

## **War, Factor of War and Humanitarian Law**

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**W**ar is the biggest enemy of humankind. None of the catastrophes can inflict more damage on humanity than does the war. Although war is condemned by the UN law, there are no strategic mechanisms to prevent its occurrence over time. The given article does not concentrate on any concrete war. Its main goal is to discuss the issue of preventing war. Why do states go for war? What are the reasons of war? How strong is the mechanism of peaceful solution? Where is the line between just and unjust war? Is today the world peace possible? How secure is the world today? The given article condemns all forms of war, however it admits that war is still inevitable in some instances and thus it concentrates on the humanitarian law- what was achieved, what is its current state and what may be done in the future in this respect. In a world where the great powers control everything, the factor of brute force still is on the agenda. The given article discusses the potential of the humanitarian law as a means of peaceful resolution of conflicts in future. In the process of writing the article, our country came face to face before the brutalities of war. So it would be impossible to avoid discussing this episode as well. Although fully unbiased evaluation of this event will require some time, the article will try to cover main facts and discuss the role of international relations and more specifically the humanitarian law played in the 5-day war between Russia and Georgia (August 2008).

## ომი, ომის ფაქტორი და ჰუმანიტარული სამართალი

მაია ასათიანი

საქართველოს უნივერსიტეტი

**ო**მი კაცობრიობისათვის ყველაზე დიდი და საშინელი მტერია. ვერანაირი უბედურება ვერ შეედრება იმ დანაკლისს, რაც ომს მოაქვს მსოფლიოსათვის. ომი დაგმობილია გაეროს წესდებით, მაგრამ სამწუხაროდ, არ არის შემუშავებული მისი თავიდან აცილების სტრატეგიული მექანიზმები. წინამდებარე ნაშრომი არ შემოიფარგლება რომელიმე კონკრეტული ომით. იგი ისტორიული მაგალითების საფუძველზე წარმოაჩენს ომის აღმოფხვრის საკითხს. რატომ მიდიან სახელმწიფოები ომამდე? რა არის მისი გამომწვევი მიზეზი? რამდენად ძლიერია მშვიდობიანი გზით კონფლიქტის მოგვარების მექანიზმი? სად გადის ზღვარი სამართლიან და უსამართლო ომს შორის? არის თუ არა დღესდღეობით მშვიდობა რეალური? და რამდენად უსაფრთხოა მსოფლიო? ნაშრომში დაგმობილია ომის ყველანაირი გამოხატულება, მაგრამ ამასთანავე, განხილულია დღესდღეობით ჯერ კიდევ მისი არსებობა და ამიტომაც, თემის მთავარი მიზანია ჰუმანიტარული სამართლის წარმოჩენა - რა გაკეთდა, როგორია რეალობა და რისი გაკეთებაა აუცილებელი. მსოფლიოში, სადაც “ძლიერნი ამა ქვეყნისანი” ფლობენ მართვის სადავეებს, რაღა თქმა უნდა, ძალა გადაწყვეტს ყველაფერს. წინამდებარე თემის მიზანია ჰუმანიტარული სამართლის წინ წამოწევა, როგორც მომავალში საერთაშორისო კონფლიქტების ცივილიზებული გზებით მოგვარების საწინდარისა. თემაზე მუშაობის პერიოდში ჩვენს ქვეყანას დიდი განსაცდელი დაატყდა თავს - მოხდა ომის სისასტიკის აშკარა გამოვლინება. შეუძლებელია გვერდი აუუაროთ იმ მოვლენებს, რასაც ადგილი ჰქონდა საქართველოში. დიდი დრო იქნება საჭირო ამ მოვლენათა ობიექტური შეფასება-ანალიზისათვის, მაგრამ დანართის სახით, თემის სათაურიდან გამომდინარე, შევეცდები გადმოვცე, რა როლი ითამაშა ამ მოვლენებში საერთაშორისო ურთიერთობებმა და კერძოდ, ჰუმანიტარულმა სამართალმა.

