

# Has the Kosovo Case Diminished the Adherence of the International Community of States to the Inviolability of territorial Integrity of the UN State-members including Georgia?

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## Abstract

*International community of states continues facing bloody armed internal conflicts. One of the most dangerous challenges is an attempt of national minorities to secede from the states which gained independence after the dissolution of the Union of Social Socialist Republics (hereinafter - USSR) and the former Socialist Federal Republic of Yugoslavia (hereinafter – SFRY). Some of these minorities refer to their alleged right to self-determination, including the right of secession, and claim that they can realize this right unilaterally and if necessary also by using force. The question arises: does contemporary International Law indeed provide to national minorities the right of secession? The cases of Kosovo and so-called South Ossetia<sup>1</sup> clearly show firm attitude of international community: no right of a national minority to secede from the democratic sovereign state - member of the United Nations and other international organizations - is recognized (South Ossetia), unless there has been gross and systematic violation of rights of national minorities in breach of international law (Kosovo).*

## Introduction

February 17, 2008 will remain in the history of International Law for a long time since, as it had been expected, the controversy over the legality of the events in Kosovo could produce a real danger to the stability of the contemporary international legal order.

At the first glance, there was nothing new in an attempt of the Kosovo Albanians to formally secede from Serbia, issuing the Declaration of Independence of Kosovo. As it is well known already 18 years before this, on September 22, 1991, the Albanians in one of the regions of Yugoslavia proclaimed Independence of Kosovo, confirmed by a referendum, with an overwhelming majority favoring the independence.<sup>2</sup>

At that time the international community of states and particularly the Euro-Atlantic states had ignored this claim since the conflict over Kosovo was considered as one of the several ones going on in territories of the former *Socialist Federal Republic of Yugoslavia (hereinafter – SFRY)* and the *Union of Social Socialist Republics (hereinafter - USSR)* being in the process of dissolution.

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<sup>1</sup> During the conflict, due to different approaches of the Georgian and Ossetian sides in using the name – Tskhinvali Region and South Ossetia respectively, a compromise formula was offered by the International Community – **“Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali Region/South Ossetia, Georgia”**, the UN General Assembly Resolution 64/296, September 7, 2010.

In this research for sake of space, both terms are being used alternatively (for additional information see fn.42).

<sup>2</sup> Weller, M. (2009) *Contested Statehood (Kosovo’s struggle for Independence)*, OUP, p.39; Rich, R. (1993) *Recognition of States, the Collapse of Yugoslavia and the Soviet Union*, in: *European Journal of International Law*, 36, p.61.

Even more, the European Union (*hereinafter - EU*) issued a very firm and meaningful for international law statement: “... *frontiers can only be changed by peaceful means and [the EC Member States – L.A.] remind the inhabitants of Kosovo that their legitimate quest for autonomy should be dealt within the framework of the EC Peace Conference*”.<sup>3</sup>

Completely different events have started following the second attempt to proclaim independence of Kosovo – on the very next day, namely on February 18, 2008 the United States recognized the independence of Kosovo that has been followed by an enormous wave of recognitions by member states of North Atlantic Treaty Organization (*hereinafter - NATO*), EU, Organization for Security and Cooperation in Europe (*hereinafter- OSCE*), Council of Europe (*hereinafter - CoE*), the United Nations (*hereinafter - UN*).<sup>4</sup>

In around two months following the proclamation of independence the predominant majority of states members of the above listed international organizations, including the United States of America (*hereinafter - US*), United Kingdom (*hereinafter - UK*), France, Germany, and others recognized the independence of Kosovo. By the end of October, 2011 more than 80 states have recognized the independence of Kosovo while some great powers (Russian Federation, China) along with over 110 states keep a negative position understanding this fact as a flagrant violation of fundamental principles of International Law, particularly of the inviolability of territorial integrity and sovereignty of member states of the UN.

Starting from a statement made by the US Secretary of State Condoleezza Rice, underlining a unique character of the Kosovo case that cannot be considered as a precedent, all the following statements of the governments and leaders of recognizing states have been repeating this reservation close:

*“The unusual combination of factors found in Kosovo situation – including the context of Yugoslavia’s breakup the history of ethnic cleansing and crimes against civilians in Kosovo, and the extended period of the UN administration – are not found elsewhere and therefore make Kosovo a special case. Kosovo cannot be seen as precedent for any other situation in the world today”*.<sup>5</sup>

In this context it is apt to cite herewith some statements by the leaders of the Russian Federation after the Declaration of independence of Kosovo had been proclaimed.

In his interview with journalists from the G-8 countries, on July 1, 2008 President D. Medvedev stated: *“We think that Kosovo sets a dangerous and regrettable precedent. We think that the decisions taken on this issue are not a one-off thing, not casus sui generis, as the diplomats would say, but set a precedent. Europe will have to face the consequences for decades to come. Moreover, this position will be taken up by a number of other separatist regimes, who will use it to justify their own status as subjects in law. There can be no escaping this fact and blaming someone.”*<sup>6</sup>

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<sup>3</sup> EC Press Statement, Luxemburg, 15 June 1992, cited from: Grammatikas, V. (2009) *Kosovo vs. South Ossetia? (Modern Politics of Secession and International Law)*, Journal of International Law (Tbilisi State University) no.1, 2009, p.33, available at: [http://www.law.tsu.ge/files/Publications/Journal%20International%20Law\\_N1\\_2009.pdf](http://www.law.tsu.ge/files/Publications/Journal%20International%20Law_N1_2009.pdf).

<sup>4</sup>[http://www.peach.dreab.com/p-International\\_recognition\\_of\\_Kosovo#States\\_which\\_formally\\_recognise\\_Kosovo\\_as\\_independent](http://www.peach.dreab.com/p-International_recognition_of_Kosovo#States_which_formally_recognise_Kosovo_as_independent).

<sup>5</sup> Statement by Condoleezza Rice on Recognition of Kosovo as Independent State (February 18, 2008), available at: <http://www.america.gov/st/texttrans-English/2008/February/20080218150254bpuh5.512637e-02.html>.

<sup>6</sup> Available at: [http://archive.kremlin.ru/eng/speeches/2008/07/03/1850\\_type82916\\_203509.shtml](http://archive.kremlin.ru/eng/speeches/2008/07/03/1850_type82916_203509.shtml).

Another statement by the President of Russian Federation was delivered on July 15, 2008, just three weeks before the Georgia-Russia war started:

*“Unfortunately, some of the most painful recent episodes have involved precisely this sort of violation- in particular, the unilateral proclamation of independence of Kosovo and the subsequent recognition of it as a state. Legal decisions in such an instance must be achieved by reaching agreement among all the parties involved in such a process and affected by these decisions. Once again international law has been undermined, along with one of the fundamental principles of coexistence among states, one that affects the way Europe and world will develop”.*<sup>7</sup>

As it can be observed the President of the Russian Federation even does not try to conceal an attempt to use the Kosovo case as a precedent which could be used in other particular (*sui generis*) circumstances. It shall be mentioned here that even the intention to apply the Kosovo case as a precedent to the breakaway regions of Georgia – Abkhazia and the so-called South Ossetia has been openly declared by V. Putin as early as in 2006, when the possibility of granting independence to Kosovo had been discussed: *“If someone considers that Kosovo should be granted full independence, then why the peoples of Abkhazia and South Ossetia should not have the same right to statehood?”*<sup>8</sup>

While international lawyers, politicians and statesmen had been involved in a heavy debate on the lawfulness of the declaration on the *sui generis* character of the Kosovo case, a really shocking event struck the world.

On August 8, 2008 the troops of the Russian Federation invaded Georgia, occupying territories of the so-called South Ossetia and Abkhazia, as well the territories of Georgia beyond the administrative borders of these entities of Georgia.<sup>9</sup>

On August 26, 2008 the President of the Russian Federation D. Medvedev announced: *“considering the freely expressed will of the Ossetian and Abkhaz peoples and being guided by the provisions of the UN Charter, the 1970 Declaration on the Principles of International Law Governing Friendly Relations Between States, the OSCE Helsinki Final Act of 1975 and other international instruments, I signed Decrees On the recognition by the Russian Federation of South Ossetia’s and Abkhazia’s independence”.*<sup>10</sup>

The President of the Russian Federation put forward several accusations aimed at justifying the alleged invasion – *“aggressive”* attack of Georgia resulted in allegedly *“killing of dozen peacekeepers”*, alleged extermination of the civil population, nationals of the Russian Federation, alleged committing crime of genocide that, according to Medvedev, all together called for a

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<sup>7</sup> Speech at the Meeting with Russian ambassadors and Permanent Representatives to International Organizations July 15, 2008, available at: [http://www.kremlin.ru/eng/speeches/2008/07/15/1121\\_type82912\\_type84779\\_204155html](http://www.kremlin.ru/eng/speeches/2008/07/15/1121_type82912_type84779_204155html).

