The Claim to Secession of the Turkish Republic of Northern Cyprus

A political and legal analysis of the latest developments in the doctrine of self-determination in Kosovo and its implications for the situation in Northern Cyprus

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Cover Illustration: Flag of the Turkish Republic of Northern Cyprus
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Introduction

The division of Cyprus into a Greek and Turkish part is a hot issue again since Cyprus' own EU-membership in 2004 and the accession talks between the European Union and Turkey. From the 1960s on there were several – bloody – encounters between the two parts of the populations, which resulted in a Greek state in the South of the island and an internationally (except for Turkey) unrecognized, self-proclaimed Turkish state in the North. Since the beginning of the conflict, the international community has repeatedly tried to find a solution. These proposed solutions were mostly focussed on reunification of the two parts. Reunification in the sense that the ‘rebellious Turks’ should let their secessionist wishes go and become part of (what is now described as Greek) Cyprus again. This attitude comes from the fact that the international community is of the opinion that the proclamation of the Turkish Republic of Northern Cyprus was an illegal act that contravened international law. As will be explained in the second chapter of this thesis, Turkish Cyprus and Turkey have a different view on things. They are of the opinion that they, and not the Greek Cypriots, acted in line with international law and rightfully exercised their right to external self-determination. At the time research for this thesis came to an end (September 2008), a new round of negotiations between the two parts of Cyprus for finding a solution to the problem, have begun.²

Though many secessionist movements exist in this world, an interesting case is going on in the Balkans. Here, the region of Kosovo – that has also been in several bloody wars with its neighbours – has recently declared its independence from Serbia. Unlike with Cyprus, a large part of the international community has actually recognized its independence. Looking at the situation in these regions, interesting questions pose itself about why Kosovo finds the international community on its side and why external self-determination is granted in that case and not in Northern Cyprus?

In line with the issues and developments mentioned above, the central question that is posed in this thesis is: *Does the Turkish Republic of Northern Cyprus (TRNC) now have a stronger case in international relations and international law for external self-determination, seen the recent developments of this doctrine with Kosovo’s successful independence?*

The reason for choosing Kosovo as a counter-case to the situation in Northern Cyprus is first of all the fact that both countries claim statehood, with the difference that the TRNC has only been recognized by one other country (Turkey) since 1983, while a large part of the world community started accepting Kosovo’s independence the day it proclaimed it. Next to this, Serbia and Cyprus share more similarities: they have a similar historical development of different controlling powers, they are both dealing with large minorities and they are located in roughly the same region of the world. Because of these similarities, Kosovo makes a good counter-case to Cyprus, in order to ascertain why Cyprus is being treated differently from Kosovo.

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In order to be able to find a comprehensive answer to this central question, the issues will be examined from two fields of expertise: international relations and international public law. These two academic subjects differ in the way that generally speaking, political science deals with reality from a more theoretical and analytical point of view, while international law tries to deal with issues in a more regulatory way.

If we would look at the different ways the secessionist wishes of both Cyprus and Kosovo are dealt with from only one perspective, we would not likely get a satisfying answer. As will be seen in the following chapters, the legal doctrine of self-determination – which plays a major role in these issues – is not a very well developed concept, partly because both its political and legal implications have changed several times over the years. Because of the legal vagueness, politics was able to use it as it found necessary and so change it.

After further examination of what is happening in both countries, it becomes clear that this changing process is still going on and therefore it is necessary to get a good view of the underlying legal and political issues.

Since this paper is about the right of populations, ‘peoples’, to form their own state, it is logical to start with an overview of the legal framework in international law about statehood. This framework exists of different parts, the first being more or less ‘practical’ rules – the so-called ‘Montevideo-criteria’ – while the second part consists of more ‘theoretical’ rules, which are closely connected to political international relations – the doctrine of self-determination. Self-determination comes in two manifestations: internal and external. Internal self-determination means that a population can gain independence from the state it is officially a part of. The chapter will close with the importance of recognition of the new state by the international community.

After having set the theoretical framework for this paper in the first chapter, the second will get in to the situation of the Turkish Republic of Northern Cyprus. After violent outbursts in the 1960s, troops from Turkey came to Cyprus to fight the Greeks, which were attacking the Turkish Cypriots. Core issue was that the Greeks were of the opinion that the Turkish minority held a disproportionate amount of power. After a civil war, the Turks retreated to the North where they founded their own state (only recognized by Turkey). Even though they proclaimed independence, the Turks would like to be reunited with the Greek part on the condition of political equality.² Proof of this attitude can (amongst others) be found in the acceptance of the Anan-plan by the Turkish Cypriots, of which political equality was a part.

Chapter 3 then deals with Kosovo, the counter case. Through examining what is happening in Kosovo, we will get a clear view on the new shift in the legal doctrine of self-determination. Where existing borders were always seen as sacrosanct and withheld a flexible application of self-determination, it now looks like the international community is willing to take another look at the alleged peace and stability that existing borders bring. It was even the international community itself –

the United Nations – that came up with independence as the only real and sustainable solution for the Kosovo-problem.

After close examination of the situation in Northern Cyprus and the latest developments in Kosovo when it comes to the doctrine of self-determination, made observations will be put into context and set off against each other in order to really see what is happening in the two countries and what the situation in Kosovo could, possibly, mean for the Turkish Republic of Northern Cyprus.