## *Introduction*

The problem of war and peace remains the greatest problem of humankind from the antique times up to date. The world peace is the prerequisite for the economic and social progress of worldwide. Thus the world peace is one of the basic rights of each human being. Without peace there can be no welfare and development achieved. The issue of protecting world peace however, is closely linked to such problems as arms control and proliferation.

According to some calculations, the world has witnessed more than 14531 wars from 3600 B.C. to these days, with the casualties reaching 3.6 billion. During all these time, there have been only 292 peaceful years in the world. According to some scholars, today there are from 40 to 100 wars going on in the world (Robert, 1961).

Therefore its most important to study reasons of war and the results it may bring to the modern world. Unfortunately the war stays the main problem of the 21<sup>st</sup> century. However there has also been a considerable number of instances when the conflicts were solved in accordance with the humanitarian law and the society should know more about this.

The war and the law...Is it really possible to solve the conflict between the states without the material losses and the war victims? Can law prevent wars breaking out? What benefits can the humanitarian law bring in everyday life or during the war? Are the Cicero's words: "law is silent during the war" still true?

The article will also cover the main facts and some of the most serious the problems humanitarian law.

War as a means of solving international conflicts is condemned by the UN charter. The concept of war is defined as a sequence of battles over some period, occurring among armed forces of two or more states (or between one state; even inside one concrete armed force) and resulting over 1000 deaths per year. Any war is preceded by conflicts and the political tensions. (www.un.org)

The article will use both qualitative and qualitative methods of research. Namely among the qualitative methods here will be used, the comparative analysis of the main theories about war; the analytic induction will be applied to discover main factors resulting in outbreak of war. The final part of the article sums up the information already discussed and works out a comprehensive answer to the questions given above.

### *Ethics of War and Peace Theories*

Ethics of war and peace is influenced by three traditional theories, these are: the Realism, the Pacifism and the Doctrine of Just War. According to the Just war Doctrine there are situations when a state can rightfully go to war. A war may sometimes (not always) be approved. This is radically different from the Realist world view, according to which states' motivation for war is rooted in their security considerations and their battle for power. According to realists, moral has nothing to do in the harsh reality of world politics where only the strongest can survive. A state has to concentrate upon its security and economic development, not moral ideals. Pacifists do not do not share the skepticism of Realists about the morality. And unlike the Just War Doctrine, which does not rule out outbreak of war, the Pacifists condemn any occurrence of war, as there always exists a peaceful alternative to violence.

### *Factor of War I World War*

War has always resulted in changing international environment. For example approximately 15 million people had died in the World War I. Apart from humans; this major conflict had resulted in braking up of the three European empires- Germany, Austria-Hungary and Russia. Before World War I, the global balance of power was centered in Europe, however after the conflict the new great powers- US and Japan had entered the world scene.

The scholars studying the World War I have traditionally dealt with the three levels of the analysis- the systemic, the domestic and the individual levels.

On the systemic level there have been two main factors influencing on rising tensions, namely the growing power of Germany and the existence of the system of alliances.

On the domestic level there were such important events taking place as the internal crisis in the Austria-Hungarian and the Ottoman empires, as well as the domestic political climate in Germany.

On the individual level we may argue, that as the emperor of Austria-Hungary France Joseph was quite old, the state was governed by the minister of foreign affairs. The heir of the throne was Prince Ferdinand, killed in Sarajevo. The ruler of Russia Nicolas II was considered to be an isolated autocrat, having only domestic influence being himself under great influence of his wife. The main figure of those times was Wilhelm II, whose emotional character had drawn Germany so close to the dangerous political steps.

## *World War II*

World War II has prevailed over all conflicts known to history both with its viciousness and the damage inflicted to all parties. The casualties during the conflict are still indefinite, ranging from 35 to 50 million with different authors. Unlike the World War I, the alliance had occupied the territories of Germany and Japan, reforming its society. Although the world still stayed bipolar, the main actors have changed. The new superpowers which came out on the world scene were the United States and Russia. Europe ceased to be the center of global political power.

The World War II is sometimes also called the 'Hitler's War'. What Hitler in fact needed was a fast victory, not a protracted conflict in the tradition of the World War I.