<sup>8</sup> Press conference of the President of the Russian Federation, 31.01.2006, available at: [http://www.kremlin.ru/eng/text/speeches/2006/01/31/0953\\_type82917\\_100901html](http://www.kremlin.ru/eng/text/speeches/2006/01/31/0953_type82917_100901html).

<sup>9</sup> See a very detailed anatomy of the Russian attempts to legally justify the intervention into and occupation of Georgia, in: Allison, R. (2009) *The Russian Case of Military Intervention in Georgia: International Law Norms and Political Calculation* in European Security, vol. 18, N2, June, p. 174, available at: <http://dxdoioig/1080/0966283093468734>

<sup>10</sup> Statement by President of the Russian Federation, Dmitry Medvedev (August 26, 2008), available at: [http://archive.kremlin.ru/eng/text/speeches/2008/08/26/1543\\_type82912\\_205752.shtml#](http://archive.kremlin.ru/eng/text/speeches/2008/08/26/1543_type82912_205752.shtml#).

humanitarian intervention to allegedly protect innocent people from alleged acts of violence by Georgia.

Touching upon a full complex embracing attempts of the Russian Federation to justify its aggressive movement, Antonio Cassese, being not only an eminent scholar but an experienced chairman of several International Criminal Tribunals as well, already on September 1, 2008 responded to all accusations put forward against Georgia. In his brief but very comprehensive article, Cassese provided the following comments:

*“Russia has set forth various reasons to justify its armed intervention in Georgia where the breakaway regions of Abkhazia and South Ossetia are nonetheless under Georgian sovereignty. Russia argues that its invasion was aimed at (1) stopping Georgia’s aggression against South Ossetians; (2) ending ethnic cleansing, genocide, and war crimes committed by Georgia there; (3) protecting Russian nationals; and (4) defending South Ossetians on the basis of the peace-keeping agreement signed by Boris Yeltsin and Eduard Shevardnadze in 1992.*

*None of these legal grounds holds water. By sending its troops to South Ossetia, Georgia no doubt was politically reckless, but it did not breach any international rule, however nominal its sovereignty may be. Nor do genocide or ethnic cleansing seem to have occurred; if war crimes were perpetrated, they do not justify a military invasion. Moreover, South Ossetians have Russian nationality only because Russia recently bestowed in on them unilaterally. Finally, the 1992 agreement authorizes only monitoring of internal tensions, not massive use of military force”.*<sup>11</sup>

As to the intervention of the Russian Federation to Georgia, some international lawyers from the beginning condemned this fact. The entire discussion among lawyers, politicians, statesmen and diplomats has than stayed within the frameworks designed by Cassese, though in more detailed way.

Christopher Borgan points out: “[w]hat is clear is that on 8 August 2008, the Russian military crossed out South Ossetia in force and began a military campaign that ranged through much of Georgia, attacking major ports and cities and coming within kilometers of Tbilisi, the capital of Georgia”.<sup>12</sup>

Roy Allison rightly observes:“

*Russian intervention in Georgia in autumn 2008 was Moscow’s first military offensive against a foreign state – rather than action just a civil conflict – since the end of the Cold War”.*<sup>13</sup>

It is also apt to refer to the evaluation contained in the Report of Independent International Fact-Finding Mission on the Conflict in Georgia” (*hereinafter – IIFFM*)<sup>14</sup>:

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<sup>11</sup> Cassese, A. (2008) *The Wolf that ate Georgia*, Monday, September 01, 2008, available at:<http://www.guardian.co.uk/commentisfree/2008/sept/01/georgia.russia1?qusrc=rss&feed=worldnews>

<sup>12</sup> Borgan, Ch., (2010) *States and International Law: The problems of self-determination, cessation and recognition*; in: *International Law for International Relations*, (Ba ak Çali, ed.), Chapter 9, p.209.

<sup>13</sup> [See fn 9](#), at p.174

<sup>14</sup> On December 2, 2008, the Council of the European Union entrusted Ambassador Heidi Tagliavini, a Swiss diplomat to establish an “Independent International Fact-Finding Mission on the Conflict in Georgia” (*hereinafter – IIFFM*). The Mission, composed of 19 independent members, was tasked “*to investigate the origins and the course of the conflict in*

The IIFFM Report states on the Russian intervention into Georgia: “Russia was involved in the conflict in several ways. First, Russian peacekeepers who were stationed in South Ossetia on the basis of the Sochi Agreement were involved in the fighting in Tskhinvali. Second, Russian regular troops were fighting in South Ossetia, Abkhazia and deeper in Georgian territory. Third, North Caucasian irregulars took part in the fighting. Finally, Russia supported Abkhaz and South Ossetian forces in many ways, especially by training, arming, equipping, financing and supporting them ... Under Art. 2(4) of the UN Charter and the parallel customary law, the military operations of the Russian army ... in the territory of Georgia (including South Ossetia and Abkhazia and elsewhere in Georgia) in August 2008 constituted a violation of the fundamental international legal prohibition of the use of force”.<sup>15</sup>

None of the attempts of the Russian Federation to justify its actions on Georgian soil in legal terms are supported in the Report. These actions *inter alia* include: the use of force as self-defense<sup>16</sup>, necessity and proportionality of the Russian actions,<sup>17</sup> use of force as fulfillment of the peacekeeping mission,<sup>18</sup> intervention on initiative of the South Ossetian authorities,<sup>19</sup> “collective self-defense”,<sup>20</sup> “humanitarian intervention” for the purpose of defending Russian citizens and Ossetians from genocide,<sup>21</sup> use of force as action to rescue and protect nationals abroad<sup>22</sup>.

It seems necessary to mention some other conclusions: the alleged Georgian Attack on the Russian peacekeepers base could not be definitely confirmed by the mission<sup>23</sup>; there is no doubt that the Russian peacekeepers, if they had been directly attacked, had the right to immediate response. An immediate military response was necessary and proportionate under that condition. Still, doubts remain as to whether the Russian peacekeepers were attacked in the first place<sup>24</sup>; It is more difficult to decide whether the entire military campaign against Georgia was necessary and proportionate<sup>25</sup>; the Russian intervention in Georgia cannot be justified as a rescue operation for Russian nationals in Georgia<sup>26</sup>; for these reasons, the presence of Georgian police or military in the Kodori Valley cannot

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*Georgia, including with regard to international law, humanitarian law and human right*”. On September 30, 2009 the IIFFM submitted the Report (*hereinafter – the IIFFM Report*) to the establishing body.

<sup>15</sup> *Ibid.*, pp.263-264.

<sup>16</sup> *Ibid* pp.264-269

<sup>17</sup> *Ibid* pp.269-275

<sup>18</sup> *Ibid* pp. 275-276.

<sup>19</sup> *Ibid* pp.276-280

<sup>20</sup> *Ibid* pp.280-283

<sup>21</sup> *Ibid* pp. 283-284

<sup>22</sup> *Ibid* pp. 285-289

<sup>23</sup> *Ibid* p. 268

<sup>24</sup> *Ibid.*, p.270.

<sup>25</sup> *Ibid.*, p.271

<sup>26</sup> *Ibid.*, p.289

be considered an armed attack on Abkhazia<sup>27</sup>; the use of force by Abkhazia was not justified under international law and was thus illegal. The same applies to the Russian support for Abkhaz use of force<sup>28</sup>.

Therefore, the above mentioned conclusions prove that Georgia has become a victim of the military invasion by the Russian Federation aimed at dismembering it. An attempt of the authorities of the Russian Federation to use the NATO operation in the former Yugoslavia to justify Russia's intervention is unsound as the so called humanitarian intervention by NATO into the former Yugoslavia in 1999 had a completely different character – the air attacks had not been followed by occupation of Kosovo by the ground troops of NATO and the peace-forcing operation ended as soon as the security of Kosovo's Albanians was protected. However, the arguments of the Russian Federation making the parallels with the approach of the western states to the Kosovo case are still being pushed forward at all international forums. Unfortunately accusations of Georgia in illegal attacks on Tskhinvali as an only cause of starting the Georgia-Russia war have been shared by some authors, while at the same time they are giving more or less an objective picture of the following events.<sup>29</sup>

### **Regarding an alleged genocide**

We shall pick up several issues to answer the main question: *what are the similarities and differences in the cases of Kosovo and South Ossetia?*

At the first glance it is easy to find out that both cases have indeed some similar features, but these common features mostly are linked to demographic aspects.

