-government in Kosovo in accordance with international law?"

On 17 October 2008, the ICJ made an order organizing the proceedings. In its Order, the Court decided that the United Nations and its Member States as well as the Provisional Institutions of Self-Government of Kosovo as the authors of the declaration in question are considered likely to be able to furnish information on the question submitted to the Court. 17 April 2009 was held as the time-limit within which written statements on the question may be presented to the Court and 17 July 2009 as the time-limit within which States and organizations having presented written statements could submit comments. 35 members of the UN have done so before the 17 April deadline.139 Needless to say that the final outcome ICJ advisory opinion is of the upmost importance on deciding whether the unilateral declaration of independence respected international law norms or not.

c. International Developments Confirming Independence

Besides 58 recognitions by UN member states, Kosovo is also acknowledged as a subject of international law by expressing certain aspects of statehood. A permanent population, a defined territory, a government and the capacity to enter into relations with other states are, as described in Chapter 1, the aspects of statehood.140 These aspects are still far from obtained.

Twenty-two of the European Union’s 27 members recognized Kosovo’s autonomy. Greece, Spain, Romania, Slovakia and the Czech Republic did not. This is logical due to internal problems with self-determination of minorities in these EU members. The EU itself has not yet reached a common stance on Kosovar independence.

140 AUST, A., id., p. 16
A very recent development was occurred on 8 May 2009, when the International Monetary Fund’s executive board certified a vote by their board of governors to offer membership to Kosovo. Kosovo will become the 186th IMF member once it has agreed to and signed the IMF’s Articles of Agreement and any related terms and conditions. The underlying reason for admitting Kosovo into the IMF is of course relief funding and loans, which remained complicated as long as the republic was not an official member. This acceptance has to be perceived as a way to resolve practical obstacles in order to revitalize economical conditions for Kosovo, but nonetheless is an important landmark.

d. Recent Assisted Institution Building and Remaining International Administration

Besides the long-term established UN administration, the major input in establishing state organs and institution-building in Kosovo is provided by the EU in its ‘European Union Rule of Law Mission in Kosovo’ (EULEX) which works under the general framework of United Nations Security Resolution 1244 and has a unified chain of command to Brussels. Security Council backing was a precondition for the EU to deploy EULEX. Serbia had fears that agreeing to EULEX deployment would imply silent recognition of the new situation. But U.N. Secretary-General Ban Ki-moon won over Serbia with a six-point plan whereby police, customs officers and judges in areas of Kosovo with a Serbian majority would remain under the U.N. umbrella, while their Albanian counterparts would work with EULEX. This effort resulted in a UNSC statement on 27 November 2008. The Security Council got round the problem by failing to mention the six-point plan, despite earlier pressure from Russia to do so.

EULEX is the largest civilian mission ever launched under the European Security and Defense Policy (ESDP). The central aim is to assist and support the Kosovo authorities in the rule of law area: police force, judiciary reforms and customs. The mission is not in Kosovo to govern or rule, but still holds a necessary form of patronage.

EULEX describes and minimizes its actual influence and effective rule: “It is a technical mission which will monitor, mentor and advise whilst retaining a number of limited executive powers.” It is needless to say that the mission will unavoidably shape and influence the young republics.

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institutions. This is not a negative evolution if the EU would expand its borders in a distant future and might, one day, incorporate Kosovo.

e. Reflections on the Sovereignty and Viability of Kosovo.

The Kosovar Parliament has cooperated and expressed its consent for the EULEX mission. The gradual disappearance of UNMIK is a strong signal: the territorial integrity and sovereignty are unified. However, since the deployment of EULEX takes place after the declaration of independence, the Kosovar Parliament now had to express its consent, because the EU-led operation is clearly a limitation of the young state’s territorial integrity and sovereignty. Few precedents exist in these matters. There is however, the Wimbledon case, of which the reasoning can be applied to some actions of the young parliament:

“The Court declines to see in a conclusion of any treaty by which a state undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt a convention (...) places a restriction upon the exercise of sovereign rights of the state (...). But the right of entering into international engagement is an attribute of state sovereignty.”

Kosovo exercises its state sovereignty by agreeing with the presence of EULEX. Serbia is no longer the commonly recognized subject of international law able to bind the Kosovar territory. Therefore the reference to Kosovo as a ‘province’ does no longer stand. But therein the EU, just as NATO, has a passive role in the one year old independence. Though not intentionally focused on confirming Kosovo as an autonomous republic, this is the effect. The functional purpose of EULEX is beyond any doubt. The presence of this institution-building mission is not focused on making the Kosovar Independence possible and preserving it in the future, but a parallel can be found with NATO’s upholding of the Kosovar border demarcation. EULEX helps in shaping conditions for a confirmed, long-term independence. In that view, EULEX is not a neutral instrument.

Can Kosovo live on as a fully independent state? This question can not be answered easily. Kosovo is small and contained, deprived from access to the Adriatic Sea. Containment is a

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possible policy, but in the long run it is self-defeating. Of course, Kosovo can not count on its northern neighbor, Serbia. Therefore an excellent relation with the other adjacent countries is a conditio sine qua non for Kosovo’s long-term existence. The tools and aid provided by the EU and NATO will remain essential for a long time to come, but one day the country will have to stand on its own feet.

3. Georgia and its Separatist Regions

i. Map

![Map of Georgia and its Separatist Regions](http://www.lib.utexas.edu/maps/commonwealth.html)

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144 JUDAH, T., id., p 128.
145 Map reprinted with permission, University of Texas Libraries, Perry-Castañeda Library Map Collection, http://www.lib.utexas.edu/maps/commonwealth.html
ii. Georgia’s Internal Conflicts and NATO

Relations between Georgia and NATO were established in 1994 in the PfP-program. Georgia always intended to uphold close ties within NATO: It was one of the first former Soviet Republics\textsuperscript{146} to join the PfP-programme, and on 29 October it was the first country ever to be allowed to an Individual Partnership Action Plan (IPAP) by the North Atlantic Council.

In 2003, the Rose Revolution took place, speeding up Georgia’s aspirations to join the Alliance. Full membership was the desired outcome by the Georgian government, whose head of state, President Saakashvili, had never hidden this primary objective. The military budget of Georgia increased more than 50 times over the period from 2002 to 2007, from 18 million US dollars to 780 million, reaching over 7% of Georgia's GDP, which is, compared to its neighboring countries, except for Russia, enormous. The Individual Partnership Action plan (IPAP) arrived well on time, already in 2004. In 2008, at the Bucharest Summit, NATO made its intentions clear: Georgia would eventually be able to join NATO. A non-binding referendum in 2008 showed that the population of Georgia approved of NATO-accession. Over three quarters of the population support an intensified relationship with NATO.