If we begin the structural level analysis of the WW II, we will conclude that individuals played a crucial role in the beginning of the conflict. Namely the Racist ideology of Hitler occurred to be unsuccessful. He believed in superiority of the Arian race and did not accept the American pluralism as a source of great power.

The WWII was conditioned by some factors on the system level as well. The international relations of the period were greatly influenced by increased role of ideologies in societies- leading ideologies being Fascism and Communism. There have been three important changes on the domestic level as well: First, the Western democracies were under pressure of class struggle and ideological disputes so that coordinating the foreign policies became almost impossible.

Second, the Great Depression had a great influence on domestic politics as well as the class struggle.

Third and one of the key factors was the isolationist politics of the United States, conducted after the end of WW I. The isolationism did not finish until Japan attacked the US port of Pearl Harbor.

### *Humanitarian Law*

#### *Historical Background*

Due to the instability of the modern world the main idea of the international cooperation is avoiding armed conflicts and preserving international peace and security. Another aim set is protecting civilians in any situation, including the times of conflict. The latter is the main principle of humanitarian law.

The easiest and the most universal definition of humanitarian law is as follows: love your neighbor as much as you love yourself, and don't treat others in the way you don't want to be treated yourself.

The task of humanitarian law is to help humanity survive. It strives to convince the international society that living in the civilized world is possible and cooperation is key component for finding peaceful means of coexistence.

### *List of Conventions*

#### *Sources of International Humanitarian Law*

The main sources of the humanitarian law are the 4 Geneva Conventions on protection of victims of war signed on August 12, 1949.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)  
for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)

Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention)

Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)

Additionally, two protocols were added to the conventions on June 8, 1977:

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol 2)

The Geneva conventions have become widely observed international documents. Today 175 states (prevailing majority of the world states) have accepted its principles.

The Hague Convention about the rules and customs of land warfare (October 18, 1907) and the Hague Charter attached. The convention was preceded by a number of such documents as Liberia Code, Sankt Petersburg Declaration, Brussels Declaration (1874), Oxford Manual (1880), and the convention worked out by the I Peace Conference in Hague (1899).

### *Conclusion*

War is a complicated phenomenon, thus its causes may vary greatly. For some people war is a destiny for others it is a matter of choice.

As other means of conflict resolution remain imperfect, states still have some opportunities to go in for war.

Generally talking about the humanitarian law, we can conclude that any question regarding it can be traced to two main problems: 1) coupling the humanitarian considerations with the military necessities and 2) the will of states to preserve their sovereignty.

The Cold War has long finished, but the international politics is still haunted by the question- what will replace the 50 year-long crisis? And was the end of Cold War generally the end of any war? These questions remain controversy for the experts of international relations.

Resting on the materials discussed during the article we may conclude that the end of Cold War actually heralded increasing probability of wars worldwide. As the world has moved from bipolar to multi polar system the minor wars with the potential of growing into massive confrontation cannot be avoided.

As we said, conventional and minor wars are inevitable for future. However even the limited scale nuclear or a conventional war will pose a great danger to humanity. Thus the only way out is to agree that there exist better ways out of conflict than going to war.

### *War of XXI Century*

The events which took place in Caucasus at the verge of XXI Century changed the concept and form of war utterly. If earlier wars were being won on battlefield, today the main element of war is the information warfare. As the main topic of the article is war, it would be unacceptable not to mention the 5-day war between Russia and Georgia which took place in August 2008, during which Russia demonstrated itself in all components of war. Today the prevailing anti-Georgian sentiments in Moscow are not a secret to anyone.

The question frequently heard today is- who was the initiator of the conflict. Even the form of the question reveals the fact that unfortunately the concept of the Caucasian conflict remains unclear to the Western analytical centers up to now. Thus its most important to help the international community, the disoriented Russian society and the Georgian citizens understand the reality about the processes taking place in Caucasus region.

