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Contents

Figures and Tables.....	3
Abbreviations.....	4
 1 Introduction.....	 5
1.1 Background and Motivation.....	5
1.2 Methods and Research Questions.....	6
1.3 Content.....	8
 2 Sovereignty, Unrecognised States and Ethno-Political Conflicts in the Post-Soviet Area.....	 9
2.1 Sovereignty.....	9
2.2 Unrecognised States.....	12
2.3 The politicisation of ethnicity.....	14
2.4 Ethno-political Conflicts after the Break Up of the Soviet Union.....	15
2.5 Sovereignty in Abkhazia and South Ossetia.....	17
 3 The Council of Europe.....	 20
3.1 Origins, Members and Principles of the Council of Europe.....	20
3.2 Actors of the Council of Europe.....	23
3.2.1 Secretary General.....	24
3.2.2 European Court of Human Rights.....	24
3.2.3 Commissioner for Human Rights.....	25
3.2.4 Parliamentary Assembly.....	25
3.2.5 Committee of Ministers.....	27
3.2.6 Congress of Local and Regional Authorities.....	29
3.3 The Eastern Enlargement.....	30
 4 Interaction and Co-operation between the Council of Europe and other European and International Organisations.....	 33
4.1 The Council of Europe and the United Nations.....	34
4.2 The Council of Europe and the European Union.....	35
4.3 The Council of Europe and the CSCE/OSCE.....	37

5 Historical Developments in Abkhazia and South Ossetia.....	39
5.1 Origins of Abkhazia and South Ossetia in the Russian Empire.....	40
5.2 The Soviet Era.....	43
5.3 After the Soviet Era.....	44
6 The role of the Council of Europe after the Five-day War.....	48
6.1 Events prior to the Five-day War.....	48
6.2 The Five-day War.....	51
6.3 Response by different actors of the Council of Europe.....	54
6.3.1 Secretary General.....	54
6.3.2 European Court of Human Rights.....	55
6.3.3 Commissioner for Human Rights.....	56
6.3.4 Parliamentary Assembly.....	58
6.3.5 Committee of Ministers.....	59
6.3.6 Congress of Local and Regional Authorities.....	60
6.4 Co-operation with other European and International Organisations.....	60
6.4.1 Co-operation with the United Nations.....	61
6.4.2 Co-operation with the European Union.....	61
6.4.3 Co-operation with the OSCE.....	62
7 Conclusions.....	64
Abstract (English).....	67
Abstract (Deutsch).....	68
8 Literature.....	70
8.1 Articles, Books, Book Chapters and Working Papers.....	70
8.2 Documents.....	74
8.2.1 Council of Europe Documents.....	74
8.2.2 Other Documents.....	79
8.3 Webpages.....	80
8.4 Google Maps.....	81

Figures and Tables

Table 1: Four different sovereignty categories.....	10
Table 2: Council of Europe Members A-Ge.....	20
Table 3: Council of Europe Members Gr-U.....	21
Table 4: Ethnic Composition of Abkhazia 1886-1989.....	42
Figure 1: Georgia and its neighbouring states.....	39
Figure 2: Ossetians living near mount Kazbek.....	41
Figure 3: Mountainous parts of Abkhazia.....	42
Figure 4: Abkhazian – Georgian Border.....	49
Figure 5: Roki Tunnel between Georgia and the Russian Federation.....	52

Abbreviations

ASSR.....	Autonomous Socialist Soviet Republic
BCE.....	Before the Christian Era
CIS.....	Commonwealth of Independent States
DG-HL.....	Directorate General for Human Rights and Legal Affairs
CoE.....	Council of Europe
Contr.....	Contributions
CSCE.....	Conference on Security and Co-operation in Europe
CSM.....	Conference of Specialised Ministers
EC.....	European Communities
EEC.....	European Economic Community
EU.....	European Union
EUMM.....	European Union Monitoring Mission
GDP.....	Gross Domestic Product
NATO.....	North Atlantic Treaty Organization
OSCE.....	Organisation for Security and Co-operation in Europe
PACE.....	Parliamentary Assembly of the Council of Europe
Repr.....	representative
SG.....	Secretary General of the Council of Europe
SSR.....	Soviet Socialist Republic
UN.....	United Nations
UNICEF.....	United Nations Children's Emergency Fund
US.....	United States
USSR.....	Union of Socialist Soviet Republics

1 Introduction

1.1 Background and Motivation

According to the German Law Professor Lassa Oppenheim (1905: 110) „*there is no doubt that statehood itself is independent of recognition. International Law does not say that a State is not in existence as long as it is not recognised, but it takes no notice of it before its recognition. Through recognition only and exclusively a State becomes an International Person and a subject of International Law.*“

Since the Five-day War in August 2008 between Georgia and the Russian Federation, two Georgian regions, Abkhazia and South Ossetia, have considered themselves sovereign, independent states. However, so far only Russia, Nauru, Nicaragua and Venezuela have recognised these two “*republics*”. (Wolff 2011: 147-148)

The Parliamentary Assembly of the Council of Europe supported the idea of Georgian territorial integrity in Abkhazia and South Ossetia under international law from the very beginning, and therefore condemned the recognition of the independence of these two regions by one of its members, the Russian Federation after the Five-day war.

As stated in Resolution 1633 of the Parliamentary Assembly of the Council of Europe (2008a): “*The Assembly condemns the recognition by Russia of the independence of South Ossetia and Abkhazia as a violation of international law and Council of Europe statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and calls on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and respect fully the sovereignty and territorial integrity of Georgia, as well as the inviolability of its frontiers.*“

The Russian Federation has been a member of the Council of Europe since 1996 and Georgia since 1999. As indicated by the Resolutions 1633 and 1647 of the Parliamentary Assembly of the Council of Europe, these two states violated the Statute and the core principles of the Council of Europe such as human rights and humanitarian law during the war in 2008 and its aftermath. (Parliamentary Assembly 2008a; Parliamentary Assembly 2009b)

The aim of this master thesis is to explore the role of the Council of Europe as an international crisis actor, especially during the Georgian-Russian conflict in Abkhazia and South Ossetia in 2008. Apart from Belarus and the Kosovo, all European states have acceded to the Council of Europe.¹

This reveals an interesting point that due to their membership the Council of Europe could deal with conflicts in the Post-Soviet area as an internal matter unlike organisations such as the North Atlantic Treaty Organization or the European Union. This is true for the conflict between Georgia and Russia in Abkhazia and South Ossetia, the tensions between Moldova and Russia in Transnistria, and the disputes between Armenia and Azerbaijan in Nagorno-Karabakh.

During my masters in political science I focused my research on ethno-political conflicts in Western Europe. My master thesis examined the role of the Scottish National Party and the European Dimension of Scottish Independence. (Kratzer 2009) For my European Studies master thesis, I want to broaden my horizons and concentrate on ethno-political conflicts in Georgia, a post Soviet and multi-ethnic country in the South Caucasus.

1.2 Methods and Research Questions

The following research questions will be analysed in this thesis:

- What historical reasons can be found for the disputes in Abkhazia and South Ossetia? What role do Georgia and Russia play in these two conflicts?
- What actions were undertaken by several Council of Europe actors – the Secretary General, the European Court for Human Rights, the Commissioner for Human Rights, the Parliamentary Assembly, the Committee of Ministers and the Congress of Local and Regional Authorities – to respond to the conflict in Abkhazia and South Ossetia within the first six months after the end of the Five-day war?
- What characteristics mark the Council of Europe as an international crisis actor during this immediate response?

¹ The Holy See participates as an observer country in the Council of Europe.

According to Ulrich von Alemann and Wolfgang Tönnesmann (1995: 39) “*Methoden sind das Handwerkszeug, mit dessen Hilfe Wissenschaftler ihre theoretischen Gebäude errichten.*”² The German political scientists distinguish between five different categories of political science methods: empirical-analytical, empirical-theoretical, hermeneutical as well as qualitative and quantitative social science approaches. (Alemann and Tönnesmann 1995)

This research will focus on the hermeneutical method and qualitative expert interviews. While Lutz Geldsetzer (1992: 128) interprets the hermeneutical method as the *science of the interpreted sense of purpose*, Ulrich von Alemann und Wolfgang Tönnesmann (1995: 56) describes this methodological approach as follows: “*Bei der Hermeneutik handelt es sich um die in den Geistes- und Sozialwissenschaften angewendete Methode des Verstehens. Sie formuliert Regeln, mit deren Hilfe es gelingen soll, den Sinn eines sprachlichen Dokuments intersubjektiv nachvollziehbar zu entschlüsseln.*”³

The research questions posed in this thesis will be analysed by conducting expert interviews consisting of predetermined questions with six members of the Parliamentary Assembly of the Council of Europe and the Georgian ambassador to the Republic of Austria. An analysis of predominately Council of Europe documents and secondary sources such as books, articles and working papers concerning the topic will also be conducted. The following members and substitute members of the Parliamentary Assembly of the Council of Europe as well as the Georgian ambassador were interviewed:

- Chiora Taktakishvili, Georgian Substitute Member of the Parliamentary Assembly of the Council of Europe, United National Movement, Alliance of Liberals and Democrats for Europe
- Giorgi Kandelaki, Georgian Substitute Member of the Parliamentary Assembly of the Council of Europe, United National Movement, Group of the European People’s Party
- Guguli Magradze, Georgian Substitute Member of the Parliamentary Assembly of the Council of Europe, Georgian Dream, Socialist Group
- Konstantin Zaldastanishvili, Georgian Ambassador to the Republic of Austria and Permanent Representative of Georgia to the OSCE

² Loose English Translation: “*Methods are the instruments for scholars to build the theoretical structure.*”

³ Loose English Translation: “*The hermeneutical method is the method of understanding in humanities and social sciences. This method formulates rules which should facilitate the decoding of the sense of a linguistic document in an intersubjective, understandable manner.*”

- Manana Kobakhidze, Georgian Member of the Parliamentary Assembly of the Council of Europe, Georgian Dream, Socialist Group
- Tedo Japaridze, Georgian Chairperson of the Parliamentary Assembly of the Council of Europe, Georgian Dream, Socialist Group
- Zviad Kvatchantiradze, Georgian Substitute Member of the Parliamentary Assembly of the Council of Europe, Georgian Dream, Socialist Group

1.3 Content

This thesis aims to assess the role of the Council of Europe and its institutions as an international crisis actor during and after the Five-day war in Abkhazia and South Ossetia in 2008. Stephen D. Krasner's (1999) four different conceptions of sovereignty, the politicisation of ethnic communities, the role of unrecognized states and the characteristics of ethno-political conflicts in the Post-Soviet area and sovereignty aspects in Abkhazia and South Ossetia are discussed in Chapter two. Chapters three and four provide background information on the Council of Europe's framework, institutions, origins and principles as well as the co-operation and interaction between the Council of Europe and other European and international organisations such as the European Union, the Organisation for Security and Co-operation in Europe and the United Nations. Chapter five discusses the historical background of the conflicts in Abkhazia and South Ossetia, while Chapter six describes the events leading to the Five-day war and analyses the role of the Council of Europe and its different actors after this conflict in Abkhazia and South Ossetia. Conclusions are drawn in the final chapter 7 by answering the research questions.

2 Sovereignty, Unrecognized States and Ethno-Political Conflicts in the Post-Soviet Area

2.1 Sovereignty

According to Craig Nation (2014: 36), Director of Russian and European Studies at the US Army War College in Carlisle, *“sovereignty is a political principle that has never been realized in pure form. Authority structures within states are always contested in one way or another ... The modern state, even in its Westphalian heyday, is best perceived as a hybrid, possessed of sovereignty of a specific kind determined by the circumstances of an international society in rapid evolution.”*

The existence of three different pillars of state sovereignty is described by Gayane Novikova (2014: 59). According to the International Relations and Security Studies scholar, they are sovereignty over territory and population, sovereignty over decision-making, and sovereignty over the interaction with other states and the international community. Novikova argues that the most important criteria in this respect are the principles of self-rule and self-protection for a sovereign independent country.

As laid down in Article one of the Convention on Rights and Duties of States (International Conference of American States 1933), under International Law the following condition have to be fulfilled for a recognized entity. A permanent population shall exist in a defined territory with an executive that is capable of entering into relations with other countries. While Helge Blakkisrud, Russian federalism researcher at the Norwegian Institute of International Affairs, together with the Pål Kolstø, Professor of Eastern European and Oriental Studies at the University of Oslo, (Blakkisrud and Kolstø 2008: 484) define state-building as the establishment of administrative, economic and military basis for functional states including frontier control and the collection of taxes and tolls, the International Relations Professor Eiki Berg (2007: 202) argues: *“Territories are human creations, produced under particular circumstances and designed to serve specific ends.”*

Stephen D. Krasner (1999) recognises in his book *“Sovereignty. Organized Hypocrisy”* the fact that the term *“sovereignty”* has different meanings and not one single definition can be formulated for it. The International Relations Professor at Stanford University has identified

four different sovereignty categories. He distinguishes between domestic, interdependence, Westphalian and international legal sovereignty. As Table one indicates, these different sovereignty types are directly related to the ability of authority and/or control over a certain territory.

Table 1: Four different sovereignty categories

Term “sovereignty“	Authority	Control
Domestic Sovereignty	X	X
Interdependence Sovereignty		X
Westphalian Sovereignty	X	
International Legal Sovereignty	X	

Source: Krasner (1999: 3-4)

As described by Stephen D. Krasner (1999: 4, 19), many states fulfil one of these identified sovereignty categories but not necessarily the others. Taiwan, the Republic of China, for instance, can guarantee Westphalian, but not international legal sovereignty. The reason for it is that authority in a certain territory can be secured but the recognition by other states is too difficult to achieve. Contrary to this example, the 28 member states of the European Union comply with international legal sovereignty. For example, the EU regulates trans-border movements and the European Court of Justice exercises transnational authority. Their decisions can be enforced against member states' governments will. This leads to the fact that the members of the European Union cannot guarantee domestic interdependence as well as Westphalian sovereignty.

The Public Law Professor Martin Loughlin (2006: 56) describes the formation of (domestic) sovereignty as follows: *“Sovereignty comes into existence through a process in which a group of people within a defined territory is moulded into an orderly cohesion through the establishment of a governing authority that can be differentiated from society and which is able to exercise an absolute political power.”*

Either exercised by one individual or separated among different institutions, the authority structures should secure effective control in a given territory. Even when these conditions are fulfilled, a controlled entity need not automatically - as shown in chapter 2.2 - be awarded recognition by other states in the international system. (Krasner 1999: 11-12)

According to Stephen D. Krasner (1999: 12-14), the effective control of movements across borders including diseases, ideas, goods, persons and pollutants is the most important task of interdependence sovereignty. Globalisation has changed the world and effective interdependence sovereignty is difficult to achieve in the 21st century.

As James N. Rosenau (1990: 13), a former international affairs scholar, pointed out, today's major challenges such as currency crisis, diseases, drug trade and pollution are all transnational issues. National governments lack jurisdiction and the citizenries' compliance to find satisfactory results for these challenges in this respect.