Indeed, the Kosovo's Albanians as well as Ossetians are:

- a) typical national minority: each ethnic community has clearly identifiable language, traditions, culture, feeling of belonging to the same specific community, different from the rest of the population living within the borders of a parent state;
- b) The Kosovo's Albanians as well as Ossetians numerically constitute a minority in regard to the rest of population, though within the regions where they have been living they constitute a majority;
- c) The Kosovo Albanians as Ossetians are parts of their mother people living on the other side of the state borders of a respective parent state and are having their own independent (Albania) or federated (North Ossetia – Alania in the Russian Federation) statehood.
- d) There is one more looking as a similarity feature: both minorities were deprived of autonomous status which they have had before the armed hostilities. However, the reasons and consequences of these events were completely different and they will be discussed below.

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<sup>27</sup> *Ibid.*, p.293

<sup>28</sup> *Ibid.*, p. 294

<sup>29</sup> Havkin, G. The Russo-Georgian War 2008. Developing the Law of Unauthorized Humanitarian Intervention after Kosovo – (*Boston University International Law Journal*), vol.28:2019

One comment is to be made here: there is a huge number of publications analyzing the case of Kosovo.<sup>30</sup> That's why I think it is more appropriate to concentrate on issue related to the South Ossetia case and partly also on Abkhazia, as there are relatively few publications addressing these two cases, based on the first hand sources. There are also researchers which despite some factual discrepancies, provide a very well structured and analytical researches based on the first hand information containing analysis of Kosovo and South Ossetia cases.<sup>31</sup>

### **Has Georgia committed a crime of genocide?**

One of the issues deals with an alleged “intent of Georgia to exterminate the Abkhazian and Ossetian population by committing the crime of genocide”.

In his Statement declaring the recognition of independence of breakaway regions of Georgia, President of the Russian Federation stated: “... *Saakashvili opted for genocide to accomplish ...political objectives* [to eradicate Abkhazian and Ossetian peoples – L.A.]”<sup>32</sup>

Mentioning “genocide” the President of the Russian Federation was not proposing a novelty in the rhetoric of the Kremlin, on the contrary – this was yet another stage of the attempts of the Russian Federation to legally justify the invasion basing on International Humanitarian and International Criminal Law.

On August 10, 2008, i.e. on the second day of occupation of the Tskhinvali region, the Prime-Minister of the Russian Federation V. Putin visited Vladikavkaz (the capital of the Republic of North Ossetia – Allania, a Subject of the Russian Federation) where he accused Georgia in committing “genocide” in South Ossetia, that was followed by statements of President Medvedev, and other high ranking officials of Russia.<sup>33</sup>

In its Report IIFFM on the conflict in Georgia denied any fact of genocide, – “*as far as Russian and South Ossetian accusations of Genocide are concerned, they became less frequent in later months as the alleged Georgian intent for Genocide could not be proven. The number of casualties among the Ossetians Civilian population turned out to be much lower than claimed at the beginning. Russian officials stated initially that about 2000 civilians had been killed in South Ossetia by the Georgian forces, but later a number of overall South Ossetian civilian losses of the August 2008 conflict was reduced to 162*”.<sup>34</sup>

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<sup>30</sup> See a very comprehensive and detailed analyses of the Kosovo case and bibliography covering period up to 2009 attached – Weller, M. (2009) *Contested Statehood (Kosovo's struggle for Independence)*, OUP.

<sup>31</sup> Mullerson, R., (2009) Precedents in the Mountains: on parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia – *Chinese Journal of International Law* vol.8, N1 p.2-25; Borgan, Ch., The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia, *Chicago Journal of International Law* July 2009; see also footnote 13; Nussberger, A., (2009) “The War between Russia and Georgia – consequences and unresolved questions” – *Göttingen Journal of International Law* 1,2, p.341-364

<sup>32</sup> See fn. 11.

<sup>33</sup> Putin accuses Georgia of Genocide available at: <http://rt.com/news/putin> - accuses- georgia-of genocide/print/

<sup>34</sup> IIFFM Report, vol. I, para.17, vol. II, para IV allegations of genocide, pp. 421-428. See also R. Allison, op. cit, p.183.

“After having carefully reviewed the facts in the light of the relevant law, the Mission concludes that to the best of its knowledge allegations of genocide committed by the Georgian side in the context of the August 2008 conflict and its aftermath are neither founded law nor substantiated by factual evidence”.<sup>35</sup>

It was interesting to observe that the European Court of Human Rights in December 2010 stroke 1,549 applications out of its list of cases of more than 3,000 applications on alleged crimes of genocide allegedly committed by Georgia in August 2008 against Ossetian civilians.<sup>36</sup>

Moreover, as it has become known, the above mentioned applications had been drafted by 200 investigators of the Prosecutor’s Office of the Russian Federation vigorously trying in the region to collect information on alleged genocide.

After submitting the applications to the European Court of Human Rights it seems that nobody had tried to communicate with the Court, which had several times requested additional, more detailed information on each alleged “victim of genocide”. Having received no information, the Court, after the third reminder, decided not to consider the above mentioned applications. Moreover, as it has been revealed many “victims” even did not know that they had sent applications to the Court.<sup>37</sup>

A. Cassese was the first among international lawyers who categorically denied any sign of genocide in the so-called South Ossetia: “*Nor do genocide or ethnic cleansing seem to have occurred*”.<sup>38</sup>

As it can be seen there was no sign of genocide and ethnic cleansing on the part of Georgia during the war in August 2008.

### **A strange picture of “discrimination” of Ossetians and Abkhazians**

Let us now look at the real picture of "the discriminatory" policy of Georgia in Abkhazia and so-called South Ossetia before the conflict.

In accordance with the Constitution of the USSR of 1924 the Abkhazian Soviet Socialist Autonomous Republic, as well as the South Ossetian Autonomous Oblast were inalienable parts of the sovereign Georgian Soviet Socialist Union Republic. The mentioned autonomous entities had no right of secession, while Georgia, in accordance with the Treaty on Establishment of the USSR, retained the right to freely secede from the USSR.<sup>39</sup>

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<sup>35</sup> *Ibid.*, Report vol. II. p. 429

<sup>36</sup> <http://cmiskp.echr.coe.int/tpk197/view.asp?item=7&portal=hbkm&action=html&highlight=GEORGIA&sessionid=70640968&skin=hudoc-en>

<sup>37</sup> Parkhomenko, V. (2011), *Has Genocide been exhausted (Strasburg will not consider claims of inhabitants of South Ossetia against Georgia: they have forgotten that they had complained)* – “Novaya Gazeta”, 12 January 2011, available at: [http://www.novaya\\_gazeta.ru/data/2001/001/10. Html? Print= 2011170111134](http://www.novaya_gazeta.ru/data/2001/001/10. Html? Print= 2011170111134).

<sup>38</sup> See: fn. 11 Cassese, A., also: fn. 31 Nussberger, A.

<sup>39</sup> For a very thorough and good analysis of the constitutional development in the USSR and GSSR during the dissolution of the USSR see: fn. 31, Nussberger, A., at 347-353



The Constitution of Autonomous Soviet Socialist Republic of Abkhazia was the only one such basic law in the entire USSR which provided the Abkhazian language (together with Georgian and Russian) as one of the official (state) languages within the region.

While by 1976 all schools of autonomous republics elsewhere in the northern Caucasus employed exclusively Russian instruction, in Abkhazia there were 25 schools teaching in Abkhazian, as well as numerous schools with combinations of Russian-Abkhazian-Georgian instruction.

At the onset of the 1989/1990 academic year, the Autonomous Republic of Abkhazia had 73 Abkhazian and mixed secondary schools. In the mixed schools the Abkhazian language was used as the medium of instruction in the I-IV grades, while in the next V-XI grades all the teaching was done in Russian, and the Georgian language and literature were taught as a separate subject. The Georgian language never featured on the curricula of any of these schools. Moreover, the use of Georgian as the state language was drastically limited.

About 20 research centers and higher educational establishments function in Abkhazia, including such large ones as the Abkhazian State University, the Institute of Subtropical Cultures, the D.I. Gulia Abkhazian Institute of Language, Letters and History, the Abkhazian Institute for Advanced Studies for Teachers, several branches of Tbilisi higher agricultural and industrial technical schools, medical and arts colleges and a wide network of secondary schools for training children in music and the arts. There were very successfully functioning the State National Theatre, the State Museum of Abkhazia, the State public library, affiliations of the Writers', Composers', Architects' Unions of Georgia, of the Theatrical and Music-cum-Choreographic Societies of Georgia, Abkhazian State National Song and Dance groups, the State Symphony Orchestra, the Choir Society, etc. Radio and television broadcasted their programs in Abkhazian, and a number of magazines, scientific journals and works of fiction came out in Abkhazian.

