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SELF-DETERMINATION IN INTERNATIONAL LAW. THE CASES OF KOSOVO AND SUDAN: DISPOSABILITY OF ARTSAKH (NAGORNO KARABAGH WITHIN THE FRAMEWORK OF CURRENT TRENDS

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ABSTRACT

This Master`s Essay examines the application of the principle of self-determination in the case of Artsakh and analyses this conflict within international law. The research analyses the present trends in international law, and focuses on the compliance of self-determination of the people of Artsakh with the international law. The source of analysis are different international law documents, case studies of Artsakh, Kosovo and Southern Sudan. The paper also compares the cases of Kosovo, Southern Sudan and Artsakh within the framework of international law namely the right for self determination.

INTRODUCTION

This paper is going to analyze the application of the principle of self-determination in the case of Artsakh and analyses this conflict within international law. It also will compare the cases of Artsakh, Kosovo and Southern Sudan to reveal whether the case of Artsakh dispose within the framework of current trends in international politics. To reach that aim the paper will analyze the international law, do comparative analysis of the cases of Kosovo and Southern Sudan and Artsakh.

This paper aims at analyzing current trends in international politics within the framework of international law. Its aim is to reveal whether self-determination can be restricted within the principle of territorial integrity and what current trends show within the cases of Kosovo and Southern Sudan. The applicability of these cases for the case of Artsakh will be considered as well.

Self-determination is a concept of group expression of people`s will and consensual government. Secession allows changing political and economic institutions which brings changes in citizen allegiance and resource distribution (Copp, 1988). In some cases it can challenge territorial integrity of recognized states and distribution of authority and in that context the right of self-determination may conflict with other fundamental norms of international law.

In 1991 Artsakh declared its independence. Since then international developments have created an interesting framework for evaluation of the features and content of the right of self-determination in modern politics. The people of Artsakh claimed their right of self-determination, while Azerbaijan maintains that the right of self-determination contradicts with the principles of territorial integrity and inviolability of frontiers. This usual position of the title nations of the Empire has created problems for recognition of the right of self-determination of Nagorno Karabagh Republic.

Two major events have occured in international politics which are important for a study of contemporary interpretation of the law of self-determination. First in 2008 Kosovo unilaterally declared its independence from Serbia and later International Court of Justice (ICJ) was asked for an Advisory Opinion on compliance of such a unilateral declaration of independence with the international law. ICJ noted that there is no contradiction between the right of self-determination and the principle of territorial integrity, as they both are applicable in different situations (International Court of Justice, 2010). In 2011 a referendum was held in South Sudan on secession. The metropolitan, Northern Sudan, agreed to accept the results of referendum.

The principle of self determination emerged as a fundamental principle of international law when during the WW II the powerful countries were drafting the UN Charter, which later provided the basis for decolonization of Africa and Asia. The right for self-determination has never existed in vacuum and it has had some interconnection with other principles of international law. The self-determination may be limited by the principles such as noninterference, territorial integrity, and political independence. Not only self-determination is limited but also other principles are limited. Sovereignty is limited by legitimate international interest in human rights, the environment and other issues which are considered the sole jurisdiction of the state.

At the time when self determination was documented it mainly functioned to facilitate the breakup of colonial empires and to legalize the norm of popular consent in the disposition of territory. This was reflected in Woodrow Wilson`s and others` approach on “internal” self-determination. But nowadays self-determination is justified by protecting individual and group identity and facilitating effective participation in government. This is reflected largely by human rights norms which have developed since 1945.

Based on recent developments secessionist movements such as in Southern Sudan, in Artsakh and in Kosovo, raise important philosophical issues about the participation of all in economic and political life of the state. These secessionist movements had challenged the right of the state over territory and the authority of the metropolitan state, which governs its population at the same time raising questions about its legitimacy. Those movements also challenge the moral status of nationalism and raise questions about democracy and issues about the priority of liberal justice. As in a democratic plebiscite the desire of a group of people to secede is justified as their will takes priority.

RESEARCH QUESTIONS

1. Modern concept of self-determination in international law authorizes secession as one of the possible forms of implementation of that fundamental right.

RQ 1. What level of human rights violation justifies self-determination through secession?

RQ 2. Did Soviet law allow secession and does it matter in interpretation of the right of people of Nagorno Karabagh for self-determination through secession?

RQ 3. Was the 1988 Petition for Reunification with Armenia a sufficient foundation for self-determination based on the human rights violations against the people of Artsakh at that time?

RQ 4. Is the 1991 Referendum a valid basis for self-determination?

RQ 5. Does the armed repression by the Azeri authorities in reaction to Artsakh's claim for self-determination constitute a grave breach of human rights, sufficient to warrant secession of Nagorno Karabah?

RQ 6. What are similarities and differences between the cases of Artsakh and Kosovo?

RQ 7. What are similarities and differences between the cases of Artsakh and South Sudan?

METHODOLOGY

In order to conduct a study and analyze international law of self-determination, to be able to present the findings and answers to the research questions primary sources of data, including relevant documents, will be reviewed. A study of legal acts and documents on Artsakh will be conducted in order to reveal to what extent the formers provide legal framework for self-determination. Then the cases of Kosovo and South Sudan will be examined from legal perspective. And within this framework the case of Artsakh will be examined through comparative analysis of the three cases.

THE CONCEPT OF SELF-DETERMINATION AND INTERNATIONAL LAW

If secession once was understood under the meaning of state`s right, during the time it has changed its meaning and nowadays it is associated with nations or people, and it is often defended as a right of self-determination (Meadwell, 1999). During the enlightenment period many scholars began to talk about self-determination within the frame of natural law. But the first application of it was during post WW I era, when Woodrow Wilson came up with his 14 points one of which was about self-determination (Snell, 1954). Even though the principle of self determination emerged as a fundamental principle of international law at the time the UN Charter was drafted and provided the basis for decolonization of Africa and Asia. Self-determination does not exist in vacuum and it has interconnection with other principles of international law, and sometimes it may be limited by recognized international principles such as noninterference, territorial integrity, and political independence (The Yale Journal.1980). Neither self-determination nor sovereignty is an absolute right. They are limited by other rights and international obligations. Sovereignty is also limited by recognized international principles such as legitimate international interest in human rights, the environment, and other issues formerly considered the sole jurisdiction of the state (Hannum, 1998).

The right for self-determination has functioned primarily to facilitate the breakup of colonial empires and to validate the norm of popular consent in the disposition of territory (The Yale Journal.1980).

Contemporary self-determination is justified by protecting individual and group identity and facilitating effective participation in government. The former cause is reflected largely by the human rights norms which have developed since 1945. The latter one mainly referred to by Woodrow Wilson and others as “internal” self-determination, which implies to

the appropriate level of democratic governance with participation of all in the economic and political life of the country (Hannum, 1998).

So the demands of secessionist movements such as in Southern Sudan, in Artsakh (Nagorno Karabagh) and in Kosovo, raise important philosophical issues about the participation of all in economic and political life of the state. These issues challenge the right of the state over territory and the authority of the state with which it governs its population at the same time raising the question about its legitimacy. Secessionist demands also challenge the moral status of nationalism and the power of such attachments which justify political arrangements raising questions about democracy and liberalism, plus issues about the priority of liberal justice. As in a democratic plebiscite a group of people may show their support for secession which takes priority over their desire for justice (Copp, 1988).

Hurst Hunnam argued that the principle of secession was applicable for decolonization times, but not after (Hannum, 1998). But after the decolonization era the right of self-determination is certain to be applied to variety of new situations. (The Yale Journal.1980).

Secession is one of the forms of self-determination. The claim for secession from an existing state mainly challenges the long-established principle of inviolability of frontiers and shows the failure of the state institutions to provide procedures for the orderly emergence of new communities. But as the individual`s right to choose the community, where she/he regards optimal for her/his development, is a fundamental social value, then the demands of people for recognition, freedom of association and equal participation in the international order must be directly confronted (The Yale Journal.1980).