At the time this research came to an end – beginning of 2009 – Kosovo has unilaterally declared its independence and has so far been formally recognized by 55 countries, amongst which 22 European Union member states and the United States of America.³

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³ www.kosovothanksyou.com (accessed: 28.02.2009). This is no Government Site, but is also used for a up-to-date status of the process of recognition by quality newspapers like Die Süddeutsche Zeitung.
Chapter 1: Theory of statehood

§1.1 The Montevideo-criteria

The origin of the international community in its present structure and configuration can be traced back to the peace of Westphalia (1648), when a system of sovereign and equal states first emerged. A ‘state’ can be described as a political community formed by a territorially defined population which is subject to one government.4 Because of the lack of a global treaty that legally defines ‘states’, the definition mostly used in international law is that from the Convention on the Rights and Duties of States, also known as the Montevideo Convention. This convention states in its first article:

“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 states.”5

There are no clear numbers or rules attached to these criteria. It does not matter how large a population is, as long as it is attached to a territory through nationality. Something similar goes for the criterion of territory. It does get more difficult though in cases where there is a dispute about the question to whom a certain territory belongs, but for now we can suffice by saying that in such cases it is about who has effective authority over the land. A government means that there is some kind of authority over a population and territory. The fourth criterion means that there is a legal authority to enter into relations with other states; that there is legal independence which permits the government to make arrangements with other states and to give effect to them domestically where that is necessary. What is important here is that it should always be about legal independence instead of political independence, just like importance on limits of population or territory was abandoned. Only a few states are wholly independent from other countries in political matters6 (especially in international relations) and therefore the criterion is about legal independence, meaning a state can engage in international relations in the way it decides within its own constitutional restraints and without any other state having the legal ability to interfere.

§1.2 The evolution of the doctrine of self-determination

The concept of self-determination is closely related to the world of international relations. Although the concept has its roots in the 1800s when J.G. Fichte first introduced the principle, the starting-point of the modern concept stems from American president Wilson. After the First World War Wilson had a clear vision of what the new world order should look like. He felt that “(t)his war had its roots in the disregard of the rights of small nations and of nationalities which lacked the union and the force to

5 Montevideo Convention on the Rights and Duties of States, 26 December 1933, art. 1.
make good their claim to determine their own allegiances and their own form of political life.”

He felt that one of the primary aims of this new world should be to recognize and respect the will of the people and their right to (democratic) self-government. This is what he understood as ‘self-determination’ and in modern times is known as the right to internal self-determination. Although it may sound that way, Wilson didn’t think this right to self-determination could be used universally. He even warned that it should only be granted “without introducing new or perpetuating old elements of discord and antagonism” that might disrupt Europe. So after stressing its importance, he immediately limited the principle’s scope, which is the starting point of the dialectic within the concept and practise of self-determination. This idea of Wilson about self-determination was put into practise in the Versailles Settlement, through which European borders changed, new statehood was granted to identifiable peoples, existing countries changed in size, ethnic minorities were granted special protection by the League of Nations and the defeated countries had to give up their colonies. Soon after this settlement though, the German Weimar project failed, Hitler rose to power (with the aim of “(…) unification of all Germans to form a Great Germany on the basis of the right of self-determination enjoyed by nations.”) and the Second World War began.

The concept of self-determination revived in the 1960s, when the process of decolonization began. With the rise of respect for human rights and under pressure from socialist countries – mostly the Soviet Union – within the United Nations, the colonial world order came to an end. Though the principle of ‘self-determination’ was already included in the first article of the United Nations Charter in 1945, it got real meaning through UN General Assembly Resolution 1514 (1960). Before this resolution and during the interwar-period there was never any talk of granting the right of self-determination to the many different colonies. The 1960-resolution first changed this, by specifically focussing on the situation of colonialism. The right to self-determination was now formulated as a right of colonial peoples to direct independence, as long as it would not jeopardize international peace and stability. The emphasis on peace and stability comes from the fear the international community had that former colonies could fragment into anarchy and violence and therefore be disruptive to international peace and security. This fear was based on the fact that many of the colonized countries had (very) different populations living in them, which did not always get along well together.

The problem with the 1960-resolution is that on the one hand it manifested the right of self-determination as a universal right, but also narrowed its applicability down to colonialism, without containing a clear definition of what ‘colonialism’, its attributes or manifestations are. Even though the concept had no clear definition, the international community actually was able to determine what colonies were during the 1960s and to free them from their European occupiers. This only with respect to another principle: uti possidetis. This principle was used in order to make sure that when a former colony would be granted the right to self-determination – in the sense of self-government – there would be no re-negotiations over the existing borders. The reason behind this was that the new states still had to learn the practice of good statehood and, therefore, needed protection from the

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7 President Wilson’s Address to Congress, February 11, 1918: http://net.lib.byu.edu/~rdh7/wwi/1918/wilpeace.html (accessed: 25.06.2007)
9 Article 1 of the National Socialist Party Program
international community against possible secessionist claims from other peoples living in the same territory, which could endanger not just domestic but also international peace and stability.

The process of decolonization actually went along those lines, until the 1980s. While decolonization during the 1960s was an *inter-state* problem, twenty years later more and more states got involved in *intra-state* conflicts. Peoples within existing and recognized countries wanted to make use of the right to self-determination to gain independence. The problem for international law with these *intra-state* conflicts is that these conflicts fall under the sovereign jurisdiction of the existing state and international law therefore has no influence on it. You could say that international law – especially then – was based on the realistic notion of International Relations, where the focus lies on states and relations between state-governments and not on what happens within states or how different people or groups within states have transnational relations with others.10 The only case in which the international community and other states may intervene in domestic conflicts is when it is about *jus cogens*, in every other case the world community has to stay out of states’ internal affairs.

The right to self-determination was laid down in the UN Charter11, the Universal Declaration of the Rights of Peoples12 and the International Covenant on Civil and Political Rights13, as a right that ‘*all peoples*’ have. Because the right to self-determination was put down as a right that *all peoples* have and because it was laid down in these three important treaties, more and more peoples are trying to claim their independence under this heading. Since there are no clear cut criteria on *external* self-determination, peoples are now also trying to apply this right outside the colonial context.14

§ 1.3 The concept of self-determination in the 21st century

The current state of affairs is that neither the international community nor states themselves have been able to grant more modest claims to external self-determination nor have they been able to respond to these developments with innovative and flexible renderings of sovereignty.15 It is, therefore, that at present the right to external self-determination is rarely recognized until it is won through war or any other (violent) conflict. A new development in the doctrine of self-determination – which does not have a lot of state-practise to back it up though – is that in case of violations of the right to internal self-determination, peoples are granted the right to external self-determination (the right to secede). In 1998 the Canadian Supreme Court dealt with the question whether Québec had the right to secede from Canada on the basis of the right to external self-determination. The Supreme Court stated the following:

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11 Charter of the United Nations, 26 June 1945. Article 1, para. 2: “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.”
12 Universal Declaration of the Rights of Peoples, 4 July 1976. Article 5: “Every people has an imprescriptible and unalienable right to self-determination. It shall determine its political status freely and without any foreign interference.”
13 International Covenant on Civil and Political Rights, 1966. Article 1: “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 recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination -- a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to external self-determination (...) can be defined as in the following statement from the Declaration on Friendly Relations as

[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people. [Emphasis added.]