The neoliberal institutionalist⁴ Robert O. Keohane (2002: 74) describes the consequences of globalisation for the principle of sovereignty as follows: *"Sovereignty no longer enables states to exert effective supremacy over what occurs within their territories: Decisions are made by firms on a global basis, and other states' policies have major impacts within one's own boundaries. Reversing this process would be catastrophic for investment, economic growth, and electoral success."*

The term *"Westphalian Sovereignty"*⁵ refers to the Peace of Westphalia which was agreed in 1648 and should indicate the non-intervention in internal affairs by another country which by the way was not articulated till the end of the 18th century. The first scholars who discussed this principle were Christian Wolff and Emmerich de Vattel. Wolff argued in the 1760s that interfering in the internal matters of a country is against *"the natural liberty of nations"*. (quoted in Krasner 2001: 20)

Today as Stephen D. Krasner explains (1999: 21-22), we understand the term Westphalian sovereignty as the exclusion of external actors from the authority structures within a certain territory, de jure as well as de facto. The Charter of the United Nations and the CSCE Helsinki Final Act respect the principles of this sovereignty category.

International legal sovereignty is the most common understanding of sovereignty today because it is directly linked to international law. When the Council of Europe mentions the

⁴ As described by Stephen D. Krasner (1999: 13-14)

⁵ Stephen D. Krasner has later changed the name of this sovereignty category into Vattelien sovereignty (Krasner 2001: 19) and Westphalian-Vattelien sovereignty (Krasner 2005: 70).

terms “*sovereignty*” or “*sovereign states*”, this organisation refers to recognised states such as Georgia and the Russian Federation.

As Stacy Closson (2011: 59), a Caucasus and Russian scholar, states: “*According to the practice of international law, a state has sovereignty through recognition by other states in the international community.*” The concept of the equality of states goes back to Emmerich de Vattel who assumes that small republics and powerful kingdoms should be both treated the same as sovereign entities. Mutual state recognition enables a defined territory to secure juridical equality according to international law. (Krasner 1999: 14-16)

The right to self-determination by the people in the international community has traditionally been limited to colonial countries. According to the UN General Assembly resolution 1514 (United Nations 1960) - a Declaration on the granting of independence to colonial countries and peoples, “*immediate steps shall be taken ... to transfer all powers to the peoples of these territories ... in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.*”

For all other countries the principle of territorial integrity and inviolability of border regimes are applied. In this respect, concerning the current situation in Abkhazia and South Ossetia, the Council of Europe’s Committee of Ministers’ Deputies (Committee of Ministers 2015a) confirm “*the unequivocal support of the Council of Europe member States for the sovereignty and territorial integrity of Georgia within its internationally recognised borders*”.

2.2 Unrecognised States

According to the Austrian legal scholar Hans Kelsen (1941: 605), “*the problem of recognition of states and governments has neither in theory nor in practice been solved satisfactorily. Hardly any other question is more controversial, or leads in practice of states to such paradoxical situations.*”

Today, as the Georgian Professor of Politics Ghia Nodia (1998: 14) mentions, state building is crucial for ethnic groups. “*In the modern era, ethnic groups find themselves in a world where*

the political map is increasingly defined by nation-states rather than multi-ethnic empires, and where political power is legitimized by the will of peoples/nations.”

However, as previously noted, the right to self-determination by people in international law is limited to colonial countries. According to Stephen D. Krasner (1999: 223), there is a real incentive for unrecognised entities to become a sovereign recognised state: *“Recognition has provided them with resources and opportunities that can enhance their chances of remaining in power. Recognition can pave the way for membership in international organizations, some of which provide financial aid; can facilitate the conclusion of treaties ... and can increase domestic political support.”*

James Harvey and Gareth Stansfield (2011: 11) argue that in principle most unrecognised states start from a point of domestic sovereignty vis à vis the international community. The problem for these unrecognised entities as well as the international community is that the de facto states are isolated by the international community. No conventions can be applied and no effective monitoring by the international organisations can be undertaken. (Kolstø 2006: 729)

According to Stacy Closson (2011: 66), many unrecognised states want to convince the international community to recognize the de facto state. These unrecognised entities often declare their sovereignty and rule of law standards in a (de facto) constitution and open the territory to scrutiny (e.g. election observation). Kosovo is one perfect example for this reaction.

According to Pål Kolstø (2006: 723), Professor of Russian and Central European and Balkan Area Studies, states that have declared independence but whose political entities have constantly been refused international legal personality by other countries are called *“de facto states”*, *“para-states”*, *“pseudo-states”*, *“quasi-states”* and *“unrecognised states”*.⁶

To limit the number of cases, Nina Caspersen and Gareth Stansfield (2011: 3-4) define unrecognised states by three criteria. First the region has achieved de facto independence for at least two years with control of (a majority of) a certain territory, it has not been recognised

⁶ I will use the term “unrecognised states” in this master thesis.

by the international community of sovereign states, and it has formally and publically declared its independence through a declaration of independence or referendum.

Different international, Eastern European and Russian Politics scholars have identified the following characteristics about unrecognised states. These entities have often achieved secession through civil wars with a parent state. Following these tensions, difficult border regimes occur in these de facto states. While sanctions are imposed on the territories leading to limited financial possibilities, this economic and financial framework results in state weakness. Leaders of the unrecognised entities often act in an authoritarian or semi-authoritarian manner, trying to embarrass the parent state that is dependent on patronage structures. (Closson 2011: 67; Harvey and Stansfield 2011: 11; King 2001: 536; Kollosov, O'Loughlin et al. 2011: 2; Kolstø 2006: 729)

Scott Pegg (1998: 43), International Politics scholar, highlights "*the economic cost of non-recognition*" in his book "*International Society and the de Facto State*". While contracts with other countries might not be internationally binding and offend the parent state, there are incentives for the unrecognised entity to co-operate with a patron state.

Professor Pål Kolstø (2006: 729) has focused his research on another consequence of non-recognition. He concludes that unrecognised entities often lack strong quasi-state structures. Kolstø has identified five reasons for the violability of quasi states: symbolic nation building, militarisation of society, the weakness of the parent state, support from an external patron, and the lack of involvement on the part of the international community.

2.3 The politicisation of ethnicity

As indicated by the Concise Oxford Dictionary of Politics, "*the only working general definition of ethnicity is that it involves the common consciousness of shared origins and traditions...Thus the kind of consciousness of ethnicity which gives rise to ethnic conflict can depend entirely on the context in which people form their consciousness and, particularly, on the other ethnic group which they recognize in that context.*" (McLean and McMillan 2009) According to Professor for social anthropology at the University of Bern, Julia Eckert (1998: 276), ethnicity is a culturally designed category of foreignness and specific ethnic culture is directly linked to the socialisation process during one's childhood. Therefore, cultural

differences can only, according to the famous German sociologist Max Weber (1964: 307), lead to one community if they are interpreted as common characteristics.

Professor of Non-Proliferation Studies at the Middlebury Institute of International Studies at Monterey, Avner Cohen (1996: 84), describes ethnicity as a political phenomenon. Disputes over cultural differences are directly linked and associated with political cleavages in this respect. While economic interests, state controlled resources and the control over public goods are often a catalyst for the politicisation of ethnic communities and political ethnic conflicts, Julia Eckert (1998: 284-285) identifies ethnicity as a possible form of group organisation. Dominant groups within an ethnic group can rely on ethnic solidarity and can even further strengthen their privileged positions.

According to the German political scientist and sociologist Theodor Hanf (1990: 53), as a result in ethnic heterogeneous states it is likely that *"die Gemeinschaften und deren politische Agenturen die wichtigsten Vermittlungsagenturen darstellen - zumindest solange, wie deren Entpolitisierung nicht gelungen ist."*⁷

As shown in Abkhazia and South Ossetia, the ethnical demarcation lines are not only drawn on the basis of language, religion and territory, but mainly on the historical roots described in chapter five of this thesis. Civil wars over e.g. land reforms, the "Georgians for Georgia" government principle in the early 1990s, the suppression of Abkhazian and South Ossetian languages and Georgia's denial of the recognition of Abkhazia and South Ossetia as independent, sovereign states created the common consciousness of shared origins and traditions of the Georgian, South Ossetian and Abkhazian ethnic groups leading to ethnic conflicts in this region. Besides that, it has to be noted that after the break-up of the Soviet Union only former Union Republics such as Georgia, but not Abkhazia or South Ossetia, were awarded international legal sovereignty.

2.4 Ethno-political Conflicts after the Break Up of the Soviet Union

Charles King (2001: 525), International Affairs Professor at Georgetown University, states: „*The territorial separatists of the 1990s have become state-builders in the early 2000s,*

⁷ Loose English translation: *"the communities and their political agencies represent the most important mediation agencies – as least as long as their de-politicisation has not succeeded."*

creating de facto countries whose ability to field armies, control their own territory, educate their children, and maintain local economies is about as well developed as that of the recognised states of which they are still notionally a part.“

Ethnic groups primarily derive from experiences and common affiliations such as culture, language and religion and are often reshaped by political circumstances. Since 2003, 70 on-going violent intrastate, ethnic or rather ethno-political conflicts have taken place around the globe. (Souleimanov 2013: 13, 17-20)

As of the end of the Cold War, according to Pål Kolstø (2006: 726), there have been two areas of emerging unrecognised states: the former Soviet Union with Transdnistria, Nagaro Karabakh, Abkhazia and South Ossetia and the former Yugoslavia with Republica Srpska, Republica Srpska Krajina and Kosovo.

After the break up of the Soviet Union, fifteen former Soviet republics were recognised and awarded international legal sovereignty. However, despite their heterogeneous ethnic and regional structures, former autonomous republics or regions such as Abkhazia and South Ossetia have not been recognised. (Hoch and Souleimanov 2013: 21)

In the early 1990s, this framework led to several small “*wars of Soviet succession*” and armed conflicts in the region: Abkhazia, Chechnya, Nagaro-Karabakh, South Ossetia, Tajikistan and Transdnistria. Actors in these conflicts included the governments of the newly created states, territorial separatists, armed forces of other countries, and international peacemakers. In all four former Soviet autonomous republics and regions the separatists won the conflicts. (King 2001: 524-529)

The tensions have occurred between separatist groups in Abkhazia, Nagaro Karabakh, South Ossetia and Transdnistria and the newly created and recognised states of Azerbaijan, Georgia and Moldova. Russian assistance in all these conflicts was crucial. Professor Charles King (2001: 539-541) argues that separatist groups were equipped with major weaponry by the Russian Federation. After the civil wars, the Russian Federation supported these unrecognised entities with economic assistance such as subsidising gas, staffing many key

economic institutions in these entities⁸, maintaining Russian military in these regions, offering Russian citizenship to the citizens' of these unrecognised entities, and not asking for visas contrary to their parent states e.g. for Abkhazian and South Ossetian inhabitants to enter the Russian Federation.

Gail W. Lapidus (2002: 341), International Politics scholar, concludes that the politically and militarily frozen conflicts in post-Soviet Eurasia “*have resulted in the creation of several quasi-states [having] de facto control over their own territory but are unlikely to be recognized by the international community*”. Despite many scholars such as Vladimir Kollosov, John O’Loughlin and Gerard Toal (2011: 2), Charles King (2001: 526) and Nina Caspersen and Gareth Stansfield (2011: 4) who support this argument and argue that civil wars in the early 1990s created de facto states in e.g. Abkhazia and South Ossetia, I will question this assumption in chapter 2.4.

2.5 Sovereignty in Abkhazia and South Ossetia

Professor Pål Kolstø (2006: 735-738) assumes that shared sovereignty models are a possible way to solve the conflict in Abkhazia and South Ossetia. According to Craig Nation (2014: 39), there are five different possibilities of shared sovereignty:

- 1) federative association joint management
- 2) national cultural autonomy
- 3) partnership agreements
- 4) regional autonomy and voluntary protectorates administered by outside authorities
- 5) joint sovereignty

Stephen D. Krasner (2005: 76-77) has proposed that shared sovereignty tools should be facilitated by international mediation. This could lead a country to democracy and governance. Krasner proposes a voluntary agreement that one sovereign state should sign for the unrecognised entity. The International Relations Professor’s proposal includes losing parts of Westphalian sovereignty and achieving international recognition by international law in exchange for that move.

⁸ To give an example: The Head of the Transdnistrian Central Bank belonged to the Russian intelligence service.

Abkhazia and South Ossetia, on the one hand, do not fulfill Krasner's (2005) approach of joint sovereignty and, on the other hand, do not follow the requirements for de facto states set out by Nina Caspersen and Gareth Stansfield (2011). The reason for it is that these regions, for instance, do not control their borders; another country does it for them. De facto we can see that many state functions and much control have been outsourced in Abkhazia and South Ossetia to the Russian Federation. This leads to the fact that not one of Krasner's (1999) four different sovereignty categories applies to Abkhazia or South Ossetia today.

Nicu Popescu (2006: 97), Research Fellow at the European Council on Foreign Relations, describes the post civil war situation of the 1990s in Abkhazia and South Ossetia as follows: „*In reality, the secessionist entities 'outsource' not only some of their institutions, but also control over their entities to the Russian Federation. Most of the population in these regions have Russian passports, pensioners receive pensions from the Russian state, the Russian rouble is the used currency, and many of the de facto officials of the secessionist entities are sent "on missions" by the Russian Federation. In addition, there is a process of legislative harmonization between the legal systems of the Russian Federation and those of the secessionist entities.*“

This argument has been confirmed by James Harvey and Professor Gareth Stansfield (2011: 19). They argue that through the control of the borders by the Russian Federation, the use of the rouble, and by outsourcing governmental functions to Russia administrative autonomy, high levels of independence are outsourced.

This situation has been intensified by the “*Partnership Agreements*” between Abkhazia and South Ossetia in 2014 and 2015. The Ministers' Deputies of the Council of Europe announced in their Decisions on 12 and 13 May 2015 (Committee of Ministers 2015a) that “*the so-called treaties between the Russian Federation and the Georgian region of Abkhazia on “Alliance and Strategic Partnership” signed on 24 November 2014 and between the Russian Federation and the Georgian region of South Ossetia on “Alliance and Integration” signed on 18 March 2015 are detrimental to the ongoing efforts to strengthen security and stability in the region, clearly violate Georgia's sovereignty and territorial integrity and have no legal validity; they contradict principles of international law and the Russian Federation's international commitments, including under the 12 August 2008 Ceasefire Agreement and its Implementing Measures of 8 September 2008*“.

