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Stateness and its Connection to International Recognition: The Case of States Emerged on the Self-Determination Principle

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The article discusses the stateness issues of states emerged on the self-determination principle, as well as the latter's connection to international recognition. It represents the requirements for legal personality of states - codified in Montevideo Convention on Rights and Duties of States as the basis for the processes of state-building and stateness, the link of these criteria with the right of peoples to self-determination, as well as analysis of the afore-mentioned criteria within the international law on the examples of Kosovo and NKR, The article, aiming to present the connection or the lack of connection between non-recognition and state fragility and/or failure, represents the specific challenges of the afore-mentioned connection or its lack according to stateness fields: political, economic, social and security.

Keywords

Stateness, non-recognized states, right of peoples to self-determination, Montevideo Convention, NKR, Kosovo.

Introduction

The establishment of the state is the main aim of each nation as a main mechanism of its safety, prosperity and natural development, but is everything that smooth in real life? In the second half of the 20th century after the entry of the UN Charter in force, as a result of significant developments in international law, the people's right to self-determination has been recognized as erga omnes and jus cogens norm¹ of international law and two active periods of state-building were recorded. The first was the raised decolonization wave in 60-

¹Torosyan T., Conflict Resolution in the Framework of International Law: Case of Nagorno-Karabakh, Tigran Mets Publishing House, Yerevan, 2010.

70's, in the result of which more than seventy new states were established², the second was the beginning of the 90's, when after the collapse of the Soviet Union and Yugoslavia more than two and a half dozen countries declared independence. Moreover, some of them gained recognition at once, whereas the others still remain non-recognized.

However, the experience of both the countries established on the second half of the 20th century and the countries established until then, shows that the establishment of the state does not automatically lead to security, prosperity and ensuring of natural development. Moreover, current situations and development tracks strictly diverse in states, which makes it even more difficult to improve the complex and at the same time fragile systems such like states and their stateness levels. Thereby, in the context of the events of the last two decades the drastic growth of the scientific studies dedicated to the issues of state effectiveness and stateness is quite natural, the aim of which is not only to evaluate the situation, but also to identify the existing problems and record simultaneously both progress and regress in all the fields - hence giving an opportunity to the states and international community to focus on the problem areas and to promptly undertake their solution process.

The problem is even more complicated for the group of those countries, which haven't been recognized yet, as there exist additional difficulties for stateness (particularly, conditioned by stringent limitation of international relations). At the same time, there are additional challenges for those non-recognized states, which have emerged as a result of collapse of the USSR – mainly conditioned by the existence of one-party system and the lack of both knowledge and experience.

²United Nations Judicial Yearbook 1980, pp. 182-183.

Stateness and Recognition: Direct Connection or its Direct Absence

The study of the complex and multi-vector political processes as stateness and international recognition (especially the study of their connection or the lack of it) should be implemented by a precise stepwise logics –as based on the fact that the natural evolution of each state should proceed with the following stages: declaration of independence, international recognition of the state (admission into UN) – as a mandatory condition for being a person of international law, and stateness process. The afore-mentioned certainly also applies to the states emerged on the self-determination principle, hence it's necessary to carry out study of the problem in the following stages:

- Review of the legal requirements for international recognition of the states emerged on the principle of people's right to self-determination with the following 3 phases:
 - study of the status, scope and content of people's right to self-determination principle in contemporary international law;
 - consider the international recognition processes of states emerged on the people's right to self-determination principle³;
 - research of the requirements for international legal personality defined in international law.
- Review of the political factor for international recognition of states emerged on the people's right to self-determination principle – in particular the study of the impact and/or the lack of the legal component on UN admission.
- Review of the connection (or the lack of it) between stateness level and international recognition.

³ **Petrosyan V.**, The Dilemma of International Recognition of States Emerged on the Right of Peoples to Self-Determination: The World After Yugoslavia, *Armenian Journal of Political Science*, 2(5), 2016, pp. 107-132.

International Recognition of States: From Theory to Practical Implementation

In the scope of international recognition process the need for transformation from theory to practical implementation has become one of the key issues of both international relations and international law. Currently there are a number of cases representing the collision between normative international law and practical political practice, which, in its turn, leads to the creation of new – more complex issues. Hence, a study should be carried out to find out whether the transformation process is so difficult, that hinders the practical implementation of the established norms, or maybe the legal framework of recognition is insufficiently and poorly defined, or maybe the states and international organizations ignore the legal framework – giving priority to various political interests.

When looking at the classical legal setting that regulates, or at least tries to regulate, the process of state recognition, one can see a fairly economical two-pillar framework, consisting of the Montevideo requirements on the one hand and the non-violation of *jus cogens* norms (such as the right of peoples to self-determination) on the other. When declaring independence, the right to self-determination is implied, which applies equally to all peoples – without any exception. The contemporary international law clearly and exhaustively defines all legal bases for the implementation subject, forms and mechanisms of self-determination right, and what is more important – defines it as *erga omnes and jus cogens*, i.e. peremptory norm of international law, which is compulsory for all the states⁴. The second pillar – the requirements for international legal personality of states enshrined in Montevideo Convention, in fact, not only listed the requirements for statehood, but also referred to recognition of statehood, and in doing so drew attention to what is arguably the most complicated, and assuredly the most politicized aspect of statehood: recognition. And if

⁴ **Torosyan T.**, Conflict Resolution in the Framework of International Law: Case of Nagorno-Karabakh, Tigran Mets Publishing House, Yerevan, 2010.

we add to the afore-mentioned the fact that international law defines the right of peoples to self-determination as a right *jus cogens*, then it can be assumed that no problem or dilemma should arise in the process of recognition of states. But the reality has the opposite manifestation – incessantly affirming the recognition as the most complicated and assuredly the most politicized aspect of statehood.