However, this was all before the ‘August’ war in South Ossetia, which led to the defeat of Georgian forces in the separatist region in 2008. Suddenly, more than ten years of Georgian efforts to demonstrate the country’s willingness in providing peace and stability were lost. Though not official, NATO had warned for a military reaction from Moscow. After all, Russian ‘peacekeeping’ forces were stationed in South Ossetia. It was unthinkable that the Kremlin would leave a re-annexation of South Ossetia unanswered. Apparently Saakashvili was not only eager to become Georgia’s first great reformer, but also desired to reinstall the territorial integrity, a justified but dangerous aspiration that awoke a disproportionate reaction from the Russian Federation.

Needless to say that Russia had foreseen such a reaction: when dealing with an area of such geostrategic importance, one needs precautions and preparations. Was the Russian campaign only a short-term adventure aimed at showing muscles in Russia’s sphere of interest, or is there a specific political and security agenda behind it?\textsuperscript{147} This logical question, brought up by several

\textsuperscript{146} AUST, A., id., p. 20
\textsuperscript{147} RADOMAN, J., Russia – the great winner and potential loser in the Georgian war, Western Balkans Security Observer, Belgrade, No. 9-10/2008, p.1.
authors, finds a logical answer: Russia has been back on the international scene since the arrival of Putin, and under no circumstances Moscow will engage in a short-time adventure

iii. Opinions in the Caucasus on the Independence of Kosovo.

Describing the official opinions in the recent conflict areas of the Caucasus is part of the comparisment of this work, and is essential in answering why South Ossetia and Abkhazia are not exactly ‘new Kosovos’.

A day after the declaration of Kosovar Independence, Georgia’s minister of foreign affairs, David Bakradze, announced that Tbilisi would not recognize its independence. This was, of course, no surprise, bearing in mind the two separatist regions within Georgian territory. President Saakashvili reaffirmed this position a few months later, stating *inter alia*, that Serbia needed more time for negotiations. Georgia thus faces a dilemma. A vast majority of NATO members have recognized Kosovo, but since it is not clear what the result is of the unilateral declaration of independence under international law, Georgia remains reluctant to give in on this position. If Tbilisi would change this position, Abkhazia and South Ossetia would, of course, use the case of Kosovar Independence as a precedent to underline their own claims towards independence.

South Ossetia’s stance was unanticipated in its reasoning. President Kokoity of the breakaway aspiring mini-republic announced that the case of South-Ossetia is incomparable to Kosovo, but added that the same rules (in order to reach independence) would work for South Ossetia.

Although the severe ethnic violence that led to the installment of provisional Kosovar authorities is incomparable to the Ossetian situation, Kokoity blamed NATO for continuing ‘aggression’ towards Serbia. Aggravatingly simplifying the complex situation, South Ossetia holds NATO and the United States responsible for ‘taking away Serbia’s province’.

The aspiring independent regions of the South Caucasus differ from Russia in opinion concerning independence and the possible precedent Kosovo poses. A similar view to Kokoity’s one can be found in Abkhazia: Sergei Bagapsh regarded the recognitions of Kosovo as a proof of double standard use by Western countries. Maxim Gunjia, the deputy foreign minister of Abkhazia,
stated that “Just because Russia does not want Kosovo to be recognized it does not mean that we do not want it.”

A large number of states that have expressed their opinion on the Russia-Georgia conflict have condemned Russian interference in the South Caucasian state, recalling the principle of territorial integrity.\(^{148}\) Clearly, Russian reference to ‘the will of Ossetian and Abkhaz peoples’ as to prove the right to Self-Determination is relative as long as Russia has effective control over the disputed territory, on which it holds thousands of ‘peace-keeping’ troops. So far, any recognition of these Caucasus regions is premature.

Georgia itself does no recognize Kosovo. Upon the declaration of independence on 18 February 2008, Georgia’s minister of foreign affairs expressed his concern, stating that the country is unanimous in its condemnation of the unilateral way in which Kosovo declared itself independent. On 9 May 2008, after internal disputes within the Georgian government, president Saakashvili stated "We are saying loud and clear that we have never planned to recognize Kosovo. Nor do we plan to do so in the future. The way out of the situation that has been chosen is not the best one. The Serbs should have been given more time for negotiations. The solution for Kosovo was a hasty one".\(^{149}\)

iv. Situation after the 2008 South Ossetian War

On 13 August 2008, long peace talks between Russian president Medvedev and his French counterpart and mediator in the conflict, Sarkozy resulted in a cease-fire proposition. Strangely, neither Russia nor its interests were extensively mentioned, suggesting that Russia again wants the recognition by the international community of South Ossetia as a fully independent party in the conflict. An unwritten statement that is perceived disguising, since Russia invoked, \textit{inter alia}, self-defense under article 51 of the UN Charter to disproportionately respond to the Georgian military advance in South Ossetia.\(^{150}\) Although minor skirmishes occurred afterwards, the 13 August document proved to be useful in ending most major military operations.

\(^{148}\) CORTEN, O, id., p. 728.
\(^{149}\) http://www.mfa.gov.yu/Policy/CI/KIM/090508_e.html
The agreement is based on six principles for resolving the conflict between Georgia and South Ossetia: No recourse to the use of force; complete cessation of all military operations; unhindered access to humanitarian aid; the return of Georgian forces to their permanent bases; the withdrawal of Russian forces to the line obtained prior to the beginning of hostilities and the proposed beginning of an international discussion on the future status of South Ossetia and Abkhazia and ‘ways to ensure their lasting security’. The last clause was added on the express will of the Russian Federation.

The Kremlin’s view on South Ossetia’s lasting security is also mentioned in the document: Russian peacekeeping forces are allowed to take additional security measures until international mechanisms are in place. Basically this comes down to a ‘carte blanche’ for the Russian military within South Ossetia. On 26 August Moscow revealed its final view on ‘lasting security’ by recognizing both South Ossetia and Abkhazia as independent states. Georgia had little genuine input in the peace talks because of the overwhelming force of the Russian Military.