According to these two agreements, the authority and control abilities of the Abkhazian and South Ossetian regions are further transferred to the Russian Federation, a common Foreign Policy should be established and a common space of defence should be assured. While according to Articles three and five of the Alliance and Strategic Partnership “*treaty*” between Abkhazia and Russia (Russian Federation 2014), a joint army should be established and in case of a threat the head of this joint group should be appointed by the Russian Federation, Russia should solely be responsible for defence and security of South Ossetia as laid down in Article two of the Alliance and Integration Treaty between South Ossetia and Russia. (Russian Federation 2015)

But these agreements are not only limited to the security dimension of these two regions. For instance, the agreement between Abkhazia and Russia in Article three (Russian Federation 2014) states: *“Основными направлениями развития союзничества и стратегического партнерства являются: ... формирование общего социального и экономического пространства; содействие социально-экономическому развитию Республики Абхазия; создание условий для полноценного участия Республики Абхазия в интеграционных процессах на постсоветском пространстве, реализуемых по инициативе и (или) при содействии Российской Федерации;”*⁹

In addition, these agreements should facilitate granting Russian passports to people permanently living in Abkhazia and South Ossetia. This in turn leads to the situation that the Russian Federation commits itself to providing “*their*” citizens with pensions and health care, for example. (Russian Federation 2014; Russian Federation 2015) According to Vladimir Kollosov and John O’Loughlin (2011: 637) in 2011, 99 per cent of South Ossetians held Russian passports.

All these arguments lead me to conclude that Abkhazia and especially South Ossetia, regardless of the fact that they have been recognised as sovereign states by the Russian Federation since 2008, act more like an autonomous region of the Russian Federation than a de facto or even recognised state.

⁹ Loose English translation: “*The main alliance areas of development and strategic partnership are: ... the formation of a common economic and social space; promoting social and economic development of the Republic of Abkhazia; creating conditions for full participation of the Republic of Abkhazia in the integration in the post Soviet area, realized on the initiative and/or with the assistance of the Russian Federation;*”

3 The Council of Europe

3.1 Origins, Members and Principles of the Council of Europe

On 5 May 1949, Belgium, Denmark, France, Ireland, Italy, Luxemburg, the Netherlands, Norway, Sweden and the United Kingdom signed the Statute of London to found the Council of Europe. The creation of this European organisation was in the wake of two events: Winston Churchill's speech at the University of Zürich in September 1946 calling for a "*United States of Europe*" and the conclusions of the so called Congress of Europe which took place in May 1948 in the Dutch city of The Hague. At the final plenary session of this congress, the 713 delegates, who included artists, economists, journalists, politicians and trade unionists, representing sixteen different Western European countries, expressed the desire for a united Europe, a European charter of human rights and a European assembly. (Brummer 2008: 22-23; Robertson 1956: 1-7)

Table 2: Council of Europe Members A-Ge

Member State	CoE Member since	PACE Repr	Contr to Budget 2015	€ 2015 per repr
Albania	13 July 1995	4 Repr	€ 476.804	€ 119.201
Andorra	10 November 1994	2 Repr	€ 256.809	€ 128.405
Armenia	25 January 2001	4 Repr	€ 259.373	€ 64.843
Austria	16 Apr 1956	6 Repr	€ 5.337.501	€ 889.584
Azerbaijan	25 January 2011	6 Repr	€ 1.223.110	€ 203.852
Belgium	5 May 1949	7 Repr	€ 7.075.121	€ 1.010.732
Bosnia and Herzegovina	24 April 2002	5 Repr	€ 553.754	€ 110.751
Bulgaria	7 May 1992	6 Repr	€ 1.136.690	€ 189.448
Croatia	6 November 1996	5 Repr	€ 1.080.929	€ 216.186
Cyprus	24 May 1961	3 Repr	€ 503.543	€ 167.848
Czech Republic	30 June 1993	7 Repr	€ 3.162.179	€ 451.740
Denmark	5 May 1949	5 Repr	€ 4.421.220	€ 884.244
Estonia	14 May 1993	3 Repr	€ 483.047	€ 161.016
Finland	5 May 1989	5 Repr	€ 3.437.361	€ 687.472
France	5 May 1949	18 Repr	€ 37.281.238	€ 2.071.180
Georgia	27 April 1999	5 Repr	€ 526.423	€ 105.285
Germany	13 July 1950	18 Repr	€ 35.415.188	€ 1.967.510

Source: Council of Europe 2015

Table 3: Council of Europe Members Gr-U

Member State	CoE Member since	PACE Repr	Contr to Budget 2015	€ 2015 per repr
Greece	9 August 1949	7 Repr	€ 4.166.897	€ 595.271
Hungary	6 November 1990	7 Repr	€ 2.259.940	€ 322.849
Iceland	7 March 1950	3 Repr	€ 485.081	€ 161.694
Ireland	5 May 1949	4 Repr	€ 3.028.849	€ 757.212
Italy	5 May 1949	18 Repr	€ 3.900.364	€ 216.687
Latvia	10 February 1995	3 Repr	€ 563.190	€ 187.730
Liechtenstein	23 November 1978	2 Repr	€ 365.115	€ 182.558
Lithuania	14 May 1993	4 Repr	€ 775.679	€ 193.920
Luxembourg	5 May 1949	3 Repr	€ 905.024	€ 301.675
Malta	29 April 1965	3 Repr	€ 379.600	€ 126.533
Republic of Moldova	13 July 1995	5 Repr	€ 343.888	€ 68.778
Monaco	5 October 2004	2 Repr	€ 339.870	€ 169.935
Montenegro	11 May 2007	3 Repr	€ 383.346	€ 127.782
Netherlands	5 May 1949	7 Repr	€ 10.785.559	€ 1.540.794
Norway	5 May 1949	5 Repr	€ 6.115.825	€ 1.223.165
Poland	26 November 1991	12 Repr	€ 8.325.976	€ 693.831
Portugal	22 September 1976	7 Repr	€ 3.492.697	€ 498.957
Romania	7 October 1993	10 Repr	€ 3.540.465	€ 354.047
Russian Federation	28 February 1996	18 Repr	€ 32.805.837	€ 1.822.547
San Marino	16 November 1988	2 Repr	€ 142.603	€ 71.302
Serbia	03 April 2003	7 Repr	€ 1.045.431	€ 149.347
Slovak Republic	30 June 1993	5 Repr	€ 1.462.558	€ 292.512
Slovenia	14 May 1993	3 Repr	€ 788.119	€ 262.706
Spain	24 November 1977	12 Repr	€ 20.071.620	€ 1.672.635
Sweden	5 May 1949	6 Repr	€ 6.877.409	€ 1.146.235
Switzerland	6 May 1963	6 Repr	€ 7.877.887	€ 1.312.981
The Former Yugoslav Republic of Macedonia	09 November 1995	3 Repr	€ 485.155	€ 161.718
Turkey	9 August 1949	12 Repr	€ 13.650.942	€ 1.137.579
Ukraine	9 November 1995	12 Repr	€ 4.328.287	€ 360.691
United Kingdom	5 May 1949	18 Repr	€ 31.962.445	€ 1.775.691

Source: Council of Europe 2015

As laid down in Article one of the Statute of the Council of Europe (1949), the main aim of the organisation is to achieve greater unity between its member states. The three core principles of the Council of Europe are democracy, human rights and the rule of law. As a consequence, the heads of state and government of the Council of Europe member states concluded in 2005 in the Warsaw Declaration at the third Summit Meeting of the Council of Europe (Council of Europe 2005b): “*The Council of Europe shall pursue its core objective of*

preserving and promoting human rights, democracy and the rule of law. All its activities must contribute to this fundamental objective.”

In addition, common action shall be taken in economic, social, cultural, scientific as well as constitutional matters. While national defence is not part of the Council of Europe agenda (Council of Europe 1949), additional protocols to the Convention for the Protection of Human Rights and Fundamental Freedoms have secured important standards throughout Europe: for instance, holding free elections by secret ballots and abolishing the death penalty (Council of Europe 1952; Council of Europe 1983; Council of Europe 2002). All member states have ratified this most important Council of Europe convention and therefore have committed to all these standards.

According to Articles three and four of the Statute of London, membership of the Council of Europe is possible for all European states willing and able to fulfil the principles of the organisation. (Council of Europe 1949) Until 1989, the Council of Europe was mainly a “*Western European Club*”. Not one single member of the Warsaw Pact joined the Council of Europe in that period. However, from the 1960s and 1970s onwards, the relationship between the Central and Eastern European countries and the Council of Europe improved. An example of this is Yugoslavia joining the European Cultural Convention as early as 1987. (Gawrich 2014: 102)

After the countries of Central and Eastern Europe started to join the Council of Europe, the Parliamentary Assembly of the Council of Europe took a step to specify the entrance conditions in its Recommendation 1247 (Parliamentary Assembly 1994): “*Membership of the Council of Europe is in principle open only to states whose national territory lies wholly or partly in Europe and whose culture is closely linked with the European culture ... In view of their cultural links with Europe, Armenia, Azerbaijan and Georgia would have the possibility of applying for membership provided they clearly indicate their will to be considered as part of Europe.*”

Within the Parliamentary Assembly, the smallest states have two and the largest 18 representatives (and the same number of deputies). The Committee of Ministers follows the principle of one member one vote. Concerning the financial contribution, the following was laid down by the Statute of the Council of Europe (1949) in Article 38: “*The expenses of the*

Secretariat and all other common expenses shall be shared between all members in such proportions as shall be determined by the Committee on the basis of the population of members.”

In fact, the financial contributions are calculated on a mix of different categories as described by Klaus Brummer (2008: 67): *“Die Beitragshöhe eines Landes wird nicht nach rein ökonomischen Kriterien festgelegt, etwa anteilig auf der Grundlage des Bruttoinlandsprodukts der Staaten. Stattdessen setzt der Beitragsschlüssel mehrere Faktoren wie Wirtschaftskraft und Bevölkerungsgröße miteinander in Bezug. Auch das politische Gewicht eines Landes spielt eine Rolle, gerade was die Gruppe der Staaten mit den höchsten Beiträgen anbelangt.”*¹⁰

Some countries contribute an extremely large proportion to the budget. These countries are considered grand payers. As shown in Table two and three, 11 countries pay over one million euros per representative in the Parliamentary Assembly. Concerning this calculation, France, Germany, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and Spain are the biggest contributors to the Council of Europe budget.

Just two European countries so far, Belarus and Kosovo, have not been admitted to the Council of Europe. There are different reasons for this. Belarus has not fulfilled major Council of Europe principles such as the abolition of the death penalty, and Kosovo has not been recognised by several members of the Council of Europe as an independent, sovereign state. (Brummer 2008: 30)

3.2 Actors of the Council of Europe

As laid down in chapter three of the Statute of London, the organs of the Council of Europe are the Committee of Ministers and the Consultative Assembly (today: Parliamentary Assembly), the seat is at Strasbourg and the official languages are English and French. (Council of Europe 1949) Beside that, important actors of the Council of Europe are the Secretary General and the Commissioner for Human Rights.

¹⁰ Loose English translation: „The amount of the contributions of a country isn't fixed by purely economic criteria, for instance based on the GDP of the member states. In fact the contribution key takes into consideration some factors like economic strength and population size. The political weight of a country plays a role as well, especially referred to the group of big payers.“

3.2.1 Secretary General

While the Statute of the Council of Europe has mainly secured the Secretary General's administrative role and his/her five year period, the Parliamentary Assembly described the SG's position as the *"natural spokesperson for the organisation as a whole"*. (Committee of Ministers 2000) Klaus Brummer (2008: 128) adds the fact that apart from the communication to the public, the most important Secretary General's function is to build the channel of communication between the two organs, the Parliamentary Assembly and the Committee of Ministers.

3.2.2 European Court of Human Rights

As shown in Table two and three, today there are 47 member states¹¹ of the Council of Europe which all have signed up to the Convention on the Protection of Human Rights and Fundamental Freedoms, the so called European Convention on Human Rights. Since Portugal's entry to the Council of Europe in 1974, all members have agreed to this Convention on the same day they entered the Council of Europe. (Raue 2005: 14)

Articles 34 and 35 of the Convention on the Protection of Human Rights and Fundamental Freedoms (Council of Europe 1950) states that the European Court of Human Rights *"may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto ... The Court may only deal with the matter after all domestic remedies have been exhausted ... and within a period of six months from the date on which the final decision was taken."*

According to the former President of the Parliamentary Assembly of the Council of Europe, Heinrich Klebes (1999: v), the European Convention on Human Rights guarantees the most effective human rights protection at regional level. Because of the supranational character of the European Court of Human Rights, it covers almost every European country and one could call it the *"constitutional law"* of Europe. As Stephan Breitenmoser and Robert Weyeneth (2014: 358-359) explain: *"Der Europarat hat ... massgeblich (sic!) zur Entstehung*

¹¹ Beside the member states there are five observer countries to the Council of Europe - Canada, Holy Sea, Japan, Mexico and the United States - and one observer country to the Parliamentary Assembly, Israel. (Council of Europe 2015b)

europäischer Mindeststandards beigetragen.”¹²

According to Article six of the Convention on the Protection of Human Rights and Fundamental Freedoms (Council of Europe 1950) “*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*”

As emphasised by Olaf Melzer (2012: 105), this outlined commitment to a fair trial enables there to be a European consensus for a strong link between democratic and rule of law standards.

3.2.3 Commissioner for Human Rights

The Commissioner for Human Rights was established in 1999 by a Committee of Ministers’ resolution. (Committee of Ministers 1999) As laid down in Resolution (99) 50, part of his/her duties are

- promoting awareness of human rights
- co-operating with national human rights institutions
- identifying human rights shortcomings in law and practice in the several member states
- serving as an ombudsman

3.2.4 Parliamentary Assembly

The Statute of the Council of Europe established the so-called Consultative Assembly. In 1974, the Parliamentarians renamed the second organ of the Council of Europe in Parliamentary Assembly. 20 years later the Committee of Ministers decided to use this expression in all future documents. (Brummer 2008: 93)

¹² Loose English translation: „The Council of Europe has ... essentially contributed to the emergence of European minimum standards.”

Four times a year the 318 parliamentarians (and their deputies) meet for sessions in Strasbourg. Each session lasts a week. These members are allocated through a system of degressive proportionality to the Council of Europe member states and must be members of their national parliaments. Political groups were finally established in 1964. 20 members of six countries can build such a group. To belong as a PACE (deputy) representative to a political group is especially important for the chairs and the composition of the different committees. (Brummer 2008: 93-96)

These groups are more loose co-operations than in their member countries or even in the European Union. I would like to give an example. The six interviewed Georgian (substitute) members to the Parliamentary Assembly belong to two electoral alliances in the Parliament of Georgia, but are members of four out of five different political groups in the Parliamentary Assembly of the Council of Europe.

The main functions of the Parliamentary Assembly as laid down by two European Law scholars, Professor Stephan Breitenmoser and Robert Weyeneth (2014: 356), are votes on the Secretary General of the Council of Europe, the High Commissioner for Human Rights and the European Court of Human Rights Judges and Recommendations to the Committee of Ministers or Resolutions addressed to the public or other international organisations. While recommendations require a two third majority, resolutions need a simple majority. (Brummer 2008: 107)

Joern Stegen (2000: 80) describes the different roles of the two organs of the Council of Europe, the Committee of Ministers and the Parliamentary Assembly as follows: *“Ist das Ministerkomitee das Entscheidungsorgan des Europarats, so ist die Parlamentarische Versammlung das Ideenlabor.”*¹³

The former Director in the Secretariat of the Parliamentary Assembly of the Council of Europe explains this active role with regard to human rights violations. Whenever they take place, PACE interprets this as a mandate to act, to discuss and if necessary to initiate new Conventions. (Stegen 2000: 86-88)

¹³ Loose English translation: “As the Committee of Ministers is the decision-making body, the Parliamentary Assembly is the ideas laboratory.”