It may seem that as international law has set standards that all the states must meet, then the recognition of the state should be conditioned by the existence of these criteria, i.e. as in the 70's of the last century, when while reviewing any case of state recognition, the International Court of Justice's opinion was compulsory for the UN member states. However, state recognition is indeed political process, as it is implemented through the UN member states' voting, which, in its turn, is not restricted by any condition. Or, maybe, for equitable voting states are guided by another document of international: the Montevideo Convention on Rights and Duties of States, the article 1 of which reads as follows: “The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states⁵. However, there are some circumstances that point to the fact that these requirements are the basis not only for recognition process, but also have another significance. It is not difficult to notice, that here the criteria for “government” is used not only in the sense of supreme governing body, but also in the regard of their full functioning throughout the territory of the state, which is a hard assessable criterion. The same holds truth for the last criteria too, i.e. “capacity to enter into relations with the other states”, especially for the non-recognized states, as, as a rule, UN member states refrain from establishing formal relations with non-recognized states.

Perhaps the only reasonable interpretation of the significance of this convention is that these criteria characterize the nature of the

⁵ Montevideo convention on the rights and duties of states, <http://www.taiwandocuments.org/montevideo01.html>, (23.01.2017).

period between declaration of independence and international recognition, during which stable situation is ensured. The aforementioned is also affirmed by the fact that clarity of the first two is a necessary condition for the realization of right to self-determination – for the expression of will of people implementing their right to self-determining. Consequently, the connection of the four criteria enshrined in the Montevideo Convention with international recognition can be interpreted as follows: the state is recognized, if it has proclaimed its independence by a free expression of will of the permanent population (criterion a) living on a defined territory (criterion b), where the latter is fully governed by government (criterion c), which is capable to establish relations with the other states (criterion d). The last criterion is necessary, as the last chord of recognition – voting of UN member states for the admission of the candidate state, is possible only in the case of willingness of these states. This interpretation of the Convention eradicates the false contradiction of that document with the right to self-determination: at first glance it may seem that the criteria enshrined in the Convention put forward for the implementation of right to self-determination, whereas the latter has the highest status of international law norm and all the previously-mentioned documents do not impose any limitation for its implementation. The proposed interpretation indicates that there is no contradiction between these fundamental documents of international law. Moreover, the Montevideo Convention outlines the pathway, which leads from declaration of independence to recognition.

At the same time it gives rise to several questions, such like what exactly is recognized: a state or a government; recognition *de jure* or *de facto* (i.e. the legality of a government, or its practical existence); what are the precise legal effects of recognition⁶. Under the declarative theory once an entity fulfils these criteria, it is a state *erga omnes*. Recognition is, in this theory, nothing more than an official confirmation of a factual situation – a retroactive act that traces back

⁶ **Klabbers J.**, *International Law*, Cambridge University Press, New York, 2013, p. 72-73.

to the moment at which the factual criteria were fulfilled and the entity became a state. A formal recognition admittedly has some practical consequences as to the relations between the recognizing and the recognized state, yet it is not a necessary element of statehood⁷.

However, referring to the criteria themselves, one can observe that they (especially criteria c and d) provide a rather broad range of interpretation. Consequently, in order to understand the possible challenges of introducing these criteria at present, it is necessary to study the interpretation, limits and the specifications of application of each criterion within the framework of international law, as well as to carry out an analysis in the scope of a comparative study of Kosovo and Artsakh.

The Requirements for International Legal Personality of States: The Cases of Artsakh and Kosovo

As it has already been mentioned the study of the requirements for international legal personality enshrined in Montevideo Convention is of vital importance for the assessment of state-building and stateness processes of states emerged on the right of peoples to self-determination – in fact, serving as a basis for them. At the same time, it gives an opportunity to evaluate the efficacy of gaining international recognition for these states. Hence, the article represents the analysis of the requirements for international legal personality – a permanent population, a defined territory government and capacity to enter into relations with the other states - embodied in the Montevideo Convention on Rights and Duties of States, which is followed by a table representing each requirement for the cases of the Republic of Kosovo and Artsakh.

⁷ **Ryngaert C., Sobrie S.**, Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia and Abkhazia, *Leiden Journal of International Law*, 24 (2011), pp. 467-490.

- **A permanent population**

The first requirement listed in Montevideo Convention is that a state needs to have a permanent population. This criterion is intended to be used in association of with that of territory, and connotes a stable community⁸. Evidentially this is important, since in the absence of the physical basis for an organized community, it will be at least impossible to establish the existence of the state. Nevertheless, the concept of permanent population leads to a precise dilemma: as it doesn't matter whether the population is large (China, India) or small; even Nauru and Vanuatu, with a few tens of thousands of inhabitants, are considered fully fledged states. The ministates of Europe (Andorra, Monaco, Liechtenstein, San Marino) are also generally considered states; they have all the attributes of statehood, although they sometimes 'outsource' some of a state's tasks⁹. Thus, Liechtensteins' defence tasks are handled by Switzerland, but this circumstance alone is not seen to diminish Liechtenstein's statehood, even though it negatively affected Liechtenstein's request to be admitted to the League of Nations in 1920¹⁰.

- **A defined territory**

The second qualification listed in Montevideo convention is "a defined territory". The states should have territory; without territory, there can be no state. The idea of a cyberstate then, a state without territory, is difficult to conceive of under the requirements of international law. That is not to say that a territory should be completely fixed; a core territory suffices, even if the boundaries remain disputed – and wisely so, as most states have boundary disputes with their neighbors; this even applies between such peaceful states as the Netherlands and Germany and Belgium. And some states have boundaries that are so controversial that a requirement of fixed boundaries would be hopelessly unrealistic; Israel may qualify as an

⁸Crawford J., *Brownlie's Principles of Public International Law*, Oxford University Press, Oxford, 2012, p. 128.