The ‘August War’ between Russia and Georgia resulted in the death of approximately 183 Georgian servicemen and 69 civilians. Over 2000 Georgians were wounded. On the Russian side, figures are vaguer, but the total death toll would not exceed 100 military casualties. Human Rights Watch used a figure of 300 to 400 casualties as ‘a useful starting point’ in indicating the loss of civilian life.

An important question after the 2008 South Ossetia War remains: who was responsible for the escalation of the scrimmages into a full-scale regional conflict? It is all too easy to blame only Russia. Moscow is not an impartial bystander: there is of course a clear support for the separation of both South Ossetia and Abkhazia and the Russian peacekeeping forces’ mission goes way beyond upholding peace in the region. Russian military presence is all about geostrategic interests. In essence, this conflict is an unsolved territorial problem after the fall of the Soviet Union. Already in 1989, South Ossetia declared independence, which resulted in clashes with Georgian armed forces.

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It was Tbilisi that launched the first military operation into Tskhinvali, while it was clear by then that all NATO members opposed to military action. There was a clear warning from NATO headquarters in Brussels that the Alliance would not intervene in any way and that any offensive military action in South Ossetia would more than probably lead to a violent reaction by the Russian military. President Saakashvili did not take these warnings into account.

Georgia was duly advised, not only by NATO, but also by the UN Security Council, to refrain from unilateral action that, in precise wording of S.C. Resolution 892, “that could aggravate the existing situation or hinder the process towards a comprehensive political settlement”. 153

Was President Saakashvili hoping on a stronger reaction from the West once the Russians started their inevitable counterattack? Did Tbilisi naively hope on a faster accession into NATO because of heightened tension with the Russian Federation? After a few days of the invasion of Tskhinvali, Georgian forces were forced to withdraw and the people of Georgia even feared an invasion of the capital. Russia has always been consequent in using an aggressive tone in its statements on the conflict. The Russian ambassador to NATO, Rogozin, warned that “any NATO attack on Russia-supported regions would mean a declaration of war on Russia”.

In a way, this short-timed conflict is not the most damaging event to NATO-Russia relations in recent years, provided that for Moscow it is not a model for a new way of dealing with foreign affairs. In its final months in office, the Bush administration launched a renewed effort to get NATO support for allowing NATO membership for Georgia. 154 With the arrival of recently elected U.S. President Barack Obama, this effort has cooled down, in an appeasing approach of the damaged relationship with Moscow.155

One could see the current situation as a dilemma between two aspirations in Georgia: one the one hand the country logically wishes to restore its territorial integrity, a viable claim according to international law. On the other hand this aspiration is bound to trigger a severe military reaction from the Russian Federation. NATO will not allow Georgia to take further steps in the accession

process as long as these two main internal territorial disputes are not settled: one can not insure a burning house.

v. Applicability of the Responsibility to Protect Doctrine

As situated in Chapter III, 4, The Responsibility to Protect doctrine provides a legal basis for a humanitarian intervention.

The Russian government has argued that its military operations in Georgia in August 2008 were conducted for humanitarian purposes. President Medvedev, Prime Minister Putin, and other high ranking Russian officials have described Georgia’s military action in South Ossetia as ‘genocide’, subsequently arguing that Russia’s reaction was an exercise of its responsibility to protect. Upon the invasion of the self-proclaimed capital of the region, Tskhinvali, Russia falsely spread news report that indicated more than 1500 South Ossetian civilian casualties.

Foreign Minister Sergei Lavrov stated in an explanation to this view, that:

“Under the Constitution the President is obliged to protect the life and dignity of Russian citizens, especially when they find themselves in the armed conflict. And today he reiterated that the peace enforcement operation enforcing peace on one of the parties which violated its own obligations would continue until we achieve the results. According to our Constitution there is also responsibility to protect – the term which is very widely used in the UN when people see some trouble in Africa or in any remote part of other regions. But this is not Africa to us, this is next door. This is the area, where Russian citizens live. So the Constitution of the Russian Federation, the laws of the Russian Federation make it absolutely unavoidable to us to exercise responsibility to protect.”

The underlined sentences mark the first flaw in Lavrov’s reasoning. The inhabitants of South Ossetia are no Russian citizens.

The use and description by the Russian Foreign Minister of the Responsibility to Protect raises eyebrows. Russia denied that NATO intervened in Kosovo on humanitarian grounds, but uses

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humanitarian motives as a scapegoat in what has to be seen as an attempt to overthrow the Georgian government.

As briefly stated above, Russia has deliberately provided South Ossetians with Russian passports, creating a large community of ‘Russians’ just outside the Federations’ borders. This is expansionism: Combined with the Responsibility to Protect it gives a dangerous cocktail. Over the course of more than a decade, Russia expands its citizens beyond its borders, and afterwards invokes their protection as a legitimate reason to rush in their military forces, knowing that the opposing forces are outnumbered fifty to one, and being no part of NATO, can not expect the protection under article 5 of the Washington Treaty. Georgia’s mistake in all this is giving Moscow an opportunity by interfering in Ossetia by force.

The responsibility to Protect in its current form only situated within a State’s borders. The responsibility to protect, or, as it is called in the first stage, “to prevent”, lies with Tbilisi in this case. The Saakashvili administration has manifestly failed to do so, but the 12 January 2009 Report of the UN Secretary-General makes no mentioning of the protection of nationals located outside a state’s borders.

A second reason prohibiting the acclaimed protection of nationals is Estoppel. Since Russia ‘created’ citizens within the region by a decade-old policy of distributing Russian visa and passports, this attempt to create a situation that can be protected conform international law and the laws of armed conflict hampers the execution of protective measures: it is against the principle of Estoppel: Russia can not invoke an argument against its own previous conduct.