The right of secession can be exercised in the cases when the implementation of former right does not abridge the rights of other groups in the society to self-determination. If

this is the case then the right of noninterference loses its priority. So the right of secession allows for changing political and economic institutions which brings changes in citizens' allegiance and resource distribution. These changes grant primary importance to the value of self-definition (The Yale Journal.1980).

From a liberal standpoint self-determination has the following reasoning. Liberal political theory assumes that individuals have moral rights that state must not violate. Individual liberty as a pivotal tenet assumes that state must not interfere with a citizen`s sphere of autonomy. This sphere of autonomy authorizes citizens to claim for political self-determination which necessarily involves claims for territory (Wellman, 1995). This theory also assumes that the consent account of political legitimacy of a state is justified only if the citizens have consented to it. This model has ability to solve the problem of political legitimacy because it reconciles the liberal conceptions of the person and the state (Wellman, 1995).

Allen Buchanan writes, "Secession ... is an effort to remove oneself from the scope of the state's authority, not by moving beyond existing boundaries of that authority but by redrawing the boundaries so that one is not included within them. To claim the right to secede is to challenge the state's own conceptions of what its boundaries are. To emphasize: Secession necessarily involves a claim to territory" (Buchanan, 2007)

The group of citizens who have the right to secede from a state have the following moral powers. First, they can claim against the state, as well as against other states not to interfere in the formation of a new state in the territory in question. Second, they can claim from the state, as well as from other states to deal with the new formed state in the way they are obliged to deal with and treat any state (Copp, 1998).

A group of people can have a general right to secede just in case if it is a society that is both "territorial" and "political." They have the power to secede from the state by means of

a plebiscite which they have the liberty to conduct. The result of plebiscite may be the formation of a new state and the new entity can claim that the resulting state be treated as having sovereignty over its territory (Copp, 1998).

If a new state is created through secession it should guarantee the respect of human rights of all its citizens and it should cooperate in the project of securing other just terms of secession which include the protection of minority and human rights, negotiated determination of new boundaries, provisions for defense and security (Buchanan, 1997).

All theories considering the right to secede are understood within two frames: as a remedial right only or as a primary right to secede. Remedial Right Only Theory claims that a group of citizens has right to secede if and only if it has suffered certain injustices, for which secession is the last resort for remedy. Different Remedial Right Only Theories assume that secession is possible in case different injustices occur (Buchanan, 1997).

According to Remedial Right Only Theories, the right to secede is similar to the right of revolution. These are typified by John Locke`s theory according to which people have the right to overthrow the government when their fundamental rights are violated and there are no other means to reclaim those rights. The main difference between the right to secede and the right to revolution is that former right accrues to a portion of the citizenry, concentrated in a part of the territory of the state. Plus the purpose of the right to secede is not to overthrow the government, but only to change the economic and political institutions over that portion of the territory (Buchanan, 1997).

The remedial right to secede is similar to Locke`s theory of revolution and theories like that. Locke mainly focuses on the cases when the government perpetrates injustices against “the people”, not a particular group within the state, and it seems that the issue of revolution arises usually when large numbers of people suffer abuses throughout the state.

And the cause of legitimate revolution is simple: when there are long-term sufferings of abuses and serious injustices the people will rise (Buchanan, 1997).

But there may be cases when the grosser injustices are perpetrated, not against the citizenry at large, but against a particular group, who live in a region of the state (Buchanan, 1997). The cases may be Armenians in Artsakh, people in Southern Sudan, Albanians in Kosovo etc. In those cases secession is justified and may be as a response to selective tyranny, because revolution is not a practical prospect (Buchanan, 1997).

Injustices and violence on the particular group crystallizes lines between opposing groups, it aids in defining the geographic and psychological bounds of a separatist claim. Injustices and violence by state shows that government`s fear of self-determination demands and its refusal to permit free choice when exercised by the secessionists it may offer further evidence of the existence of a group will. Still, injustices and violence play an important role in the final evaluation of secessionist claims. At the same time any restructuring of the state should promote the long-run achievements of freedom of association and respect among group (The Yale Journal.1980).

So the secession can be justified if the physical survival of its members is threatened by actions of the state or it suffers violations of other basic human rights or its previously sovereign territory was unjustly taken by the state (Buchanan, 1997).

If the Remedial Right Only Theories suggest that secession can take place only if there is injustices towards the group of the people then Primary Right Theories assumes that a group of citizens can have a (general) right to secede also in cases even if there was no injustices and violence, which means they can secede also from a perfectly just state (Buchanan, 1997).

Harry Beran writes, "Liberal democratic theory is committed to the permissibility of secession quite independently of its desirability in order to increase the possibility of consent-based political authority. The claim is this: if persons have a right to personal and political self-determination, then secession must be permitted if it is effectively desired by a territorially concentrated group and if it is morally and practically possible." Then Beran argues that "any territorially concentrated group within a state should be permitted to secede if it wants to and it is morally and practically possible." He also lists a number of circumstances that would preclude secession. These include: if a group is not "sufficient large to assume the basic responsibilities of an independent state", then "occupies an arena not on the borders of the existing state so that secession would create an enclave", plus "occupies an area which is culturally, economically, or militarily essential to the existing state" (Beran, 1987).

International law also has gradually evolved more on person`s right and now it focuses on the individual. The Charter of United Nation, Helsinki Accords, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) are all recent proliferation of human rights documents and the emergence of self-determination as a peremptory norm. According to new environment created by these laws state demands for self-maintenance and order cannot absolutely bar valid secessionist movements that would grant new groups the right to self-determination and guarantee individuals the freedom to join with others to pursue values they deem desirable (The Yale Journal.1980).

One of the four purposes of the Charter of United Nations was self-determination. Article 1(2), states that "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." Then Article 55 assumes self-determination as main

principle for creating well-being and developing friendly relations among nations (Charter of United Nations 1945).

The Declaration on the Granting of Independence to Colonial Countries and Peoples states that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (The Declaration on the Granting of Independence to Colonial Countries and Peoples 1986). Then in the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly calls upon the Administering Powers "to take all necessary steps to enable the dependent peoples of the Territories concerned to exercise fully and without further delay their inalienable right to self-determination and independence." (Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. 1986).

One of the international instruments containing a provision on self-determination that was not meant to apply only to colonial situation is the Helsinki Final Act of 1975. Even though, the Helsinki Final Act is not a treaty according to international law but it is "politically binding agreement." The Act contains ten "Principles Guiding Relations between Participating States" and one of them is the principle of equal rights and self-determination of peoples (Griffioen, 2009).

The signatories of the Final Act pledged to respect the equal rights of peoples and their right to self-determination. At the same time they accepted to act with the purposes and principles of the Charter of the United Nations and with relevant norms of international law. Principle VIII, paragraph 2 of the Final Act states about self-determination as following "by virtue of the principle of equal rights and self- determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and

external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development" (Final Act. 1975).

The participating States recalled the importance of "respect for and effective exercise of equal rights and self- determination of peoples for the development of friendly relations among themselves as among all States" (Helsinki, 1975).

The appearance of the right of self-determination in the Final Act was meant to apply to the peoples of Europe and at the time they were not subject to colonial domination. This definitely rebuts the assertion that self-determination only applies to colonial situations. Furthermore, if in the context of United Nation`s Charter the right of self-determination was not mentioned explicitly, then in the Final Act self-determination was proclaimed quite "progressively". Paragraph 2 makes it clear that the right of self-determination was not confined to the colonial context. The phrase "*all* people *always* have the right" intended to give universal scope to the right of self-determination. Then the phrase "when and as they wish" confirms the conclusion that the right of self-determination is a "continuing right". It is important to mention that Principle VIII of the Final Act "explicitly" refers to the internal dimension of self-determination (Griffioen, 2009). Cassese writes about its internal dimension in the following way "[t]he debates preceding the adoption of the Helsinki Declaration illustrate that the phrase 'in full freedom' reflects the Western view that the right of self-determination cannot be implemented if basic human rights and fundamental freedoms, in particular the freedom of expression and association, are not ensured to all members of the people" (Buergenthal, 1977)

The Helsinki Final Act "breaks new ground in international relations" by making connection between self-determination, democracy and human rights. The Declaration shows

that self-determination applies outside the colonial context, at the same time the emphasis has shifted from external to its internal dimension (Griffioen, 2009).