⁹Klabbers J., *Op. cit.*, p. 71.

¹⁰The League of Nations did not accept Liechtenstein for precisely this reason, but much later it turned out to be no impediment for admission to the UN. Liechtenstein joined UN in 1990.

example. The only important criterion then is the existence of a core territory, other than that, international law posits no demands on territory, and refrains, for instance, from indicating minimum or maximum sizes¹¹.

• **Government**

The criteria of territory and population can be considered more or less formal in nature; a state either has them (in whatever quantity) or does not. The two remaining criteria are substantive, though. Arguably the most important requirements is that in order to qualify for statehood, a state must have an effective government, although the Montevideo convention itself does not use the adjective 'effective'. No wonder, the existence of effective government, with centralized administrative and legislative organs, is the best evidence of a stable political community. The underlying idea is that a state can be accepted as such only when it is in a position to guarantee that law and order, in whatever precise form, will be upheld¹².

It can be stated that the international law is not very concerned with the precise form of government; as long as law and order can be guaranteed, international law is satisfied. As a logical consequence of the sovereign equality of states, there is no specific form of government prescribed, This is controversial, of course, as it means that nasty dictatorships are treated in the same way as enlightened democracies, and it is no coincidence that on occasion attempts are made to influence the form of government. In the nineteenth century this took the form of making a distinction between civilized and uncivilized states. On this basis the Ottoman Empire and Japan could be kept on the margins of international law. While this appeal to a standard of civilization largely disappeared, a faint echo can be still heard in article 38 of the International Court of Justice Statute, which accepts 'general principles of law recognized by civilized nations' as a source of international law¹³.

¹¹ Klabbers J., *Op. cit.*, pp. 70-71.

¹² Klabbers J., *Op. cit.*, p. 71.

¹³ *Ibid.*

E.g. in *Kadic v. Karadzic*, US Court of Appeals for the Second Circuit was presented with the question of whether a self-proclaimed Bosnian-Serb republic within Bosnia-Herzegovina, referred to as Srpska, was a state whose leadership could be held on account for various atrocities committed by the proclaimed leaders. The court summarized its conclusion that Srpska met the definition of a state by noting that it “is alleged to control defined territory, control populations within its power, and to have entered into agreements with other governments. It has a president, a legislature, and its own currency. These circumstances readily appear to satisfy the criteria for a state in all respects of international law.” Srpska, by virtue of its state-like characteristics, is indeed a *de facto* state entitled to the rights and encumbered by the responsibilities of a state within the international system¹⁴. This decision was hardly a stretch for the Circuit court, as the Supreme Court has long recognized that “any government, however violent and wrongful in its origin, must be considered a *de facto* government if it was in the full and actual exercise of sovereignty over a territory and people large enough for a nation . . .”¹⁵.

However, effective government is in certain cases either unnecessary or insufficient to support statehood. Some states have arisen before government was very well organized, as, for example, Poland in 1919 and Burundi and Rwanda, admitted to the UN in 1962¹⁶.

Despite a state does not necessarily have any special type of a government, but it should be able to provide relevant level of national stability and enjoy population’s trust. Effective government provides to its citizens and residents basic services and undertakes *vis-à-vis* responsibilities with other states. In addition, government, in fact, should be independent of other countries, including the “mother

¹⁴ *Kadic v. Karadzic*, Opinion of 2nd Circuit re: Subject Matter Jurisdiction, US Court of Appeals for the Second Circuit Nos. 1541, 1544, <http://avalon.law.yale.edu/diana/4298-12.asp>, (17.09.2017).

¹⁵ *Ford v. Surget*, 97 US. 594, 620 (1878),

<https://supreme.justia.com/cases/federal/us/97/594/case.html>, (17.09.2017).

¹⁶ **Crawford J.**, *Brownlie’s Principle...*, p. 129.

state”. Of course, absolute independence is indeed impossible, as the cooperation with the other states is essential for the efficient functioning of the state, but the notion of independence for state struggling for recognition is of particular significance. State must be independent of other state legal orders, and any interference by such legal orders, or by an international agency, must be based on a title of international law. If an entity has its own executive and other organs, conducts its foreign relations through its own organs, has its own system of courts and legal system, and a nationality law of its own, then there is strong evidence of statehood. However, there is no justification for ignoring foreign control exercised in fact through the ostensibly independent machinery of state. But the emphasis is on systematically and on continuing foreign control overbearing the decision-making of entity concerned on a wide range of matters. And here we should properly distinguish between agency and control, and ad hoc interference and “advice”¹⁷.

• **Capacity to enter into relations with the other states**

The Montevideo Convention represents the concept of independence by the requirement of ‘capacity to enter into relations with other states’. It was a ‘must have’ in the days of colonialism, when, actually, the Convention was concluded and no wonder that it was the reflection of that time. The hallmark or the reflection of colonialism was that despite colonized territories may have enjoyed considerable autonomy, they were typically not considered capable of entering into relations with other states without the metropolitan state’s consent. But there were cases when this basic idea was neglected when politically expedient: e.g. India (a British colony) and the Philippines (A US colony) enjoyed independent relations prior to independence; India became a member of the League of Nations, despite of gaining independence only after the League’s demise. However, nowadays the requirement that a state must have the capacity to enter into relations with other states is not considered that relevant, although it provides services with respect to federal states in

¹⁷ Crawford J., *Brownlie’s Principles...*, p. 129-130.

particular; it makes it clear that while the USA is a state, its component elements – its states – are not. This requirement is describe more as a ‘conclusion rather than a starting point’¹⁸.