3.2.5 Committee of Ministers

The functioning of the Committee of Ministers is described in Articles 13 to 21 of the Statute of the Council of Europe. The Ministers for Foreign Affairs of the Council of Europe member states are represented by the principle of one member one vote. They meet in private, but provide final communiqués of their meetings. (Council of Europe 1949)

The Committee of Ministers is the decision-making body of the Council of Europe. The 47 foreign affairs ministers have met since 2004 once a year to give impetus and decide the medium and long-term direction of the Council of Europe in the so called session. Additionally, the Ministers' Deputies, their permanently diplomatic representatives, deal with the every day business in their weekly meetings. (Committee of Ministers 2016; Brummer 2008: 37)

As laid down in the Rules of Procedure for the Meetings of the Ministers' Deputies (Committee of Ministers 2005), the Committee of the diplomatic representatives *“is empowered to deal with all matters within the competence of the Committee of Ministers and to take decisions on its behalf. Decisions taken by the Deputies shall have the same force and effect as decisions taken by the Committee of Ministers meeting at the level of the Ministers for Foreign Affairs. The Deputies shall, however, not take decisions on any matter which, in the view of one or more of them, should by reason of its political importance be dealt with by the Committee of Ministers meeting at ministerial level.”*

Most decisions require a two third quorum such as the agreement on conventions, recommendations to member states, budget decisions and response to the Parliamentary Assembly. For a change of the Statute of the Council of Europe, a consensus is required. (Gawrich 2014: 108-109)

Also, there are two special forms of the Committee of Ministers: the summit meetings and the conferences of specialised ministers:

The summit meetings, comprising the heads of states and governments, are responsible for political guidance and signals for fundamental questions of the Council of Europe. These

meetings have taken place only three times in the history of the organisation.¹⁴ They are political but not legally binding. (Brummer 2008: 47-48)

The Conferences of Specialised Ministers represent members of the governments on a different subject. This group can extend the member states of the Council of Europe. For instance, all members who have signed the Culture Convention (besides the Council of Europe members, the Holy Sea and Belarus) are members of the Special Conference on Education and Sports. (Brummer 2008: 56)

The framework for the Conference of Special Ministers' work was laid down in Resolutions (51) 30E, (71) 44, and (89) 40 of the Committee of Ministers. (Committee of Ministers 1951a¹⁵; Committee of Ministers 1971; Committee of Ministers 1989) In 1989, for the first time, it was considered that a Special Conference could be awarded Committee of Ministers competences. Resolution (89) 40 of the Committee of Ministers (1989) describes the establishment of such a Special Conference of the Council of Europe. The Committee of Ministers should *“examine pragmatically and flexibly the possibility of delegating the Committee of Ministers' powers on an ad hoc basis to this or that Conference.”*

In 2004, it was decided by the Ministers' Deputies (Committee of Ministers 2004) that whenever appropriate the Committee of Ministers can *“give specific mandate to a CSM to negotiate the content, adopt or decide on the opening for signature of particular legal instrument.”*

The work of the Committee of Ministers includes, for instance (Committee of Ministers 2016):

- admitting new member states
- adopting the budget, agreements, conventions, resolutions, working programmes
- monitoring how member states respect commitments
- supervising the execution of the judgements of the European Court of Human Rights

¹⁴ The first Summit meeting took place in Vienna in 1993, the second in Strasbourg in 1997 and the third in Warsaw 2005.

¹⁵ Back in 1951 they were named European Specialised Authorities.

The most important task under Article 15a of the Statute of the Council of Europe is the adoption of conventions and agreements. (Council of Europe 1949)

However, these instruments are only applicable in those member states that have acceded and ratified them. The former Director in the Secretariat of the Parliamentary Assembly of the Council of Europe, Joern Stegen (2000: 80), argues in this respect: *“In der Tat sind Europaratskonventionen Angebote an die Mitgliedsstaaten, einen Schritt zur europäischen Integration zu tun, zu dem sie aber (mit Ausnahme der Menschenrechtskonvention) nicht gezwungen werden können.”*¹⁶

3.2.5 Congress of Local and Regional Authorities

Beside the two organs, the Conference of Local Authorities was introduced in 1957 and enhanced its status in 1994 to the Congress of Local and Regional Authorities. (Breitenmoser and Weyeneth 2014: 355)

The aim of this consultative body is

- to promote local and regional democracy
- improve the governance on that level
- strengthen self-governance by authorities

The Congress of Local and Regional Authorities observes local and regional elections in the member states and draws up international treaties. The most important duty for this consultative body is the European Charter of Self Government. (Congress of Local and Regional Authorities 2016) This Charter recognises the right to local self-government in domestic legislation. These powers should be prescribed by a constitution or statute. (Council of Europe 1985)

¹⁶ Loose English translation: “In fact Council of Europe Conventions are offers to the member states to take one step towards European integration. However, they can’t be forced (except the European Convention on Human Rights) to join them.

3.3 The Eastern Enlargement

One of the most important speeches at the Palais de l'Europe in Strasbourg was held by Mikhail Gorbachev on 6 July in 1989 when the General Secretary of the Communist Party of the Soviet Union spoke about a "*common European house*". (Babajanyan 2007: 50-51) Soon after this speech a new principle, "*Better include than exclude*", was established by the Council of Europe concerning the accession to Central and Eastern European Countries. (Brummer 2008: 31)

The first step to be taken to reach this goal was the establishment of the "*Special Guest Status*" of the Parliamentary Assembly of the Council of Europe. During the accession process of the Central and Eastern European countries, PACE created an observer status for these countries. As stated in its Resolution 917 (Parliamentary Assembly 1989), the requirement for this guest status was to apply and implement the CSCE Helsinki Final Act and the UN International Conventions on "*Civil and Political Rights*" and on "*Economic, Social and Cultural Rights*" in 1966. This enabled the Central and Eastern European Countries without membership status to take part in the plenary sessions and committees of the Parliamentary Assembly without voting rights. On 8 June, 1989, the first countries that were awarded this guest status were Hungary, Poland, Yugoslavia as well as Russia. (Raue 2005: 17)

Nine eastern European countries had acceded to the Council of Europe by the Vienna Summit in 1993. It was the first time that the heads of state and governments of the Council of Europe underlined the importance of the new members, declaring "*The Council of Europe is the pre-eminent European political institution capable of welcoming, on an equal footing and in permanent structures, the democracies of Europe freed from communist oppression. For that reason the accession of those countries to the Council of Europe is a central factor in the process of European construction based on our Organisation's values.*" (Council of Europe 1993)

To fulfil these obligations, a monitoring procedure was introduced. In the Parliamentary Assembly of the Council of Europe, the monitoring work goes back to the initiative of Tarja Halonen, a Finish representative who later became Minister for Foreign Affairs of Finland.

The reason for it was the questioning of the accession of Slovakia because of the treatment of the Hungarian minority there. (Raue 2005: 36)

The so called Halonen Order, Order 488 (Parliamentary Assembly 1993a), states: *“Recent Assembly opinions on applications for membership of the Council of Europe refer to specific commitments entered into by the authorities of the candidate states on issues related to the basic principle of the Organisation ... The Assembly therefore instructs its political affairs Committee and Committee on Legal Affairs and Human Rights to monitor closely the honouring of commitments entered into by the authorities of new member states and to report to the Bureau at regular six monthly intervals until all undertakings have been honoured.”*

While Order 488 just focused on the new member states, Order 508 (Parliamentary Assembly 1995) referred to all member states. An assembly committee on the honouring of obligations and commitments by Member States was set up by Resolution 1115. (Parliamentary Assembly 1997) The actual chairperson of this committee is the Austrian Stefan Schennach.

Today, the monitoring procedure works as follows. Separate country reports are conducted. Two co-rapporteurs are appointed for a maximum time period of five years. A report to the Parliamentary Assembly every three years and a report with draft resolutions are conducted. Monitoring in committee is confidential, while the discussion in the plenum is open to the public. (Parliamentary Assembly 2016)

Each year it is revised which countries will continue to stay in the monitoring process. (Melzer 2012: 75) With regard to Georgian membership of the Council of Europe, in 2000 it was constituted by the Committee of Ministers (2000) that Georgian membership *“complies with the conditions laid down in Article 4 of the Statute”*.

The Eastern Enlargement resulted in minority problems being created. To counter these, the Parliamentary Assembly issued Recommendation 1134 (Parliamentary Assembly 1990) and 1201 (Parliamentary Assembly 1993b) to ensure the rights of minorities throughout Europe. As a consequence, new member countries such as Georgia were required to sign four conventions within three years after their accession to the Council of Europe:

- the Framework Convention for the Protection of National Minorities

- the European Charter for Regional or Minority Languages
- the European Charter of Local Self-Government
- the European Outline Convention on Transfrontier Co-operation

Such conventions are according to Marc Scheuer (2008: 194) of the utmost importance in regions with ethno-political conflicts such as Abkhazia and South Ossetia.

In addition, the Venice Commission, an expert committee composed of experts in constitutional and international law, political scientists, supreme court judges as well as diplomats, was established by the Committee of Ministers by Resolution (90) 6 to give advice on constitutional law matters. (Committee of Ministers 1990; Raue 2005: 48-49)

As described in chapter 3.2, this section concerning Eastern enlargement of the Council of Europe confirms the role of the two organs. While the Parliamentary Assembly is more the active part and enabled the Central and Eastern European Countries to take part in the work of the PACE with the guest status, the Committee of Ministers is the decision-making body, deciding unanimously whether a country can join the organisation and establishing bodies such as the Venice Commission.

4 Interaction and Co-operation between the Council of Europe and other European and International Organisations

The legal framework for the relationship and the co-operation between the Council of Europe and other international organisations were laid down in Articles 1c and 23b of the Statute of London (Council of Europe 1949) and specified by a Committee of Ministers' statutory resolution, Resolution (51) 30F (Committee of Ministers 1951b), in May 1951. (Robertson 1956: 187)

Article 1c of the Statute of the Council of Europe, similar to Article seven of the North Atlantic Treaty¹⁷ concluded one month previously, states (Council of Europe 1949): *“Participation in the Council of Europe shall not affect the collaboration of its members in the work of the United Nations and of other international organisations or unions to which they are parties.”*

Besides, Article 23b concludes that the Consultative Assembly (today: Parliamentary Assembly) should draw up its agenda by taking into consideration *“the work of other European intergovernmental organisations to which some or all of the members of the Council are parties.”* (Council of Europe 1949)

The first legal basis for the co-operation between the Council of Europe and other international organisations was agreed by the Committee of Ministers' Resolution (51) 30F, a so called statutory resolution. According to Klaus Brummer (2008: 229), statutory resolutions are amendments to the Statute of the Council of Europe. This one enabled the Committee of Ministers to conclude agreements with other intergovernmental international organisations regarding matters lying within the Council of Europe competences. (Committee of Ministers 1951b)

As the report of the Moldovan Chair of the Committee of Ministers to the Parliamentary Assembly indicated on 1 October 2003, the European Union and the Organization for Security and Co-operation in Europe were identified as the *“two key partners on the*

¹⁷ Article 7 of the North Atlantic Treaty (North Atlantic Treaty Organization 1949) concludes: *„This treaty does not affect, and shall not be interpreted as affecting in any way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security.”*

European stage” (Committee of Ministers 2003) and the Statute of London (Council of Europe 1949) explicitly mentions in Article 1c the United Nations as an international organisation. Therefore, this chapter focuses on analysing the relationship, interaction, and co-operation between the Council of Europe and these three international and European organisations.

4.1 The Council of Europe and the United Nations

The United Nations is the only international organisation apart from the Council of Europe explicitly named in the Statute of London. (Council of Europe 1949) As early as the 15 December, 1951, an agreement between the Secretary General of the Council of Europe and the Secretariat of the United Nations was signed. It included (Council of Europe 1951):

- the arrangement of exchange of information
- mutual consultation
- attendances of representatives of the Secretariat-General of the United Nations at meetings of the Council of Europe
- technical co-operation

While the Secretariats of the two organisations established communication with regard to human rights as well as cultural and social matters with the *“Arrangement on Co-operation and Liaison between the Secretariats of the United Nations and Council of Europe”* in November 1971 (Council of Europe 1971), the co-operation intensified after the end of the East-West conflict. In 1989, the Council of Europe was granted observer status in the UN General Assembly and the first debate on the co-operation between the United Nations and Council of Europe was held during the 55th UN General Assembly meeting in September 2000. (Brummer 2008: 242)

Also, since 1993 the Tripartite Meetings of three major international players, the Council of Europe, the Conference on Security and Co-operation in Europe (as of 1 January 1995 Organization for Security and Co-operation in Europe), and the United Nations, have exchanged views on matters of common interest and built mutual awareness of the actions taken. Today the European Commission often participates in these meetings as well. (Council of Europe 2016c)

Every second year since 2004, the United Nations General Assembly has adopted resolutions with the co-operation of the Council of Europe and the United Nations, including areas of common interest.