*Estoppel* is derived from a Common Law principle and is based on Equity and the principle of non-contradiction. In general, the element ‘damage’ is what distinguishes *Estoppel* from Acquiescence.\(^{157}\) Invoking *Estoppel*, however, is only possible before a court, which would be in this case, the International Court of Justice. In this case study, *Estoppel* has been infringed due to the violation of non-contradiction: The Russian Federation can not expand its amount of citizens outside its borders by ‘granting’ Georgian citizens the Russian nationality, because it has always argued that this was a measure to ensure ‘elementary social services’ for non-ethnic Georgian peoples ‘abandoned’ by the Georgian Gamsarhurdia-administration shortly after the collapse of the Soviet Union. By doing so, Russia can not claim that these people are genuine Russian nationals. Lavrov rounds up this argument by stating:

“When the Soviet Union collapsed, Russia found itself in a very awkward position. Some 25 million people who used to be the citizens of the Soviet Union, overnight found that they are living in a foreign country. The Parliament of the Russian Federation in 1991 adopted the law saying that whoever was a holder of a Soviet passport has the right to become a Russian citizen (...) these people were still deprived of elementary social services and as Russian citizens they had the right to be provided with pensions, salaries and elementary things.”158

Self-Defense or Extraterritorial law enforcement would be a correct doctrine for cross-border military action. International practice abounds with incidents in which one country uses force within the territory of another, in order to protect or rescue nationals, while invoking self-defense.159 A rescue mission, such has happened at Entebbe airport in Uganda in 1976, is justifiable.160 A large-scale deployment of troops and heavy equipment is not.

However, Self-Defense is also unattainable as a legitimization for the Russian reaction since the Georgian campaign was situated within the country’s territory, and was not aimed at ethnic cleansing or any other type of human rights violation targeted by the Responsibility to Protect-doctrine. Casualty reports indicated 3 to 400 civilian deaths, partly by Georgian acts of war, and partly by the Russian military. It seems questionable whether the severeness-threshold was met, because the larger part of the casualties occurred during the confrontation of the opposing forces.

The most important gap in the humanitarian justifications of the Russian Federation’s use of force is the absence of UN Security Council approval. Without it, there is no legal authority for a military intervention based upon the Responsibility to Protect. This is, in my opinion, a lesser argument, since this UNSC approval is a hampering element within the doctrine: I refer to Chapter III, 4, for previous remarks on this problematic approach of the principle.

Thus, the doctrine of the Responsibility to Protect can not be used by the Russian military; the fact that the threat to the South Ossetian people was not of a nature and scale to legitimate the use of force. There were no ‘mass atrocities’. No comparisment with the case of Kosovo can be made in this regard, since a policy of violence and ethnic cleansing used by Serbian forces in 1999 was

158 Interview by Sergey Lavrov, id.
159 RONZITTI, N., Rescuing nationals abroad through military coercion and intervention on grounds of humanity, Martinus Nijhoff, 1985, p.30-44.
not present in Georgia. The scale of the larger conflict was not too small for the doctrine to be utilized, but the intent and situation in the field proved insufficient for the doctrine to be applied.

The UN High-level Panel on Threats, Challenges and Change, and Secretary-General Kofi Annan in his ‘In Larger Freedom’- report to the 2005 World Summit all recommended that the Security Council should adopt precautionary principles.

The five conditions set forth are: **an imminent threat of massive human rights violations** (1), **halting this being the only purpose of any intervention** (2), **the total depletion of peaceful means, including action via the Security Council** (3), **proportionality in means and results of any incursion** (4) and **a reasonable chance that appropriate action will lead to an effective halt of the atrocities** (5).

Each condition must be satisfied before any incursion could be accepted as legitimate under the responsibility to protect-doctrine. When applying them to Russia’s incursion within Georgia, it is clear that all of these prerequisites fail:

**An imminent or actual threat of genocide or other mass atrocity crime (1).**
As stated above, it is prima facie not arguable that ‘genocide, war crimes, ethnic cleansing or crimes against humanity’ were being committed by Georgia against South Ossetians, Georgia’s invasion of Tskhinvali, was an unjustified over-reaction, a breach of earlier agreements that involved the Russian Federation as well, but available evidence is not of the weight that is needed to justify a conclusion that Georgia was ‘manifestly failing’ to protect its population under the responsibility to prevent.

**The purpose and intention of the intervention: prevention of mass atrocities (2).**
While one purpose of the Russian military intervention was the protection of South Ossetian civilians and Russian peacekeeping personnel under attack, it is highly questionable whether that was the primary motive. The establishment of full Russian control over both South Ossetia and Abkhazia, which was not involved in the conflict, seems to be the main objective, besides the partial or complete destruction of the Georgian military and the diminishing of the country’s NATO ambitions. The escalation fits in a series of events in which the Russian Federation
stepped up its presence within Georgian territory and airspace. This condition clearly fails in the light of the continued Russian offensive towards the capital of Tbilisi after the expulsion of Georgian forces from Tskhinvali.

**Depletion of peaceful measures including a Security Council resolution (3).**
An immediate Security Council resolution condemning Georgia and imposing an immediate cease-fire would have placed Tbilisi under great pressure to comply. Russia did urge the Security Council by a letter of 7 August to call for a cease fire, but disagreement over whether the statement should refer to Georgia’s territorial integrity led to Council inaction. This partly proves the necessity of the Responsibility to Protect doctrine outside the Security Council’s scope, although that could give rise to illegal actions falsely based on humanitarian motives.

**Proportionality in the means and results of the incursion (4).**
Russian forces attacked Georgian territory outside South Ossetia and Abkhazia after Georgia had already signed an OSCE ceasefire agreement initiative. Both sides have used cluster bombs in densely populated areas.¹⁶¹ This condition of the Responsibility-principle clearly fails.

**A reasonable chance that appropriate action will lead to the end of the atrocities (5).**
This prerequisite is often referred to as ‘The balance of consequences’. In the case at hand, condition 1 fails, leaving out ‘mass atrocity crimes’ or genocide. Though hostilities ended with the 12 August cease-fire agreement, the conflict remains unsolvable as for now, with no realistic perspectives for a lasting peace in the near future.

To round up the applicability of the Responsibility to Protect: While Georgia did not respect prevention and proportionality, the main topic of this subchapter was an investigation of Russian intervention motives. They fail to meet the general principles implied in the doctrine. As for the five specific conditions that must be respected, all of them fail the threshold.

vi. Georgia within NATO?

Already shortly after NATO’s intervention in Kosovo, Georgian policymakers, including the president, had deployed not only the two domestic conflicts, but also the energy argument as a justification for NATO to repeat its Kosovo operation in the region to restore the territorial integrity of Georgia.\textsuperscript{162} For NATO this would be, of course, impossible. Such kind of action is out of the question, especially if it could trigger a conflict with Russia.

NATO’s aspirations for the South Caucasus do not reach far since the downfall of Saakashvili’s popularity and domestic political support. In this view, the Alliance should remove Georgia from the Membership Action Plan, or at least freeze membership obtainability as long as the conflict remains. The NATO Handbook, published under the authority of the Secretary-General, is clear on these issues: “States which are involved in ethnic disputes or external territorial disputes, including irredentist claims, or internal jurisdictional disputes, must settle those disputes by peaceful means in accordance with OSCE principles, before they can become members.”\textsuperscript{163} This is a literal reiteration of the wordings of the 1995 study on NATO enlargement.