But at the same time we can’t neglect the fact that the external support is of key importance for the processes of state-building and stateness; especially post-conflict ones. Moreover, external support has a direct connection with recognition: states generally do not support the states they haven’t recognized. Of course, there are some exceptions; e.g. RA is providing large-scale assistance to the Nagorno-Karabakh Republic, though hasn’t recognized it yet. In the case of non-recognized states there exist additional difficulties for stateness - particularly, conditioned by stringent limitation of international relations. Thus, difficulties of stateness in non-recognized states are on the one hand conditioned with internal factors: borders fragility, incomplete rule of law, problems of control of tax and financial systems, a large number of refugees, and on the other hand with non-standart system of relations with the leading players of international politics - power states, supranational institutions and international organizations.

But what is of exceptional importance: the states that have recognized Kosovo have almost invariably justified their decision to grant recognition – if such a justification was given at all – by referring to political considerations, most notably the need for stability, peace, and security in the region, and the positive effect recognition would have on these parameters. Conspicuously, however, states that refused to grant recognition relied to a much greater extent, and in much greater detail, on international law in their line of reasoning. More specifically, the notions of state sovereignty and territorial integrity – core principles of the Westphalian legal order – were often mentioned as reasons not to recognize Kosovo.

¹⁸ **Klabbers J.**, *Op. cit.*, p. 72.

Table 1. The Requirements for International Legal Personality embodied in Montevideo Convention on Rights and Duties of States for the cases of Kosovo and Artsakh

Montevideo Convention Requirements	Kosovo	Artsakh (Nagorno-Karabakh)
A permanent population	2011 Census – 1.739.825 people 2015 – 1.870.981 people	1989 Last Soviet Census – 189.100 people 1995 Post-War period – 122.600 people 2005 National Census – 137.700 2015 – 148.100 people
A defined territory	10.908 km ²	11.458 km ² The issue of the territory is still one of the points on the negotiation table
Government	Since 2008“post-interim-mission syndrome” Non-effective governance Even UN, OSCE, EU and NATO efforts weren’t sufficient to make Kosovo, located in the centre of Europe – the cradle of democracy, to refrain from being cradle of illicit activities like illegal arms trade, drugs, trafficking.	Runs the state since the very day of independence 25 years of effective democratic governance

<p>Capacity to enter into relations with other states</p>	<p><u>Recognized by 112 states</u></p> <ul style="list-style-type: none"> • <u>108 – UN member states</u> • <u>4 - Non-member states</u> <p>- <u>Diplomatic missions</u> - <u>25</u></p> <p><u>Consular missions -</u> <u>27</u></p>	<p><u>Recognized only by non-recognized states of post-Soviet space: Abkhazia, South Ossetia, Transnistria</u></p> <p><u>Permanent representations in:</u> Armenia, Russia, France, Germany, Australia, USA, Middle East countries /located in Lebanon/</p>
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The study of the requirements for international legal personality enshrined in Montevideo Convention on Rights and Duties of States for the cases of Kosovo and Artsakh shows, that within the first two criteria enshrined in Montevideo Convention - **a) ‘a permanent population’** and **b) ‘a defined territory’**, the international law does not indicate minimum or maximum for the number of population or the size of the territory of a state. In addition, under the term ‘a defined territory’ it presumes, that the whole territory is not necessarily to be defined: a core territory suffices, even if the boundaries remain disputed. Hence, it can be stated, that Kosovo and Artsakh comply with these criteria – having their defined territory and a permanent population under their control.

What about the third criterion – **c) government**, it is necessary to mention about Kosovo’s incompetent and ineffective government: because of its own inability and fragility, the state had to ‘host the UN interim administration mission, after the termination of which the government is yet not able to effectively run the state – suffering from so-called ‘post-interim mission syndrome’¹⁹. The efforts of both local and international actors were not sufficient to refrain Kosovo from

¹⁹ Nations in Transit 2018 - Kosovo, Freedom House, <https://freedomhouse.org/report/nations-transit/2018/kosovo>, (20.09.2017).

being a cradle of illicit activities in the centre of Europe. Whereas the government of Artsakh has run the state since the very day of their independence referendum – marking significant results and solid development in the field of effective governance. Today Artsakh is a unique case of a state with an effective democratic governance, but lack of international recognition. Nevertheless, the inability of Kosovo's government does not prevent the latter from complying to this criterion, as the international law does not impose any particular type of government, moreover efficiency level.

In the scope of the forth criterion - **d) 'capacity to enter into relations with other states'**, it should be noted, that Kosovo has been recognized by numerous UN member states, hence has opportunity to establish close relations with these states: diplomatic and consular missions. However, it has been possible not due to the efforts of Kosovar Government, but due to the sponsorship of latter's main donor – USA. On the other hand, Artsakh has all the institutional basis and relevant institutions for establishing relations with other states, and currently Artsakh's permanent representations are functioning in a number of states, which is the result of consistent work of the Artsakh's Government. The above-mentioned is, in fact, a vivid testimony of an ability to establish relations with other states. Official Stepanakert reports, that despite being yet not recognized, they already take and will continue to take steps towards the implementation of the commitments they will take over when finally join international organizations. It's noteworthy that even without international community's and organization's guidance and support Artsakh Republic successfully passes the path towards establishment and strengthening of constitutional democracy, and in this context we can only assume what achievements it would have had, if it enjoyed international community's and organizations' support.

So, the study of the requirements for international legal personality enshrined in Montevideo Convention on Rights and Duties of States for the cases of Kosovo and Artsakh shows, that both of them comply with the requirements enshrined in the Convention.

However, Artsakh hasn't been recognized by any UN member state (has been recognized only by non-recognized states of post-Soviet space – Abkhazia, South Ossetia, Transnistria), whereas Kosovo is recognized by numerous UN member states – in fact, once again reaffirming recognition as the most complex and politicized aspect of statehood.