(...) [The] right to self-determination [in international law] only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development. In all three situations, the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination.”\textsuperscript{16}

What the Canadian Supreme Court says in this case, is that peoples generally have the right to internal self-determination, and have the right to external self-determination in case of colonization. Then the court goes on and extends the applicability of the right to external self-determination, to cases where peoples are oppressed by their own government and for a longer period of time are deprived of their right to internal self-determination. After summing up the clear cut cases in which the right to external self-determination is granted (f.e. colonization, exploitation, alien subjugation), the court makes clear that in cases where peoples can enjoy their internal self-determination and there is a government representing the whole of the people equally and without discrimination, they have no right to external self-determination.

“[I]n other circumstances, peoples are expected to achieve self-determination within the framework of their existing state. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states.”\textsuperscript{17}

In the specific case of Quebec, the court finds that there is no denial of the right to internal self-determination of the citizens of Quebec and therefore that they have no right to external self-determination and cannot secede unilaterally.

“Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the National Assembly, the legislature or the government of Quebec do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally.”\textsuperscript{18}

\textsuperscript{16} Supreme Court of Canada, “Reference re Secession of Quebec”. 20.08.1998, paragraph 126 & 138.
\textsuperscript{17} Supreme Court of Canada, “Reference re Secession of Quebec”. 20.08.1998, paragraph 154.
\textsuperscript{18} Supreme Court of Canada, “Reference re Secession of Quebec”. 20.08.1998, paragraph 154.
§ 1.4 Recognition of states

An entity wanting to secede from an existing state does not only have to deal with the question whether or not it has the right to external self-determination. As was mentioned above, the doctrine on this issue is not crystal clear, which means that even if an entity finds that it has the legal right to external self-determination, this new situation also has to be accepted by the rest of the international community; the entity now has to be recognized as a state. This issue is closely related to the fourth criterion of the Montevideo-criteria. For only if a state is being recognized as such by others, can that new state enter in international relations, make use of its rights and be called upon its duties.

When it comes to recognition there are a number of things you could recognize, such as states, governments or recognition for domestic law. Since this paper deals with the question whether the TRNC has a right to secede from Cyprus, we will only deal with the first form of recognition.

‘Recognition’ is a unilateral act of a state. It is not a state’s duty to recognize another state, but if it does, this act has international legal consequences. From that moment on, the relations between the two states will be governed by international law on a state / state basis. This does not, however, automatically mean that the two states will engage in diplomatic relations. Both recognition and the establishment of diplomatic relations are discretionary, which means that if one state recognizes another it does not automatically follow that diplomatic relations will be established, that if they do, they have to be of a certain level or that once they are established, they cannot be changed or terminated (termination of diplomatic relations is a normal diplomatic sanction in international relations).19 The decision whether or not to recognize an entity as a state, depends partly on the fulfilment of the Montevideo-criteria, but is also a political decision. Politics and the self-interest of states can lead to the decision to recognize, since it could be of importance for existing states to engage in diplomatic relations with the new state or to conclude treaties together. On the other hand could politics also lead to the decision not to recognize another entity as a state. If an entity gains effective authority by overriding fundamental rules of international law, like with the apartheid regime, recognition will be unlawful. Another act of unlawful recognition is the case of ‘premature recognition’. In this case, an existing state recognizes and entity or a rebel group as a state, although the existing government is still trying to exert its authority. The reason behind this is that such recognition would be an intervention of the recognizing state into the domestic affairs of the other state.20 Thirdly, it can also be the case that the organized international community (such as the UN Security Council or the UN General Assembly) condemns the formation of a new ‘state’ and calls upon the international community not to recognize a certain entity as a state. This is called ‘non-recognition’. Examples are Transkei in South-Africa (1976) or the white minority in Rhodesia (1965).21

The doctrine on the recognition of states exists of two rivalling theories, the constitutive and the declaratory theory. According to the first, a state becomes an International Person solely through recognition and only with respect to the recognizing state. The declaratory theory finds that states become subjects to international law whenever they de facto exist, independent from the wills or actions by other states. Recognition in this sense only declares the existence of this fact and does not

constitute the legal personality of the new state, as presumed in the constitutive theory. A major difference between the two theories is the answer to the question whether or not a state possesses legal personality prior to recognition and whether an unrecognized state has the capacity for rights and duties under international law. In practice the declaratory theory has certain advantages over the constitutive. The biggest problem with the latter being that in international relations there is no central authority that can decide whether or not a new state complies with the Montevideo-criteria and that recognition is in order.

So although recognition is mostly used as a political instrument, it can also have major juridical implications. First, in case it is not clear whether an entity really fulfils the Montevideo-criteria, recognition by other states can be used as proof of effective authority over a certain territory (for example in case a conflict comes before a tribunal concerning this issue). Secondly, recognition shows the willingness of the recognizing state to engage in judicial relations. It is the recognition by other states that gives the new state the opportunity to truly engage in international relations, join international organizations, conclude international treaties etc.

§ 1.5 Summary

Although it has been laid down in a number of international treaties that all peoples have the right to self-determination, this does not automatically mean the right to external self-determination. As was explained in the case Reference re Secession of Quebec, peoples have a right to internal self-determination. That means that they are represented by their government in an equal and indiscriminate way and can pursue their political, economic, social and cultural development within the framework of an existing state. The right to external self-determination is granted in cases where a people is oppressed, as for example under foreign military occupation, and – according to the Supreme Court of Canada – where its right to internal self-determination is denied.