The complex situation of the energy reserves and transit through the Baku-Tbilisi-Ceyhan (BTC) pipeline is briefly explained in Chapter V, 3, ii. A detailed description of the entire transit situation would lead this paper too far from its original subject, but for the geostrategic importance of Georgia the energy situation is \textit{incontournable}.

On 29 October 2004, when the internal situation in the country was far more stable, Georgia already became the first country to agree an IPAP with NATO. For Georgia, consequently, the ultimate goal was and remains membership through the preceding stage of M.A.P. For Tbilisi this is seen as the ultimate solution for its deep-rooted problems with Russia.

The question remains whether an accession within the Alliance is a guarantee for long-lasting stability or a recipe for disaster. Current evolution tends to the last option: the fact that Georgia was not a NATO member during the 2008 South Ossetian War prevented an open conflict between NATO and the Russian Federation. The consequences of the hypothetical situation of Georgia as an Alliance member at the time would be catastrophic.

\textsuperscript{162} MACFARLANE, N.S., \textit{id.}, p. 36.
As long as the situation in Georgia has not been resolved by a UN-backed, long-term solution, there is no chance for Georgia to become an acceding NATO member. The question of Georgian membership is also delicate concerning the enlargement discussion: one of many other factors thwarting the possibility of Georgia obtaining membership of the Alliance is its location: Of all countries currently considering closer ties with NATO Georgia is the furthest east. The geographical position of Georgia in Eastern Europe is a controversial subject related to Georgia's accession aspirations.\textsuperscript{164} Article 10 of the \textit{North Atlantic Treaty} clearly limits membership extension to \textit{European} states.\textsuperscript{165}

If this should be no objection, the territorial claims made by Georgia, though justified in the eyes of the international community, prevent NATO membership, and the only short-term solution that Tbilisi will agree on is a forced accession of the breakaway provinces. This is not a realistic solution since Russia will not give up its interests in the Caucasus, even in the impossible scenario that Georgia would become a NATO member in the near future. Russia also perceives the chances of Georgia becoming a NATO member as non-existing.\textsuperscript{166} The Kremlin perceives three reasons: First of all, relations between Brussels and Moscow would deteriorate even further. Secondly, the Alliance does not want to become hostage to the ethnic conflicts plaguing Georgia. A third and hypothetical reason is that NATO would not welcome the prospect of sharing a border with Chechnya, although abovementioned reasoning was given before the Kremlin’s decision to officially normalize the situation in the war-ridden Republic.

Even in the impossible scenario that Georgia would give in to pressure from Moscow and give up its claims to Abkhazia and South Ossetia, Georgia can not expect a swift accession into the Alliance. Of course, it would be unjust for Georgia to give in to such kind of pressure. The divided country might once become a NATO member, but the only way Georgia might enter NATO is as a unified state with all of its territorial disputes solved.


\textsuperscript{165} Art. 10 North Atlantic Treaty, NATO Handbook, 2001, 534p, p.527

\textsuperscript{166} YUSIN, M., No-one in NATO is Awaiting Georgia, Izvestia, October 27, 1999, p. 1. exc. from NIEDERMAIER, A.K., id, p 79.
In this point of view, Saakashvili has evolved from an element of reconciliation to an obstacle preventing a long-lasting peace agreement. In January 2005, he had put forth a proposal to provide an autonomous status to South Ossetia within Georgian borders, which was a good intention. The proposition was supported by the United States, but rejected by South Ossetia. A mere three years later an invasion seemed to be the only acceptable solution for Tbilisi. Elections in Georgia are due to 2012, so the evolution of the factor ‘Saakashvili’ will be an important aspect to monitor in the next three years.

vii. Abkhaz and South Ossetian Independence Perspectives.

Despite the aspirations of these two would-be independent states, the numbers are against them: so far Abkhazia and South Ossetia have been recognized by 2 UN members, Kosovo by 58. Consolidation of lingering conflicts is also an important aspect in the discussion why Kosovo has a broader recognition within the international community. The recognitions of Kosovo took place nine years after the conflict; South Ossetia and Abkhazia were recognized by Russia just days after the South Ossetian War. In this view, besides Russia being a permanent member of the UNSC, its recognition has an equivalent value of Albania acknowledging Kosovar independence on 22 October 1991, when the Balkan conflict was starting to fully erupt. The establishment of newly independent states can only be clarified when the dust of conflict settles.

The main difference between the case of Kosovo and the Georgian territories is, besides minor different geographical aspects, is that Kosovo was governed -and partly remains governed- by a UN interim administration for nine years. This is not the case for the two separatist regions within Georgia’s territory.

Nor was there a similar position of the leading regime in Serbia towards the ethnic minorities: Tbilisi has not cracked down on the Abkhaz and Ossetian minorities in the same way as Belgrade did with Kosovar Albanians. The theory of remedial secessio is not applicable to the case of South Ossetia and Abkhazia. Russia has attempted to claim that the conditions of the conflict were of a nature granting both regions the remedial right of secession, even accusing Georgia of
If the situation would have been this severe, Georgia would have lost its privilege to fully exercise its territorial integrity rights, as the theory explains, and Russia could have subsequently exercised a -proportionate- right of humanitarian intervention.

When discussing viability, only Abkhazia would have realistic prospects of being able to sustain and strengthen its economy in the hypothetical situation of independence. The viability of an independent South Ossetia is at the least questionable. Tskhinvali, proclaimed capital of South Ossetia, is hardly a capital at all. Tim Judah, a Balkan and Caucasus expert, describes it as a ‘muddy, village-like ‘capital’ whose main thoroughfare is called “Stalin Street”. South Ossetia’s population is microscopical, and the aspiring independent state lacks many aspects of statehood to be seen as an independent subject of international law, e.g. no defined territory. An independent South Ossetia would be more an object of international law, forced to follow Russia due to its tininess and many factors that make the breakaway province an extension of the Russian Federation.

Abkhazia and South Ossetia are entirely dependent on Russian support: the Russian Federation funds separatist fighters, and supplies the locals with Russian passports. As explained under point ‘v’ of this subchapter, Russian citizenship was extended to thousands of ethnic Abkhaz and South Ossetians living in the conflict zones.