Challenges and Perspectives of Stateness Assessment of Non-Recognized States

Not only the processes of post-conflict state-building and stateness are themselves cumbersome: the assessment of post-conflict stateness is also abundant with precise challenges and difficulties. First and foremost, there are issues with the concept of “stateness” itself. It is noteworthy, that though the concepts and models of assessment of stateness have started to develop since the 60s of the past century, they are still in the stage of elaboration and improvement. The term of stateness was first suggested by J. Nettl in his article “The state as a conceptual variable”²⁰ published in 1968, where he mainly focused on the idea of independence of variables of "stateness" and "nationness". But still the concept of stateness remains not distinct enough, as further tough work on its conceptualization and operationalization is needed. It may be explained by the following factors of “stateness” notion:

- The authors, while using the term “stateness”, do not explain what exact meaning they put in it.
- There is no consensus between the researchers what should be understood under the following term.
- There exist objective difficulties concerning the formulation of the meaning, which are expounded by the complexness of the notion itself and the diversity of viewpoints.

²⁰Nettl J., The State as a Conceptual Variable, *World politics*, Vol. 20, N 4, 1968, pp. 559-592.

The diversity of the viewpoints on "stateness" concept can be clearly demonstrated by the study of works dedicated to this issue. According to the fact, how the works represent stateness, or it would be more appropriate to say, how they represent the segregated fields of stateness, the works worthy of remembrance can be divided into the following groups:

- Works defining the two main features of state – statehood and stateness, as well as the influence of statehood and stateness on the formation of territorial units; in particular, participation in international processes and the role of these units in the following processes²¹.
- Works representing the strategic types of stateness with the major focus on ethno-political homogeneity policies and its variants²².

²¹**Nettl J.**, The State as a Conceptual Variable, *World politics.*, Vol. 20, N 4, Princeton, 1968, pp. 559-592; **Tilly Ch.**, Reflections on the History of European State-Making, The Formation of National States in Western Europe, Ch. Tilly (ed.), Princeton University Press, Princeton, 1975; **Tilly Ch.**, War Making and State Making as Organized Crime, Bringing the State Back in/ Ed. by Evans P., Rueschemeyer D., Skocpol T., Cambridge University Press, Cambridge, 1985; **Spruyt H.**, The Sovereign State and its Competitors. An Analysis of System Change, Princeton University Press, Princeton, 1996; **Lindberg S.**, Forms of State, Governance and Regime: Reconceptualising the Prospects for Democratic Consolidation in sub-Saharan Africa, *International Political Science Review* 22 (2), 2001, pp. 173-199; **Lindberg S.**, Democratization by Elections: A New Mode of Transition?, John Hopkins University Press, Baltimore, 2009; **Lehmbruch G.**, Consociational Democracy and Corporatism in Switzerland, *Publius: The journal of federalism*, Vol. 23, N 2, Oxford, 1993, pp. 43-60; **Fukuyama F.**, State-Building: Governance and World Order in the 21st Century, Cornell University Press, Ithaca, 2004; **Fukuyama F.**, Building Democracy After Conflict, "Stateness" First, *Journal of Democracy*, Vol. 16, No. 1, 2005, pp. 84-88; **Bartolini S.**, Restructuring Europe: Centre Formation, System Building, and Political Structuring between the Nation State and the European Union, Oxford University Press, Oxford, 2005; **Мельвилъ А., Ильин М., Мелешкина Е. и др.**, Политический атлас современности: Опыт многомерного статистического анализа политических систем современных государств, МГИМО–Университет, Москва, 2007.

²² **Rae H.**, State Identities and the Homogenisation of Peoples, Cambridge University Press, Cambridge, 2002; **Brubaker R.**, Nationalism Reframed: Nationhood and the National Question in the New Europe, Cambridge University Press, Cambridge, 1996; **Linz J., Stepan A.**, Problems of Democratic Transition and Consolidation: Southern Europe, South America and Postcommunist Europe, John Hopkins university, Baltimore, London, 1996.

- Studies focusing on communities' political construction conceptualization and operationalization, the socio-political demarcation concept, representing the most important social riots, which in its turn has profound institutional reflection in the political system and is able to form the system of government-people relations as a political "body" of the state²³.
- The works, which offer conceptual definitions to the process of creation of states and nations, mainly focusing on the alternatives of creation of states²⁴, the relations between center and periphery, as well as between other socio-political units²⁵ and representing the creation of nations as a resume of national standardization and social mobilization²⁶.
- Works of historical institutionalization supporters, among which worth sticking to are the ones, which take as a subject of analysis the impact of institutional heritage on the process of

²³**Lijphart A.**, Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice, Routledge, New York, 2007; **Lijphart A.**, Democracy in Plural Societies: A Comparative Exploration, Yale University Press, New Haven, London, 1977; **Lijphart A.**, Consociational Democracy, *World Politics*, Vol. 21, No. 2, 1969, pp. 207-225; **untu luulu' Daalder H.**, The Consociational Democracy Theme, *World politics*, Vol. 26, N 4, 1974, pp. 604-621; **Lehmbruch G.**, Consociational Democracy and Corporatism in Switzerland, *Publius: The journal of federalism*, Vol. 23, N 2, Oxford, 1993, pp. 43-60; **Lipset S., Rokkan S.**, Cleavage Structures, Party Systems and Voter Alignments: An Introduction, Party Systems and Voter Alignments: Cross-National Perspectives, The Free Press, New York, 1967; **Caramani D.**, The Nationalization of Politics: The Formation of National Electorates and Party Systems in Western Europe, Cambridge University Press, Cambridge, New York, 2004.

²⁴**Moore B.**, Social Origins of Dictatorship and Democracy, Beacon, Boston, 1968.