In every governing body in Abkhazia, the Abkhazians held the majority of seats: in the Supreme Soviet there were 57 Abkhazians, 53 Georgians and 14 Russians; in the city and regional councils Abkhazians held 1/3 seats among the members of the Council of Ministers; Abkhazians were over the half of the City Committee of the Communist Party.. Out of 12 Ministers, 8 were Abkhazians; out of 8 Chairmen of State Committees, 5 were Abkhazians; out of 8 city and regional prosecutor's offices, 5 were headed by Abkhazians; by 1990, the Abkhazians were widely represented in the Government and party bodies of the Georgian Soviet Socialist Republic.

Furthermore, in 1991<sup>40</sup>, in accordance with a new law, agreed upon by the Georgian and Abkhazian members of the Supreme Soviet of the Autonomous Republic 93,000 Abkhazians, constituting 17% of the Republic's population were represented by 28 members of the Supreme Soviet, whereas 250,000 Georgians, constituting 46% of the population of the Autonomous Republic were represented by 26 members, and other ethnic groups (Russians, Armenians, Greeks and others), constituting 37% had only 11 representatives there.

Therefore, arguing about discrimination of Abkhazians is impossible without profound distortion of the reality.

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<sup>40</sup> It shall be noted that it was done when in accordance with the official statements of the Russian Federation, reflected in some Western European researches, Georgia had been persuading slogan of its President Gamsakhurdia: "Georgia for Georgians"(?!)

As to the situation in the former South Ossetian Autonomous Oblast, it was similar to the above described, where by the beginning of an armed conflict in early 1990ies, 60,000 Ossetians and 30,000 Georgians resided. It is apt to mention here that another 100,000 Ossetians were scattered all over the rest of the Georgian territory, deeply integrated into the Georgian society.

First of all let us look at the statement of Prof. Abayev, the patriarch of the Ossetian humanities, in the article *“The Tragedy of South Ossetia”*<sup>41</sup> published in *“Nezavisimaja Gazeta”*, one of the popular Russian newspapers: *“I am tempted to objectively look at the issue whether or not the Ossetian side had undertaken any speedy, not well thought actions, provoking and exacerbating hostility. And I should confess that such actions had taken place. I refer here to the proclamation of sovereignty exceptionally oriented at Moscow with the perspective of unifying of South Ossetia and North Ossetia... The main Caucasus Mountain Range is a natural border between Georgia and Ossetia, and any attempt to erode this border would entail the state of permanent conflict between the Georgians and the Ossetians... First of all, all talks on South Ossetia seceding from Georgia needs to stop. No Georgian Government will ever agree to it and will be perfectly right, because it would mean violation of the territorial integrity of Georgia ... Those who wish peace between the Ossetians in South Ossetia and Georgians shall forever reject the idea of joining South Ossetia to North Ossetia. Those wishing peace between Georgia and Russia shall also abandon the idea. This is the reality”*.<sup>42</sup>

It should be stressed here that the Ossetians living in Georgia were provided with all the necessary facilities for developing their national culture and economy. Suffice it to say that at the beginning of the 1990/1991 academic year there were 97 secondary schools in Georgia (including 90 schools in the former Autonomous Region) where either instruction was carried out in Ossetian or the Ossetian language and literature were taught as an individual subject. In this connection it is interesting to quote an excerpt from an article by Mr. A. Galazov, Chairman of the Supreme Soviet of North

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<sup>41</sup> Moscow, Issue No. 13, 22.01.1992

<sup>42</sup> Some concise facts shall be cited herewith with regard to settlement of the Ossetian population in Shida Kartli, Georgia and creation of the Autonomous Oblast.

In XI-XII cc. Alans (in the Georgian sources called “Ovsebi”) had a feudal state in the North Caucasus, which was destroyed by the invasions of Mongols (XIII c.) and Tamer-Lane (XIV c.). Being forced to escape the valley regions of the North Caucasus, Ossetians found shelter in a narrow gorge of the Caucasus mountain range. Later on they started moving towards the Southern mountainside of the Caucasian mountain range. Starting from XVII-XVIII cc. a part of the Ossetian nation settled north to the territory of Shida Kartli in Georgia.

Experiencing hardship and looking for better life the Ossetians were trying to get to the Georgian mountain villages and often settled at the lands belonging to Georgian land-owners. The movement of the Georgian population from the mountainous regions to the valleys due to the invasions from the North Caucasus and the relatively favorable economic conditions in lowlands also contributed to this process.

Ossetians were mostly settling in the gorges along the rivers Didi Liakhvi, Patara Liakhvi and Ksani. Later the Ossetian population settled in the Gori and Dusheti administrative regions of Georgia. A relatively small part of the Ossetians settled in Racha administrative unit. The gratitude of Moscow for involvement of Ossetians in the 1921 intervention of Moscow resulted into the decision of the latter to establish the South Ossetian Autonomous Oblast. Stalin and Orjonikidze did their best to accomplish the Plan, however were hampered with the obstacles. The People’s Commissariat of Internal Affairs of Georgia reported as follows: *“there is no geographical entity, such as South Ossetia ... There are only different regions inhabited by Ossetians, which are not in any way connected neither in terms of economic nor topographical linkage.”* The People’s Commissariat considered inadmissible the creation of the oblast on the expense of inclusion of the Georgian villages of Gori, Dusheti and Racha administrative units into it, as the population of these villages categorically opposed the idea. However, the oblast was created on 31 October, 1921. It is apt to remind the reader that at that time in the administrative center of the oblast – Tskhinvali there were only 2 Ossetian families residing, while tens of thousands of Ossetians were dispersed throughout the other territories of Georgia. (by the end of 1980ies, in 1991-1992).

Ossetia: “*I am always dreadfully sorry for the young people of my nationality who, in spite of their knowledge of foreign languages and world civilization, feel uncomfortable at home because of their ignorance of the basics of the Ossetian culture... The national youth, for instance, have been deprived of their mother tongue. Until last year there were no schools in Northern Ossetia with instruction in the Ossetian language ...*”<sup>43</sup>.

The Teachers’ Training Institute, Advanced Training Institute for Teachers, Agricultural Technical School, Medical, Musical, Art Vocational schools, etc. functioned in the city of Tskhinvali. The so-called South Ossetia held the second place in the USSR (according to the 1979 data) as to the number of persons with a higher education per thousand of the population.

Lots of important books were published: “*History of Ossetia*” (documents and materials from ancient times to the present day), the two volumes of “*Sketches of South Ossetian History*”, the four volumes of the “*Explanatory Dictionary of the Ossetian Language*”, “*The Reversed Dictionary of the Ossetian Language*”, the multivolume “*History of Ossetian Literature*”, there volumes of Ossetian folk tales, a collection of Ossetian folk songs, with sheets of music appended, etc. There were a State National Theatre in the former Autonomous Region, a state song and dance company, a state museum of local lore, a state fine arts gallery, a public library, affiliations of writers’, composers’, and artists’ unions, and theatrical, choreographic and musicians’ societies of Georgia; the local radio station broadcasting in Ossetian; Ossetian was the language of the local press, scientific publications and fiction. In 1988, five times as many titles and three times as many copies of books were published in the Ossetian language in the Tskhinvali region in Georgia than in the North Ossetian Autonomous Republic. In the 1980ies, as well as before, the Ossetians were amply represented in the directory and managerial bodies of the Georgian SSR. Suffice it to say that Ossetians held the posts of Deputy Chairman of the Council of Ministers, one was a Deputy Minister, and others were Deputy Chairmen of two state committees and other managerial offices of the Georgian SSR.

At the same time, according to the data of 1990, the participation of the Georgians in the state machinery of the Autonomous Region was less than was warranted by the percentage of the Georgian population residing there. Out of the 140 party functionaries in the Region (according to the 1990 data), only 34 were Georgians.<sup>44</sup>

Even this small piece of evidence is enough to conclude that the Georgian people and its government have never discriminated against the Ossetians; exactly the opposite, the latter have been provided with ample facilities for their national-cultural, socio-political and economic development.

As it can be seen neither Ossetians nor Abkhazians living in the respective regions have suffered any racial discrimination preceding the commencement of the respective armed conflicts in 1990-1992, despite of the fact that “the South Ossetian Oblast (District)” was created absolutely without any ground from the legal, political and historical perspective and was the result of the

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<sup>43</sup> Newspaper “Pravda”, Moscow, November 11, 1989.