Article 1 of ICCPR and ICESCR states that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The first look at the text of common Article 1 reveals that the right of self-determination is granted to "all peoples". The meaning of this phrase reveals that the right of self-determination is not restricted to colonial situation but may indeed have a "universal and continuous character" (Griffioen, 2009).

Thus the ordinary meaning of Article 1 support the conclusion that self-determination is not confined to colonial context, but propounded as a gateway to the development of principle that self-determination has also the concept of internal application, as it connected self-determination with civil and political rights (Griffioen, 2009).

The Common Article 1 has other important characteristics which are; it envisages the free determination of "political status" and "economic, social and cultural development" of all peoples that should also be able to "freely dispose of their natural wealth..." (Cop and Eymirlioglu, 2005). There were a lot of arguments that the "flexibility" and "adaptability" of self-determination has helped itself to obtain a new "free-standing meaning" outside the colonial context (Griffioen, 2009).

The development of self-determination in international law assumes that people have the right of self-determination. If the beginning of 20th century self-determination was a political principle then at the end of it self-determination had become a legal principle. The inclusion of this principle in the Charter of United Nation triggered this transformation. Then self-determination was declared as part of Human Rights in the ICCPR and ICESCR. These two Covenants granted self-determination to "all peoples", transforming it into a universal

right. Then Helsinki Final Act made self-determination as “continuing right”, which means that it didn’t apply only to colonial period.

LEGAL ASPECTS OF ARTSAKH'S SECESSION

Nagorno Karabagh Republic was formalized in 1991 on the basis of the Nagorno Karabagh Autonomous Region. Armenians have traditionally called that region Artsakh, a term that refers to one of the 15 provinces of the ancient Kingdom of Armenia. “Karabagh” was mainly associated with the legacy of Nagorno Karabagh`s Soviet-era autonomy, but it is being gradually replaced with the region`s relevant historical name -“Artsakh”.

Artsakh had been an ethnic Armenian autonomy forcibly annexed to Azerbaijan on 5 July, 1921 by the political decision of the Plenary Session of the Caucasian Bureau of the Central Committee of the Russian Communist Party-Bolsheviks under direct command of Joseph Stalin. The first paragraph of that decision states that "proceedings from the necessity of establishing peace between Muslims and Armenians... leave Nagorno-Karabagh in the Azerbaijan SSR, granting it wide regional autonomy with an administrative centre Shushi, included in the autonomous region". But the decision was not approved by the majority of the members of the Plenary Session. Thus the decision of July 5, 1921, can be considered null and void because neither it was discussed nor it was supported by vote of the members (Avakian, 2005).

Long before the decision of Stalin, on November 20, 1920 the REVCOM of Azerbaijan declared the recognition of Artsakh (Nagorno Karabagh), Zangezour and Nakhichevan as an integral part of the Armenian SSR. In the declaration it mentioned that "the Workers-Peasants Government of Azerbaijan, having received the message on the declaration of the Soviet Socialist Republic in Armenia on behalf of the rebelling peasantry, welcomes the victory of the brotherly people. From this day on, the former borders between Armenia and Azerbaijan are announced abrogated. Nagorno-Karabagh, Zangezour and Nakhichevan are recognized as an integral part of the Armenian Socialist Republic” (Avakian, 2005).

After 67 years of above mentioned illegal decision, in February 1988, in an unprecedented example of direct democracy, a session of the twentieth convocation of delegates of Artsakh Autonomous Region, which is a regional parliament, officially appealed to Yerevan and Baku to consider the possibility of reunifying the region with Armenian Soviet Socialist Republic. At the same time delegates of the session applied to the Supreme Soviet of the USSR for confirmation of this resolution (Barsegov, 2008). This grassroots initiative brought changes of normal top-down system of decision making in Soviet Union.

Long before this decision, on 23 November, 1977, the Presidium of the Council of Ministers of USSR reviewing the appeal of workers demanding to reunify Artsakh to Armenian SSR decided that "Artsakh was tied to Azerbaijan artificially." Then the decision states that "herewith the historical past of the region, its ethnic composition, the will of the people and economic interests had not been taken into account. Decades have passed and the issue of Artsakh has continued to lean, to cause anxiety and moments of ill-will between two neighboring nations… It is necessary to reunify Artsakh to Armenian SSR. Then everything will fall into its legal frame" (Barsegov, 2008).

To hold up the appeal of the session of the twentieth convocation of delegates of Artsakh Autonomous Region, the Regional Committee of Communist Party of Artsakh adopted a ruling to support the demand of the population of Artsakh. The ruling requested Politburo "to consider and favorably decide the reunification of Artsakh Autonomous Region with Armenian SSR, thereby correcting the historical mistake made in the early of 20`s in determining the territorial jurisdiction of Artsakh (Barsegov, 2008).

On June 13, 1988, the Supreme Soviet of the Azerbaijan SSR denied the application of the Session of the twentieth convocation of Artsakh. Thereafter, on June 15, 1988, the Supreme Soviet of Armenian SSR approved the request of Artsakh. Reviewing the appeal

and taking into consideration Article 70 of the Constitution of USSR about the right of free self-determination of nations, the Supreme Soviet approved the reunification of Artsakh with Armenian SSR. Also the Supreme Soviet decided to appeal to the Soviet government for the resolution of the issue and addressed to the Supreme Soviet of Azerbaijani SSR to approach to the decision with understanding and keep well-established relations between two nations (Barsegov, 2008).

On 21 June, 1988 the session of the twentieth convocation of delegates of Artsakh Autonomous Region adopted a decision, which criticized the decision of Supreme Soviet of the Azerbaijan SSR and stated that "[t]heir response to the unacceptability of this solution is more like a hasty evasion than legal act of supreme state body of SSR. Otherwise the non-recognition of an act, which aimed to implement the Leninist principle of self-determination of nations, is incompatible with the recognition of supreme state bodies of SSR" (Barsegov, 2008, p. 668).

Later the Presidium of the Supreme Council of USSR adopted a resolution. According to the resolution a special form of governance was established. The Presidium of the Supreme Council, for the prevention of further aggravation of interethnic relations and for keeping stability in the region, decided to establish a special form of government in Artsakh Autonomous Region (Barsegov, 2008).

These developments increased tension between Armenians and Azeri people. The Azerbaijani mass media and especially the television were propagating anti-Armenian actions. The result of this development was pogroms, beating and murder of Armenians in Sumgait, which is a town 30-minutes drive from Baku. The crimes committed by Azeri thugs reached to its high point on February 27-28 (Genocide and Gone, 1988).

The thugs broke into apartment buildings with prepared in advance lists of Armenian tenants residing there. According to verified but incomprehensive data at least 53 Armenians were killed, many of them were set afire alive. Hundreds of innocent Armenians were injured of different severity and became physically impaired. The riots robbed more than two hundreds apartments, fired dozens of cars, and demolished many crafts studious, shops and kiosks. Thousands of people became refugees. Andrei Sakharov, who is a renowned Soviet physicist and human rights activist, wrote about the Sumgait on the following way, "No half-measures or arguments about friendship of nations can calm down the people. Even if some doubted it before Sumgait, no one sees a moral opportunity to insist on territorial unity of NKAO and Azerbaijan after the tragedy happened". (Genocide and Gone, 1988).

The security of life and property right of Armenians was challenged in the whole territory of Azerbaijani SSR. Armenians living in Artsakh Autonomous Region and Armenian SSR began taking actions for overcoming those challenges.