The last Resolution in 2014 (United Nations 2014) reiterated as all the previous ones had: *“its call for the reinforcement of cooperation between the United Nations and the Council of Europe regarding the protection of human rights and fundamental freedoms, the promotion of democracy and the rule of law and good governance at all levels, inter alia, the prevention of torture, the fight against terrorism and trafficking in human beings, the fight against all forms of racism, discrimination, xenophobia and intolerance, the promotion of freedom of expression and freedom of thought, conscience, religion or belief, the protection of the rights and dignity of all members of society without discrimination on any grounds and the promotion of human rights education.”*

4.2 The Council of Europe and the European Union

In 1957 for the first time the relationship between the EEC/EC/EU and the Council of Europe was mentioned in a legal document. Article 230 of the Treaty establishing the European Economic Community provided that *“The Community shall establish all suitable cooperation with the Council of Europe.”* (European Economic Community 1957)

Following this treaty, the Secretary General of the Council of Europe, Lodovico Benvenuti, and the Commission President, Walter Hallstein, exchanged informal letters. Both expressed the wish to establish close relationships between these two organisations. As a consequence, annual reports on the Commission’s activities were sent to the Council of Europe and vice versa. (Kolb 2013: 37)

Despite all these efforts, the first common institutional and financial framework between these two organisations goes back to the end of 1980s and beginning of 1990s. Following another series of letters, in 1987, between the Commission President, Jacques Delors, and the Secretary General of the Council of Europe, Marcelino Oreja (Council of Europe 2001), the first so called quadripartite meeting between the Chairman and Secretary General of the Council of Europe and the President of the Council and Commission of the European

Communities (later: European Union) took place on 11 July, 1989, in Paris and was based on Resolution (89) 40 of the Committee of Ministers. (Committee of Ministers 1989)

The reason for these institutionalised meetings, which should have taken place at least once a year between these two organisations, was to provide the two organisations with the impetus for their co-operation. (Committee of Ministers 1989) In 1996, the European Commission was finally granted observer status in meetings and activities of the Council of Ministers' meeting of the Council of Europe, rapporteur groups, and other Council of Europe working groups. (Kolb 2013: 38-39)

The first joint programmes between the Council of Europe and the European Union were developed and financed in 1993. The geographical focus of these joint programmes included the following regions: (South) Eastern Europe, South Caucasus, and Turkey. The primary aims of these joint programmes were to strengthen democracy, the rule of law and respect for human rights. In most cases, the European Union funded these programmes up to 80 per cent and the Council of Europe was responsible for implementing the programmes. (Council of Europe 2016a; Kolb 2013: 38)

At the third summit meeting in Warsaw, it was proposed *“to create a new framework for enhanced co-operation and interaction between the Council of Europe and the European Union in areas of common concern, in particular human rights, democracy and the rule of law.”* (Council of Europe 2005b)

As a consequence, this new framework was laid down in 2007 in the *“Memorandum of Understanding between the Council of Europe and the European Union”*. In Article nine of this memorandum, seven areas of common interest were identified between the Council of Europe and the European Union as follows: *“the promotion and protection of pluralistic democracy, the respect for human rights and fundamental freedoms, the rule of law, political and legal co-operation, social cohesion and cultural interchange.”* (Council of Europe 2007)

Two years after this memorandum, the agreed Treaty on the European Union, the so called Lisbon Treaty, stipulated in Article six that the EU shall accede to the European Convention on Protection of Human Rights and Fundamental Freedoms. (Official Journal of the European Union 2012)

In accordance with a decision of the Committee of Ministers of the Council of Europe, there are today three pillars of political co-operation between these two organisations: political dialogue, legal co-operation and co-operation projects. (Committee of Ministers 2016)

4.3 The Council of Europe and the CSCE/OSCE

The Charta of Paris of the Conference on Security and Co-operation in Europe was recognised in 1990 as part of the human dimension of the contributions of the Council of Europe regarding human rights, democracy and rule of law area, which welcomed the adherence to the European Convention on Human Rights of the participating states and *“the readiness of the Council of Europe to make its experience available to the CSCE”*. (Conference on Security and Co-operation in Europe 1990)

Since the 1990s the following co-operation has been institutionalised and formalized between the Council of Europe and the Conference on Security and Co-operation in Europe / Organization for Security and Co-operation in Europe:

- joint meetings and exchanges of views between the Council of Europe Ministers’ Deputies and the OSCE Permanent Council and their subsidiary bodies
- 2+2 High Level and Senior Officials Meetings
- co-operation regarding joint expert assessment and election observation, for example participation in OSCE Permanent and Ministerial Council, Council of Europe’s Committee of Ministers and Ministers’ deputies meetings of both organisations
- co-operations between field missions

(Council of Europe 2016b)

Similar to the co-operation between the Council of Europe and the European Union, a deeper and closer collaboration was expressed at the Warsaw Summit of the Council of Europe: *“We are also resolved to secure improved practical co-operation between the Council of Europe and the OSCE and welcome the prospect of enhanced synergy opened up by the joint declaration endorsed at this Summit.”* (Council of Europe 2005b)

The Declaration on Co-operation between the Council of Europe and the Organization for Security and Co-operation in Europe signed in Warsaw on 17 May 2005 on the sidelines of

the summit highlighted four key priority areas of co-operation: fighting against terrorism, protection of persons belonging to national minorities, combating human trafficking as well as promoting tolerance and non-discrimination. The co-operation started in these areas. (Council of Europe 2005a)

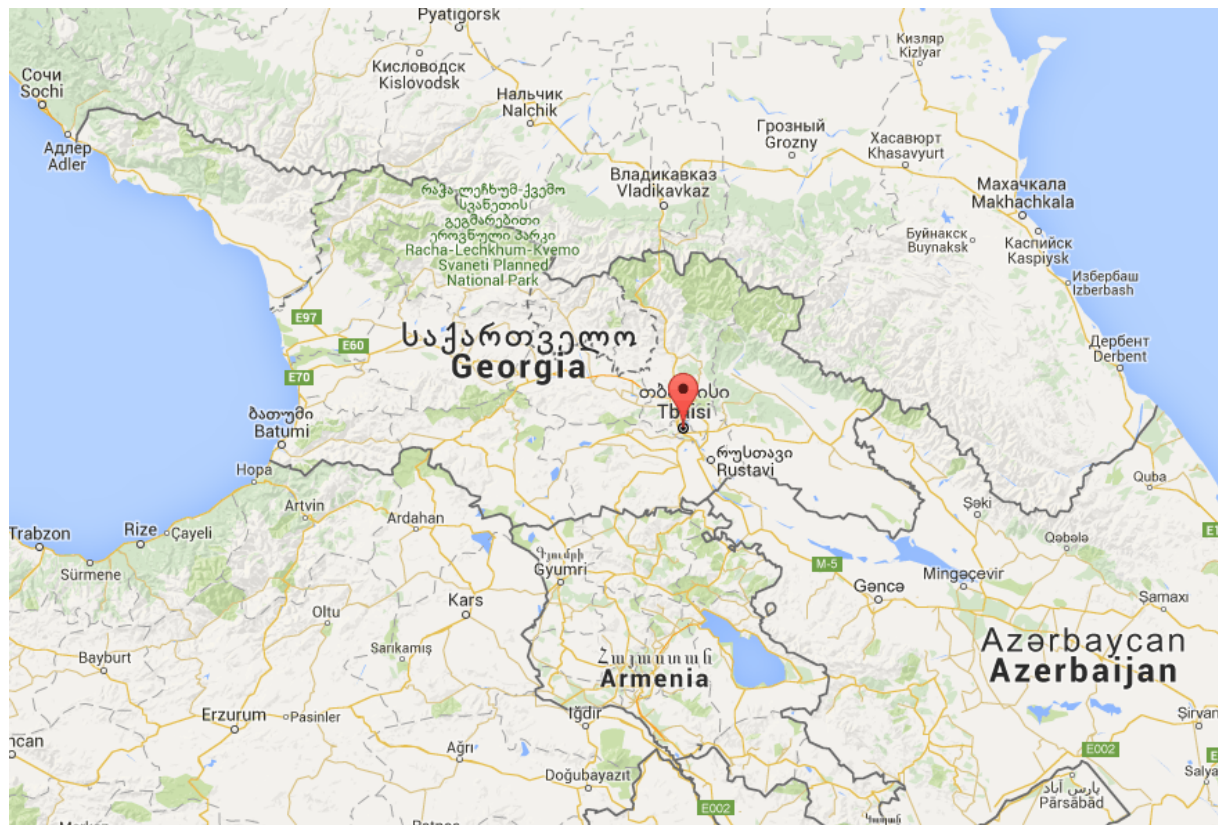
However, in contrast to the EU relations, no Memorandum of Understanding has been agreed on yet between these two international players. Such an initiative was first proposed by the Committee of Wise Persons' Final Report in 1998. (Council of Europe 2016b)

5 Historical Developments in Abkhazia and South Ossetia

As shown in Figure one, Georgia with its capital Tbilisi lies in the heart of the Caucasus, an area situated between the Black and Caspian Sea. It is bordered by Russia in the North, Turkey in the South West, Armenia in the South and Azerbaijan in the South East. Two Georgian regions, Abkhazia in the North-West and South Ossetia in the North of Georgia, only have borders with Russia.

According John Andrews (2015: 152), a foreign correspondent of “The Economist”, *“Georgia has historically been conveted by its larger neighbours. During most of the 20th century this meant control by Moscow as part of the Soviet Union – indeed, in some ways an honoured part, given that Joseph Stalin was a Georgian. Independence came in April 1991 as Georgian nationalists (there had been anti-Soviet demonstrations three years earlier) took advantage of the accelerating collapse of the Soviet Union.”*

Figure 1: Georgia and its neighbouring states



Source: Google Maps 2016e; the Georgian capital of Tbilisi is marked by the red pin

Edward Lucas identifies Georgia as the hottest spot of what he calls the “*new Cold War*”. The senior “The Economist” editor states (Lucas 2014: 182): “*Regarding news reports of the war in August 2008, it would be easy to assume, wrongly, that the fighting started with an unprovoked attack by Georgia on neighbouring South Ossetia. The truth is a lot more complicated. It starts with Georgia’s difficult rebirth as a modern nation.*”

Local sources date back the origins of a unified Georgian Kingdom to the fourth century BCE. In the 11th and 13th century under the rule of King David IV and Queen Tamar, this Georgian Empire included the greater part of eastern Anatolia and the South Caucasus. While this period was followed by decline, Georgia was subsequently ruled by the Roman, Persian, Byzantine and Ottoman Empires before the Treaty of Georgievsk was signed to incorporate the Georgian Kingdom of Kartli-Kakheti into the Russian Empire. The dissolution of the Kingdom of Kartli-Kekheti was finally secured by a unilateral decree of Tsar Alexander I in 1801. (Souleimanov 2013: 71-74)

5.1 Origins of Abkhazia and South Ossetia in the Russian Empire

According to Svante E. Cornell (2001: 18), the conflicts in the former Russian autonomous republics and oblasts such as Abkhazia and South Ossetia, were mainly not religious or language related, but were primarily conflicts over territory and ownership. While Abkhazia has a long history and the Abkhazian Kingdom was established as early as in the eighth century (Chirikba 1998: 53-54), South Ossetia first occurred on the administrative map in 1842 when the region was placed under Russian military rule because of several rebellions between the Ossetian peasants and the Georgian lords. (Saparov 2015: 29-30)

The presence of Ossetians can be dated back to the 13th century. (Souleimanov 2013: 116) Historically, the Ossetian cultural centre was north of the Georgian border in North Ossetia which today belongs to the Russian Federation. (King 2001: 534) Ossetia joined the Russian Empire in 1801. As there was no native nobility, no specific Ossetian political entity had been developed. The Ossetians lived at that time primarily in the mountainous areas near the rivers Ksani and Liakhvi (within South Ossetia today) and Mount Kazbek. (east of South Ossetia today, see Figure two) (Saparov 2015: 28)

living in this area halved during this period. As Table four confirms, the ethnic structure changed completely at the end of the 19th century. 40.000 migrants arrived in Abkhazia from 1886 to 1897 including Mingrels, Georgians, Greeks, Armenians, Russians, Germans, and Turks. (Saparov 2015: 26-27, 42)

Figure 3: Mountainous parts of Abkhazia



Source: Google Maps 2016d; Sokhumi is marked by the red pin

Table 4: Ethnic Composition of Abkhazia 1886-1989

Ethnic Group	1886	1926	1959	1970	1979	1989
Abkhaz	42,00%	27,80%	15%	15,90%	17,10%	17,70%
Georgians	50,30%	33,50%	39,10%	40,90%	43,80%	45,70%
Russians	1,40%	6,20%	21,40%	19,00%	16,40%	14,20%
Other	4,80%	19,80%	8,20%	8,90%	7,60%	7,90%
Armenians	1,50%	12,70%	15,90%	15,30%	15,10%	14,50%

Source: Cornell (2001: 156); Kolossov and O'Loughlin (2011: 634)

Abkhaz people belong to the North West Caucasian language family and Ossetians to an Iranian group inside the Indo-European language tradition. Both Abkhazians and Ossetians primarily adopted Christianity. In Abkhazia only a few converted to the Islam, especially Mingrelians living in East-Abkhazia. (Blakkisrud and Kolstø 2008: 485-487)

In the late 19th century, Russia promoted minorities to weaken Georgia and opened schools in Mingrelian and Svan. This primarily affected the Abkhazian region. Teaching the Russian language to the Abkhaz led to Russian replacing Georgian as the second language there. (Cornell 2001: 146)

5.2 The Soviet Era

The principle of ethno-federalism was applied in the Soviet Union. Nationality was primarily defined by language and the territorium was hierarchically divided into union republics, autonomous republics, autonomous okrugs and autonomous oblasts representing their own nationality. (Wheatley 2010: 28)

As noted by Angela E. Stent (2014: 104), adviser on Russia under the American Presidents Bill Clinton and George W. Bush, one of the most prominent politicians within the USSR were Georgians; from Stalin over Lavrenti Beria to Eduard Shevardnadze. During the Soviet era, three autonomous areas existed in Georgia: the two autonomous republics of Abkhazia and Ajars and the South Ossetian Autonomous Oblast. (Cornell 2001: 143)

After a treaty between the Abkhaz People Council and the Georgian Government was signed, Georgian troops landed in Sukhumi on 18 June, 1918, to expel the Bolsheviks from Abkhazia. As part of a compromise, the newly elected Abkhaz People Council decided on 20 March, 1919, to join the Georgian Democratic Republic as an autonomous entity. After the Bolsheviks entered Abkhazia and Georgia, it was first agreed to award the region the status of an independent Socialist Republic. This position changed when a special union-treaty was concluded in December 1921, which finally defined Abkhazia as an autonomous region within Georgia. (Saparov 2015: 44-53)

Article one of the Georgian Constitution of 1922 stated: (quoted in Saparov 2015: 55) “*Based on voluntary self-determination, the ASSR Ajaria, the Autonomous Region of South Ossetia*

and the SSR Abkhazia, which is joined to the SSR Georgia by the special union treaty between them, all compose the Socialist Soviet Republic of Georgia.”