Next to this legal right to external self-determination, there are some more practical criteria that have to be fulfilled. It is necessary to meet the criteria of a permanent population, a defined territory, a government and (legal) sovereignty. The last step in attaining statehood is to be recognized as such by other states. Only if states will recognize a new state, will it fully be able to exercise its statehood by engaging in international relations with the rest of the world community, for a state can only become a member of international organizations (as f.e. the United Nations), conclude international treaties etc. if it is fully recognized. The difficulty about recognition is that for a large part it is a political process. There are no binding legal rules that tell states when to recognize an entity as a state and when not to. Every state will make its own assessment on whether to recognize the new state or not, which could for a (very) large part be influenced by politics and not (just) by the fulfilment of the above mentioned legal and practical criteria.

Chapter 2: Case study – The Turkish Republic of Northern Cyprus

§ 2.1 Historical overview

The Mediterranean island Cyprus has its roots in the Greek culture. After this period the island was colonized for 3000 years by many different cultures and rulers. The period that is most important for the current situation in Cyprus, is that of the last two colonizers. These colonizers were the Ottomans and after that the British. During the occupation by the Ottoman Empire, a great many Turks came to live in Cyprus. When the Turks gave the island to the British in exchange for protection against the Russians, these Turks continued to live in Cyprus. When Great-Britain integrated the island in the commonwealth, the Greek Cypriots got enough of just another occupier and came up with the idea of ENOSIS; becoming part of Greece again. During the 20th Century these sentiments grew stronger and several referenda were held on the island – mainly organized by the Church – in which a large majority (of Greek Cypriots) were in favour of ENOSIS. The British would not give in though, which resulted in the establishment of EOKA, a nationalist organization that fought for the expulsion of British troops from the island, for self-determination, union with Greece and therefore also against the Turks.

The EOKA was clandestinely supported by the Greek Government in the form of arms, money and propaganda. In an attempt to end the Cypriot conflict the House of Commons decided to grant the island its independence and took on a resolution to grant both parties on the island the right to self-determination. After this, the Greek and Turkish Cypriots, the British, Turks and Greeks got together in 1960 and formulated a constitutional arrangement for the island.24 Through this constitution the two parties on the island became political equals and several constitutional arrangements were made to put this equality into practice; for example: the President would be Greek and the Vice-President Turkish. There came a fixed number of Greek and Turkish representatives in various governmental institutions and each side got autonomy in matters relating to religion, education, culture etc.25

After a short while the Greek Cypriots found that the Turkish minority had too much to say and that is why in 1963 they tried to revise the constitution. The Turkish Cypriots didn’t go along and only days after the Turkish rejection, a Greek attack against the Turks began. In order to protect the Turkish Cypriots and scare away the Greeks, a ‘warning flight’ of Turkish jet fighters was ordered over the island, so the Turks could move to a place on the island where it was safe. The Greeks interpreted this ‘attack’ as a breach of the Treaty of Alliance – that was concluded in 1960 between Cyprus, Greece and Turkey through which the parties undertook to resist attack or aggression directed against the independence or territorial integrity of Cyprus – and declared that from now on the treaty had been terminated. Because of these upheavals, the Turkish Cypriots retreated to the North of the island. Because of continued fights between the two parties, a UN Peace Keeping Force (UNFICYP) was sent to Cyprus and reinforced the constitution.

Ten years later, a coup d’état organized and led by Greek officers of the National Guard – and there are rumours about Kissinger and the CIA being involved – took place. The Greek president was overthrown and former EOKA-terrorist Nikos Sampson was made president. His goal was still to seek union with Greece. The Greek followers of former president Makarios were opposed to these actions.

and so a civil war with large numbers of casualties took place, which also affected the Turkish Cypriots. After the Turks had unsuccessfully asked Britain for help, Turkey took action on the 20th of July 1974. This Turkish intervention – in their opinion based on the Treaty of Guarantee (1960) in which Greece, Turkey and Great-Britain made themselves guarantors of the 1960-constitution, Cyprus’ independence and its territorial integrity – was aimed at putting an end to the take-over of Cyprus by Greece and the inevitable destruction of the Turkish community. A year after the Turkish intervention, the Turkish Federated State of Cyprus was declared. It covered 37% of the island in the North that since the fighting a year before, was almost only populated by Turks.

The reason for establishing the Federation was to gain a stronger bargaining position once talks with the Greeks would be reopened. In response to this, the UN Security Council adopted a resolution in which it stated to regret this action on the grounds that it would compromise negotiations between the two parties. The UN General Assembly – that has no coercive force – even demanded the withdrawal of foreign troops and called upon all parties not to recognize this ‘state’. On 15 November 1983 the Assembly of the Turkish Federation proclaimed the establishment of a new state: the Turkish Republic of Northern Cyprus (TRNC). Although this state was immediately recognized by Turkey, that still had troops on the island, no other country recognized this entity. The international community also condemned this unilateral declaration and saw it as legally invalid and disrespecting Cyprus’ territorial integrity.26

§ 2.2 Recent developments
On the 25th of July 2008 Greek and Turkish Cypriots agreed to begin direct talks aimed at reunifying the island. On the 27th a newly appointed UN mediator arrived in Cyprus to help launch the historic

talks that are to start on the 3rd of September. After a series of meetings between Cypriote President Demetris Christofias and Turkish Cypriot President Mehmet Ali Talat, a historic decision was taken to start direct talks for the reunification of Cyprus. President Talat has told the press that he hopes to settle the Cyprus-question by the end of 2008: "Starting from September, we have four months... This much time is sufficient. It can be extended a little bit if necessary, but resolving the Cyprus question in a short time must be our primary objective." According to Cyprus’s chief diplomat to the EU Nicholas Emiliou, the two sides have already agreed on "what the final solution should look like". He described the process as a transition from a unitarian state to a federal, bizonal and bicomunal state. President Talat further elaborated in the talks by saying that the Greek side wants a presidential system with a rotating presidency and a unitary economy, but that no compromise was reached on this topic yet. Talat further said that Turkey's right to a guarantee of political sovereignty, political equality, bizonality and bicomunnality were the Turkish side's red lines, but apart from these are ready to negotiate anything. A problem though seems to be Turkey's guarantee of political sovereignty. Where Greek Cypriot President Christofias has called this unacceptable, Talat said that the abolition of Turkey's guarantee of political sovereignty would be unacceptable and a violation of existing international agreements. According to the Turkish Cypriot President there has been an agreement on the demilitarization of the island, once a settlement is reached.