The Supreme Council of Armenian SSR adopted a decision about security issues of Armenian population living in Azerbaijani SSR, Artsakh, in the border areas of Armenian SSR and the Armenian soldiers serving in the Soviet army. The decision was made under circumstances of violation of human rights and killings of Armenians. Taking into account this circumstance the Supreme Council of Armenian SSR appealed to Supreme Council of USSR to guarantee the security of life of Armenians living in the territory of Azerbaijani SSR. Also the Supreme Council of Armenian SSR instructed the Prosecutors Office to investigate and inform them about mass poisoning committed on the territory of Armenian SSR.

To restore historical truth and to abolish illegal action of the Plenary Session of the Caucasian Bureau of 5 July, 1921, the Supreme Council of Armenian SSR adopted a decision

on 13 February, 1990 about invalidating the above mentioned illegal act. The decision was made taking into consideration the fact that Artsakh historically had been part of Armenia and it had never belonged to Azerbaijan. Then Artsakh was independent from 1918 to 1921 and it had state institutions on behalf of Armenian National Council. The Supreme Council recognized the "political decision" of Caucasian Bureau as null and void as the fate of Artsakh at the time was determined by an unconstitutional and unauthorized "political decision", and the Caucasian Bureau had no right neither to participate in nation-building of another state nor to interfere in the internal affairs of other Soviet sovereign republic. The former action also violated the right of self-determination of the nation and the will of 95 percent of people of the region was not taken into consideration (Barsegov, 2008).

The Supreme Council recognized the following documents as legal principles for self-determination of Artsakh people. The decision of Political Bureau of Central Committee on 7 June, 1920, under which the fate of Artsakh should be resolved taking into consideration the ethnic composition of the region and the will of people living there. The decree of the Armenian SSR of 12 June 1921, which was based on the decree of REVCOM of Azerbaijan and the agreement signed between Armenian SSR and Azerbaijan. Two of them recognized Artsakh as an integral part of the Armenian SSR. Then the Agreement on the Formation of USSR and the Constitution of USSR were stated as legal grounds, as both of them recognize the principle of self-determination (Barsegov, 2008).

Beside above mentioned legal grounds there were passed other legal documents in USSR that provided secession for the Soviet Republics, autonomous republics, autonomous regions or any type of similar distinct territories. On 3 April, 1990 the Supreme Council of USSR enacted the law of USSR regarding "The procedure of secession of a Soviet Republic from the Union of Soviet Socialist Republics." Article 2 of the law states that "the decision on secession of a Soviet Republic from the USSR is made by the will of the people of that

Soviet Republic by means of a referendum. …[T]he referendum is to be conducted according to the referendum law of the USSR, referendum law of a given Soviet or autonomous Republic if they do not contradict this law." (The law of USSR).

Article 3 grants a right for referendum not only to the Soviet Republics but also to the autonomous republics, autonomous regions or any type of similar distinct territories within a Soviet Republic. The Article allows conducting referendum "separately in each of the autonomies. The people residing in the autonomies are given a right to independently decide whether to remain in the Soviet Union or in the seceding Republic as well as to decide on their state legal status. Referendum results are to be considered separately for the territory of a Soviet Republic with a compactly settled ethnic minority population, which constitutes majority on that particular territory of the Republic" (The law of USSR).

The Law on the Division of Powers between the Union of Soviet Socialist Republic and the Subject of the Federation gave the autonomous republics new status attaching them to the federation entities. According to the law they became subject of the Federation-USSR and from the moment gained status like the Union republics. The autonomous republics and other autonomous entities became part of the Union Republics on the basis of the self-determination of peoples and obtained full state authority on their territory, apart from powers transferred by them to the Union of Soviet Socialist Republics and the Union Republic (The Constitutional Status, 2004).

According to the law of April 26, 1990 the autonomous republics, were described as 'subjects of the federation' thus recognizing their right to equal representation with the union republics, in the negotiations over the Union treaty.

The Law established general principles of the legal status of autonomous republics, autonomous regions or any type of similar distinct territories, separated the powers between the Union and Autonomous Republics, Autonomous Entities (Barsegov, 2008)

If on the legislative level everything was going on more or less smoothly then on the ground the tension had been increasing. The pogroms were spreading throughout Azerbaijan. The largest of them took place in Baku, Kirovabad, Shamkhor, Mingechaur, the Nakhijevan ASSR. In Kriovabad, the participants of pogroms entered old people home, robbed the house and killed 12 Armenians. At the same time the population of Armenian villages of the Azerbaijani SSR was deported. These events led to a situation when out of the 215000 Armenians only 50000 remained in Baku. On January 12-13 1990 other pogroms were organized in Baku. On January 13 a crowd of people gathered in a rally in Lenin`s Square, then divided into groups and began house-to-house cleansing of Armenians. The rights of Armenians were violated due to their ethnic background. Armenians were killed or taken to the sea-port or to the airport and forced to leave. On 16, January "Izvestia" a USSR newspaper wrote "On January 15, pogroms and assaults continued in Baku. By preliminary information, the pogroms during the first three days resulted in the death of 33 people. Yet this number should not be considered final, as not all of the dwellings in Baku were checked…" (Armenian Pogrom, 1990).

Then the political leaders of Azerbaijani SSR launched a new attack against Armenian population of Artsakh and the Shahumian district. The Armenian population were demanded to leave the territory of Artsakh at the earliest possible date. On January 14, the Presidium of the Supreme Council of Azerbaijani SSR adopted a decision about the unification of the Armenian populated Shahumian region and the Azerbaijani-populated Kasum-Ismailovsky region into one Geranboy region (Armenian Pogrom, 1990). The attacks and the decision were another illegal action of Azerbaijan violating human rights of Armenians.

The situation in Artsakh and in the nearby regions became heated. And the violation continued. Among the punitive measure against Armenian population was “Ring” operation. In the spring of 1991 the Azerbaijani SSR embarked a new type of offensive against the Armenians living in Artsakh Autonomous Region and in the Shahumian district to the north. Military forces of the 23rd Division of the Soviet 4th Army stationed in Azerbaijan helped Azerbaijani Ministry of Interior (OMON, or “black beret” forces) to undertake systematic deportations of Armenians. Typically the operation was organized on the following way. The Soviet 4th Army troops surrounded the villages with tanks and military helicopters would hover low overhead. Then the Azerbaijani OMON moved in and harassed villagers (Cox and Eibner).

During the summer of 1991, the Armenians of Artsakh tried to make a conciliatory step indicating a willingness to call back their appeal for reunification with Armenia and to agree to live within the territorial boundaries of Azerbaijan. Armenians of Artsakh looked hopefully to the Zheleznovodsk Agreement of September 23, 1991. It was signed with the participation of international community. The signatories were the President of Russia, Kazakhstan, Armenia and Azerbaijan. According to the agreement Azerbaijan pledged to end the blockade of Artsakh, to exchange hostages and open up normal channels of communication and transport (Cox and Eibner). This was a good chance for Azerbaijan to show its good will and readiness to reconcile with Armenians of Artsakh. Azerbaijan could stop the violation of rights of Armenians and creating secured environment for them to live there.

Unfortunately, the agreement was not implemented: blockades and bombardment continued unabated. Azerbaijan made a step further by announcing that it would formally rescind Artsakh`s long established autonomous status, then Azerbaijan also proclaimed its intention to change the name of the capital of Artsakh (Cox and Eibner). This was an alarm

for Armenians to rethink once more about their security and viable existence. They were made to take measures for self-protection and survival.