To strengthen their position, Russian Bolsheviks encouraged Abkhazians, South Ossetians and other minorities in Georgia to rebel against the central government in Tbilisi. (Nodia 1998: 21) The only time Abkhazia was awarded the status of an independent Socialist Republic was from March to December 1921. The Treaty of Union after that was in force for 10 years before Abkhazia's status was reduced to an autonomous republic within Georgia. Several attempts by Abkhazian party officials in 1956, 1967 and 1978 to separate from Georgia and become incorporated within the Russian Soviet Republic were unsuccessful. (Stewart 2003: 6-7)

The creation of the Georgian-South Ossetian conflict goes back to the time of the Georgian Democratic Republic between 1918 and 1921 and mainly refers to economic controversies. South Ossetians refused the introduction of economic policies by the central Georgian Menshevik Government supporting big landowners who mainly were Georgians. This conflict led to an armed uprising between the South Ossetian peasants who were mainly without land and the Georgian aristocrats who owned the land. As a consequence of this conflict, sympathy for Russian Bolsheviks increased. Initially, the Red Army supported the South Ossetians and gave material support but by the mid 1920s they distanced themselves from South Ossetian Bolsheviks to avoid a military conflict with Georgia. In 1922, the South Ossetian Autonomous Region was built as a result of a concession made to South Ossetian Communists. While 3.000 to 7.000 South Ossetians were killed as a result of ethnic cleansing during that period, 20.000 civilians decided to flee to the Soviet Union. (Souleimanov 2013: 112-113)

5.3 After the Soviet Era

It should be noted that during the break up of the Soviet Union, the Abkhazians and South Ossetians still had a quasi-state structure. (Cornell 2001: 143, 163)

Abkhazia in 1989 was an inter- and multi-ethnic region. Only in two districts, one group could reach an overall majority – both bordering the Black Sea: the Abkhazians in the Gudauta district in South-West Abkhazia and the Georgians in the Gulripshi district in South

Abkhazia. (Gachechiladze 1998: 73) Contrary to Abkhazia, South Ossetians made up a majority in their region. According to the 1989 census, 66 per cent Ossetians, 29 per cent Georgians and 2 per cent Russians lived in this region. (Blakkisrud and Kolstø 2008: 487)

On 18 March, 1989, the Lykhny Declaration suggested that Abkhazia became a Union Republic within the Soviet Union. Six days later, this declaration was printed in all major newspapers in Abkhazia and Russia. As a consequence, 12.000 people protested against this declaration in Gali, in the South East of Abkhazia, on 25 March, 1989. Following this protest, many manifestations in different towns and a multi-day rally in the Georgian capital Tbilisi led to a Soviet attack with shovels and poisonous gas, killing twenty and injuring hundreds of demonstrators. South Ossetia supported these Abkhazian demands. (Mihalkanin 2004: 143; Souleimanov 2013: 123)

The conflicts even worsened later in 1989. Georgia wanted to establish Georgian as the sole official language of the country, without considering Ossetian, Abkhazian, or even Russian that had been treated as *lingua franca* in South Ossetia at that time. As a reaction, South Ossetian authorities in Tskhinvali produced a proposal to give the Ossetian, Georgian and Russian languages equal status in South Ossetia. (Souleimanov 2013: 123-124)

As a result of the October 1990 Supreme Council Election, the nationalist Free Georgia – Gamsakhurdia’s Roundtable coalition won an overall majority in Georgia. However, not only Zviad Gamsakhurdia, but all 34 contesting political parties at that time expressed sympathy for Georgian independence. Five months later, as a result, 90 per cent of the electorate voted in a referendum to secede from the USSR. (Goltz 2009: 16-17) With his motto “*Georgia for Georgians*”, President Zviad Gamsakhurdia, gave the impression to Abkhazians and South Ossetians in the country that minorities were mere “*guests*” on Georgian territory. (Souleimanov 2013: 90)

As a consequence, the Abkhazians and South Ossetians favoured the Soviet Republic over the Georgian Republic during the early 1990s because they believed that minorities were better treated there. In March 1991, an All-Union Referendum, proposed by Mikhail Gorbachev, took place even before the Georgian independence referendum. The Georgian leadership prohibited Georgia taking part. Nevertheless, the Abkhazian and South Ossetian authorities

organised the referendum and the people in these regions voted overwhelmingly for staying in the USSR. (Cornell 2001: 164)

The Georgian Supreme Soviet abolished the South Ossetian Autonomous Oblast on 11 December, 1990. Contrary to this move, the oblast authorities decided to declare South Ossetia an autonomous republic and unite with North Ossetia in 1990. This led to the first clashes between Georgia and South Ossetia in 1990. Besides that, the Georgian Supreme Soviet prevented South Ossetians from participating in the parliamentary election. In September 1990, the South Ossetian Parliament declared independence and republican status. While the Georgian elections were boycotted, their own elections took place in December 1990. The Georgian Republic reacted, sending the Georgian national guard and police to the region to restore order. A similar development took place in Abkhazia. After their authorities declared independence and the Abkhazian Parliament tried to restore the draft constitution of 1925, the Georgian troops tried to restore order on the pretext of the protection of highways and railways. The Abkhazian militia resisted. (Blakkisrud and Kolstø 2008: 488; Saparov 2015: 149; Stewart 2003: 9)

As outlined by Stephen Blank (2009: 107-108), Russia's role in Abkhazia and South Ossetia during that time could be questioned: *"Russia's initial activities in Georgia in 1992-94, where Moscow either ran guns to the Abkhazians or unilaterally imposed its forces as so called 'peacekeepers' in the conflicts between Georgia and its rebellious provinces and forced Georgia to accept that verdict, revealed that during this period Russian armed forces were not fully under control and that the consequences of their operations in the Caucasus were unpredictable and dangerous."*

The Sochi Agreement in June 1992 and Moscow Agreement in May 1994 formally ended the military conflicts between Georgia, Abkhazia, and South Ossetia and secured a central role for the Russian Federation in both areas of conflict. These ceasefire commitments established conflict free zones. The Sochi Agreement defined the zones of conflict and a security corridor for South Ossetia. A Joint Control Commission composed of Georgians, Russians, North and South Ossetians, and OSCE representatives observed the Sochi Agreement. (International Crisis Group 2004; United Nations 1992)

In Abkhazia, the Moscow Agreement created an area that was to be free of military operations, both offensive or defensive. This conflict free zone was monitored by a peacekeeping operation by the Commonwealth of Independent States, which was dominated by Russia. This operation was controlled by the United Nations. (International Crisis Group 2006: 6; United Nations 1994)

6 The role of the Council of Europe after the Five-day war

6.1 Events prior to the Five-day War

The Parliamentary Assembly (2008a) of the Council of Europe concluded in its Resolution 1633 that the outbreak of the Five-day War “*was the result of a serious escalation of tension, with provocations and ensuing deterioration of the security situation, which had started much earlier. Steps to reduce tension were not taken and the possibility of military intervention became an option for both sides in the conflict.*” These events go back to the Georgian Rose Revolution of 2003.

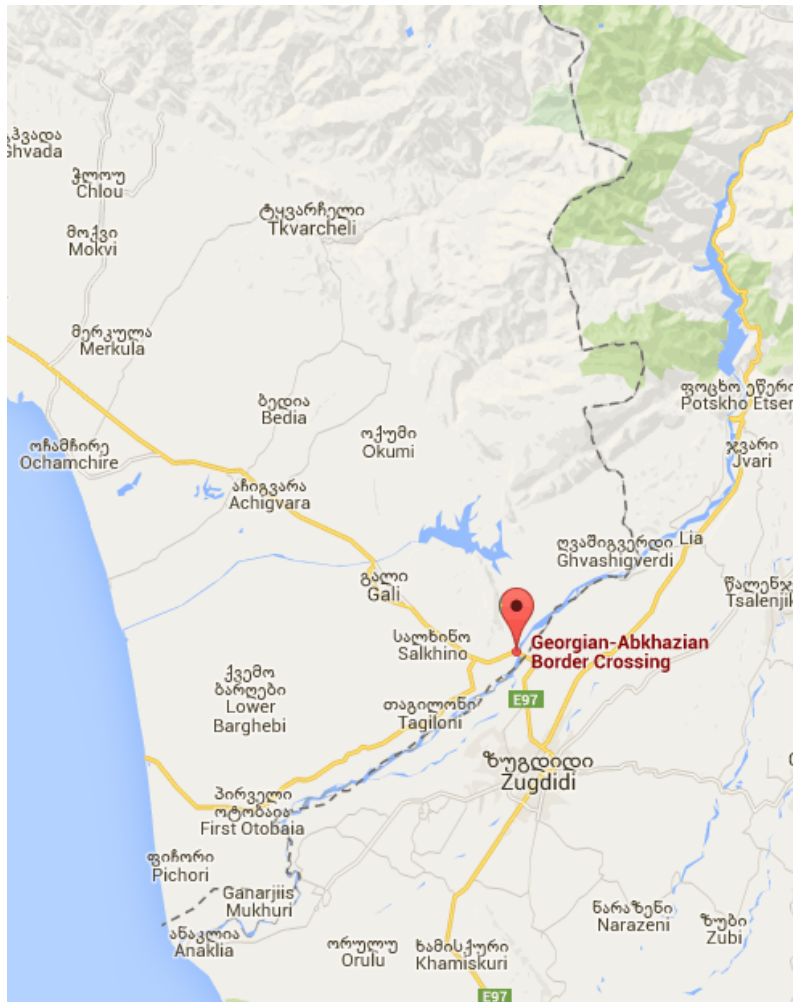
The newly elected Georgian government and President Mikheil Saakashvili adopted the establishment of Georgia’s territorial integrity as their first priority. After his inauguration, the Georgian President announced that the conflicts in Abkhazia and South Ossetia should be solved by soft power principles and in a non-violent way by the end of his first term. (Nilsson 2009: 91)

In fact, the Georgian Government dismissed several attempts by the Abkhazian, Russian and South Ossetian sides to guarantee a non-use of force in the areas of conflict. This was the key obligation set out by the de facto authorities in Abkhazia and South Ossetia to start negotiations between the two regions and the Republic of Georgia. (Wheatley 2010: 36-37)

After a similar strategy proved to be successful in Ajaria, the Georgian Government tried to attract South Ossetians with a promise of free state pensions and free fertilizers for the rural population. This strategy should have secured bringing down the de facto authority in South Ossetia. However, the contrary happened. After the Republic of Georgia closed down the Ergneti market in the South East of Abkhazia, see Figure four, an important trading point for contraband goods on the Georgian – South Ossetian border, the civil population of South Ossetia was hit hard by this move. As a consequence, six weeks of fighting started, causing the deaths of 17 Georgians and five South Ossetians. Additionally, tensions escalated between Abkhazia and Georgia over Upper Kodori Gorge in July 2006. This part of Abkhazia had been controlled by local militia before Georgia entered the region in 2006. After the

announcement by their leader Emsar Kvitsiani that he was rearming his militia, the Republic of Georgia sent troops to secure central control. (Wheatley 2010: 35-36)

Figure 4: Abkhazian – Georgian border



Source: Google Maps 2016a; the Georgian-Abkhazian Border Crossing is marked by the red pin

Although the Republic of Georgia supported peace plans for Abkhazia and South Ossetia including political and cultural autonomy backed by the Organization for Security and Co-operation in Europe from 2005 on, these events at Ergneti market and in Upper Kodori Gorge affirmed the belief in these two regions that the Russian Federation, and not Georgia, was on their side. (Nilsson 2009: 93)

As outlined by David J. Smith (2009: 125) *“the West failed to see that Abkhazia and South Ossetia ... were never the issue for Russia. The issue was Georgia’s successful embarkation upon a westward path, and in particular its progress toward joining NATO.”*

Tensions between the two sovereign states, the Georgian Republic and the Russian Federation, in turn intensified after the announcement of the NATO Bucharest Summit’s Declaration. While Georgia had been a member of the North Atlantic Treaty Organization’s Partnership for Peace Programme since 1994 (Andrews 2015: 152), the NATO members welcomed Georgia’s NATO aspirations in Article 23 of this Declaration on 3 April, 2008, and concluded Georgia’s intended membership. (North Atlantic Treaty Organization 2008)

In the same year, the European Union decided to include Georgia in its European Neighbourhood Policy. (Andrews 2015: 152) Following the North Atlantic Treaty Organization’s announcement, the Russian President Vladimir Putin and Foreign Secretary Sergey Lavrov interpreted this move as a direct threat to Russian security. (Smith 2009: 126-127)

Several moves by the two conflict parties were interpreted as provocations by the other side:

- Prior to the NATO Summit in March 2008, Georgia withdrew from the Joint Control Commission in South Ossetia (Popjanevski 2009: 144) and the Russian Federation withdrew from the sanctions regime in Abkhazia to enable the transfer of arms shipment to Abkhazian separatists. (Smith 2009: 129)
- On 17 March, 2008, Givi Tagamadze, Georgian convener of the Parliamentary Committee on Security and Defence, expressed his willingness to restore Georgia’s territorial integrity by using armed forces. (Wheatley 2010: 37)
- On 24 March, 2008, the Russian Duma asked the Kremlin to consider the recognition of the Abkhazian and South Ossetian independence. (Smith 2009: 129)
- Russian President Vladimir Putin signed a Presidential decree on April 16, 2008, the same year that enabled and instructed Russian state agencies to establish official ties with the two de facto administrations in Abkhazia and South Ossetia. (Popjanevski 2009: 145)

By April 2008, Russian military had positioned themselves on Georgian territory under the pretext of protecting Russian citizens abroad and responding to the big increase in Georgia's military budget that led to a Georgian build-up on the Georgian territory. The Russian shooting down a Georgian Unmanned Aerial Vehicle on April 20 the same year - later proved by a UN Investigation Report – was evidence of the heated situation, before shellings, shootings and bombings escalated in June. (Smith 2009: 132-40)

After several explosions took place which on 29, and 30 June, 2008, in the Abkhazian cities of Gagra and Sukhumi, Abkhaz de facto authorities announced that the border to Georgia was to be closed. (Popjanevski 2009: 147) Provocations continued. While a US led large-scale military exercise took place outside Tbilisi in mid July, Russian troops were doing the same near the Georgian border. (Stent 2014: 169-170)

The actual outbreak of the war started as a result of shootings between Georgian and South Ossetian forces on 29 July, 2008. According to Ronald D. Asmus (2010: 25-26), these shootings, at that time, were interpreted by most commentators as business as usual. One day later, five Georgian peacekeepers were wounded and six Ossetians died as a result of heavy fighting in the South Ossetian main city, Tskhinvali. (Cheterian 2010: 67)

When on 2 August, South Ossetian de facto authorities announced the evacuation of children and women from Tskhinvali, it was clear that war was soon to come, according to Ronald D. Asmus (2010: 28).

6.2. The Five-day War

As Matthias Schmidl (2009: 216) describes, the Five-day war in August 2008 was a classic inter-state war between two sovereign states, the Georgian Republic and the Russian Federation. This conclusion was supported by two Parliamentary Assembly Resolutions: Resolution 1633 in October 2008, and Resolution 1647 in January 2009. (Parliamentary Assembly 2008a; Parliamentary Assembly 2009b) From the outbreak of the war, Georgia and the Russian Federation both relied on their argument of self-defence.

At 23.35h on 7 August, 2008, the Georgian President Mikheil Saakashvili gave orders to attack Russian troops entering Georgia through the Roki Tunnel (see Figure five) and moving

towards the South Ossetian main city, Tskhinvali. The Georgian side gave three reasons for this move: (Asmus 2010: 19-21)

- 1) Lack of response to the Georgian unilateral ceasefire by the Ossetian and Russian sides on the same day
- 2) Shellings in Georgian villages
- 3) Russian movement of forces, estimated to be 12.000 soldiers with artillery and armours, North of the Roki Tunnel. While many of them had already crossed through the tunnel, the Russian side, however, argued that they only entered Georgia one day later, on 8 August, at 14h.