§ 2.3 The TRNC and the right to self-determination

Several reasons may be advanced for the non-recognition of the Turkish Republic of Northern Cyprus. John Dugard mentions the three most important and most used by the international community in his book 'Recognition and the United Nations'. These three will be discussed below and set off against arguments from a Turkish point of view.

1. The TRNC cannot be recognized, for it is the consequence of Turkey's unlawful invasion and continued occupation of the Northern part of the island, which are both violations of Article 2 (4) of the UN Charter which states that: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

Though the UN Charter forbids unlawful use of violence, Turkey’s use of violence must not necessarily be seen as unlawful, for Article 51 of the UN Charter states: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a

32 Art. 2 (4) UN Charter, 26 June 1945.
Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." In the eyes of the Turkish government, the Greek attacks were so potentially devastating, that the Turks felt the need to help their fellow Turks as soon as possible and didn’t feel that there was enough time for first discussing possible intervention with the Security Council.

2. The establishment of the TRNC is contrary to the Treaty of Guarantee that guarantees Cyprus’ territorial integrity and prohibits partition of the island.

What is fundamental here is the problem that the international community, till today, is overlooking Greek systematic outbursts of violence against the Turks in 1963, 1964, 1967 and 1974, and the destruction by the Greek Cypriots in 1963 of the Republic. They are overlooking the fact that for 11 years after 1963 the Turkish Cypriots were driven from their homes, farms and businesses and squeezed into defended enclaves comprising only three percent of the island and were deprived of the basic necessities of modern life - all this despite the existence of a solemn international guarantee and UN troops actually in Cyprus since 1964. Seen in this light, Turkey only acted in line with the Treaty of Guarantee; it intervened in order to keep Greece from completely taking over Cyprus.

3. The creation of the Republic cannot be viewed as a genuine exercise in self-determination, as the Turkish Cypriot community does not constitute a self-determination unit and the secessionist state results in an impermissible fragmentation of the territorial integrity of Cyprus.

The question of self-determination can also be used in favour of the Turkish Cypriots, for as we saw in the case about secession of Quebec: “[Self-determination is granted] where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development.” Looking at what happened to the Cypriot Turks, according to this interpretation of the right to self-determination they would have a full right to self-determination.

The reason for why the international community is refusing to see these arguments seems to be foremost inspired by Britain’s interests. Since the British colonized the island, they have two army bases in Southern Cyprus. The importance of the bases to the British is based on the strategic location of Cyprus, at the eastern edge of the Mediterranean close to the Suez Canal and the Middle East, the ability to use the RAF base as staging post for military aircraft and for general training purposes. Because of this, and the electronic intelligence equipment located there, it was important to protect these bases, which could not be guaranteed if Britain had become an active part in the Cypriot conflict.

Another reason is that the international community fears that once they recognize the TRNC, Cyprus will never be re-united. This not in line though with statements of the TRNC. The government of the TRNC has stated time and again that their goal is to be re-united with the Southern part of the

33 Art. 51 UN Charter, 26 June 1945.
island and that their self-government is only temporary until this goal is reached. The whole idea behind becoming a recognized state, is to become an equal partner in future negotiations about the division of power in order to prevent the Greeks from having, almost, full control – like what they are striving for now and are able to, because the international community is constantly on their side and forgives them everything. It is because of this position, where they have no incentive to compromise, that the Greek Cypriots can continue their diplomatic efforts to exclude Turkey from Cyprus and the issue remains unsolved. The latest manifestation of these positions was the referendum held on the Anan-plan in 2004, which aimed at re-uniting the parties so they could become member of the EU together. It was the Turks that voted massively in favour of this and the Greeks that voted massively against it, which, \textit{de facto}, resulted in the fact that only Southern Cyprus became a member.

\section*{2.4 Conclusion}

What is clear about the Cyprus-conflict is that the arguments about whether to grant the North independence or not, can work both ways. Both parties have repeatedly used violence against each other, but the international community – following Britain’s self-interest – has only focussed on the Turkish ‘violations’.

Looking at the point of self-determination for the Turkish Cypriots, there is no clear legal argument for not granting the Turks the right to external self-determination. Although it is said that secession would be a violation of territorial integrity, the real reason for not granting it are the interests of the international community itself. Because in times of conflict Britain wanted to protect its own military bases on the Greek part, it didn’t get involved in the conflict (although it was legally supposed to according to the Treaty of Guarantee) and because the bases are still located in the Southern part, Britain has ever since been on the Greek side and used its influence in international relations to make sure no one else would choose sides with the Turks. So where it was normally international peace and stability that was protected by not granting separatist movements the right to external self-determination, in this case, it looks like pure self-interest. And even if the TRNC would be recognized by the US and others, this would still have happened out of political self-interest – to oppose Russia. So although the doctrine of self-determination seems to be granted more easily, it can still not be seen outside the context of international relations and what works best for the international community, or better: the hegemonies of the international community.
Chapter 3: Comparative case study: Kosovo

§ 3.1 Historical summary
The dispute over Kosovo between the Serbs and the Albanians has been going on for centuries. The region used to be part of the Serbian empire, but was invaded by the Ottoman Empire in 1389. The Turks tried to convert Kosovo’s population to the Islam, which succeeded reasonably well with the Albanians. When Serbia gained its independence in the 1800s, the idea of a Serbian nation encompassing Serbs from all over the Balkans, evolved. In order to achieve this goal wars – that continued till the beginning of the 20th century – broke out, both between Baltic countries and the hegemonies of the time; Russia, Austria and the Ottoman Empire.

After major losses and an attempt by the Ottomans to curtail the Albanians’ (cultural) rights within the Ottoman Empire, nationalism rose amongst them. Because Serbia and Montenegro were interested in gaining some land easily, they provided the Albanians with weapons to fight the Turks. When the Albanians grew too strong, the Balkan countries started a mutual war against them and the Turks. When this war ended Kosovo had become part of Serbia again. None the less, most Balkan-countries were unhappy with the outcome of the war which is part of the reason why the First World War broke out.