<sup>44</sup> For details see: *And Again: Aggression, Intervention and Occupation of Georgia aimed at Razing the Sovereignty and Territorial Integrity of the Country. Statement of the International Law Institute of Law Faculty of Iv. Javakishvili Tbilisi State University* (2008) in *Journal Of International Law (TSU)*, N2, available at: [http://www.law.tsu.edu.ge/files/Publications/Journal\\_2\\_2008.pdf](http://www.law.tsu.edu.ge/files/Publications/Journal_2_2008.pdf)

“gratefulness” expressed by communists for the support the Ossetians provided to them during the invasion of the Red Army into Georgia in February 1921.

Soonest following the dissolution of the USSR, the authorities of the Russian Federation have started triggering the mines implanted into Georgian statehood in 1921.

Following the approach of the diplomats and politologists, evaluation of a political or legal approach is impossible without revealing a real intent of actors. That’s why it is necessary briefly remained views of Russian diplomatic and political establishment. Here is the advice of the General-Major P. Sytin, military attaché at the Representation of the RSSFR to Georgia, as provided in his Report of 26 April, 1921. Just two month after red army invaded Georgian Democratic Republic and after bloody struggle occupied it.

*“One of the preventive measures ... at the time having the general political nature should be retaining of the sufficiently strong contingence of the Red Army within Georgia. The other measure weakening the Georgian chauvinism both in territorial and economic viewpoints I would consider to be separation of Abkhazia. Such an act would along with the considerable strategic and political meaning for the RSSFR will also hand over [to our state] significant national wealth of [Georgia].”*

The same advice can be seen in 1990<sup>th</sup>. In 1998 in the very first issue of the supplement to the newspaper “Nezavisimaja Gazeta” – “Sodruzhestvo”, led by Zatulin (today he is the first deputy chairman of the State Duma of the Russian Federation), the “Analytical Report produced by the “Caucasian Division” of the Institute of the CIS States” was published with the title “Georgian-Abkhazian Conflict: the Past, the Present and the Future”:

*“When determining its strategy here [in the Caucasus], Russia shall consider that Georgia will not be a grateful partner and a candid allied state. Georgia’s inclination toward the West and NATO is presently only halted by the problem of its territorial integrity, restoration of which is impossible without Russia ... it is evident that for the present, as well as for the future Abkhazia, South Ossetia and to a certain degree Adjara Autonomy constitute natural allies for Russia in relation with Georgia.”*

Since in the beginning of 1990ies the national liberation movements in the Baltic States and Georgia were very strong and it was clear that these would not have stopped until the achievement of their goals - to secede from the USSR using appropriate articles from the USSR Constitution, Moscow issued law providing “realization” of the process of secession (what was otherwise clichéd as the Law forbidding any secession). In accordance with this Law, each Republic of the USSR could have used the right of “free” secession if this would have been supported by the referendums held in entire territory of a country, with votes of each autonomous entity be counted separately., The latter were granted the right to stay in the USSR, if they had so voted in the referendum. This was considered by the separatists in Abkhazian and South Ossetian autonomous districts as a legal ground supporting their strive for independence. They started adopting decrees and laws on sovereignty, right of self-determination and even secession. The situation became more aggravated after the XIV session of the XX convocation of the Regional Soviet of the People’s Deputies of the so-called South Ossetia adopted the declaration (September 20, 1990) transforming the South Ossetian Autonomous Oblast (district – L.A.) into the “South Ossetian Soviet Democratic Republic”.

On September 21, 1990 the Supreme Council of the Republic of Georgia annulled this illegal and unconstitutional resolution of South Ossetia’s Regional Soviet. Nevertheless, the XV session of the

XX convocation of the Regional Soviet (October 16, 1990) confirmed its previous decision. Moreover, it elected, at the same session, the provisional executive committee of the so-called republic, adopted a provisional Statute of election and formed the Central Election Commission.

Despite the official warning by the Georgian authorities, the election to the “Supreme Soviet” of the so-called South Ossetian Democratic Oblast (district – L.A.) was held on December 9, 1990, followed by a session of the “Supreme Soviet” on December 11. Responding to that illegal step the Supreme Council of the Republic of Georgia adopted a Law on December 11, 1990, abrogating the status of the South Ossetian Autonomous Region “which was created in 1922 against the will of the indigenous Georgian population of the region and to the detriment of the interests of the entire Georgia”.<sup>45</sup> Georgian authorities sent a dozen of policemen in Tskhinvali. This peaceful act was resulted in assault of policemen by well trained and armed Ossetian “boeviks” being armed from the USSR military base stationed in the region. We have to take into consideration the fact that at that time Georgia had non-regular army or even military forces of the Ministry of Internal Affairs and the fight was going on between the mercenaries and boeviks well trained by Russians military stationed in the Tskhinvali region of Georgia and Georgian practically voluntary formations trying to protect the territorial integrity of Georgia. It shall be recognized that there were atrocities from both sides but there was not much level of mass and systematic policy of genocide committed by Georgia. In 1991 in Sochi the authorities of the Russian Federation forced Georgia to sign the agreement aimed at seizing the fire and initiating the joint peacekeeping operation. It shall be noticed that the composition of those forces was very peculiar, it consisted of the Georgian, Russian, and North Ossetian (as if the latter was not a part of the Russian Federation) forces. Since then these peacekeepers as well as peacekeepers of the Commonwealth of Independent States stationed in Abkhazia (in fact they consisted of the military forces of the Russian Federation only) were in fact “blind” to the growing military buildup of separatists behind them.

It should be stressed that Georgian government and personally President M. Saakashvili, since 2003, as soon as an intensive democratic development has been initiated, several peaceful programmes have been proposed aimed at ending the “frozen conflicts”, that had been supported by the international community. But, as usually, the Abkhaz and Ossetian separatists had not even “looked at them” since these documents were based on the UN formula – any status of breakaway regions have to be settled within the territory of Georgia.

Every day provocations and shelling from Tskhinvali have been growing resulting in casualties of loss of human lives and ruined houses of ethnic Georgians. When it became evident that the Ossetian separatists, supported by the Russian 58<sup>th</sup> Army was about to start aggressive invasion, Georgia had to use the right of preventive self-defense, starting during the night of 7 to 8 august shelling areas occupied by armed boeviks, mercenaries and moving in the Russian tanks. As a Report of IIFFM states: “*yet it was only the culminating point of a long period of increasing tension, provocations and incidents.*”<sup>46</sup> But nothing could have stopped already started movement forward of

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<sup>45</sup> Zhorzholiani, G., et al., (1992) “*The Historical, Political and Legal Aspects of the Georgian-Ossetian Conflict*”, Georgian Academy of Sciences Research Centre of Relations Between Nations, , Tbilisi “Samshoblo” Publishers, p.12.

<sup>46</sup> IIFFM Report, Vol. I, para. 3.

enormous amount of soldiers and tanks which in a few days occupied 20% of the Georgian territory.<sup>47</sup>

### **Some aspects of the right of people to self-determination**

Turning to “the right of Self-determination, including right to secession, the framework of this research does not allow to cover it comprehensively and in details. That’s why I have to recapitulate conclusions made by international lawyers basing on the analysis of existing international instruments (the UN Charter, 1970 Declaration of Principles of International Law, Helsinki Final act of 1975, The Vienna Declaration and Programme of Action – June 25, 1993; Covenants on Human Rights – 1966, the Framework Convention on National Minorities adopted by PACE 1995 and other).

There are some very interesting publications aimed at compare cases of Kosovo and South Ossetia.<sup>48</sup>

The international community of states is reluctant to recognize the right of small and large ethnic entities to secede from the parent state without the consent clearly given by latter. As Antonio Cassese rightly concludes:

*“In modern diplomatic practice, secession or external self determination is strongly disfavored. From the birth of the UN, diplomats and jurists emphasized that a right of self-determination was not a general right of secession”*.<sup>49</sup>

As Christopher Borgan rightly indicates: *“The international community is highly skeptical of secession and has built a legal regime that disfavors secession”*.<sup>50</sup>

The same view has been expressed by Angelika Nussberger - *“International law is generally hostile toward secession”*.<sup>51</sup>

V. Grammatikas notes that, by examining the relevant state practice, which does not bear any element of uniformity and by the total lack of opinion juris on behalf of states, we cannot detect any

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<sup>47</sup> Latinina, J., (2008) *200 kilometers of tanks: about Russian-Georgian War* in “Novaja Gazeta”, 19-28 November, 2008; English extracts can be seen in the Journal of International Law, Tbilisi State University, N 1, 2009, Annex. Available at: [http://www.law.tsu.edu.ge/files/Publications/Journal%20International%20Law\\_N1\\_2009.pdf](http://www.law.tsu.edu.ge/files/Publications/Journal%20International%20Law_N1_2009.pdf)

<sup>48</sup> Mullerson, R., (2009) *Precedents in the Mountains: on parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia* – Chinese Journal of International Law, vol.8, N1 p.2-25; also: fn.32 Borgan, Ch.,; see also footnote 13; Nussberger, A., (2009) *The War between Russia and Georgia*, in Consequences and Unresolved Questions – Göttingen Journal of International Law 1 (2009) 2, p.341-364; Grammatikas, V., (2009) *Kosovo V. South Ossetia? Modern Politics of Secession and International Law*, in Journal of International Law, Tbilisi State University no.1, p. 26-44 [http://library.law.tsu.edu.ge/files/publications/Journal%20International%20Law\\_N1\\_2009.pdf](http://library.law.tsu.edu.ge/files/publications/Journal%20International%20Law_N1_2009.pdf).; Borgan, Ch., (2010) *States and International Law: The problems of self-determination, cessation and recognition*; in: International Law for International Relations, (Ba ak Çali, ed.), Chapter 9, p.209.