Figure 5: Roki Tunnel between Georgia and the Russian Federation



Source: Google Maps 2016c; the Roki Tunnel is marked by the red pin

It was the Russian representative who asked, on 7 August, 2008, for an emergency United Nations Security Council meeting, which took place at 1.15 a.m. on the 8 August, 2008, in New York. According to the Russian representative in the United Nations Security Council, the tanks of the Georgian authorities and infantry of the Georgian military attacked parts of Tskhinvali and criticised Georgia's refusal to support an agreement on non-use of force while

the Georgian representative argued that this move was primarily an action of self-defence and necessary to prevent further deaths. (United Nations 2008)

The war did not last long. On 9 August, 2008, the Russian Federation opened another front in Abkhazia in Kodori Gorge. One day later, once more a unilateral ceasefire was announced by the Georgian Republic. This was rejected again by the Russian Federation. On the following day, Russians reached the city of Gori and seemed to be ready to attack the Georgian capital of Tbilisi. As a consequence, the Republic of Georgia announced its withdrawal from CIS and Ukraine expressed its willingness not to allow Russian naval ships involved in the war to return to Sevastopol. (Lucas 2014: 193)

However, these fears proved to be wrong. Nicolas Sarkozy, the President of the European Council, brokered together with the Finnish OSCE Chairmanship a six-point ceasefire plan, which was signed by the Russian Federation and Georgia. (Wolff 2011: 152) The Georgian President signed this ceasefire agreement on 15 August and his Russian counterpart on 16 August, 2008. As a consequence, following the establishment of the European Union Monitoring Mission, Russia finally withdrew its troops outside the Abkhazian and South Ossetian borders. (Cheterian 2010: 68) According to this agreement, the PACE member Zviad Kvatchantiradze states: *"Russia and Georgia signed a six point agreement in 2008 ... No point is executed till today by Russia. And everyone has forgotten about it. Nobody remembers."*

By two presidential decrees, the Russian Federation recognised the independence of South Ossetia and Abkhazia on 26 August, 2008. In addition, they secured their military presence in these regions announcing a future Treaty on Friendship, Co-operation and Mutual Assistance. As long as this was not agreed, armed Russian forces acted with a peacekeeping function on this territory and refused to withdraw their troops. (Schmidl 2009: 216)

Bilateral treaties between the two regions, Abkhazia and South Ossetia, and the Russian Federation were finally agreed which led not only to military presence but also to immense economic and social support. 96 per cent of the South Ossetian budget consisted of Russian payments. However, people living in South Ossetia and Abkhazia were more concerned with the economic situation and unemployment rates than with the political situation. (Kollosov and O'Loughlin 2011: 2, 7)

The Parliamentary Assembly of the Council of Europe announced that independent sources estimated the displacement of 192.000 people, 31.000 of which were permanently displaced, as a consequence of this armed conflict in Abkhazia, South Ossetia and other parts of Georgia. 300 were killed and 500 wounded on the Russian and South Ossetian sides. On the Georgian side, these numbers were 364 and 2.234 respectively. (Parliamentary Assembly 2008a)

6.3 Response by different actors of the Council of Europe

As indicated in chapter 3.2, different Council of Europe actors and organs have different responsibilities and duties. While the European Court of Human Rights takes care of the Council of Europe's legal dimension, the observation of human rights violations lies in the competence of the Commissioner of Human Rights. Political initiative is taken by national members of Parliaments in the Parliamentary Assembly, in principle by majority voting. In contrast, the Committee of Ministers acts in consensus as the decision-making body of the Council of Europe. The spokesperson of the organisation is the Secretary General. These different roles of the Council of Europe's actors were proven by the Council of Europe's response within the first six months after the end of the inter-state Five-day war between the Georgian Republic and the Russian Federation in August 2008, described in this chapter.

6.3.1 Secretary General

As argued in 2009 by the spokesperson of the organisation, the Secretary General of the Council of Europe, Terry Davis (Secretary General 2009b): *“The outbreak of the conflict in Georgia in August 2008 left its imprint on the Council of Europe and its external relations. The Organisation has been dealing with the conflict primarily from the point of view of membership obligations of two member states ... Particular attention was given to the humanitarian situation, post-conflict rehabilitation and prevention of future or continued conflict.”*

As the person responsible for strategic management of the Council of Europe, his public role was merely passive. Beside several bilateral negotiations¹⁸, he accompanied the Chair of the

¹⁸ For instance, during the UN Security Council meeting in September 2008 he had several bilateral meetings with Presidents, Prime Ministers and Foreign Ministers of CoE Member States, with Ambassador

Committee of Ministers to a mission between 11 and 13 August, 2008, to the region and proposed at the informal Committee of Ministers meeting in September 2008 (see chapter 6.3.5) an enhanced monitoring procedure for Georgia and the Russian Federation. (Secretary General 2009a)

6.3.2 European Court of Human Rights

Article 15 paragraph 1 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms states (Council of Europe 1950): *“In time of war ... any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law ... Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore.”*

After the outbreak of the Five-day war between Georgia and the Russian Federation, both parties did not inform the Secretary General of the Council of Europe about this incident. On 10 August, 2008, the Republic of Georgia informed the Secretary General that one day before that the Georgian President had declared war for 15 days in the whole of Georgia, and this declaration had been approved by the Georgian Parliament. However, it was noted in this note verbale, that no derogations under the European Convention for Human Rights had been applied for Georgia. The Russian Federation side could not commit themselves to a similar statement. The only explanation given for the Russian use of force by President Dmitry Medvedev on 8 August, 2008, was the argument of the right of self-defence under Article 51 of the United Nations Charter. (Commissioner for Human Rights 2008)

On 12 August, 2008, the European Court of Human Rights decided interim measures applying rule 39 of the Rules of the European Court for Human Rights that Articles two and three of the Convention for the Protection of Human Rights and Fundamental Freedoms were to be respected. The President of the Court’s Chamber argued on the same day that *“the*

Johan Verbeke and several UN officials. Between 2 and 4 November, he met UN Under Secretary Burton Lynn Pascoe and two Human Rights Watch representatives in New York. On 12 November, 2008 he met the Russian Foreign Minister Sergey Lavrov in Moscow and on 18 November, 2008 the Georgian Foreign Minister Ekaterine Tkeshelashvili in Tbilisi. (Secretary General 2009a)

current situation gives rise to a real and continuing risk of serious violations of the Convention ... In accordance with Rule 39 § 3, the President further requests both Governments concerned to inform the Court of the measures taken to ensure that the Convention is fully complied with.“ (European Court of Human Rights 2008)

On 21 and 22 August, 2008, the Georgian and Russian Governments transmitted information to the European Court of Human Rights which measures were taken to fulfill Articles two, the right to life, and three, the prohibition of torture, of the Convention for the Protection of Human Rights and Fundamental Freedoms. (Commissioner for Human Rights 2008; Council of Europe 1950) Besides, people living in South Ossetia affected by hostilities sent about 3.300 applications to the European Court of Human Rights. (Secretary General 2009b)

6.3.3 Commissioner for Human Rights

Within the first six months after the end of the Five-day war, the Commissioner for Human Rights undertook three visits to the region. (Secretary General 2009a) The most important took place as an immediate reaction to the war.

Between 22 to 29 August, 2008, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on a special mission to the region, assessed the human rights situation in South Ossetia, focusing on the victims on both sides of the armed conflict. He was accompanied by Swedish Ambassador Ulrika Sundberg, the Council of Europe official Alexandre Guessel, and the legal advisor Irene Kitsou-Milonas to the Georgian city of Gori, the Russian capital Moscow, the Georgian capital Tbilisi, the South Ossetian main city Tskhinvali and the North Ossetian main city Vladikavkaz meeting internally displaced persons as well as governmental and international organisation representatives. (Commissioner for Human Rights 2008)

The role of the Commissioner for Human Rights was explained in Thomas Hammarberg's report as follows (Commissioner for Human Rights 2008): *“In accordance with his terms of reference he would not pass any political judgement on the situation. His main concern was to enshure that the human rights of the persons affected are taken into account and respected as far and thoroughly as possible.”*

This special mission to the affected region led the Commissioner for Human Rights to decide on six principles to urgently protect human rights and humanitarian security due to the “*humanitarian disaster*” in South Ossetia. They were as follows: (Secretary General 2009a)

- 1) Right to return for displaced persons
- 2) Right of displaced people to care and support
- 3) Right to be protection against dangers from remnants of war
- 4) Right to Protection against lawlessness
- 5) Right to protection and exchanges of detainees and prevention of hostage-taking
- 6) Right to international assistance and presence

This action was for instance supported by the two Council of Europe organs, the Committee of Ministers and the Parliamentary Assembly. (Committee of Ministers 2008b; Commissioner for Human Rights 2008; Commissioner for Human Rights 2009; Parliamentary Assembly 2008a)

In addition, Thomas Hammarberg condemned the use of cluster munitions by Georgia and the Russian Federation against civilians and called on these two countries to ratify the Convention on Cluster Munitions. (Commissioner for Human Rights 2009) So far, 118 countries around the world have signed this international treaty. However, the Republic of Georgia and the Russian Federation have continued to refuse to sign and implement it. (Convention on Cluster Munition 2016)

During his first visit, the Commissioner for Human Rights took several actions to exchange prisoners. On 24 August, 2008, he organised an exchange of 34 detainees at the Karateli check-point between the de facto South Ossetian and Georgian authorities. One day later, the Georgian Government released three prisoners as a unilateral act of good will. While on 26 August, 2008, South Ossetians handed over 43 corpses to the Georgian side, a day later Thomas Hammarberg organised the release of all 85 Georgians who were present at the local police station in the South Ossetian main city of Tskhinvali. (Commissioner for Human Rights 2008)

However, as indicated in the Commissioner’s “Report on Human Right Issues, following the August 2008 Armed Conflict”, only 100.000 of the 138.000 displaced people had a chance to

return in the months following the Five-day War to their homes. (Commissioner for Human Rights 2009)

6.3.4 Parliamentary Assembly

While other actors of the Council of Europe such as the Commissioner of Human Rights tried to play an impartial role, the Parliamentary Assembly adopted a clear political stand. Resolution 1633 on *“The consequences of the war between Georgia and Russia”* was overwhelmingly passed on 2 October, 2008. 93 members of the Council of Europe voted for this resolution, 29 voted against, and 5 abstained. It is interesting to note the different voting behaviours by Georgian and Russian PACE representatives. While 19 of the total 29 opposing votes came from Russian Federation members, all Georgian representatives voted in favour of resolution 1633. (Parliamentary Assembly 2008b)

The reason seems to be quite simple. Parliamentary Assembly’s commitments like Resolution 1633 or 1647 (Parliamentary Assembly 2008a; Parliamentary Assembly 2009b) condemned not only the ethnic cleansing and human rights violations on both sides - the Georgian warfare in the main South Ossetian city of Tskhinvali and the Russian counterattack leading to the occupation of Georgia. They were also not willing to accept Russia’s principle of protecting citizens abroad and interpreted the Russian Federation’s independence recognition of Abkhazia and South Ossetia as a violation of international law.

These requests by the Parliamentary Assembly still have to be fulfilled by the Russian Federation. The report of the PACE Committee on the Honouring of Obligations and Commitments, the so called Monitoring Committee, stated on 26 January, 2009 (Parliamentary Assembly 2009a): *„Based on the analysis made by the co-rapporteurs, the committee concluded that Georgia has complied with many, but not all, of the Assembly’s demands. However, the committee concluded with regret that Russia has not yet complied with the majority of the demands made by the Assembly, including the many demands that are not related to, and therefore have no effect on, the question of the status of the two break-away regions of South Ossetia and Abkhazia.“*

As a consequence of resolutions 1633 and 1647, an ad-hoc committee on promoting dialogue between Russian and Georgian PACE members and an ad-hoc sub Political Affairs committee

on early warning systems and conflict prevention in Europe were established. (Secretary General 2009c)

While these steps were important for political dialogue and observation, the countries' positions regarding these matters have not changed so far. Recent developments in the region as mentioned in chapter two, through new partnership agreements between the Russian Federation and the two regions, Abkhazia and South Ossetia, have even worsened the situation in the region.

6.3.5 Committee of Ministers

The first steps taken by the Committee of Ministers was a call by the Swedish Chairman of the Council of Europe to both parties, Georgia and the Russian Federation, to end the military tensions in accordance with the Council of Europe Statute. From 11 to 13 August, 2008, he, together with the Secretary General of the Council of Europe, visited the Georgian capital Tbilisi on the ground, while the Russian Government informed the Chairman that they would not meet him. (Committee of Ministers 2008b)

On 24 September, 2008, the Swedish Chairman of the Committee of Ministers convened an informal meeting with the other Foreign Affairs Ministers in New York on the fringe of the UN General Assembly Meeting. The chair of the Committee of Ministers proposed an "Action Plan for the promotion of the Council of Europe values and standards in Georgia and the Russian Federation" which was also supported by Recommendation 1814 of the Parliamentary Assembly, as an immediate respond to the crisis between Georgia and Russia due to the Five-day war. (Committee of Ministers 2008c)

The Action Plan included the first measures for protecting human rights and humanitarian security, such as EUMM human rights training and support for the Human Rights Commissioner's six principles of human rights and humanitarian security, which was announced in August 2008. Secondly, the establishment of an enhanced monitoring procedure was announced, and, thirdly assistance and co-operation activities promoting human rights, democracy, and rule of law in Georgia and the Russian Federation were to be undertaken. (Committee of Ministers 2008c)

As the Committee of Ministers decided on 5 November, 2008, the Ministers' Deputies: *"approved the proposals submitted by the Secretary General ... for the implementation of part A of the Action Plan for 2008 and agreed regarding 2009 to take the appropriate budgetary decisions in the framework of the adoption of the 2009 Programme of Activities."* (Committee of Ministers 2008d)

6.3.6 Congress of Local and Regional Authorities

The Congress of Local and Regional Authorities being an advisory Council of Europe body to strengthen local democracy and trans-frontier co-operation, their response was merely "consultative". As outlined in its Resolution 272 (Congress of Local and Regional Authorities 2008), all the Congress' assistance programmes were based on the territorial integrity of its member states. Besides the Congress President's visit to Georgia between 9 and 11 September, 2008, and the support for other Council of Europe actor's actions, they called on all parties in Article 11c of this Resolution to *"restore full local self-government in the areas affected and do everything in their power to ensure that infrastructure and services begin to function properly as quickly as possible, that people and property are safe and facilitate the effective arrival of aid."*

One year after this resolution was passed, the Congress of Local and Regional Authorities organized a training programme on active citizenship in the region and a workshop on promoting network and cooperation between local authority associations. Local authorities and civil society organisations participated in both. (Committee of Ministers 2009b)

6.4 Co-operation with other international organisations

The Secretary General described the co-operation between the Council of Europe and other international organisations during the 2008 crisis between Georgia and the Russian Federation as follows (Secretary General 2009c): *"On a multilateral level (in particular with the UN, the OSCE and the EU), the Council of Europe has used every opportunity to discuss the Organisation's contribution to international efforts to deal with the consequences of the conflict in order to ensure efficient co-ordination and avoid any unnecessary overlaps. Particular attention was given to the humanitarian situation, post-conflict rehabilitation and prevention of future or continued conflict ... The Council of Europe declared its readiness to*

contribute, within its competence, values and standards, to the efforts undertaken by the international community within the Geneva talks whenever the participants would deem it appropriate.“