Russia has used different methods to erase Georgia from the political

and cultural map of the world through time. Securing Caucasus as its geo-political backyard is the main aim of Russia from 1801 to date. This is even voiced by the current ideologist of Kremlin- Alexander Dugin (Dugin 1999).

The last campaign against Georgia began in 1991, after the Supreme Council of the Republic of Georgia declared the Russian forces on the Georgian territory as occupational. The West at this time was busy freeing Eastern Europe and the Baltic States from Russian domination, so nobody had either time or energy to assist Georgia. In 1992-1993 the Russian forces ousted the President and the parliament of Georgia and established its control over Abkhazia and the region of South Ossetia. The new president Edward Shevardnadze gave the occupational forces the peacekeeping status, at the same time he agreed on Georgia entering the CIS.

Russia began preparing for the August War long time before. The Russian forces were sent to Abkhazia in July- with the pretext of reconstructing the railway. Meanwhile the military training of the 58th army (with code name Caucasus 2008) began in proximity of the Georgian border. (24 hours, 2008)

All these facts have to receive an adequate legal evaluation.

Although conflicts among neighbors are not ruled out over time, turning this into bloodshed is utterly unacceptable. Historically Georgians and Abkhazians (Georgians and Ossetians) have never been enemies. It's time to call everything by its name, and to define the actual parties of the conflict- Georgia vs. Russia.

According to the resolution issued by the Parliament Assembly of Council of Europe on 2 October 2008 both Russia and Georgia have acted against principles of the Council and did not accomplish their duties to find peaceful solution to the conflict. Thus both parties are responsible for violation of the Humanitarian Law. 'Bombing Tskhinvali by the Georgian side escalated the conflict even further- into the all-out and mass-scale war'. Using heavy artillery and cassette bombs created a serious threat to the lives of civilians, and can be evaluated as disproportionate use of force by Georgia on its own territory'. However it can be inferred that Georgia was protecting its territorial integrity by doing so. According to the resolution the Russian counterattack was also disproportionate. 'The Russian counterattack together with its actions in Central and Western Georgia and Abkhazia obviously did not correspond to the principle of proportionality, the Humanitarian Law and the principles of the Council of Europe. And may be evaluated as violation of responsibilities of Russia as a member state'- the resolution concludes. According to the assembly using violence by both sides can be defined as a war-crime. At the same time, the Assembly supports territorial integrity and sovereignty of Georgia and calls on Russia to withdraw recognition of both



regions. The Council of Europe has also addressed other states not to recognize the given separatist regions. It has also expressed concerns about the facts of ethnic cleansing in the Georgian villages of the Tskhinvali region. Georgia has addressed the Court of Justice demanding 'temporary measures' to be taken (to cease the bombing, to return Russian forces to their dislocations of August 6, to deliver humanitarian aid, to return the population to their homes etc.) what was confirmed by the Court.

Russian aggression resulted in immense losses on the Georgian side. Apart from the lives lost, tens of thousands of Georgian citizens became subject to ethnic cleansing. The local Georgians were ousted from their homes, their property was damaged. The local population was forced either to take citizenship of Ossetian or Russian republics or leave their homes. Georgian towns were bombed inflicting immense psychological trauma on the peaceful population. All this went against the principles of IV Geneva convention (protecting civilians during armed conflicts) (Report by S. Subar, 2008). According to Washington Post Eduard Kokoity had arranged a peaceful corridor for those who chose to leave, South Ossetia would never allow these people to return back home again. This in itself is one more instance of war-crime.

On August 26, 2008 Dmitri Medvedev signed a document recognizing independence of Abkhazia and South Ossetia. Russia used as a legal basis the right of self-determination of nations discussed in the UN Resolution 2625 (XXV). However the given resolution can do little good in this case. The part of the resolution where the right of self-determination is discussed stresses concrete cases when it can be rightly applied, namely to end colonialism as soon as possible, expressing unanimous consent of all states. The last paragraph of the resolution determines in which context this principle cannot be used- any state should refrain from any action violating territorial integrity of another. In other words, the sole purpose of the resolution was to organize the process of disintegrating colonial empires. It cannot be applied to interstate relations.