The final goal for South Ossetia is unification with North Ossetia, creating a sort of ‘Grand Ossetia’. Deputy foreign minister Pliev is vague about this concept and whether this would be as a fully independent state or as a part of Russia. These intentions feed the thought that a sustained independence of these two territories would lead to a de facto incorporation into the Russian Federation.

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168 JUDAH, T., id., p 133
169 JIBLADZE, K., id, p. 46-47.
Georgians claim only 22,000 people inhabit South Ossetia. According to Russia the population is a mere 70,000. The UN Needs Assessment Mission in 1998 estimated the population of Abkhazia at between 180,000 and 220,000, whereas Abkhaz sources present a figure near 300,000.\(^{170}\)

If the two regions would gain independence from Georgia, they would become satellite republics in Russia’s sphere of interest, which is intriguing: Russia’s divide and rule policy can gain little with an independent Abkhazia, as this would strengthen instability and separatism in the North Caucasus.\(^{171}\) Using Kosovo’s independence as an international precedent for all unrecognized states seeking self-determination might prove effective for Russia considering its short-term interest in the South Caucasus, but could result into domestic instability in a long-term view. If Moscow sets Kosovo as a key example, there is nothing to stop Dagestan, Ingushetia, Chechnya and various other trouble spots within the Russian Federation from declaring their own independence.

viii. NATO’s Position

NATO’s position on Georgia is, as expected for a non-member country, vague and referring to peaceful solutions in general terms. The North Atlantic Council has been consequent in its view on Georgia’s territorial integrity: on 19 August 2008, Allied foreign ministers called for a peaceful and lasting solution to the conflict while reiterating the country’s independence, sovereignty, and territorial integrity.\(^{172}\) NATO’s position seems to be only backing membership of a unified Georgia, including the two breakaway regions. In my own opinion, the realistic and expectable outcome in the South Caucasus might prove to be very different.

Georgia’s success in achieving NATO’s Intensified Dialogue (ID) stage in September 2006 represented the highlight of President Mikhail Saakashvili’s move towards the Alliance. However, days following that announcement Moscow imposed economic sanctions including a transportation blockade, suspension of diplomatic relations, and the aggressive deportation of

\(^{171}\) COPPIETERS, B., id, in fine
ethnic Georgians from Russia. The Intensified Dialogue stage is not yet the MAP stage, which would secure Georgia’s eventual ascension to NATO as a full member.

In September 2008, NATO and Georgia established the NATO-Georgia Commission (NGC) to oversee NATO assistance to Georgia following the recent conflict with Russia and to oversee the accession process begun in Bucharest. Amongst NATO members, no consensus on a MAP with Georgia exists nor is there a reasonable perspective on a political agreement in the near future.

ix. UN Security Council Position

In the cases of Abkhazia and South Ossetia independence was the main goal as soon as the end of the Soviet Union approached. Both of the breakaway provinces declared independence in the beginning of the nineties. The Security Council never allowed secession for Abkhazia or South Ossetia. However, it has never granted Georgia the right to reclaim both regions by force.

The UN Security Council produces various Resolutions prior to and in the first stages of a UN observation mission in Georgia, UNOMIG (United Nations Observer Mission in Georgia). UNOMIG was officially established on 24 August 1993 in SC resolution 858 to verify compliance with the ceasefire agreement between the Government of Georgia and the Abkhaz authorities in Georgia. UNOMIG's mandate was expanded following the signing by the parties of the 1994 Agreement on a Ceasefire and Separation of Forces.

In general terms, the Security Council, in every resolution on the case of Abkhazia and South Ossetia, reiterated the need to respect the territorial integrity of Georgia. Every resolution naturally called upon the parties to the conflict to abstain from the use of force. In every way, concerning the Abkhaz conflict, the Security Council only takes into account a political solution without giving in towards Georgia’s territorial integrity. The core position of the UN is consequently best described in paragraph 3 of resolution 1065 of July 12, 1996:

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173 JIBLADZE, K., id, p. 47.
“3. Reaffirms its commitment to the sovereignty and territorial integrity of Georgia, within its internationally recognized borders, and to the necessity of defining the status of Abkhazia in strict accordance with these principles, and underlines the unacceptability of any action by the Abkhaz leadership in contravention of these principles;”

It is notable that these wordings are far more reiterated in more resolutions and with more consistency then equivalent stressing of Serbia’s territorial entity in the main resolutions on Kosovo. Action by the Abkhaz leadership was undertaken, when elections were held in 1999. The Council promptly deemed these elections ‘self-styled’ and ‘illegal’.176

4. Evaluation of Different Secession Attempts

i. Statehood criteria

The examination of these conditions is in essence a scrutiny of statehood criteria.177 The size of a territory is not of any relevance: within international law, the size of a state is an unimportant feature. Since 1990, smaller long recognized states such as Andorra, Liechtenstein, Monaco, Nauru, San Marino and Tuvalu have joined the United Nations.178 All a state requires concerning size, as one of the five criteria of statehood, is a defined territory.

More problematic for Abkhazia and South Ossetia is the requirement of independence in external relations. A government must be sovereign and independent; no subjection to the authority of another state is allowable within its own territory. This criterium is not fulfilled. Economically, the situation in both regions is deplorable. Tourism, one of the largest economical actors in Abkhazia before the conflict, has virtually ceased to exist. South Ossetia relies mostly on agriculture.

177 explained in Chapter III, 2, i, b
178 AUST, A, id., p. 17.
ii. Differences between the recognition of Kosovo, South Ossetia and Abkhazia from a Legal Point of View

a. A Breach Arising Under a Peremptory Norm of International Law

As introduced in chapter III, recognition of a state could be seen as prohibited if that state originates from a situation that is a serious breach arising under a peremptory norm of general international law.\(^\text{179}\)

This produces the question whether the recognition of Kosovo is the recognition of the violation of the prohibition of the use of force. In other words: are states, by recognizing Kosovo, allowing grave violations of article 2 § 4 of the UN Charter? Upon the launch of operation ‘Allied Force’, Serbia ceased to have control over its province. If this reasoning is stretched to its maximum, Kosovo based its independence upon the possibility granted by an intervention \textit{against} article 2 § 4. Seen on a timeline, Kosovo was the scene of military intervention, followed by the drafting of UNSC resolution and finally, recognition by multiple states. It is already important to stress that for Georgia’s breakaway provinces, events followed in a different order: UNSC Resolutions first, followed by military action and the recognition of independence by a mere 2 states. This will prove to be important for reasons of causality, which are discussed below.