²⁵**Rokkan S.**, Cities, States and Nations: A Dimensional Model for the Study of Contrast in Development, *Building states and nations: Method and data resources*, Vol. 1., Sage, Beverly Hills, 1973, pp. 13-38; **Rokkan S.**, Territorial Structures in Western Europe: An Overview and Possible Model, Center Periphery Structures in Europe: An ISSC Workbook in Comparative analysis., Campus Verlag, Frankfurt am Main, 1987; **Rokkan S.**, The Center-Periphery Polarity, Center Periphery Structures in Europe: an ISSC Workbook in Comparative analysis, Campus Verlag, Frankfurt am Main, 1987; **Rokkan S.**, Territories, Centres, and Peripheries: Toward a Geoethnic-Geoeconomic-Geopolitical Model of Differentiation within Western Europe, Centre and Periphery. Spatial Variation in Politics, ed. by J. Gottmann, Sage Focus Editions, Beverly Hills, London, 1980; **Rokkan S., Valen H.**, The Mobilization of the Periphery, Approaches to the Study of Political Participation, Michelsen Institute, Bergen, 1962.

²⁶**Deutsch K.**, Social Mobilization and Political Development, *American political science review*, Vol. 55, N 3, 1961, pp. 493-514.

state development, as well as on extreme situations arisen throughout history and their influence on institutional decision-making actors²⁷.

So, the studies dedicated to the issue of stateness focus on giving definitions to separate components of stateness process (attempts offering conceptual definitions of statehood, conceptualization and institutionalization of communities' political construction, search of strategic types of stateness, the process of creation of states and nations), but comprehensive conceptual works and empirical comparisons are still missing.

The complexity of the solution of the afore-named problem is also conditioned by a number of other factors: while talking about the features and capabilities of this or that state, the researchers quite often use such vague words as “strong”, “weak”²⁸. It's noteworthy that the perceptions of various authors about the formulations “strong” and “weak”, characterizing the states, greatly differ from one another: starting with efficient functioning of state apparatus unto government's apparent intervention to society's life, authoritarian governance, developed public sector and the ability to prohibit exceedingly external influence²⁹.

Sometimes for describing this or that country authors use controversial concepts as “control”, “power of state” or “weakness of state”, “failed states”, “fragile states” and other formulations of this

²⁷**Pierson P.**, Increasing Returns, Path Dependence, and the Study of Politics, *American political science review*, Vol. 94, N2, 2000, pp. 251-267; **Pierson P.**, *Politics in Time: History, Institutions and Social Analysis*, Princeton University Press, Princeton, New Jersey, 2004; **Mahoney J.**, *The Legacies of Liberalism: Path Dependence and Political Regimes in Central America*, Johns Hopkins University Press, Baltimore, 2001; **Collier R., Collier D.**, *Shaping the Political Arena*, Princeton University Press, Princeton, 1991; **Skocpol T.**, *States and Social Revolutions: A Comparative Analysis of France, Russia and China*, Cambridge University Press, Cambridge, 1979; **Ziblatt D.**, *Structuring the State: the Formation of Italy and Germany and the Puzzle of Federalism*, Princeton University Press, Princeton, New Jersey, 2006; *States and Development. Historical Antecedents of Stagnation and Advance*, Ed. by Lange M., Rueschemeyer D., Palgrave Macmillan, New York, 2005.

²⁸**Мелешкина Е.**, Исследования государственной состоятельности: какие уроки мы можем извлечь?, *Политическая наука*, № 2, 2011, 9-27.

²⁹**Lauridsen L.**, The Debate on the Developmental State, *Development Theory and the Role of the State in Third World Countries*, J. Martinussen (ed.), Roskilde univ. centre, Roskilde, 1991, pp. 108-133 (cf. **Мелешкина Е.**, *Op. cit.*):

sort. In a number of studies the afore-named expressions, used to characterize a country or a group of countries, are substantiated by documentary materials. However, the empirical model, assessment tool and clear fixation of data of the studied phenomenon are often missing. Additionally, the use of such words and phrases in empirical studies may lead to distortion of notions³⁰ and, what is even more hazardous, to arbitrary interpretation of research results for political purposes³¹.

The solution of the afore-named problems requires a set of comprehensive actions. The first step should be the presentation of an integral model of assessment of stateness, the main evaluative and analytical tool of which should be the *"stateness" – as the state's capacity of performing its main functions, becoming a full member of international community and a subject of international law*. The index aims to represent an integral model of assessment of stateness, which will be applicable both for recognized and non-recognized states, and will give the opportunity to compare the levels of stateness both within the countries of Post-Soviet space and of the whole world. The creation of a model, which will have a practical implementation, can become truthfully helpful tool for identifying the existing and potential problems. Integral assessment of stateness allows to record simultaneously both progress and regress in all the fields of stateness hence giving an opportunity to the states and international community to focus on the problem areas and to promptly undertake their solution process. Such approach would allow to fight against security threats and destabilization, thereby fostering peace and security (which conditioned the name of the index – Peace Index).

³⁰Сартори Дж., Искажение концептов в сравнительной политологии, *Полис*, № 3, 2003, с. 67-77.