The population of Artsakh in the autumn of 1991 was the following: 180, 000 people, of whom 75 percent were Armenians and 25 percent Azeris. And after the situation escalated and Armenians perceived that their future as an autonomous enclave was in danger, the only possible democratic solution became to hold a referendum, with vision to the possibility of declaring independence from Azerbaijan (Cox and Eibner). The referendum was organized on 10 December, 1991. It gave every citizen a chance to vote. The Azeris mainly boycotted the vote, even though they were notified and given the appropriate documents on the referendum. The absolute majority of voters which is 99,89 percent, said "Yes" to the referendum. Only 0,02 percent of the voters said "No". The Act recorded no violation of organizing referendum (Barsegov, 2008). Later, on December 28, Parliamentary elections were organized which included a proportional representation of seats for Azeri population, but again was boycotted. On January 6, 1992, the newly convened Parliament, taking into consideration the results of the Referendum, adopted a Declaration of Independence in a view to legalize the relation with Azerbaijan, ensure the right of people for self-determination and restore the experience of Artsakh on self-governance as it was during 1918-1920. The Declaration and the Universal Declaration of Human Rights formed as basis for the elaboration of the Constitution and Legislation of Artsakh (Avakian, 2005).

These developments made the rulers of Azerbaijan to escalate military offensive in order to quell the unilateral declaration of independence of Artsakh. Then the war began in Artsakh and the country became an open battlefield, with civilians trapped inside, besieged, blockaded and bombarded. The war lasted till 1994 which was stopped by ceasefire was signed by Artsakh, Armenia and Azerbaijan. But the negotiations process is going on up to now.

The research reveals that there was sufficient level of human rights violations that justified the self-determination of Artsakh people through secession. The Petition for Reunification with Armenia was an example of direct democracy and the session of the twentieth convocation of delegates of Artsakh Autonomous Region used its authority, legal background of Artsakh and unjust treatment of Armenians in Azerbaijan to adopt the decision for reunification with Armenia. So the implementation of the right of self-determination was based on the above mentioned decision, on the laws of USSR, on other legal acts concerning Artsakh and field circumstances. The Sumgait, Baku and other pogroms, plus the "Ring" operation constituted a grave breach of human rights, sufficient to warrant secession of Artsakh. The Referendum was a final act of implementation of the right for self-determination.

KOSOVO TOWARDS ITS INDEPENDENCE

Like many conflicts the roots of the Kosovo conflict has a long history. Usually people seek the roots of it in the battle of Kosovo Polie (1389) when the Serbs were defeated by the Ottoman Empire (Glenny, 1999). But in 1912 as a result of the First Balkan War, Serbia took back the control over Kosovo. Later, in 1913 Serbian government sent a memorandum to the Great Powers which provided the justification for Belgrade`s rule over Kosovo. It states that "[T]he moral right of a more civilized people; the historic right to an area which contained the Patriarchate buildings of the Serbian Orthodox Church and had once been part of the medieval Serbian empire; and a kind of ethnographic right based on the fact that at some time in the past Kosovo had had a majority of Serb population, a right which […] was unaffected by the "recent invasion" of Albanians." (Cismas, 2010).

Kosovars claim to be the Balkan`s oldest people and Kosovo`s inhabitants. Also Albanian national movement was formed not in Albania but in Kosovo when the League of Prizren was established in 1878. After the Second World War Kosovo was returned to Yugaslavia from Italy and given the status of autonomous region within Serbia and upgraded to that of autonomous province in 1968.

In 1964 Yugoslavia passed a new fundamental legal act which elevated Kosovo-Metohija`s status from an autonomous region to the equal of Vojvodina which was an autonomous province. As the tension was rising between ethnics in Yugoslavia further constitutional amendments were adopted which led to the adoption of the 1974 Constitution. It granted Kosovo and Vojvodina nearly the same rights as Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. The rights were granted in terms of administrative and economic power, as well as representation at the federal level (Cismas, 2010).

The important differentiation was while narodi (nations) were granted the status of republics, narodnosti (nationalities) were designated autonomous provinces. This distinction was the core of the architects of the Constitution. It was considered that narodi as potentially State forming units are those that have their own homeland inside Yugoslavia, while narodnosti as those who had their homeland outside of Yugoslavia and were considered as displaced segments of other nations. Consequently only narodi received constitutional right to self-determination. This principle provided the right to secession (Cismas, 2010).

But the change of the status of Kosovo did not change a lot on the ground situation in Kosovo (Cismas, 2010). Sabrina Ramet writes that "Kosovo was by all measures, the poorest, most backward region in the SFRY". Albanian majority population was discriminated in the employment of the social sector and in the representation of the party ranks. These facts rise inter-ethnic tension and deepened the distrust within Kosovo. If the living condition of one ethnic group developed that was perceived as a threat to the other group. The demographic situation has been changing rapidly. If there were 64 percent Albanians, 23 percent Serbs and 13 percent others, then the picture in 1991 was different. There were 82 percent Albanians, 12 percent Serbs and 8 percent others. After the independence there was fast decrease of Serb population due to conflict and in 2006 there was only 5 percent Serbs (Cismas, 2010).

All these brought to the point that Serbs began to thinking that they had lost Kosovo. At the same time Albanians continued to point to what they perceived as the original wrong, the lack of republic status within the federation. In 1980s Albanians began to show their dissatisfaction more often. One of the protests against food condition in the cafeteria of the University of Pristine turned into a series of political protests with open demands for Kosovo higher political status within Yugoslavia. The process had a snowballing affect. The Serbian elite accused Albanians for committing brutalities and violation against Serbian population. (Cismas, 2010). Even Serbian Academy of Science and Arts in its Memorandum stated the

following sentence “physical, political, legal and cultural genocide of the Serbian population in Kosovo and Metohija” (Memorandum of the Serbian Academy).

The tension continued to get worse. In April 1987 at the Kosovo Polie monument Slobodan Milosevic, then president of Serbia`s League of Communists, addressed Kosovo Serbs by saying: "You shouldn't abandon your land just because it's difficult to live, because you are pressured by injustice and degradation. No one should dare to beat you." (Silber and Little, 1995). The speech came in response to a petition signed by more than 60,000 Kosovo Serbs. The petition warned that Kosovo Serbs community felt endless violation against them and "genocide" is inflicted to their community by Albanian irredentists. In November 1988 Azem Vllas and Kaqusha Jashari who were Kosovo`s top Albanian leaders resigned and they were replaced by Milosevic`s appointee. This provoked dissatisfaction among Kosovars, which turned into a mass strike by February 1989 (ICG, 20 March, 1998).

Journalist Behlull Beqaj writes about the events of that period. "All the achievements of the communist period began to crumble as a house of cards, especially on 27 February 1989 when the SFRJ Presidency confirmed that the situation in Kosovo had deteriorated and became a threat to the constitution, integrity and sovereignty of the country. Because of that, it made the decision to proclaim a state of emergency in Kosovo and thus opened the door of Serbia to cancel autonomy of Kosovo (Ethnicity in Post-communism).

During 1988 and 1989 the Serbian Parliament submitted a few amendments to the Serbian Constitution which in practice abolished the federal status of Kosovo and Vojvodina (Cismas, 2010). According to those changes the control over the security forces and judiciary were shifted from the autonomous provinces to the central government. Albanians went to streets to defend the old constitution and they clashed with armed police throughout the province. Official figures stated that 24 people were killed (International Crisis Group, 20 March, 1998).

In May 1990 in order to support the protest over Serbia`s interference all Kosovars resigned from the Kosovo government. On July 1990 Kosovar delegates gathered on front of the Kosovo Assembly building to proclaim Declaration of Independence. Two month later they proclaimed the Constitution of the Republic of Kosovo in Kacanik. In 1991 between 26 and 30 September a semi-underground referendum was organized. 87 percent of 1,051,357 eligible voters participated in referendum and 99,87 percent of them said Yes for independent Republic of Kosovo (ICG, 20 March, 1998).

After declaring independence three options were put forward in the political agenda. The first one was to keep the status of nation of the Kosovo Albanian and of republic within Yugoslavia for Kosovo, in the case the internal and external borders of the Soviet Federation Republics of Yugaslavia (SFRY) were not going to be changed. The second option was to create within the SFRY of an Albanian Republic including Kosovo and the territories inhabited by Albanians in central Serbia, Montenegro and Macedonia, if the internal borders were going to be changed. The third option suggested unifying with Albania and creating an "undivided Albanian state" with the boundaries proclaimed by the League of Prizren in 1878. This scenario was suggested to implement in case the external borders were to be altered (Cismas, 2010).