When the war ended in 1918, the Serbs, Croats and Slovenes created a new state: Yugoslavia. The Albanians that were living in Yugoslavia were not granted any right to internal self-determination; they were perceived as collaborators with the Turks and therefore heavily discriminated, expropriated and displaced. At the same time the Serbs started to colonize Kosovo. Because of this situation, the Albanians felt freed when the Germans invaded Yugoslavia and the greatest part of Kosovo came under the rulings of Albania during the 1940s. Many Serbs were killed and expelled, while about the same number of Albanians was brought over from Albania to settle in Kosovo. The German / Albanian occupation didn’t last long, for communist Josip Broz Tito and his partisan militia freed Yugoslavia from its occupiers only some years later. Some of the Serbs that had been expelled were allowed to come back to Kosovo, but because of an alliance between Tito and Enver Hoxha – Albania’s Prime Minister – the border between Albania and Kosovo was open, which resulted in a majority of Albanians living in Kosovo. When Tito and Stalin, years later, got into a conflict and Hoxha choose sides with Stalin, the border with Albania was closed. Under supervision of Tito’s Vice President Aleksander Rankovic and his secret service UDB-a, Serbs gained control over Kosovo again, until Tito got rid of Rankovic in 1966 and let a majority of Albanians in.

By winning the first Yugoslavian elections after the 2nd World War in 1953, Tito became President and made his country a federation, which by 1974 existed of republics and provinces. The difference was that the peoples living in the provinces – Hungarians and Albanians – actually had a mother country somewhere outside of Yugoslavia and the peoples living in the republics didn’t. Therefore the latter were granted more autonomy – even to the point of the right to secession.

Because Kosovo was economically behind in Yugoslavia, both Albanians and Serbs got discontent with their situation, which eventually led to violent outbursts in the 1980s. During the same years, the Albanians had come up with the plan of creating one large Albania, consisting of Albania
and Kosovo. Following all this, in 1987 Slobodan Milošević suddenly started to come up for the Serbs and was able to stop the Kosovo's independence from Yugoslavia with his military forces. This let the Albanians to retreat to an underground society which existed alongside the formal Serbian society.

Because the republics within Yugoslavia didn't want to be dominated by Serbia and Milošević, they became independent and the reason that the international community did nothing about the highly explosive situation in Kosovo – although everyone knew what was going on – is that they were too focussed on the war that Milošević was raging against the secessionist countries in order to incorporate them again. After a while, the Albanians became dissatisfied with the passive protest which led to more support for the Kosovo Liberation Army UÇK. This led Milošević to take drastic actions in 1998. Finally, the international community started taking measures against these grave human rights violations and eventually the NATO started bombing Yugoslavia. After the war ended, the UN Security Council passed Resolution 1244 that placed Kosovo under transitional UN administration (UNMIK) and authorized KFOR, a NATO-led peacekeeping force. Around 100,000 Serbs still remain in Kosovo.

§ 3.2 Recent developments
After Kosovo was placed under UN supervision in 1999, an UN-led political process – led by former Finnish president Martti Ahtisaari – began in late 2005 to determine Kosovo's future status. UN Special Envoy Ahtisaari negotiated with both parties for fourteen months. During these talks and negotiations they informed him about their ideas about the future Status of Kosovo. Belgrade proposed that Kosovo should maintain to be highly autonomous, but still part of Serbia, because an imposition of Kosovo's independence would be a violation of Serbia's sovereignty and therefore contrary to

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international law. Priština on the other hand, asserted that Kosovo should become independent, arguing that the violence of the Milošević years made continued union between Kosovo and Serbia unviable. At the end of the last High level meeting, the Special Envoy observed that there was no will from the parties to move away from their previously stated positions. Left with no doubt that the parties’ respective positions on Kosovo’s status did not contain any common ground to achieve an agreement and that no amount of additional negotiation would change that fact, the Special Envoy concluded that the potential of negotiations was exhausted. After this he finalised his proposal and submitted it to the UN Security Council.\[37\] This proposal contained:

“The aim of the Comprehensive Proposal for the Kosovo Status Settlement is to define the provisions necessary for a future Kosovo that is viable, sustainable and stable. It includes detailed measures to ensure the promotion and protection of the rights of communities and their members, the effective decentralization of government, and the preservation and protection of cultural and religious heritage. In addition, the Settlement prescribes constitutional, economic and security provisions, all of which are aimed at contributing to the development of a multi-ethnic, democratic and prosperous Kosovo. An important element of the Settlement is the mandate provided for a future international civilian and military presence in Kosovo, to supervise implementation of the Settlement and assist the competent Kosovo authorities in ensuring peace and stability throughout Kosovo. The provisions of the Settlement will take precedence over all other legal provisions in Kosovo.”\[38\]

The international community responded to this plan in different ways. The United States and the European Union were in favour of it and would like it to be accepted by the UN Security Council and be implemented as soon as possible. The main reason for this urgency was mostly the fear that if uncertainty about the status of Kosovo would continue, stability of the region would be in danger. This fear is based on reported rising tensions since 2007: radical ethnic Albanian groups impatient for independence are widely suspected of orchestrating a series of non-fatal bombs in recent months, which led to fear amongst the Serbs that now started to move from isolated villages to larger Serb enclaves in the north.\[39\] Next to that, experts also feared that the provisional authorities and the people of Kosovo could not move forward on necessary economical and societal reforms until they would have the responsibility for governing their own state, because only then could Kosovo be granted access to international financial institutions, EU projects and attract foreign investments.\[40\] At the time, US President Bush even went as far as saying that even if independence for Kosovo wouldn’t come through the Security Council, the United States would recognize the region as a state.\[41\] In response the European Commission official Lars Erik Forsberg said: “If we don’t have a UN resolution that the EU states can cluster around, we may have a repeat of the situation with [the invasion of] Iraq, when some countries went one way and some the other way”.\[42\]

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On the other hand, some other member states of the European Union (i.e. Spain, Cyprus, Bulgaria, Romania, Slovakia) and Russia were very much opposed to independence for Kosovo. Russia made its own proposals in response to the UN plan about what should be done about the situation in Kosovo. Although the Russian plan was similar to the Ahtissaari proposal, the main point of disagreement between the Russians and Western members of the Security Council is whether Kosovo will be in a better position to meet these obligations as a part of Serbia or as an independent state. Even though the US and EU have repeatedly tried to strike a deal with Russia about the situation with Kosovo, President Putin threatened to use his Security Council veto if the Ahtissaari proposal would be voted on.

