Chapter 7
Conclusions and Recommendations

This work outlined and analysed the current framework of international law which attempts to regulate the use of force in wars of national liberation and applied the framework to two such conflicts, i.e. the conflict between the RMS and the FKM and Indonesian forces in the South Moluccas and the conflict between the GAM and Indonesian forces in Aceh. It had as its main aim to ascertain whether the framework was sound in theory and applied in practice. A number of conclusions can be drawn from the above discussion and analysis and a number of recommendations can be formulated thereon.

7.1 Conclusions

1. The status of the *jus ad bellum* in relation to wars of national liberation is still unsettled. This contributes to a situation whereby the international legal right of peoples to self-determination is violated in many situations. It seems to be the case that states are not taking the right to self-determination seriously. The denial of the right to self-determination in many cases leads to other serious violations of international law. As Parker comments:

the tragedy is that states are in open violation of their *jus cogens* and *erga omnes* obligations to defend the principle of self-determination. And also, very sadly, not enough people know sufficiently both the law of self-determination and the law of armed conflict to properly redirect the dialogue. The defenders of self-determination are in a very vulnerable position, charged with terrorism. The supporters of the groups fighting for the realization of national liberation may also be labeled or unduly burdened by laws against terrorism at the extremely serious expense of not only human rights but rights under the Geneva Conventions, other treaties and customary laws of armed conflict.¹

However, while the right to self-determination is now well established in international law in theory, there is a fear that the international community may be threatened if self-determination is, in fact, exercised by all those who claim it. In

his Agenda for Peace, the then Secretary-General of the UN stated “if every ethnic, religious, or linguistic group claimed Statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve.” Therefore, the right to self-determination may have to be balanced with the maintenance of international peace and security, which may in turn mean that not every people will obtain their right. This must be understood by states and national liberation movements alike.

It is clear, however, that a clarification of the issue of self-determination in general, and the *jus ad bellum* in relation to wars of national liberation specifically, is necessary. There seems to be little point in the acceptance of rights, such as the right to self-determination, under international law, if their attainment is impossible or indeed, prohibited. While the right to self-determination has been enshrined in various legal instruments and has been accepted as a *jus cogens* norm, it is nothing more than rhetoric if it is impossible to attain and this delegitimises the international law framework. Sir Ivor Jennings’ comments, made over fifty years ago, as to the difficulties in implementing the right to self-determination without knowing who are people are, still holds true today. There is no body or office responsible for determining which people have the right to self-determination. In the past, states, and indeed international and regional organisations, recognised national liberation movements, such as the PLO, the ANC etc. on a consistent basis. This recognition conferred legitimacy on the right of the people they represented to self-determination. States seem less willing to recognise national liberation movements in more recent times. Even the recognition of the new state of Kosovo in 2008 proved to be politically too difficult for some states. Also in 2008, the issue of the right to self-determination of the South Ossetian people was generally ignored by states during the conflict in August, and recognition of the state of South Ossetia was only forthcoming from Russia and Nicaragua. Without recognition, either from third states, regional bodies, the UN itself, or a non-governmental body such as the Unrepresented Peoples and Nations Organisation, the right to self-determination of national liberation movements will remain ignored. Without pressure from the international community a state is very unlikely to accept a claim of self-determi-

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