But the ongoing processes gave another option to come true. Kosovo was taking steps towards independent state. After declaring the Independence Kosovars decided to organize parallel elections for parliament and president. The elections were held on 24 May 1992. Kosovo Serbs boycotted the elections. 14 of 130 seats were reserved for Serb deputies. The Democratic League of Kosovo won the election of parliament with 76,4 percent and their leader Ibrahim Rugova was elected President (ICG, 20 March, 1998).

But the independence could not stop the human violation that had continued for a long time. Distinct categories of violation occurred for the period 1989-1998: discrimination in

relation to property and resettlement, removal of ethnic Albanians from public office, commercial firms and impunity for perpetrators, arbitrary arrests and seizures, imposing of Serb curricula which prompted the general break down of the official education system (Cismas, 2010).

Human rights violation was not restricted to above mentioned areas. Violation by the Serbian security forces was very widespread in Kosovo. Fred Abrahams who was Kosovo researcher at the Human Rights Watch/Helsinki and was testified before the US Congress in November 1997 said: "Since the revocation of Kosovo's autonomy, the human rights abuses against ethnic Albanians by the Serbian and Yugoslav governments has been constant… The brutality of the police continues against the population. Random harassment and beatings is a daily reality for ethnic Albanians in Kosovo, especially those in the villages and smaller towns. No policemen are ever held accountable for their actions, even when their brutality results in the death of an innocent person" (International Crisis Group, 20 March, 1998).

On December 1996 the United Nations General Assembly adopted a resolution condemning all violations of human rights in Kosovo and demanded from the authorities of the Federal Republic of Yugoslavia to stop human rights violation and to release all political prisoners and cease the prosecution of political leaders and members of local human rights organizations (International Crisis Group, 20 March, 1998).

In February 1998 Serbian security forces began a campaign termed as the fight against Albanian terrorism. During this period there were huge number of violation by Serbian security forces and Kosovo Liberation Army (Cismas, 2010). Human Rights Watch in its report stated: "The vast majority of these abuses were committed by Yugaslav government forces … The Kosova Liberation Army … has also violated the laws of war … Although on a smaller scale than the government abuses. These two are violations of international standards, and should be condemned" (*Human Rights Watch,1998).*

17 February 2008 Kosovo proclaimed independence from Serbia. In 2010 International Court of Justice was requested advisory opinion on accordance with international law of the unilateral declaration of independence in respect of Kosovo. In the advisory opinion the court noted that during last three centuries there were numerous cases of declarations of independence which was opposed by States from which independence was being declared. In no cases the declaration was regarded as contrary to international law. On the contrary, State practice led clearly to the conclusion that international law contained no prohibition of declarations of independence. Many states have come into existence by exercising the right to declare independence (International Crisis Group, 22, July 2010).

The Court then recalled the principle of territorial integrity as "an important part of the international legal order…" But at the same time recalling United Nations Charter, General Assembly resolutions and Helsinki Final Act, the Court noted "the scope of the principle of territorial integrity is confined to the sphere of relations between States." Taking other factors and the scope of the requested advisory opinion the Court considered that general international law contains no applicable prohibition of declarations of independence. Accordingly, it concluded that the declaration of independence of 17 February 2008 did not violate general international law" (International Crisis Group, 22, July 2010).

Till the end of January 2011 Kosovo had been the newest born state in the world but the Southern Sudan was the other state which gain independence through self-determination. And now on more states are expected to gain independence.

SOUTHERN SUDAN: TOWARDS ITS INDEPENDENCE

Sudan belongs to the group of countries which most of its existence passed through conflicts. It could not provide security for citizens living in its territory. Religious intolerance, racial discrimination, rapacious resource extraction and elite domination were main causes of conflict in Sudan. 44 of its 55 years of independence Sudan spent in conflict which devastated the country and brought to division into North and South.

One of the reasons for the conflict may come from Congress of Berlin, which drew suspiciously the boarders of African countries. This and other agreements created oversized or artificial Sudan, which put together heretofore independent groups of Arabs, Africans, and Muslims into a country lacking any common national ethos or adequate distribution of resources to sustain commitment to unity (International Crisis Group, 28 Jan. 2002).

And the continuation of this "drawing" policy was that mainstream politics created a situation where it became unbearable for Southerner to live within the one form of government in Sudan. The major struggling forces in Sudan were the National Islamic Front government and the opposition Sudan People`s Liberation Army (SPLA). These two forces prosecuted the civil war with stark brutality, but the government had usually carried out the worst abuses. Both sides were encouraging others more to fight than in broadening their own appeal. As the crisis deepened the SPLA and other southern Sudanese political forces became more and more committed to self-determination. The government`s unwillingness to negotiate in good faith and SPLA`s survival on the battlefield have convinced southerners that an independence referendum is the possible outcome for them, as only independence could justify the high cost of the war (International Crisis Group, 28 Jan. 2002).

During its history Sudan has never been a coherent entity. Even its geography is very diverse. Colonial legacy has its own bad impact on Sudan. On January 19, 1889 a joint-authority government was formed and Sudan fell under the control of Britain and Egypt

(Sudan Net). According to the agreement Britain took over the management of South, while leaving the control of the North under the Egyptian government. At the time Britain developed a new approach towards its part of Sudan entitled "Southern Policy". The primary aim of the policy was to prevent economic integration of the two regions in order not to let the North to spread its influence towards South (Woodward, 1995). By this policy Britain aimed to preserve English values and beliefs such as Christianity, in the South and later create a seperate political entity or integrate it into British East Africa ((International Crisis Group. 28 Jan. 2002).

When in 1947 Britain gave political power to Northern Sudan they began the “Sudanization” of southerners. They removed almost all colonial administrators between June and November 1954. Massive representation of northerners in the government greatly alarmed southerners. In September 1956, a committee was formed by National Assembly to draft the constitution. But there were only 3 southerners out of 46 members. Later they left the committee arguing that the federal constitution was outvoted (Taisier and Roberto, 1999).

The process put the beginning of the violent conflict. In January 1955 the conflict broke out when southern apprehension led to riots and a bloody rebellion. After knowing that they would be disarmed and transferred to the north the soldiers of Southern Corps rebelled. In November 1958, General Ibrahim Abboud came to power with his army. The military regime put the beginning of violent governance. The "Islamisation" launched by Abboud forced thousands of southerners into exile in neighboring countries. They formed opposition organization called the Sudan African National Union, which petitioned the United Nations and the Organization of African Unity, arguing to provide self-determination for South Sudan (ICJ, 28 Jan. 2002).

At the time former soldiers and policemen from the 1955 rebel had began to form military movement called Anya-Nya ("snake poison"). By 1963 Sudan totally was engaged in

civil war. During the time it intensified and became dangerously internationalized. More and more foreign powers started to support either the government or the Anya-Nya and sometimes both. Soon Anya-Nya was reformed into a more unified political force. When Colonel Joseph Lagu came to power in Anya-Nya, he united all officers under his command and declared the formation of the Southern Sudan Liberation Movement (SSLM) (ICJ, 28 Jan. 2002).

Lagu also could convince his followers to accept Nimeiri`s proposal for peace "within the framework of one Sudan". Ratification of the Addis Ababa Agreement in 1972 created ground for a peaceful and cooperative era. It granted political and economic autonomy to the south. The south took responsibility to include Anya-Nya soldiers in the national army in proportion to the national population. In 1977, a coalition of northern opposition parties demanded from Nimeiri to review the Adis Ababa Agreement, especially they wanted the provisions for security, border trade, language, culture and religion to be changed. Also the discovery of oil in the south increased the incentives for north not to obey the provisions of Adis Ababa Agreement, particularly those that allowed the south a degree of financial autonomy and the right to collect all central government taxes on industrial, commercial and agricultural activities in the region (Alier, 1990).