The assumption that the recognition of Kosovo is the recognition of a violation of international law goes too far.\(^\text{180}\) A distinction needs to be made: Resolutions that reiterate territorial integrity do not by themselves become peremptory norms of international law. Therefore, states have not recognized as lawful situations created against a peremptory norm of international law if, by example, they recognized Kosovo against the express wordings of earlier Resolutions, whether drafted by the U.N. General Assembly or the Security Council.

The establishment of an international administration for Kosovo can also not be seen as the recognition of the violation of the prohibition of the use of force. State practice shows that that the causality between the initial illegal act and the recognition of independence is, in similar

\(^{179}\) See Chapter III, ii, b.
\(^{180}\) The legality of NATO’s 1999 Kosovo intervention is discussed in this Chapter, under point 2, iii.
situations, lifted by a determinating element: a Security Council decision. In this view the lapse of time between the initial military action and the declaration and recognitions of independence remains irrelevant.

The causality between the initial supposedly illegal act and the recognition of the international administration is lifted by a Security Council Resolution, which in itself poses a legal title to act: states do not longer recognize the consequences of the alleged violation of a peremptory norm of international law. Instead, they execute the decisions made by the Security Council.

Concluding on Kosovo it is simply unjust to state that states could have violated the rule of the prohibition of the use of force by recognizing Kosovo as an independent state.

This is not the case for Abkhazia and South Ossetia. No Security Council decision could have lifted causality since the few recognitions of these countries’ independence took place right after the military action. Again, the lapse of time between the end of hostilities and the recognition, whether as short as a few days or as long as nine years, in the case of Kosovo, remains irrelevant.

To conclude this argument it is important to stress that Kosovo is well on its way to become a fully independent state, with nearly 60 recognitions, while Abkhazia and South Ossetia have a mere two. If the U.N. General Assembly, in its resolution of 12 December 2001 on the 53rd session of the I.L.C., proclaimed the abovementioned prohibition, only Russia and Nicaragua, the two states that recognized South Ossetia and Abkhazia, could have violated such an obligation.

In this hypothetical view, Russia violated article 2§4 of the UN Charter, prohibiting the use of force by upholding a situation. Recognitions of this situation, created by a serious breach arising under a peremptory norm of general international law, are therefore against article 40 of the International Law Commission’s draft. This renders the two recognitions of the two aspiring independent South Caucasian provinces illegal.

181 CORTEN, O, id, p. 748.
b. Territorial Integrity as a Prohibiting Element in the Establishment of Newly Independent States

The principle of territorial integrity is connected with the principle of non-intervention. A state holds all its sovereignty and state power and no other state may intervene in these matters.

The International Court of Justice, in its judgment on the Nicaragua Case, states the following on the principle of non-intervention:

“In view of the generally accepted formulations, the principle of non-intervention forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty; to decide freely (...) Intervention is wrongful when it uses methods of coercion in regard to such choices...”182

This is the principle of international law. Of course, exception can be found, and in the case of NATO’s Operation Allied Force, the exception is humanitarian intervention. In the case of a secession attempt, the state may resist the infringement of its sovereignty, and it may do so resorting to the use of force. Third states recognizing the secessionist entity are interfering in national matters. States are never bound to accept this sort of interference. In this way, Georgia does not have to accept as legal the recognitions by Russia and Nicaragua of South Ossetia and Abkhazia.

The same does not apply to Serbia’s opposition against Kosovo’s independence. Again, the time span between the de facto secession and the declaration of independence is irrelevant. Abkhazia and South Ossetia are not residing under Tbilisi’s control since the early nineties, while in Kosovo Serbian control was only lifted after NATO’s 1999 intervention. On 25 June 1991, Slovenia and Croatia declared their independence of the Yugoslav Federation. These assertions of

statehood were not recognized by the Yugoslav Federal authorities, nor were they formally accepted by them afterwards until the final Yugoslav *dismembratio*.

The main difference between Georgia’s separatist provinces and Kosovo lies, as stated previously, in the international administration that governed Kosovo for almost 10 years. The UN approved and authorized installation of this international administration placed Kosovo outside Serbia’s state affairs and sovereignty, uplifting the apparent objections of territorial integrity, although the internationalization never implied that the province would gain independence. The Security Council always stressed the need for a solution acceptable to all parties. The influence of the international interim governing of Kosovo on the integrity claims of Serbia is a question still to be extensively examined within international law.

iii. Precedents and Peaceful Solutions

Suggesting a peaceful solution for the South Caucasus equalizes forcing an open door, as would the suggestion of political solutions within a U.N. framework. It is relevant to take a look at a few situations where a similar conflict was avoided. Peaceful solutions over similar regions can be found, as the case of Ajaria proves: this territory was successfully reintegrated within Georgia.

This raises questions on how to deal with the separatist regions themselves when engaging into peace talks. There is one relatively decent example in recent history that also included Russian interests: Transnistria. The internationally unrecognized Moldavian Transnistrian Republic (MTR) is equally treated in the negotiations as would it be a state. It is questionable whether this is a good approach of this matter, since an established statehood of the MTR might not be a good solution to the conflict. The Tiraspol authorities of the MTR are internationally not recognized, making it an unfit example. Russia is an integral part of the Transnistria problem at hand; the European Court of Human Rights reiterated this in its 2004 judgment on the case *Ilaşcu and Others v. Russia and Moldova*:

“The Russian army was still stationed in Moldovan territory in breach of the undertakings to withdraw them completely given by Russia at the OSCE summits in 1999”

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184 COOPS, C.M., id. p 6.
and 2001. Both before and after 5 May 1998, when the Convention came into force with regard to Russia, in the security zone controlled by the Russian peacekeeping forces the “MRT” regime continued to deploy its troops illegally and to manufacture and sell weapons in breach of the agreement of 21 July 1992. All of the above proved that the “MRT” remained under the effective authority, or at the very least under the decisive influence, of Russia, and in any event that it survived by virtue of the military, economic, financial and political support that Russia gave it.”

The Transnistrian problem is comparable to Abkhazia and South Ossetia. Security is enhanced on this Moldovan strip of land since the agreement directing the retreat of all Russian forces. However, Moscow has stalled the execution of the agreement.