³¹Мелешкина Е., *Op. cit.*

Peace Index

<u>Political Index</u>
• State legitimacy
• Political stability
• Government Effectiveness / World Bank /
• Constitutionality and rule of law
• The right to vote
• Political pluralism and participation
• Effective Mechanisms against corruption
<u>Economic Index</u>
• Economic freedom / Index of Economic Freedom and expert assessment/
• GDP per capita / USD/
• GDP annual growth rates
• Income / Expenses GDP
• Import / Net exports /GDP %/ goods and services
• External debt to GDP ratio %/
• Efficient income distribution / Gini coefficient and expert assessment /
<u>Social Index</u>
• Provision of basic services
• Employment indicator
• Quality of public services
• Accessibility and quality of health care and mandatory medical insurance
• Literacy rate and quality of education
• Minimal social conditions and protection of rights of refugees and IDPs
• Environmental protection
<u>Security Index</u>
• Quality and Efficiency of Security Agencies
• Border and customs control
• Absence of secessionist tendencies, civil wars, units having territorial claims, illegal armed units, not self-

determination conflicts and domestic armed conflicts
<ul style="list-style-type: none"> • Absence of foreign military bases and peacekeeping missions
<ul style="list-style-type: none"> • Absence of illicit activities (drugs, illegal arms, trafficking)
<ul style="list-style-type: none"> • Absence of external threats

So overviewing the stateness level by the following indicators and their sub-indicators, we can distinguish the features, which are especially vital within the connection of stateness level and international recognition (or in this case the absence of it) – outlining the threats that can arise because of the non-recognized status.

Political field: Within political factors from the perspective of the connection with the international recognition of notional importance are state legitimacy and government effectiveness. One of the most fragile points in all the non-recognized states are indeed the issues of good governance and government effectiveness. As a rule the governments of these entities find themselves incapable and/or non-reluctant to work on that issue. No doubt, the most difficult are the cases when we have to deal with their non-willingness (reasons and opportunities as described in the previous chapter), as the cases with incapability or lack of knowledge/experience can be easily addressed in the case of international community’s ‘willingness’ to assist.

In the states, where the state institutions haven’t still been fully established, the non-state actors – e.g. warlords, rebels and criminal networks – can take the advantage of lack of state capacity and legitimacy, and offer alternative governance systems. Therefore, the issue of legitimacy is very complex in fragile post-conflict entities - with different sources of legitimacy coexisting, competing and conflicting – and interacting with other sources of power and interest. This further complicates external actors’ effective intervention during

the post-conflict period³². Especially after armed conflict very often power is focused in the hands of the actors, who, in their turn, control the armed groups³³, unless the Constitution and relevant laws haven't been adopted and the elections haven't been held on their basis. Hence, in the first phase the key actors are the warlords, whose role in the second phase should gradually decrease, of course, if the process is moving in the right direction. All in all, legitimacy issue is, indeed, a very vulnerable point for all of these states, as neither their sovereignty, nor their elections are perceived as legitimate by the international community.

Economic field: For each state economic factor is undoubtedly of high significance, especially the issues of trade and investments. But the non-recognized states are, in fact, facing almost absence of the afore-named relations, particularly conditioned by stringent limitation of any type of international relations, apparently including the economic relations too. But if we take into account, that these states in this cumbersome plight should develop their economy along with the 'ideal' pack of challenges: reconstruction and rehabilitation of the whole country after the military phase, worldwide deepening of the globalization process, in the context of still "a frozen conflict" the process of extensive and intensive armament and in the case of the countries of Post-Soviet space the pack accrues with the process of Post-Soviet transformation, the international community is, in fact, directly putting these states under the threat of becoming fragile and even failed, as this 'ideal' pack of challenges is too much even for a recognized state – with its already firmly established international relations, what to say about the ones which have a lack of them.

Social field: Overall, without ensuring public security, the economy and public services simply cannot work and peace cannot be obtained. Bright examples are Somalia and Afghanistan. But the difficulties of the limited public representation and capacities in

³²Paris R., Sisk T., *The Contradictions of State Building: Confronting the Dilemmas of Post-War Peace Operations*, Routledge, London, 2008.

³³Goldstone J., *Pathways to State Failure*, *Conflict Management and Peace Science*, Vol. 25, Issue 4, 2008, 285-296.

fragile post-conflict states facilitate the process of focusing the provision of key activities and services in the hands of some non-state actors – including international and local non-governmental organizations, inherited power holders and in some cases criminal or armed groups, who are challenging and competing with the elected authorities³⁴. But the elected authorities also do not restrain from taking the advantages of misusing the public goods for the sake of their own interests. The afore-mentioned is not acceptable, as state should be able to protect itself from both internal and external threats, while simultaneously being obliged to protect the population – regardless of ethnicity³⁵.

But at the end of the day one thing is unchangeable: no matter how effectively any type of positive changes and amendments are implemented, the political voice is formed not only through political processes, but also by the mobilization possibilities of society, especially - civil society. Yet another important point: where the society is fragmented by conflicts and violence, the possibilities for political voice and social accountability are often eroded. A matter of special concern are the issues of mobilization capabilities of vulnerable and marginalized groups, especially in post-conflict entities. In post-conflict fragile states the continuous disregard of fundamental rights, including the violation of children's rights, gender inequalities and the systematic expulsion of indigenous peoples and vulnerable minority groups, is largely conditioned by the absence of voting rights and legal channels for participation³⁶.

Security field: The most troublesome issues of non-recognized states are mainly referring to security field. The absence or underdevelopment of international and local control mechanisms over

³⁴**Batley R., McLoughlin C.,** Engagement with Non-State Service Providers in Fragile States: Reconciling State-Building and Service Delivery, *Development Policy Review*, 28 (2), 2010, 131-154.

³⁵**Sisk T., Wyeth V.,** Rethinking Peace-Building and State-Building in War-Torn Countries: Conceptual Clarity, Policy Guidance, and Practical Implications, Draft discussion note for the OECD DAC International Network on Conflict and Fragility, 2009.