The reason why these countries are opposed to Kosovo’s independence, is that Kosovo’s independence will be a precedent for separatist movements within their own territory. Another specific explanation for Putin’s behaviour is the close Russo-Serbian relations, which go back almost three centuries. Both nations share an Eastern Orthodox religion, similar Slavic languages, have cultural ties and supported each other in a military way several times since the beginning of the 19th century.

While the international community could not find a solution for the situation in Kosovo, Kosovo’s parliament unanimously endorsed a declaration of independence from Serbia on February 17th 2008. The move was immediately condemned by Serbia and Russia. "For as long as the Serbian nation exists, Kosovo will remain Serbia," Serbian President Kostunica said in a nationally televised address, while Russia (and European countries like Spain in a similar way) uttered its concern that the province’s independence could spark violent separatism elsewhere in the world. Since February, 55

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44 Juurd Eijsvogel, “Wereldpolitiek aan de zee was voor de deelnemers de moeite”. NRC Handelsblad, 9.6.2007.
countries have officially recognized Kosovo's independence and 10 others have announced to do so in the (immediate) future.\textsuperscript{48}

\section*{3.3 Conclusion}

The successful secession of Kosovo from Serbia and the large number of recognisers, shows that the thinking about the relationship between territorial integrity and self-determination – even to the point of secession – has moved away from seeing existing borders as sacrosanct. Although the secession is a violation of Serbia’s territorial integrity and now it is not done via the UN Security Council a violation of International Law (since that would go against Resolution 1244, which ensures Serbia’s territorial integrity), large numbers of countries still recognized the proclaimed independence, under which influential countries like the United States, Japan and EU member states like Germany, Great Britain and France. This shows a definitive break away from the traditional application of the right to self-determination. Kosovo never was an independent region, but has always been part of some other empire and only recently started to become a nation. Although one could try and argue that the UN troops are a foreign occupier, this is not really relevant is this case for the UN troops are only there temporarily and the international community seems more than willing to finally get them out of there, and therefore not the entity from which Kosovo has to free itself. In the present case it seems like the only criterion for (not) recognizing Kosovo as a new state, is a country’s view on whether it would serve international peace and stability. As was explained above, for some countries independence seemed the only way to ensure peace and stability (in the Balkans) and therefore recognized the new state, while other countries feel like it would only set a precedent for other secessionist movements which would endanger peace and security everywhere (and especially in their own countries) and therefore did not recognize Kosovo’s proclamation.

It seems like the clash between territorial integrity and self-determination still is the key factor in the whole debate about when to grand peoples their formal independence. But views have apparently changed, about whether or not international peace and stability can only be protected by protecting a country’s sovereignty and the international community seems more willing to look at one case at a time and see what the best solution for this particular problem is. What must not be overlooked is the self-interest of countries that have not recognized Kosovo as a state. Their reason for non-recognition is simple: they are afraid that ‘their own’ separatists will get inspired by Kosovo and that now the right to self-determination will not be granted based on rules of international law, but on politics.

Chapter 4: Lessons from a comparative exercise

The aim of this paper is to see what Kosovo’s independence could mean for the future of the Turkish Republic of Northern Cyprus. Before it was possible to start to answer this question, it was first of all necessary to study the doctrine of self-determination. The right to self-determination has two types: internal and external self-determination. The difference is that only in case of the latter, an entity has the right to secession. During the 1960s this right used to be virtually exclusively reserved for states under colonial ruling. Any other peoples only had the right to internal self-determination, which means the right to practice their own religion, speak their own language etc., within an existing state. One of the most recent (1998) developments in this doctrine – as expressed by the Canadian Supreme Court – is the opinion that in case a people is denied its right to internal self-determination, it should get a right to external self-determination. There is, however, not a lot of state-practice (yet) to back up this opinion.

After the theoretical framework for this paper was set, the case of the Turkish Republic of Northern Cyprus was examined. This examination showed several things. The first is that one could interpret the ‘Turkish invasion’ – which the international community uses as an argument for not recognizing the Turkish Republic of Northern Cyprus – as an act of protection against the terrorist organisation EOKA that tried to take over Cyprus and become part of Greece. Seen in this way, Turkey simply acted in line with the Treaty of Guarantee. The second observation is that Great-Britain seemed to have personal interests in condemning Turkey’s actions. This personal interest was the protection of military bases on the island, which were of strategic value to Britain. A last important observation is the fact that in attempts to end the Cypriote conflict, the TRNC has for the most part been very cooperative. The TRNC has stated that it wants to end the conflict and integrate the two parts again, on the basis of equality. An example is the referendum held for the Anan-plan which aimed at unifying the island, for which a large majority of the Turkish Cypriots voted in favour (as opposed to the Greek Cypriots).

To date, only Turkey has recognized the TRNC and no solution is found to end the conflict. Some progress has been made though, in the sense that there is an agreement to tear down the wall that separates the island and negotiations between the two parts are in progress.

The third part of this thesis revealed that there are many similarities between the case of the TRNC and Kosovo. The historic situation in the region Kosovo was not that different from the situation in Cyprus: both regions had been occupied for centuries and have struggled with two different populations for decades. Both regions declared unilateral independence, but have no history as an independent state and therefore do not fall within the criteria where the right to external self-determination is normally granted (i.e. colonization, foreign occupation). Unlike with Northern Cyprus, Kosovo's independence was recognized by many countries immediately. How can this be? What is the major difference between Cyprus' situation and that of Kosovo?