A better political solution that might serve as a template for Georgia’s breakaway provinces can also be found Moldova. The ‘Kozak Memorandum’ of 16 November 2003, also known as the “Memorandum on the Basic Principles of the State Structures of the Unified State” served as a good basis for a solution for the internal problems that involved Russian military presence. The Kozak Memorandum arguments the creation of a federated Moldova and reiterates Moldova’s acceptance of the continued Russian military presence on Moldovan territory for a period of 20 years. This last part of a possible solution seems hard to apply in a possible peace agreement between Georgia, South Ossetia and Russia. Federalism, however, might prove to be the only reasonable solution in which the dangerous evolution towards a rise of mono-ethnic states can be stopped.

Unfortunately, the possible peaceful settlement of this territorial conflict that is in many ways like the Georgian problem has been cancelled. Opposition within Moldova and within the international community had the non-signing of the Memorandum as a result. Currently, a new alternative strategy that might be relevant for the cases in Georgia is based upon three D’s: Demilitarization, Decriminalization and Democratization. The last two D’s are without doubt the most difficult ones. And making the peace process even more complex are the number of parties involved in the talks. Currently involved are: Moldova, the Moldovan Transnistrian Republic, Russia, Ukraine, the OSCE, the EU and the United States.

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187 BREZIANU, A. and SPÂNU, V., id., p. 359.
Yet again, this proves that in order to reach a solution to a conflict, all relevant parties, including of course neighboring countries, should be involved. If not, the possibility of rejection by one of the parties not involved in the talks might spark another violent chapter in these conflicts that are already enduring for decades.

Transnistria has been a source of unrest and territorial disputes since the Second World War, and proclaimed independence in 1990. As for a swift and peaceful example for the settlement of similar conflicts in the South Caucasus, this might not prove a good example, but it is the only in its kind considering the direct involvement of the Russian Federation. More important, the Transnistrian dispute has not triggered large-scale conflict such as the South Ossetian one.

A better example of federalism proving to be an adequate answer in order to contain conflict can also be found in Moldova. Gagauzia, formally named Unitatea Teritorială Gagăuzia or UTAG, is an autonomous region situated within the South-Eastern European country. Localities outside Gagauzia, where ethnic Gagauz make up over 50 percent of the population, have the option of becoming part of the region through a referendum. The same procedure can be applied to leave the territorial entity. This very local approach of the matter might prove useful in the settlement of disputed conflicts. Important to the resolve of the Gagauzian conflict, which held in itself the possibility of violence, was the willingness by the Gagauz ethnicity to drop its secessionist claims. This did not only relieve tensions, but also provided a good outcome to the undoubtable huge economical difficulties an independent Gagauzia would face.

Gagauzians can now elect their own executive and legislative officials, including the Governor, called the bashkan. Brezianu and Spănu, esteemed authors on Moldavian internal issues, make note of the imperfections of this federalization solutions, especially concerning criticism from the Council of Europe. But the key element making Gagauzia a good example of the way separatism should be dealt with is non-violence. Flaring hostilities tend to make separatist conflicts increasingly more complex, a problem well avoided in the case of the Gagauz.

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188 BREZIANU, A. and SPĂNU, V., id., p. 160.
VII. Conclusion

The Kosovo war has proven that NATO is willing to intervene in a secessionist crisis, while clearly ignoring repercussions within international law and the relation with the Russian Federation. Even more disturbing, NATO operations might support the idea that armed force is the swiftest way of reaching a breakthrough in a similar conflict over separation.

One of the essential lessons that have to be drawn from the Kosovo conflict is that NATO cannot intervene without first reflecting on the political consequences that arise from the presence of thousands of its peacekeeping troops. Another important lesson learnt is that if the final resolve of conflicts is based upon ad hoc criteria, independence always could have a severely destabilizing effect, and the idea of Kosovo being a case sui generis is naïve and even dangerous. In my opinion, the precedential value of Kosovo is undeniable. But is also my opinion that NATO had the obligation to intervene in order to stop ethnic cleansing.

For the future, the Alliance faces the consequences of a dangerous precedent. Separatist regions might attempt to trigger a reaction from their central government, possibly by provoking a violent reaction. If the retaliation of a government is severe and long enough in duration, the international community might be lured into supporting claims for independence. This might give rise to false claims of self-determination and to the idea that, as an ethnicity, one can only enjoy full autonomy within its own state, outside any federation. The final dreaded outcome could be an exponential growth of mono-ethnic states.

Different forms of federalism have proven, in a few cases, to be a genuine solution in similar conflicts. Defederalization of states bearing such a conflict, and providing monitoring or observer institutions through the U.N. might lead to an alternative path, away from the slippery slope where NATO put its first steps on in 1999.

But sometimes the water between a central government and a breakaway region is too deep, and such was the case for Kosovo. There was only one solution for what appears to be the last of the great Balkan conflicts: independence. And although the young republic still faces many obstacles, a resolve grows day by day that full autonomy was the only way out of the deadlocked situation.
within Serbia. Any other solution would be half a solution, leaving the door open for new frustrations to crop up in the Balkans, which would, one day, result in yet another bloody confrontation. Essential in the final outcome for Kosovo is the respect for minorities, human rights, and above all, democracy. Here lies a shift in responsibility: NATO did its part in military efforts, the European Union has showed its resolve, trough the EULEX mission, to make Kosovo into a state that might, one day, become part of the EU.

The Russia-Georgia war provides the world with pessimism on how Kosovo’s independence is welcomed: it highlights the dangers and risks of states, whether individually or in a coalition, interpreting global norms unilaterally and launching military action without UN Security Council authorization. The case of NATO proves this can be done in a responsible manner, whereas the Russian intervention in the Caucasus raises concern on how ‘humanitarian intervention’ is misinterpreted or even abused.

NATO has come a long way since the Kosovo crisis. Now, ten years after the events, political and strategical consequences still have their effects on daily life in the Balkans. During the crisis, the Alliance’s intent seemingly was to keep Russian influence low, Serbian frustrations high and Kosovo’s borders closed. Nine years later, the possible precedent that Kosovo creates could have devastating effects on separatist conflicts, no more within Europe, but in rest of the world. Bearing this in mind, NATO’s intervention strengthened European security in the short term of a decade, but could destabilize global security for half a century to come. A world that is rid of the East versus West dichotomy now faces numerous irredentist claims, and NATO definitely had an important role in this evolution.
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8. MISCELLANEOUS

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