³⁶**Migdal J.,** *Op. cit.*

the non-recognized entity, as well as the fact that fragile post-conflict states are likely to have limited authority over some regions within their own territory, becomes a truthfully prolific basis for the emergence and development of illegal groups and activities. As a rule, the process of state-building and afterwards stateness is more visible in the capital, whereas the population of the peripheries typically has a limited and insufficient interaction with the state. As a result, informal or regional authorities are more actively participating in the management of these regions. In such context, not only the traditional model of "top-down" state-building and governance is put under a risk, but also the threat of non-stability is increasing. At the same time, it's worth mentioning, that even the existence of international control and administration mechanisms isn't yet a guaranty for stability. Even UN, OSCE, EU and NATO efforts weren't sufficient to make Kosovo, located in the centre of Europe – the cradle of democracy, to refrain from being cradle of illicit activities like illegal arms trade, drugs, trafficking. Plus, the issue is more troublesome because of the problem of not only the disability, but first and foremost non-willingness of formal authorities to address the issues, as they may themselves run, have share in illicit activities and/or special agreements with the groups managing such kind of activity.

Another feature of non-recognized states is the high level of military potential – mainly conditioned by the fact, that these states have gone through phase of armed conflict (and not once) with their 'mother' states. Of course, the existing military potential may become the primary means of ensuring state sovereignty and national security, in particular in the cases of major failures of international administration bodies and efforts of peace maintenance, especially in the context of current rise of terroristic attacks. However, there are some states, where the size of military forces is bigger comparing to the population, but still it doesn't guarantee the absence of problems associated with stateness in these countries. On the other hand, some recognized states (mainly European) have the lack of military strength, whereas some non-recognized states do not. For instance, in

a number of recognized states (e.g. Switzerland) the existence of the armed forces, especially its size, are indeed not vital factor for stateness., as they successfully use other mechanisms, particularly supranational bodies and security guarantees. While observing the question from another angle, it can be stated, that the military potential, which doesn't get precise economic support (especially taking into account that non-recognized states in the majority of cases are not even able to fully ensure themselves their state budgets), can become fragile and quickly lose its significance, as the process of extensive and intensive armament is expensive and at the same time encounters the problem of unceasing equipment upgrade.

So, one can assume that non-recognized status is a real challenge for a state, but the dilemma is that a number of states - both recognized pretty long time ago and comparatively freshly recognized – are in a way worse situation than some non-recognized states, though they enjoy the privileges of being recognized and do not have to face the challenges deriving from being non-recognized. Just enumeration of these states is quite sufficient, as their number is not that little: Somalia, Central African Republic, Sudan, Pakistan, Burundi, Iraq, Chad, Afghanistan, Haiti, Guinea, Nigeria, Yemen, Zimbabwe, Niger, Myanmar, North Korea, Guinea Bissau, Ethiopia, Sierra Leone, Libya, Kenya, Liberia, Mali, Cote d'Ivoire, Cameroon, Uganda, as well as states relatively recently emerged on self-determination principle – Eritrea, Timor Leste and South Sudan. And we can still continue the afore-mentioned list.

Somalia is no doubt an extreme example of the wide discrepancy between absent or ineffective stateness on one hand, and guaranteed judicial statehood (and international recognition). Maintaining the latter by disregarding empirical stateness helps to perpetuate structural weaknesses and conflicts, because states – and the governments that claim to rule them – derive resources from sovereignty (e.g. loans, development assistance etc. ³⁷). The same

³⁷ **Tull D.**, Separatism in Africa: The Secession of South Sudan and Its (Un-)likely Consequences, SWP Comments 2011/C 18, August 2011.

phenomenon was previously represented for South Sudan and Eritrea too. So if state weakness represents the main source of conflict in countries such as Somalia, Eritrea and South Sudan, then it makes a good political sense to recognize those entities that provide effective institutions and political governance – if all else fails below the threshold of international recognition.

Conclusion

The states emerged on the right of peoples to self-determination after the armed conflict are starting the processes of state-building and stateness under indeed cumbersome conditions.

1. All in all, the issues of stateness are extremely complex for all the states. But the issue is more complex for the non-recognized states, as the non-recognized status brings with itself a whole bunch of challenges for all the fields of stateness. Even the states that have already gained international recognition (e.g. South Sudan, Eritrea and Timor Leste) are plagued with extreme political, economic and social underdevelopment. However, the non-recognized states are still in a more troublesome situation, as the delay of granting final legal status to these states puts them under constant risk of becoming fragile and/or failed – no matter what development track they already had: the limitation or the absence of international relations can sooner or later lead to the dissolution of one or maybe at once all the fields of stateness, as all of them are tightly interconnected with one another. It may increase the threat of conflict resumption and the sufferings of people living in these states.
2. The complexity of the situation is further increased by the fact, that the process of granting final status to these states lasts for decades - conditioned by the political factor, though there is no legal obstacle. Moreover, various observations on reasoning the delay of determining the final status of such states by

deficiency and contradiction of international law are fictitious. In reality, the regulations related to the implementation of the right to self-determination are clear and exhaustive. In addition, the criteria enshrined in the Montevideo Convention are harmoniously compatible with the the right to self-determination.

3. The case study of Kosovo and Artsakh indicate, that even the results of non-recognized states with a number of essential common features may vary significantly. This attests, that the influence of external factors (like partial recognition) on sustainability level of a state is way smaller that the internal factors and peculiarities. Therefore, the existence of the means to increase the effectiveness of domestic processes is of crucial importance for enhancing sustainability level.
4. Effective mechanisms of stateness assessment can enhance the possibilities for resolving the problems of the states, that have been facing serious challenges for a long term. The already existing methods have a number of faults and segmental character. Their combination is practically impossible because of their different concepts, approaches and principles.
5. The article suggests to use an integral model of assessment, which would provide not only integral grade - increasing the accuracy of classification/gradation of states, but also segregated field assessment – pointing to the fields and issues, which could make the grading of the state non-sufficient and in the direction of which it is necessary to make efforts for improving the situation.