All members of the Parliamentary Assembly of the Council of Europe and the Georgian ambassador to the Republic of Austria who were interviewed in expert interviews mentioned the Geneva Talks, an international mediation process initiated by the European Union, Organisation for Security and Co-operation in Europe, United Nations, and United States of America in October 2008, as the most efficient means to discuss the conflict between Georgia and the Russian Federation over the Abkhaz and South Ossetian territory. However, no direct involvement of the Council of Europe was guaranteed within this mediation process. This forum achieved results such as the withdrawal of Russian troops from Perevi, a Georgian town outside of South Ossetia. (Mikhelidze 2010: 1-2)

6.4.1 Co-operation with the United Nations

While the Secretary General of the Council of Europe used his presence at the High Level Segment of the UN General Assembly and the 63rd session of the UN General Assembly in September and November 2008 for several bilateral talks with senior UN officials including UN Under Secretary General at the Department of Political Affairs, the most important meeting took place on 30 September, 2008. In a meeting with a UNICEF representative in Georgia, the Deputy Secretary General offered assistance to train Georgian teachers in how to provide psychological assistance to children. This conversation led to a Master Class for 150 psychologists, social workers and teachers trained in the psychological rehabilitation of traumatised children. It was organised jointly by the Council of Europe Secretariat of the Directorate General of Social Cohesion and UNICEF. (Secretary General 2009a)

6.4.2 Co-operation with the European Union

The European Union started its civilian monitoring mission, called EUMM, in Georgia on 1 October 2008. Their role was to monitor the withdrawal of armed forces by both actors, deploy police in Georgia, and observe human rights issues. However, of critical importance is

the fact that this mission did not receive the permission to enter the two regions, Abkhazia and South Ossetia. (Secretary General 2009d)

At the 27th Quadripartite meeting in Brussels between the European Union and the Council of Europe on 10 November, 2008, the two organisations agreed to “*consider ways to enhance their co-operation in order to further consolidate the principles and standards of human rights, democracy and the rule of law in the South-Caucasus.*” (Committee of Ministers 2008e)

While the Secretary General of the Council of Europe had proposed training sessions for the European Union Monitoring Mission, the Ministers’ Deputies authorised the DG-HL Directorate to train the 203 EUMM observers in the following human rights skills and standards in 11 sessions over a three-week period in November and December 2008: (Commissioner for Human Rights 2009; Secretary General 2009a)

- 1) freedom of movement
- 2) non-discrimination and gender issues
- 3) prohibition of torture and inhuman treatment
- 4) protection of IDPs and refugees
- 5) right to life, liberty and security

6.4.3 Co-operation with the OSCE

The 2+2 High Level Meeting between the OSCE and the Council of Europe supported the six point ceasefire agreement, the six human rights principles announced by the CoE Commissioner for Human Rights, and the Statement of the OSCE High Commissioner on national minorities to respect international norms of minority protection. They concluded that conflicts must be dealt with peacefully and the Russia Federation must return to their positions prior to the Five-day war. Also, a general conclusion for international co-operation was stated: “*They called for further urgent action by the OSCE and the Council of Europe, in cooperation with the UN, the EU and other international partners, to protect the human rights and address the humanitarian and protection needs of those persons affected by the conflict.*” (Committee of Ministers 2008a)

Despite this commitment and another bilateral exchange between the two Secretary General of the two organisations at the OSCE Ministerial Council in Helsinki on 4 and 5 December, 2008, no concrete actions such as the training sessions of the EUMM monitors or the CoE-UNICEF training session took place during the first half year after the Five-day war, apart from the exchange of views and commitment,.

7 Conclusions

“The short war in August 2008 ... has dramatically changed the geopolitical landscape of the south Caucasus ... Russia recognized the independence of the two “de facto” states (Abkhazia and South Ossetia) on August 26, 2008 ... The presence of Russian troops on the borders with Georgia as well as Russian security guarantees mean that omnipresent fears of further attacks from Georgian forces have been largely removed, a change evident in our surveys: only 13 percent of respondents in Abkhazia and 24 percent in South Ossetia stated that the threat of a renewed war with Georgia is a problem. After almost 20 years of separation from Georgia, the emphasis within “de facto” states can now turn fully to the weak economies, tackling pervasive un- and under-employment, reversing population losses, and reducing the substantial Russian subsidies.” (Kollosov and O’Loughlin 2011: 632)

Despite the Russian Federation’s recognition of Abkhazia and South Ossetia as sovereign, independent states in 2008 together with three other states, these two Georgian regions – as stated by the Council of Europe - not only lack international recognition. As outlined in chapter two, not one of Stephen D. Krasner’s (1999) four different concepts of sovereignty – domestic, interdependence, Westphalian or international legal sovereignty - can be applied to Abkhazia and South Ossetia. The reason for this argument is quite simple. Authority and control over the main state functions are dominated or at least assisted by Russia. For instance, borders are controlled by the Russian Federation, governmental functions are outsourced, legal and economic harmonization among Russia, Abkhazia and South Ossetia takes place, pensions and health care are paid by the Russian state, the majority in this region hold Russian passports, and the official currency is the rouble. Two separate Partnership Agreements between Russia and these two Georgian regions in 2014 and 2015 even strengthened this relationship. As described in chapter two, I therefore conclude that Abkhazia and especially South Ossetia act more like autonomous Russian regions than as recognized or even unrecognized states.

These disputes in Abkhazia and South Ossetia are conflicts over territory and not over religion or ethnicity in multi-ethnic Georgia. The historical roots described in chapter five can be found even before the Soviet Union was created. However, while 15 Soviet republics were awarded sovereign, independent state status after the break up of the Soviet Union, the same was not true for Abkhazia and South Ossetia as former autonomous republics and regions.

While in the early 1990s tensions intensified and Abkhazians and South Ossetians were treated merely as guests in Georgia by the Georgian nationalist government, wars between first South Ossetia and later Abkhazia separated Georgia and the two regions. Subsequently, Georgia was not able to secure authority and control over these regions. In the following years, Russian support increased and the war in 2008 was a result of continuing provocations on both sides.

The Council of Europe as an international, intergovernmental organisation changed its structure after the break up of the Soviet Union. Through Eastern enlargement, including the Russian Federation and Georgia, the former “Western European Club” changed its nature. As outlined in chapter three, many different Council of Europe actors perform different roles: the two organs, the Committee of Ministers and Parliament, are the decision-making and political bodies of the organisation; the Secretary General acts as the spokesperson of the Council of Europe; the European Court for Human Rights is responsible for legal matters; the Commissioner for Human Rights monitors human rights violations; and the consultative Congress of Local and Regional Authorities takes local democracy and trans-frontier co-operation into consideration.

As described in chapter six, the Five-day war between Georgia and the Russian Federation in 2008 resulted in different responses by different Council of Europe actors, mainly in the human rights field. The Commissioner for Human Rights secured hundreds of exchanges of prisoners and announced and later monitored six principles to protect human rights and humanitarian law. The European Court of Human Rights decided interim measures against the two Council of Europe members because of the violations of Articles two and three of the Convention on Human Rights, the right to life and the prohibition of torture. While the Secretary General held several bilateral meetings and tried to negotiate behind the scenes, the Parliamentary Assembly took a clear stand condemning all violent actions and violation of humanitarian law during the Five-day war. The Committee of Ministers adopted an action plan including EUMM training sessions, an enhanced monitoring procedure and assistance and co-operation for human rights and rule of law strengthening in Georgia and the Russian Federation. The Congress of Local and Regional Authorities called for local self-government to be restored.

Despite these important human rights activities and measures, as an international actor in the first six months after the outbreak of the Five-day war between Georgia and the Russian Federation, it has to be noted that the Council of Europe was not involved in the peace plan negotiations. Moreover, all members of the Parliamentary Assembly to the Council of Europe who were interviewed and the Georgian ambassador to Austria described the Geneva Talks as a mediation process initiated by the European Union, Organization for Security and Co-operation in Europe, United Nations and United States of America, as the most important tool to discuss the Abkhazian and South Ossetian conflict. Therefore, this leads me to conclude that the Council of Europe is an essential international crisis actor, but only in co-operation with other international organisations. Over the years, as outlined in chapter four, it has established several formal meetings and exchanges of information with the EU, OSCE und UN. Furthermore, in the aftermath of the Five-day war, the training session on monitoring human rights by EUMM and the workshop, jointly organised by the Council of Europe-UNESCO, to instruct teachers on supporting children psychologically showed the willingness of the Council of Europe and other international organisations to co-operate actively. To strengthen the Council of Europe's role as an international crisis actor in future conflicts, the different actors of the organisation could strengthen their approach and intensify active co-operation with other international organisations.

Abstract (English)

This master thesis assesses the role of the Council of Europe as an international actor in the Georgian-Russian conflict of 2008 over Abkhazia and South Ossetia. Its main goal is to examine the basis for the disputes in these two Georgian regions, analyse actions taken by Council of Europe actors within the first six months after the Five-day war in August 2008, and examine the characteristics of the Council of Europe as an international actor during this immediate response. An analysis of Council of Europe documents, secondary sources as well as seven expert interviews with (deputy) members of the Council of Europe and the Georgian Ambassador to Austria and the OSCE are conducted.

Although Russia recognised Abkhazia and South Ossetia as independent, sovereign states in 2008, this thesis concludes that none of Krasner's (1999) four concepts of sovereignty can be applied to these two regions. It is argued that the main authority and control functions of Abkhazia and South Ossetia are dominated or assisted by the Russia Federation. These conflicts in the South Caucasus leading to two wars during the 1990s and the Five-day war in 2008 were always over territory and not religion or ethnicity. The tensions between Georgia and the two regions intensified after the break up of the Soviet Union.

The Council of Europe proved its role in the aftermath of the Five-day war as an international crisis actor, especially in the human rights dimension. This intergovernmental organisation condemned the outbreak of the war and violation of Articles 2 and 3 of the European Convention of Human Rights, namely the right to life and prohibition of torture. The Commissioner for Human Rights, for instance, negotiated hundreds of exchanges of prisoners and corpses. The key role of the Council of Europe lies in the co-operation with other international organisation such as the EU, OSCE and UN. This relationship was not only been formalized (exchange of views, joint meetings). In the aftermath of the Five-day war, the Council of Europe staff trained EUMM observers on human rights issues and a workshop to instruct teachers on supporting children psychologically was jointly organised by the Council of Europe and UNESCO. This thesis concludes that the Council of Europe as an international actor in future conflicts could further intensify active co-operation with other international organisations.

Abstract (Deutsch)

Die Masterarbeit untersucht die Rolle des Europarates als internationaler Akteur im georgisch-russischen Konflikt im Jahr 2008 in Abchasien und Süd-Ossetien. Die Ziele dabei sind die Bewertung der Hintergründe der Konflikte in diesen zwei georgischen Regionen, die Analyse der Handlungen der verschiedenen Europarats-AkteurInnen innerhalb der ersten sechs Monate nach dem Fünf-Tages-Krieg und die Bewertung der Charakteristika des Europarats als internationaler Akteur während dieser Phase. Eine Analyse der Europaratsdokumente, Sekundärquellen sowie ExpertInneninterviews mit (Stellvertretenden) Mitgliedern der Parlamentarischen Versammlung des Europarats und mit dem georgischen Botschafter in Österreich wurden durchgeführt.

Obwohl Russland Abchasien und Süd-Ossetien im Jahr 2008 als unabhängige, souveräne Staaten anerkannt hat, wird in dieser Masterthese der Schluss gezogen, dass keines von Krasner's (1999) vier Souveränitätskonzepten für diese zwei Regionen zutrifft. Denn alle wesentlichen staatlichen Befugnisse und Kontrollfunktionen werden in Abchasien und Süd-Ossetien von der Russischen Föderation ausgeführt oder unterstützt. Die Auseinandersetzung im Südkaukasus, die zu zwei Kriegen während der 1990er Jahre und dem Fünf-Tages-Krieg im Jahr 2008 führten, waren stets territoriale - und nicht religiöse oder ethnische – Konflikte. Die Intensivierung dieser Konflikte zwischen Georgien und den zwei Regionen fand nach dem Auseinanderbrechen der Sowjetunion statt.

Der Europarat bestätigte im Zuge des Fünf-Tages-Krieg seine Rolle als internationaler Krisenakteur, speziell im Zusammenhang mit der Menschenrechtsdimension. Diese intergouvernementale Organisation verurteilte den Kriegsausbruch und Verletzung von Artikel 2 und 3 der Europäischen Menschenrechtskonvention – das Recht auf Leben und Folterverbot. Beispielsweise verhandelte der Menschenrechtskommissar den Austausch von Gefangenen und Leichen. Die Kernrolle des Europarates liegt in der internationalen Kooperation mit EU, OSZE und UN. Diese Zusammenarbeit wurde nicht nur formalisiert (Austausch von Meinungen, gemeinsame Treffen). Als Reaktion des Fünf-Tages-Krieges, trainierten Europarats-MitarbeiterInnen EUMM BeobachterInnen in Menschenrechtsangelegenheiten und ein gemeinsamer Europarats-UNESCO-Workshop wurde veranstaltet, um LehrerInnen psychologisch zu schulen. Diese Masterthese zieht den

Schluss, dass der Europarat als internationaler Akteur in zukünftigen Konflikten seine Kooperation mit anderen internationalen Organisationen weiter vertiefen sollte.

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8.4 Google Maps

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<https://www.google.de:443/maps/place/Georgian-Abkhazian+Border+Crossing,+E97/@42.5834517,41.8630869,14z/data=!4m2!3m1!1s0x405c21a0ffe82bb5:0xcc0b64769a7aa856> (available: 03/07/2016)

- Google Maps (2016b): Mount Kazbek,
<https://www.google.de:443/maps/place/Mt+Kazbek,+Georgien/@42.6862754,44.5430374,13z/data=!4m2!3m1!1s0x405acba776bf7f55:0xd88b8aa303bc7ce0> (available: 03/07/2016)

- Google Maps (2016c): Roki-Tunnel,
<https://www.google.de:443/maps/place/Roki+Tunnel/@42.6068712,44.1412045,13z/data=!4m2!3m1!1s0x405b27ffc830e5c9:0x5348bfd0f8e9f381> (available: 03/07/2016)

- Google Maps (2016d): Sokhumi,
<https://www.google.de:443/maps/place/Sochumi/@43.0182495,41.1084701,11z/data=!4m2!3m1!1s0x405f220f44f90b7d:0xe01a1045ea63bc8a> (available: 03/07/2016)

- Google Maps (2016e): Tbilisi,
<https://www.google.de:443/maps/place/Tiflis,+Georgien/@41.7324592,46.7614603,7z/data=!4m2!3m1!1s0x40440cd7e64f626b:0x61d084ede2576ea3> (available: 03/07/2016)