The first explanation could be that the situations are different and that Kosovo falls within the right to external self-determination and that the TRNC does not. As we have seen, the right to external
self-determination is usually granted in cases of foreign oppression, colonization etc. or in case internal self-determination is denied. In both cases there is no colonization of foreign oppression. This leaves denial of internal self-determination. In the case of the Turkish Cypriots, this right was threatened by the Greek Cypriots on several occasions in the 1960s and ‘70s, which eventually resulted in the proclamation of the Turkish Republic of Northern Cyprus. Ever since, the Greek Cypriots have not agreed to re-unification plans, on the basis of equality. The Albanians in Kosovo were denied their right to internal self-determination during the reign of Milošević, but this was not the case anymore after the fall of Yugoslavia and Kosovo became part of Serbia (Serbia wanted Kosovo to remain part of their country but with a high degree of autonomy). Therefore, Kosovo’s internal self-determination would not be compromised, which – according to the Quebec-case – means that they have no right to external self-determination. Gathering from these facts, one cannot conclude that Kosovo has a stronger case for gaining external self-determination than the TRNC (one could even argue the opposite).

A third point in relation to the right to external self-determination is the rule of uti possidetis (the maintenance of existing borders). During the de-colonization period in the 1960s, the international community found that occupied countries did have the right to external self-determination, but only in respect to existing borders. So, external self-determination was only granted to the state as a whole and not to each of the different peoples living in it. The idea behind this was that in case all peoples got the right to external self-determination, this would compromise international peace and foremost international stability. In the case of the Turkish Republic of Northern Cyprus, the international community uses this as an argument for not recognizing it. In the case of the independence of Kosovo, there is a clear violation of the territorial integrity of Serbia, of which Kosovo legally became a part after the downfall of Yugoslavia. This means that territorial integrity, as was the doctrine since the 1960s, can also not be the answer to the question why such a large part of the international community recognizes Kosovo as an independent state and not the TRNC.

Another explanation could come from yet another aspect that was dealt with several times in this paper: international political relations. Like we have seen in the different chapters, international relations within the international community play an important part in how countries and problems are dealt with. This means that the answer seems to lie in closer examination of the reason for countries (not) to recognize Kosovo and the TRNC. As can be read in chapters two and three, many countries have political motivations for (not) recognizing Kosovo and the TRNC. Although in the case of the Turkish Republic of Northern Cyprus the discussion on recognition mostly involves legal arguments, in the case of Kosovo it seems quite the opposite. In chapter three we could read about countries with ‘their own’ secessionist movements that do not want to set a precedent for them by recognizing Kosovo. Russia threatened to veto a UN Security Council resolution recognizing Kosovo, because of its historic ties with Serbia. Some other European countries went ahead and recognized Kosovo, because they wanted the conflict in their own ‘backyard’ to finally end, which they think can only be achieved with an independent Kosovo. Though there seems less political interest in the case of Northern Cyprus, some can still be found. At the beginning of the conflict, Britain restrained from
intervening because it wanted to protect its strategically important military bases on the (Greek part of the) island. Other examples are the countries establishing trade relations with the TRNC though not fully recognizing the country. All these motives are politically inspired, which seems to be the answer for the question on different treatment: the countries that make up the world community seem to have different political interests in Kosovo and the TRNC.

With these observations we can turn back to the central question that was posed in the beginning of this paper: *Does the Turkish Republic of Northern Cyprus (TRNC) now have a stronger case in international relations and international law for external self-determination, seen the recent developments of this doctrine with Kosovo’s recognized independence?* From a legal point of view one might say that international law is the same for ‘everyone’ and that if Kosovo is granted this right and Cyprus is in a similar situation, independence should be granted to Northern Cyprus as well. Although the law can lay down requirements for a certain rule of law to be applicable, there always has to be someone who decides whether these characteristics fit a certain case; like a judge does in court. In international law though, there is no legal order like in national law where a judge can decide on a matter which can be enforced with i.e. police action. The international sphere has equal states as its main actors and no traditional enforcement mechanisms. This means that ultimately states are the ones to decide whether a rule of law applies and whether they are going to follow it up. That international law works this way becomes particularly clear on the subject of the right to external self-determination. A country can proclaim its independence, but will only be able to fully enjoy it when the rest of the world community recognizes it. With recognition, the new state can start diplomatic relations, become part of international organisations en profit from the rights it attains through that. In case of non-recognition there are a lot of downfalls, for example no national documents (marriage certificates, diplomas, passports) are of any use abroad and there could even be sanctions imposed on you.

The first of the above mentioned scenarios applies to Kosovo, the second to the Turkish Republic of Northern Cyprus. As was mentioned, legally speaking both states constitute similar cases and should only be granted the right to internal self-determination. What does differ, are different political interests of the international community. This means that an answer to the central question can be found in the sphere of international relations.

Cyprus is a little island in the Mediterranean Sea that has been relatively peaceful for the past years. Though the ongoing conflict got some attention again when Cyprus was about to become a member of the European Union, there seems to be no urgency in dealing with this problem right away. Neither has any of the large powers in today’s world anything to gain by getting involved in the conflict. Not to forget the argument that its independence could set a precedent for other secessionist movements.

With Kosovo the case is politically quite different. The region borders the European Union, which means that it constitutes a conflict in the EU’s own ‘backyard’ and many countries don’t like the idea of an unresolved conflict that could end in violence so close to home. Secondly, in the last years there have been more and more violent outbursts and indications that the situation will only get worse without a solution. Although like with the TRNC some countries do not recognize Kosovo's
independence because of ‘their own’ secessionist movements, for a lot of other countries there is more to gain by recognizing the new state (or to follow the example of hegemonies who did recognize).

The answer to the question does the Turkish Republic of Northern Cyprus (TRNC) now have a stronger case in international relations and international law for external self-determination, seen the recent developments of this doctrine with Kosovo’s recognized independence? must be answered in the negative. Legally speaking, now the criteria of regional integrity and the presence of a colonial ruler are abandoned when it comes to granting external self-determination, the TRNC should have the same right to independence as Kosovo. When it comes to the part of recognition by other countries, the situations are quite different. In the case of Kosovo a number of hegemonies – the United States, the European Union and Russia – have an interest in the conflict, while this interest is lacking in the case of Northern Cyprus. This means that despite the fact that the doctrine of self-determination has evolved in a manner that is actually positive for the TRNC, because of the lack of priority and political interest for the international community to solve the conflict, the Turkish Republic of Northern Cyprus’ goal of becoming a recognized state does not seem to have come any closer with the independence of Kosovo.
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