In 2005 the Interim National Constitution (INC) and the Comprehensive Peace Agreement were signed which proposed the possible road to independence through self-determination referendum, if Southern Sudanese wouldn`t want to stay within united Sudan. These documents set out detailed transitional arrangements over six-years interim period. During the interim period the authority was divided between Sudan People`s Liberation Movement and the central government. The CPA aimed to restructure wealth, power and security arrangements in Sudan, by sharing them between two parties (Thomas, 2010).

For power sharing the CPA established the following conditions: a Government of National Unity in Khartum and an appointed National Legislature. One-third of posts in those institutions were assigned to historically under-represented Southern Sudanese; a government of Southern Sudan, financed with half the revenue from Southern oil; special power- and wealth-sharing arrangements for three contested on the Northern side of North-South border, including special arrangements for the war affected people of those areas to evaluate the agreement (Thomas, 2010).

Under the CPA voters in the south on 9 January, 2011 decided to secede and form the world`s newest state. The civil war, which lasted 22 years and which took the lifes of 2.5 million southerners, was fought for several issues: the central government`s long standing neglect of Sudan`s periphery, the excessive concentration of jobs, wealth and public services in the region known as Arab triangle; massive human rights violations; the government`s brutal attempts to impose Arab culture and Islam on the south, where Christianity prevails; its persistent refusal to grant the south any autonomy (Natsios and Abranowitz, January/February, 2011).

On 30 January the final results of the referendum on South Sudan held under UN auspices. Nearly 99% of southerners, who are Christian and animist, voted for separation from Sudan`s Muslims, who mainly dominate the government in the North. South Sudan faces many hurdles. The biggest one is the lack of public services. It occupies one of the least developed parts of Africa. At the same time South lacks a full functioning government and state institutions. The ruling Sudan People's Liberation Movement is dominated by military figures. It was not integrated into state apparatus. South Sudan is still far from being a fully functioning state.

Southern Sudan is still a fragile state and the war still continues between North and South. In May 2011 Sudanese warplanes and artillery began bombing the civilian population

in Abyei, which is referred to as the Kashmir of Sudan because it sits on the disputed border between north and south. The bombing has displaced 15,000 Ngok Dinka inhabitants, who moved to south. For centuries, Abyei had been the homeland of Dinkas, who dominate in the South. They make up 40 percent of the south`s population and represent a powerful part of both the south`s government and its army. They demand the return of Abyei to the south (Natsios and Abranowitz, 26 May, 2011).

This shows there is lack of political will in south and north to end the disputes and create long-term peace between two sides. Also the weak state institutions in the south create challenges. The south can't still guarantee security for its citizens. In the long term perspective the South has the chance to strengthen the government and bring into reality the will of the people expressed in the referendum.

ARTSAKH, KOSOVO AND SUDAN: SIMILARITIES AND DIFFERENCES

All these three cases which are famous in international politics as cases of self-determination have some common history and some common justification for independence. But in their path to independence these three cases also have different status in international arena and different level of state building.

All three states were annexed by metropolitan states. If in the case of Artsakh it was annexed to Azerbaijan by the political decision of the Plenary Session of the Caucasian Bureau of the Central Committee, then in the case of Kosovo Serbia took the control over it by force and sent a memorandum to the Great Powers justifying the action without taking into consideration the will of Kosovo people. In the case of South Sudan a joint-authority government was formed, and then Britain and Egypt began to control Sudan. Then in 1947 South Sudan was given to the authority of North without having consensus of Southern people. Even after annexing those territories metropolitan authorities could not create security of people living within those territories.

The security of property, human rights and life was challenged during the control of Baku, Belgrade and Khartoum. The violation of human rights in Artsakh reached to its high point in 1988. Armenians were killed, robbed and injured. Thousands of them became refugees. And after that territorial unity with Azerbaijan became impossible. For seeking their security Armenians decided to secede from Azerbaijan, as their security condition was not on proper level to sustain.

In Kosovo the tension increased to its high point when in 1987 SFRY Presidency declared that the situation in Kosovo had become a threat to the constitution, integrity and

sovereignty of the country. Human rights violation against ethnic Albanians by Serbian and Yugoslav government had been constant. Albanians were harassed and beaten by police and security forces. The government was imprisoning people for their political views and prosecuting political leaders.

Approximately the same picture was in Southern Sudan. The decisions by government to employ violances led southern people to riots and bloody rebellions. When government decided to "Islamize" southerners and forced many of them into exile in neighboring countries the tension increased in the South. The rights of southerners to have their own language, culture and religion was restricted by the government which led to stalemate and southerners decided to have their own state.

The road to independence for Artsakh in many senses was similar to Kosovo and Sudan. In 1991 a referendum was organized in Artsakh. Absolute majority of voters said yes to independence. Later, Parliamentary elections were also organized then on 6 January, 1992 adopted the Declaration of Independence based on international law of self-determination and Universal Declaration of Human Rights. This was a respond to Azerbaijani violent policy towards Armenians living in its territory.

On July 1990 Kosovar delegates gathered on front of the Kosovo Assembly building to proclaim Declaration of Independence. Two month later they proclaimed the Constitution of the Republic of Kosovo in Kacanik. In 1991 between 26 and 30 September a semi-underground referendum was organized. On 24 May, 1992 Kosovars organized elections for the parliament and the president. But due to changes in international politics Kosovo had to declare independence again on 17 February 2008. Then in 2010 International Court of Justice was requested advisory opinion on accordance with international law of the unilateral declaration of independence in respect of Kosovo. In its advisory opinion the Court noted that general international law contains no applicable prohibition of declarations of independence.

Accordingly, it concluded that the declaration of independence of 17 February 2008 did not violate general international law.

If in the case of Artsakh and Kosovo the secession was unilateral then in the case of Southern Sudan the metropolitan agreed to organize referendum after six years interim status according to Comprehensive Peace Agreement. In 2005 the Interim National Constitution (INC) and the Comprehensive Peace Agreement were signed which proposed the possible road to independence through self-determination referendum. There transitional details were arranged for over six-years interim status. During this period the authority was divided between Sudan People`s Liberation Army and the central government.

But violation by central government hadn`t stopped even during this period and after 22 years of civil war, which took more than 2.5 million southerner`s life, on 9 January, 2011 the voters of Southern Sudan decided to secede from Khartoum. The southerners fought for their independence as their security was challenged under the control of central government from Khartum. The government brutally attempted to impose Arab culture and Islam on the south.

More than 80 United Nation countries formally recognized the Republic of Kosovo. Sudan is on the process of it. But in the case of Artsakh there is no still formal recognition by any state. The secession of these three cases is justified as physical survival of people living in those territories had become threatened by the actions of the metropolitan state. Plus their previously sovereign territories were unjustly taken by other state. All of them implemented their right of self-determination mentioned in Charter of United Nations, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and Helsinki Final Act.

CONCLUSION

The development of the right of self-determination in international law assumes that people have the right of self-determination. The right of self-determination has had development from the beginning of 20th century. If at the beginning the self-determination was a political principle then nowadays self-determination has become a legal principle. The main transformation of the principle happened when it was included in the Charter of United Nation. Then self-determination was declared as part of Human Rights in the ICCPR and ICESCR. These two Covenants granted self-determination to "all peoples", transforming it into a universal right. Then Helsinki Final Act made self-determination as "continuing right", which means that it didn't apply only to colonial period.

And based on above mentioned laws and the principles of international law Artsakh in 1991 declared its independence. The research reveals that there was sufficient level of human rights violations that justified the self-determination of Artsakh people through secession. Besides there were other legal grounds for secession of Artsakh from Azerbaijan. The Petition for Reunification with Armenia was an example of express of the will of Artsakh people. The decision for reunification with Armenia is justified by legal background of Artsakh and unjust treatment of Armenians in Azerbaijan. The implementation of the right of self-determination by Artsakh people was based on the above mentioned decision, on the laws of USSR, on other legal acts concerning Artsakh and field circumstances. The Sumgait, Baku and other pogroms, plus the "Ring" operation constituted a grave breach of human rights, sufficient to warrant secession of Artsakh. The Referendum was a final act of implementation of the right for self-determination.