The nature of Russian peacekeeping on the Georgian territory should also be discussed. Namely: the Sochi (Dagomisi) agreements signed in 1992 are violated since they ruled out possibility of Russian military intervention in the conflict. Also the rules of conduct of the armed forces and military observers in the conflict region are violated; according to them the peacekeepers should have prevented any uncontrolled military endeavor of the conflicting parties.

Russia has never received the UN peacekeeping mandate to legalize its military presence in South Ossetia ; not to say in the rest of Georgian territory including Senaki, Poti, Gori, Zugdidi, Sachkhere, etc. ([www.grani.ru](http://www.grani.ru))

It should be obvious. What we have in Abkhazia and South Ossetia is the Russo-Georgian confrontation, not ethno-conflicts.

Resting on the unstable supply of energy from Russia, Caucasus gains importance both for the West and for the East. Today the world 'has enough time and energy' for Georgia. This resulted in opening a new page in Russo-Georgian relations. The current Georgian government has returned to status of occupational forces to the Russian militaries. It has also voiced its determination to leave CIS.

What should be done in future? If Russia is really going to reestablish the Soviet Union, then the West will have to protect the post Cold War global structure and the newly established post-communist states. Open occupation of Georgia would have resulted in a new Cold War and harsh economic sanctions from the West. Even Russia would be under threat on the regional level, as the Caucasus remains instable and the constituency of Russian army today increasingly includes Chechens and other ethnic minorities. Even less important steps from the Russian side require adequate reaction. The Central European states deeply concerned with the Georgian crisis quickly gave consent on installing the Anti Ballistic System on their territories (a thing Putin has so fiercely opposed). Closer relations between Georgia and NATO reveal how Russia pushed Georgia to tightening its ties with the West. At the same time, the West can inflict great economic losses on Russia if it declares the Russian passports issued for citizens of South Ossetia invalid; also tough economic sanctions may be imposed of the Russian Federation. In this case Kremlin will have to rule a poor and instable province.

Thus Russia gained nothing by violating the international norms. Much has changed after the Cold War- including the nature of warfare, where the role of mass-media and the international society has increased immensely. Such actions as bombing a hospital (protected under the international law), opening fire at non-combatants (the reporters), and not providing security for civilians on the occupied territory- will not go unnoticed. Such unacceptable methods of warfare as destroying the local infrastructure (explosion of the railroad), inflicting damage on the unique nature located kilometers away from the conflict zone were used for the sole aim- to punish Georgia for its Western orientation. Even the fascists refrained from destroying the nature listed in the Red Book. The latter is an instance of 'ecologic terrorism' committed by one state against another. One of the main targets of Russia included the pipeline owned by the British Petroleum (BP) thus the conflict in Georgia had an international character- namely Russia confronted rest of the world by attacking Georgia.

The fact that one of the largest states- Russia remains so inconsistent

and unpredictable should serve as an impetus for a new level of development in international and humanitarian law. Indeed, what can the international community do against a member who does not obey the common rules- the state which confronts the core principles of the international system and the international law, the state which is utterly deprived of logic of conduct. While recognizing Kosovo remains a catastrophe, recognition of Abkhazia or South Ossetia is quite normal from the perspective of Kremlin authorities. Russia had to protect its citizens in South Ossetia, but it had to kill them ruthlessly during notorious Nord Ost. This is the strange logic of Kremlin, principles of which remain mysterious for the rest of the world.

From the lessons of history it may be inferred that for its survival the international system requires constant perfection. After failure of the League of Nations to prevent World War I, the new and more powerful organization the United Nations was formed. Today the Russian aggression demonstrates the weaknesses of the UN and the international law. Thus it would be logical to predict upcoming reforms. Either Russia will win and the world will return to anarchy, or the civilized world will protect its right to exist by further developing international law. Today the international society stands before a choice: where it prefers to live in a world organized according to international norms or in middle ages.

As the rest of the world has much more economic, political and military resources than Russia, its logical to think the winner will be the former. And the international law in future will have stronger mechanisms of punishing any state which will dare to go against all, even against its own self.

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