<sup>49</sup> Cassese, A., (1995) *Self-Determination of People’s Legal Reappraisal*, p.51; see also fn. 30 Borgan, Ch., (2009) “ *The Language of Law and Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the cases of Kosovo and South Ossetia* – Chicago Journal of International Law, p.5.

<sup>50</sup> Fn. 13 Borgan, Ch., at p.15

<sup>51</sup> Nussberger, Angelika, *The War between Russia and Georgia – consequences and unresolved questions* – “*Göttingen Journal of International Law*” 1 (2009) 2, p.363.

customary rule to support the existence of secession as a right in international law and there is certainly no piece of treaty law to accept its existence”.<sup>52</sup>

There are generally recognized two notions of self-determination – internal self-determination (ISD) and external self-determination (ESD). All post the UN documents are granting an unrestricted right of ESD first of all to the colonial peoples and peoples being under the foreign domination. As to the sovereign UN member states, not having colonies and other forcibly kept under their domination peoples, being governed by the Rule of Law and granting to all national minorities (people having a kin state abroad) as well as to peoples which have not any kin state abroad and historically have been living in the present state, legally protected rights to develop their ethnical identity, language, traditions, culture. No unilateral secession is allowed for any such group.

In this context is significant to learn an approach expressed by the law experts of CIS in the Document adopted on July 14 2000:<sup>53</sup>

*“Conference reminds that Modern International Law does not sanction and encourage any kind of action that would lead to the violation (partially or wholly) of territorial integrity and political unity of states, enjoying the principles of equality and self-determination of peoples. Secession is not an unavoidable element of exercising the right to self-determination. It shall not be carried out off the frames of the right to self-determination. National, ethnic, language and religion minorities have no right to self-determination... As to the right of the people to self-determination up to secession, the modern International Law is rather categorical in this respect recognizing the right of all people to self-determination within the frames of already existing state and different small in number people existing on the same territory as a part of the population of such a state. International Law at the same time rejects the right of these people inhabiting a democratic state, to unilateral secession without reckoning with the will of a whole state”.*<sup>54</sup>

I am quoting the stipulations formulated by legal experts of CIS, predominantly by the Russian one on purpose, as each paragraph proves unsoundness of arguments put forward by the authorities of

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<sup>52</sup> Grammatikas, V., Fn.50

<sup>53</sup> In its conclusions the Conference is summing up:

*“1.A state shall not resort to the use of armed force if the question of self-determination arises in a manner not violating the constitutional procedures. A state, however, enjoys the right to resort to an adequate use of force, including the use of armed forces, if in case when the issue of self-determination has been put forward the constitutional order is violated or violence is resorted to.*

*5. States created in violation of the principle of equality and self-determination of peoples, shall not be recognized as the subjects of International Law.*

*6.An armed interference into the conflict by the third states when the struggle for secession is going on is inadmissible without the sanction of the UN Security Council.*

*7. A state enjoys right to defend its sovereignty, territorial integrity and political unity (within the frames of its constitutional order and observing its international obligations) against any unlawful act, committed under the pretext of realization of right to self-determination.*

<sup>54</sup> The Conclusions and Recommendations of the Conference of Law Experts of CIS Participant states – Right to Self-Determination and Secession in modern International Law, July 12-14, 2000, in Moscow Journal of International Law, no.4 2000, p.9-21.

Russia aimed at justifying the military intervention into and occupation of 20% of the territory of Georgia.

The problem which has to be specially addressed in the context of this research is linked to an issue of the “remedial secession”.<sup>55</sup>

All International lawyers refer to the Declaration of Friendly Relations, some of them mention the Vienna Declaration and Programme of Action adopted by the UN World Conference on Human Rights.

The question which has been discussed relates to a scope of a stipulation regulating the circle of those peoples which are invested in the right to secede without any limitation. Being agreed upon that this right belongs unconditionally to colonial and depended peoples, international lawyers differ in their approaches to an issue – do these documents are restricting categories of beneficiaries or they affect all the states beyond the anti-colonial aspect as well.

Since I have participated in the meetings of a working group drafting a text for the adoption by the plenary meeting of the Vienna World Conference, I can confirm, that since by the beginning of 1990<sup>th</sup> the colonial system had been almost abolished, the main discussion was aimed at getting consensus on applicability of the text under discussion to the present day realities.

The Conference separated these issues and clearly stated:

*“All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.”* (this is a formula contained in common article 1 of the both Covenants on Human Rights of 1966 – L.A.)

*Taking into account the particular situation of peoples under colonial or other forms of alien domination of foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.* (Here we see more strong and concrete definition of the right of self-determination then it had been done before – L.A.)

*In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.* (and again the participants tried to broaden the scope of kinds of discrimination, as it had been done in the 1970 Declaration – “without any distinction as to race, creed or color” – L.A.)

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<sup>55</sup> A brief but comprehensive analysis of the development of doctrinal approaches to this issue, beginning from Buchneit L.C. “Who coined the term remedial secession” is given in article of Ioana Cismas “Secession in Theory and Practice: the Case of Kosovo and Beyond, “Gottingen Journal of International Law” 2 (2010),2, p.545-548



Therefore there shall not be any doubt that the above mentioned paragraph while confirming that the right of self-determination is not the right of unilateral secession from the democratic parent state, at the same time admits that in the situation when people ethnically different from the rest of the population is suppressed and discriminated as a last resort in struggling in saving its ethnic identity can claim to have the right of secession.

### **Allegedly expressed “free will” in a de-populated land**

Another issue is connected with the statement of President of the Russian Federation, declaring that the recognition of Abkhazia and so called South Ossetia had been dictated by “the freely expressed will of their peoples living there”.

But what kind of will of people can we talk about when the “peoples” expressing this will, preliminarily forcibly, using genocidal measures, expelled from a region members of another, even much larger, ethnic community residing in the region for thousands of years.<sup>56</sup>

In this connection it is necessary, at least briefly to address the problem of the expression of “will” of Abkhazian and Ossetian peoples having claimed to have the right to secede from Georgia. This is one of the main questions which arises – what is meant under the term “will of people?” As to Abkhazia it is enough to look through the existing documents, *inter alia* on decisions taken by the UN Security Council, summits of OSCE and CIS, to get a full picture of atrocities, mass killing, rape and other crimes against humanity committed by the separatists in Abkhazia and South Ossetia, with the intention to change the demographic structure of Abkhazia using a slogan – “Abkhazia without Georgians”.

The first International organization which from the very beginning echoed the tragic developments taking place in Abkhazia was the Organization of Security and Cooperation in Europe (OSCE). Already in 1994 the Budapest Summit participating states expressed their deep concern over “‘ethnic cleansing’, the massive expulsion of people, predominantly Georgian, from their living areas and the deaths in large number of innocent civilians”.<sup>57</sup>

However, the most comprehensive, though concise definition of the policies carried out by the separatists in Abkhazia is included into the Lisbon Summit Declaration (3 December 1996): “We (the OSCE member states – L.A.) condemn the ‘ethnic cleansing’ resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia”.<sup>58</sup>

In November 1999 in the Declaration adopted at the OSCE Summit convened in Istanbul the states “reiterated” their “strong condemnation as formulated in the Budapest and Lisbon Summit Documents, of the “ethnic cleansing” resulting in mass destruction and forcible expulsion of

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<sup>56</sup> See Alexidze, L. (2001), *Unsound Endeavours of the Abkhaz Side to the Conflict in Abkhazia, Georgia to Prove the Legitimacy of claiming “The Right of Abkhazia to Self-determination, Including Secession from Georgia”* in Journal of International Law (Tbilisi State University) N1 pp.58-79

<sup>57</sup> Meeting of the Heads of State and Government of the OSCE Participating States, 4 and 5 December 1994, in “Towards a Genuine Partnership in a New Era”, UN Doc. A/49/800-S/1994/1435, annex. Budapest Decisions, Regional Issues, Georgia, para.2.