The cases of Kosovo and Southern Sudan also prove that in the practice self-determination has become one of the main principles in international law. In the case of Kosovo the ICJ in its advisory opinion noted that in no cases in the practice of international

law the declaration of independence was regarded as contrary to the international law. Many states in the world have come into existence by exercising the right to self-determination.

About the contradiction between self-determination and territorial integrity the Court noted that the principle of territorial integrity as "an important part of the international legal order…" But at the same time recalling United Nations Charter, General Assembly resolutions and Helsinki Final Act, the Court noted "the scope of the principle of territorial integrity is confined to the sphere of relations between States." At the end the Court concluded that general international law contains no applicable prohibition of declarations of independence. Accordingly, it concluded that the declaration of independence of 17 February 2008 did not violate general international law.

In the case of Southern Sudan the practice reveals that self-determination prevails. After many years of civil war the Khartum agreed to grand independence to the if the people would say Yes to the independence. Under the CPA referendum was otganized and voters in the south on 9 January, 2011 decided to secede and form the world`s newest state. After 22 years of civil war which took the lifes of 2.5 million southerners, was fought for several issues: the central government`s long standing neglect of Sudan`s periphery, the excessive concentration of jobs, wealth and public services in the north; massive human rights violations; the government`s brutal attempts to impose Arab culture and Islam on the south, where Christianity prevails; its persistent refusal to grant the south any autonomy.

Based on the referendum Southern Sudan declared independence. Even though Southern Sudan is a fragile state and the war still continious between north and south, but international community recognized their independence.

The practice of three cases reveals that their previously sovereign territories were unjustly taken by other state. Then during the time the metropolitan state couldnt sufficient security for the citizens they decided to declare independence based on right of self-

determination mentioned in Charter of United Nations, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and Helsinki Final Act and other internationa documents.

REFERENCES

A Genocide Gone Unpunished (1988), Pogroms of Armenians in Sumgait, Retrieved September 2011 from http://www.nkrusa.org/nk_conflict/sumgait_massacre.shtml

Alier, Abel. (1990) "Southern Sudan: Too Many Agreements Dishonoured," Exeter.

Armenian Pogroms in Baku. (1990) "Continued history of ethnic cleansings" Retrieved September 2011 from http://www.nkrusa.org/nk_conflict/ethnic_cleansing_campaigns.shtml#baku

Avakian, Shahen. (2005) Nagorno Karabagh: Legal Aspect, Retrieved August 2011 from http://www.armenianembassy.org.uk/documents/legalaspect.pdf

Barsegov, Yuri (2008) "Nagornyi Karabagh in International Law and World Politics", Moscow: Krug.

Beran, Harry. (1987) "The Consent Theory of Political Obligation" Croom Helm Publishers.

Buchanan, Allen. (2007) "Secession". Stanford Encyclopedia of Philosophy.

Buchanan, Allen. (1997) Theories of Secession. Philosophy and Public Affairs 26 (1)

Buergenthal, Thomas. (1977) "Human Rights, International Law and the Helsinki Accord", New York: Allanheld.

Cismas, Ioana. (2010) "Secession in Theory and Practice: the Case of Kosovo and Beyond", Goettingen Journal of International Law.

Charter of United Nations (1945)

Cop, Burak and Eymirlioglu, Dogan. (2005) "The Right of Self-Determination in International Law Towards the 40th Anniversary of the Adoption of ICCPR and ICESC", Retrived August 2011 from http://www.sam.gov.tr

Copp, David. (1998) "International law and morality in the theory of secession", The Journal of Ethics, Vol. 2, No. 3, The Yale Law Journal Company, Inc.

Council of Europe. (2003) "The constitutional status of the regions in the Russian Federation and in other European countries."

Cox, Caroline and Eibner, John. "Ethnic Cleansing in Progress: War in Nagorno Karabakh" Institute for Religious Minorities in the Islamic World, Retrieved September 2011 from http://sumgait.info/caroline-cox/ethnic-cleansing-in-progress/contents.htm

Declaration on the Granting of Independence to Colonial Countries and Peoples (1986), Retrieved September 2011 from www.un.org

Declaration on the Granting of Independence to Colonial Countries and Peoples. in Encyclopædia Britannica. Retrieved September 2011from http://www.britannica.com/EBchecked/topic/241821/Declaration-on-the-Granting-of-Independence-to-Colonial-Countries-and-Peoples

Final Act. (1975) "Conference on Security and Cooperation in Europe", Helsinki.

Glenny, Misha. (1999) "The Balkans. Nationalism, War and the Great Powers (1804-1999)", Penguin Books.

Griffioen, Christine. (2009) "Self-Determination as a Human Right", Public International Law, Utrecht University.

Hannum, Hurst. (1998) "The Specter of Secession: Responding to Claims for Ethnic Self-Determination", Foreign Affairs, Vol. 77, No. 2.

Human Rights Watch. (1998) "Federal Republic of Yugoslavia: Humanitarian Law Violations in Kosovo." Vol. 10, No. 9.

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. (1986)

International Court of Justice. (22 July 2010) "Accordance with international law of the unilateral declaration of independence in respect of Kosovo."

International Crisis Group. (1998) "Kosovo Spring". Report.

International Crisis Group. (28 Jan. 2002) "God, Oil and Country: Changing the Logic of War in Sudan." Africa Report No. 39.

Meadwell, Hudson. (1999) "Secession, States and International Society", Review of International Studies, Vol. 25, No. 3.

Memorandum of the Serbian Academy of Sciences and Arts, English translation, Retrieved August 2011 from http://www.trepca.net/english/2006/serbian_memorandum_1986/serbia_memorandum_1986

Natsios, Andrew and Abranowitz, Michael. (2011) "Sudan`s Secession Crisis" May 26, Foreign Affairs, Retrieved September 2011 from http://www.foreignaffairs.com/articles/67869/andrew-s-natsios/sudan-back-on-the-brink?page=show

Natsios, Andrew and Abranowitz, Michael. (2011) "Sudan's Secession Crisis: Can the South Part from the North Without War?" January/February, Foreign Affairs, Retrieved September 2011 from http://www.foreignaffairs.com/articles/67054/andrew-s-natsios-and-michael-abramowitz/sudans-secession-crisis

Silber, Laura and Little, Allan. (1995) "The Death of Yugoslavia", London: Penguin Books.

Snell, John. (1954) "Wilson on Germany and the Fourteen Points". The Journal of Modern History. Vol. 26, No. 4

Sudan Net "Sudan: A Historical Perspective" Retrieved August 2011 from http://www.sudan.net/history.php

Taisier, Ali and Roberto, Matthews. (1999) "Civil Wars in Africa," London.

The Albanians in the Post-communist Transformation of Yugoslavia. (1996) "Ethnicity in Post-communism", Belgrade: Institute of Social Sciences.

The economist. (February, 2011) "South Sudan`s future: Now for the hard part", Retrieved September 2011 from http://www.economist.com/node/18070450

The law of USSR regarding "The procedure of secession of a Soviet Republic from the Union of Soviet Socialist Republics." Retrieved August 2011 from http://en.wikisource.org/wiki/Concerning_the_procedure_of_secession_of_a_Soviet_Republic_from_the_Union_of_Soviet_Socialist_Republics

The Yale Journal. (1980) "The Logic of Secession". Vol. 89, No. 4.

Thomas, Edward. (2010) "Decisions and Deadlines: A Critical Year for Sudan", Chatham House.

Wellman, Christopher, (1995) "A Defense of Secession and Political Self-Determination", Philosophy & Public Affairs, Vol. 24, No. 2.

Woodward, Peter. (1995) "Sudan: War without End," New York.

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. (1986)