<sup>58</sup> Lisbon Summit Declaration, 3 December 1996, UN Doc. A/51/76, appendix I, para.20.

predominantly Georgian population in Abkhazia, Georgia, and of the violent acts in May 1998 in the Gali region exercised against the returnees”.<sup>59</sup>

The UN Security Council “recalls” in all of its resolutions adopted during 1995-2006 the OSCE Budapest decisions and following that the conclusions of the Lisbon and Istanbul Summits and considers the demographic changes as a result of the conflict in Abkhazia unacceptable.<sup>60</sup>

It is to be mentioned here that until 2006 all the resolutions included a reference to the Lisbon and Istanbul decisions, such as for example in the resolution adopted in 2002, the Security Council “recalls” the Lisbon (S/1997/57, Annex) and the Istanbul Summit conclusions concerning the situation in Abkhazia, Georgia.<sup>61</sup>

On May 29, 2008, just two months before the Russian invasion into Georgia, the UN General Assembly adopted the Resolution (62/249 “Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia”), “*Recalling all relevant Security Council resolutions, and noting the conclusions of the Budapest (1994), Lisbon (1996) and Istanbul (1999) summits of the Organization for Security and Cooperation in Europe, in particular the reports of “ethnic cleansing” and other serious violations of international humanitarian law in Abkhazia, Georgia and condemning ethnic cleansing in Abkhazia, Georgia.*”<sup>62</sup>

On September 7, 2010 the General Assembly adopted Resolutions 64/296 covering both breakaway regions, denying their “independence” – and titling the document in accordance with generally accepted by the international community of states way: “*Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali Region/South Ossetia, Georgia, deploring the policy of ethnic cleansing*”.

As to ethnic cleansing allegedly committed against Georgians in the Tskhinvali region in August 2008, Human Rights Watch issued reports indicating that several Georgian villages had been destroyed completely.<sup>63</sup> On August 12 HRW reported:

*“moving back from Tskhinvali to Java on the evening of August 13, Human Rights Watch researchers saw, for the second day running, houses that were ablaze in several Georgian villages. They had clearly just been torched. One counterintelligence officer of the South Ossetian forces claimed the Human Rights Watch that: “We burned these houses. We want to make sure that they [the Georgians] can’t come back, because if they do come back, this will be a Georgian enclave again and this should not happen””.*

The report of IFFFM makes a clear cut conclusion: “*with regard to allegations of ethnic cleansing committed by South Ossetian forces on irregular armed groups, however, the mission found patterns of forced displacements of ethnic Georgians who had remained in their homes after the onset of hostilities. In addition, there was evidence of systematic ...and destruction of ethnic Georgian*

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<sup>59</sup> OSCE Istanbul Summit Declaration, 19 November, 1999 par.17, [www.osce.org](http://www.osce.org).

<sup>60</sup> See: United Nations Security Council 1036/1996/12 January 1996; 1065-1996, 12 July 1996.

<sup>61</sup> See: Resolutions 1427/29 July 2002; 1582/28 June 2005; 1615 (2005); 1656 (2006).

<sup>62</sup> UN General Assembly Resolution 62/249

<sup>63</sup> Human Rights Watch – Russia/Georgia: Investigate Civilian Deaths, August 12, 2008, available at: <http://www.hrw.org>.

*villages in South Ossetia. Consequently, several elements suggest the conclusion that ethnic cleansing was indeed practice against ethnic Georgians in South Ossetia both during and after the August 2008 conflict.*"<sup>64</sup>

Ethnic Cleansing has been Described in the Resolution 1647 (2009) adopted by the Parliamentary Assembly of the Council of Europe covering events going on in Georgia during August of 2008 and later.

Resolution 1664 (2009) of Parliamentary Assembly indicates:

*"The villages in South Ossetia previously under Georgian control have been razed to the ground (underlined – L.A.)with the exception of a handful of houses. The intention to cleanse the area of ethnic Georgians is clear".*<sup>65</sup>

Very comprehensive description of violent ethnic cleansing against ethnic Georgians contains one of the Reports of the Human Rights Watch:<sup>66</sup>

*"Among the images publicly available from the UNOSAT website (<http://unosat.web.cern.ch/unosat/>) is a map marking satellite-detected active fire locations in the ethnic Georgian villages around Tskhinvali. The map shows active fires in the ethnic Georgian villages on August 10, 12, 13, 17, 19 and 22, well after active hostilities ended in the area on August 10. On these dates the lack of cloud cover allowed the satellites to view those locations.*

*UNOSAT has also released a set of six high-resolution satellite images of the enclave of ethnic Georgian villages stretching nine kilometers north from Tskhinvali, showing that the majority of them have been destroyed".*

Responding to accusations that damages were resulted from the shelling and bombardment committed by Georgia, the report states:

*"The images strongly indicate that the majority of the destruction in five of the villages – Tamarasheni, Kekhvi, Kvemo Achabeti (Nizhnie Achaveti in Russian), Zemo Achabeti (Verkhnie Achaveti in Russian), and Kurta – was caused by intentional burning. The high-resolution images of these villages show no impact craters from incoming shelling or rocket fire, or aerial bombardment. The exterior and interior masonry walls of most of the destroyed homes are still standing, but the wood-framed roofs are collapsed, indicating that the buildings were burned. Only along the main road through Tamarasheni are a number of homes visible with collapsed exterior walls, which may have been caused by tank fire".*<sup>67</sup>

In its Resolution 382 Parliamentary Assembly of NATO

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<sup>64</sup> Report vol.I, para. 27 (p. 27), vol. II, pp. 421-428.

<sup>65</sup> PACE, Resolution 1664 (2009), adopted on 29 April 2009.

<sup>66</sup> Human Rights Watch, *Georgia Satellite Images Show Destruction, Ethnic Attacks*, available at: [http://hrw.org/english/docs/2008/08/28/georgia1972\\_txt.html](http://hrw.org/english/docs/2008/08/28/georgia1972_txt.html).

<sup>67</sup> *Ibid.*

“5. Deeply concerned by the humanitarian situation in Georgia’s occupied territories of Abkhazia and South Ossetia, as well as the ongoing denial of the right of return to Georgian populations displaced from the two regions...

14. URGES the parliament and government of the Russian Federation, as well as the de facto authorities of Abkhazia, Georgia, and South Ossetia, Georgia:

a. to reverse the results of what has been described as ethnic cleansing by the Independent International Fact-Finding Mission on the Conflict in Georgia as well as by other international documents and allow the safe and dignified return of all internally displaced persons to their homes.”<sup>68</sup>

Therefore “peoples” living in Abkhazia and Tskhinvali Region have no right to make any decision regarding the status of the regions until the whole expelled individuals have not refused to their homes.

### **Has the Kosovo case had a negative impact on the progressive development of International Law?**

One of the main issues which have been discussed by scholars and politicians related to the future of the principle of territorial integrity of states – had the Kosovo case diminished it in favour of the external self-determination?

As Christopher Borgan rightly indicates: “*The international community is highly skeptical of secession and has built a legal regime that disfavors secession. In some instances, where there is significant number of states may recognize a secessionist entity like Kosovo. But this is the exception (underlined – L.A.) to international politics.*”<sup>69</sup>

Indeed at that none of the world community of states except Nicaragua had rendered the recognition of Abkhazia and South Ossetia as independent state. Later one more state has been persuaded to do the same – it happened to be Nauru - the smallest member-state in the UN.

As to the international community as a whole its attitude is clear – up to now (May 2011) even states participants of the Commonwealth of Independent States express their firm adherence to the principle of inviolability of territorial integrity and sovereignty of Georgia.

It is very meaningful that those states which had recognized independence of Kosovo since then has shown much more strong support of the territorial integrity and sovereignty of Georgia persistently condemning and rejecting the occupation and recognition of independence of Abkhazia and South Ossetia by Russia and call it to withdraw the recognition of independence of this breakaway regions.

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<sup>68</sup> NATO Parliamentary Assembly Resolution 382 on the Situation in Georgia, adopted on 26 November, 2010

<sup>69</sup> Borgan, Ch., *Language of Law*, p.15 see fn. 13.

The international community of states and particularly those of the Euro-Atlantic area, have constantly been confirming the territorial integrity of Georgia in documents adopted by governing bodies of EU, the Council of Europe, OSCE, and NATO.

It is sufficient to mention only some of them.

From the beginning of occupation of Abkhazia and South Ossetia by the Russian troops and recognition of their independence, Parliamentary Assembly of the Council of Europe: *“calls on all member states and states with observer status with the organization to:*

*24.1 not recognize the independence of South Ossetia and Abkhazia...*

*24.4. firmly condemn the ethnic cleansing taking place in the areas under the effective control of Russian forces and of de facto authorities in South Ossetia.*<sup>70</sup>

In January 2009 the Assembly again:

*“4. Condemns the recognition by Russia of the independence of South Ossetia and Abkhazia and considers it to be a violation of international law and of the Council of Europe’s statutory principles. The Assembly reaffirms its attachment to the territorial integrity and Sovereignty of Georgia and reiterates its call on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and to fully respect the sovereignty and territorial integrity of Georgia, as well as the inviolability of its borders.*

*9.3 Urges Russia to fully and unconditionally implement all requirements of the Resolution 1633 (2008) of the Parliamentary Assembly, including the withdrawal of the recognition of the two break-away regions of Georgia, and ... [6] reaffirms its full support for the sovereignty, territorial integrity of Georgia as well as the inviolability of its borders...*<sup>71</sup>

Angelika Nussberger commenting par. 4 of this resolution, observes: *“such is the wording of the resolution of the Parliamentary Assembly of the Council of Europe half a year after the five-days-war between Georgia and Russia that broke out in the night between 7 and 8 August 2008. The message is clear and unequivocal without much diplomatic balancing between different positions. The strong language used is quite unusual for an international political body such as the Parliamentary Assembly. It thus takes a clear stance in the struggle between Russia and Georgia about the legal status of the break-away regions Abkhazia and South Ossetia and expects Russia as a member State to comply with its harsh resolution.”*<sup>72</sup>

On 16 November 2010, NATO’s Parliamentary Assembly declared:

*11. Reaffirming its attachment to the territorial integrity and sovereignty of Georgia, as stated also in numerous UN Security Council resolutions on the situation in Georgia;*

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<sup>70</sup> Resolution of PACE 1633 (2008) adopted October 2, 2008

<sup>71</sup> Resolution 1647 (2009) adopted on 28 January 2009, para.4,6,9.3

<sup>72</sup> Nussberger, A., op.cit., p 343

*12. Urges member governments and parliaments of the North Atlantic Alliance to re-affirm NATO's open door policy, the Bucharest Summit declaration that Georgia will become a member of NATO.*<sup>73</sup>

In connection so called elections hold in Abkhazia in August 2011 the spokesperson of EU High representative C.Ashton issued a Statement “on the elections in the breakaway region of Abkhazia in Georgia”

In April of 2011, NATO Ministers reaffirmed their strong support for the territorial integrity and sovereignty of Georgia within its internationally recognized borders. They also reaffirmed their continued policy of non recognition of the South Ossetia and Abkhazia regions taken at the Lisbon Summit, notably the decision to continue to call on Russia to withdraw the recognition of the South Ossetia and Abkhazia regions of Georgia as independent states.<sup>74</sup>

In view of the reports today from Sukhumi in the breakaway region of Abkhazia in Georgia, that Mr. Alexander Ankvab has been elected as new president, this statement is to recall that the European Union does not recognize the constitutional and legal framework within which these elections have taken place.

The European Union reiterates its support to the territorial integrity and sovereignty of Georgia, as recognized by international law.<sup>75</sup>

The same statement was made by NATO Secretary General on the elections in Abkhazia, Georgia. “The holding of such elections does not contribute to a peaceful and lasting settlement of the situation in Georgia. The Alliance reiterates its full support for the sovereignty and territorial integrity of Georgia within its internationally recognized borders.”<sup>76</sup>

The most comprehensive manifestation of the contemporary attitude of the international community of the states and of the European Union particularly, to the importance of the principle of the territorial integrity of states and that of Georgia particularly can be found in the resolution N2011/2133 (INI) adopted by the European Parliament on November 17, 2011:

“(d) strengthen the EU's support for the sovereignty and territorial integrity of Georgia and ensure the applicability of the agreement, once it has been concluded, to the whole territory of Georgia; to that end, continue actively engaging in conflict resolution, inter alia thanks to the EUMM, whose mandate has recently been extended until 15 September 2012;

(g) recognise Georgia's regions of Abkhazia and the Tskhinvali region/ South Ossetia as occupied territories;

(h) intensify talks with the Russian Federation to ensure that it fulfils unconditionally all the provisions of the cease-fire agreement of 12 August 2008 between Russia and Georgia, particularly

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<sup>73</sup> <http://www.nato-pa.int/default.asp?CAT2=2185&CATO=576&SHORTCUT=2245&SEARCHWORDS=resolution,georgia,,>

<sup>74</sup> Joint Statement at the Meeting of the NATO-Georgia Commission at the level of Foreign Ministers in Berlin, Germany – April 15 2011.

<sup>75</sup> Brussels, 27 August 2011, A/334/11

<sup>76</sup> NATO does not recognize the elections held on August 26 in the Georgian region of Abkhazia.

the provision stating that Russia shall guarantee EUMM full unlimited access to the occupied territories of Abkhazia and the Tskhinvali region/ South Ossetia; underscore the necessity of providing stability in the aforementioned regions of Georgia;

(i) call on Russia to reverse its recognition of the separation of the Georgian regions of Abkhazia and the Tskhinvali region/ South Ossetia, to end the occupation of those Georgian territories and to fully respect the sovereignty and territorial integrity of Georgia as well as the inviolability of its internationally-recognised borders as provided for by international law, the UN Charter, the Final Act of the Helsinki Conference on Security and Cooperation in Europe and the relevant United Nations Security Council resolutions.”

## **Conclusion**

In spite of the controversy emerged around the Kosovo’s declaration of independence this case has not become a generally recognized precedent undermining the inalienability of the territorial integrity of states. On the contrary, the international community of states in its relations to Georgia has shown its firm adherence to this one of the main pillars of the United Nations.

Once more international community confirmed that national minorities have no legal basis in international law to be granted the right of external self-determination – that is a right to secede from the parent state.

The right to remedial secession is an exclusive right which can be used only in a very clearly cut situations proving impossibility to protect ethnic identity of minorities. Any humanitarian intervention to protect on the part of one state is inadmissible. The help to the oppressed people can be rendered only as a result of collective measures of states and first of all with the authorization of the United Nations Security Council. No international recognition of breakaway de facto separatist regimes resulting in the occupation of the democratic state including its breakaway regions is admissible.

I think it is necessary to conclude my research with a rather political evaluation of the situation on the ground. Despite of the fact that the international community of states (NATO, EU, Council of Europe), urge Russian Federation to withdraw the recognition of the so-called independence of the break-away regions of Georgia, the situation only worsens. The illegality of the attitude of the Russian Federation towards territorial integrity of Georgia continues: it is manifested in the strengthening of Russian military presence in the mentioned regions, “justified” by the so-called “agreements” “concluded” with “independent states” and not allowing any international organization or its observers to enter this area until they recognize their independence.

The last statements of the President of Russia V.Medvedev witness that Moscow is not going to take into the consideration the attitude of the world community to strengthen territorial integrity and sovereignty of Georgia, on the contrary by his statements he has forgotten his previous assurances that was aimed at “stopping Georgian policy of genocide toward Ossetians” and openly revealed the real purpose of the Russian aggression to completely isolate Georgia from NATO. Meeting on November 21, 2011 with the officers of 58<sup>th</sup> Army, that invaded Georgia in August 2008, Medvedev pointed out that as a result of this invasion (which was “the operation to bring Georgia to peace”) the geopolitical situation in the region had been changed for the Russian benefit. *“I can say, that if in 2008 we had flinched the Geopolitical layout would have been different now. And a number of*

*countries which (some states – L.A.) had been trying to artificially drag into NATO, more likely, they would have been there. What does this mean? We are not opposed to someone somewhere was registered, but that only means one thing: that with us there is not just the armed forces of the neighboring state, but there is a military organization, which for obvious reasons creates for us certain inconveniences.”<sup>77</sup>*

How long shall the international community tolerate this cynical attitude to the fundamentals of the contemporary international legal order? In this connection, the Report of the IIFFM states: “[t]here is a need for more timely and more determined efforts to control an emerging crisis situation, and in such situations a more sustained engagement is needed from the international community and especially the UN Security Council, as well as by important regional and non-regional actors.”<sup>78</sup>

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<sup>77</sup> Available at: <http://kremlin.ru/news/13605>

<sup>78</sup> IIFFM Report, Vol. I, p.3, 34, para.2-3.