

## **Humanitarian intervention as a justification for the use of military force by the example of the Russian-Georgian war in 2008**

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*Legal regulation (status) of humanitarian intervention represents a huge challenge to global safety. It is very significant to answer the question – should international law allow states to intervene in another territory and, furthermore, should it give incentives to states to use the pretext of humanitarian intervention to wage wars against other states (pursuant to the political or economic interests towards the states where intervener is involved in the hostilities)? One of the most significant drawbacks of Humanitarian intervention is that aggressive states use the pretext of humanitarian intervention in order to launch wars under covert motives. Russian military intervention in South Ossetia (which is the undisputed territory of Georgia) represents an example of how states use their political motives to violate another states sovereignty.*

### *Introduction*

Russian-Georgian war in 2008 gave rise to different opinions through the context of International law. According to the position of the Russian Federation, use of force on the territory of South Ossetia in combination with the other arguments (e.g.: Self-defense - according to the official Moscow's position, the invasion in the territory of South Ossetia was conducted compatibly with Article 51 (Self-Defense) of the UN Charter) (Independent International Fact-Finding Mission, 2009, pp. 188-189), was justified by the necessity of humanitarian intervention. The above mentioned war was the issue of primary interest of the West, which declared the Russian invasion to South Ossetia as the act of aggression. Notwithstanding the different position of the Russian Federation, the act of the invasion of South Ossetian territory can be assessed as the first unauthorized humanitarian intervention in Europe since the invasion of NATO to the Federal Republic of Yugoslavia in 1999 in order to eradicate ethnic cleansing in Kosovo. Furthermore, at the time of Russian invasion in South Ossetia, the role of UN was much more restricted than in the case of Kosovo. In particular, there were no Security Council Resolutions issued, which would be directed to assess the situation on the territory of South Ossetia before the Russian invasion, unlike the case of Kosovo.

Humanitarian law is the most unbalanced branch of international law. According to the Lauterpacht, "if international law is, in some ways, at the vanishing point of law, the law of war is, perhaps even more conspicuously, at the vanishing point of international law" (Lauterpacht, 1953, pp. 381-382). Although, the formal legal documents, which deal with transnational conflicts, are specifically determined, namely, the UN charter has granted the right to the Security Council to ascertain the threats to peace, breach of peace and the acts of aggression (United Nations (UN) charter, 1945, Article 39) and in order to protect these principles, use all necessary ways, including the right to use force. States have the right to use force when they are authorized by the Security Council to provide individual or collective self-defense (United Nations (UN) charter, 1945, Articles 42 and 51). As for the Russian invasion in South Ossetia, it must be emphasized that officially Moscow passed the borders of the conflict and occupied 1/3 of the territory of Georgia, which is a "disproportional use of force" and, generally, corresponds

the violation of international law, in particular, the violation of international humanitarian law (Aleksidze, 2008, p. 7).

The article aims to discuss the violation of territorial integrity of Georgia by the Russian Federation in the context of humanitarian intervention.

### *Russian Georgian war in 2008 and pre-war conditions*

The negative relationship between the Ossetians and Georgians has especially exacerbated in 20<sup>th</sup> century, particularly, at the time of Ossetian uprising between 1918-1920, when Ossetia at that time being the part of Russian empire, unsuccessfully attempted to create its own soviet republic. Since the establishment of Soviet rule in Georgia, Ossetia became part of the Soviet Social Republic of Georgia.

At the beginning of 1990, as well as in 2008 during the war, Georgians and Ossetians were suspicious of each other's motives: Ossetians saw remaining within Georgian territory as a threat for them, however, the Georgian Government considered Ossetians as Moscow's leverage to undermine the sovereignty and territorial integrity of Georgia (Sammut & Cvetkovski, 1996, pp. 5-15). The confrontation in 1989 made it possible for South Ossetia to obtain the status of "Independent Soviet Republic". Approximately, after 3 months, the Georgian Parliament had abolished the autonomy of South Ossetia and afterwards, on 24 June 1992 in Sochi/Russian Federation cease-fire agreement has been signed by the president of Russian Federation – Boris Yeltsin and the president of Georgia – Eduard Shevardnadze (Agreement on Principles of Settlement of the Georgian, 1992). In order to find out the exact time of the cease-fire and the withdrawal of Russian troops, the Sochi agreement is called for a "Joint Control Commission consisting of opposing parties", for the control of and implementation of the cease-fire agreement, control on withdrawal of troops and to maintain security within the region. Article 3 para 5 of the said agreement strictly elaborates the competence of the joint control commission, in order to implement its mandate: In case of violation of provisions of this Agreement, the Control Commission shall carry out investigation of relevant circumstances and undertake urgent measures aimed at restoration of peace and order and non-admission of similar violations in the future" (Agreement on Principles

of Settlement of the Georgian - Ossetian Conflict Sochi, 24 June 1992). The joint control commission was comprised of the representatives of Russia, Georgia, North and South Ossetia, however, joint peacekeeping forces were comprised of troops from Russia, Georgia and South Ossetia. In 1994, OSCE (Organization for Security and Cooperation in Europe) received the mandate to monitor the activities of joint peacekeeping forces.

Prior to the war in 2008, the Sochi agreement was the subject of fierce criticism, since it couldn't resolve the conflict and empowered the Russian Federation with a disproportional role in implementation. In February 2006, the Sochi agreement was discussed by the parliament of Georgia and adopted a resolution (Resolution of the Parliament of Georgia Regarding, October 2005), which envisaged the issue of replacement of Russian peacekeepers by the international peacekeeping mission. The Authorities of Georgia charged the Russian Federation with: arm supply of separatists, spreading contraband and smuggling. Notwithstanding the fact that the parliament of Georgia adopted the abovementioned resolution, the Sochi agreement remained in force.

Prior to the war in 2008, several incidents took place between Russia and Georgia such as, downing of drones and espionage. It seemed that, in most cases, the international community and media didn't take the threats seriously; this was emphasized many times by Georgian side.

Armed conflict in South Ossetia started on 7 August 2008. The Russian government claimed that until that date (7 August) active movement of their troops to the conflict territories was ordinary movement. On 10 August it became already known that not only the territory of South Ossetia would be involved in the conflict, but also other Georgian territories outside the conflict zone. In particular, Russia was bombing the town of Gori.

The official position of the Russian federation about its activities in South Ossetia was revealed on 8 August when President Dmitri Medvedev declared that Georgian troops conducted an assault on the Russian peacekeepers and civil society in South Ossetia, gravely violating international law.

There are opinions and evidence that during the invasion in South Ossetia, Russian Federation committed a war crime. Pursuant with the report from Human Right Watch, Russia had violated the right to shell military objects

and intentionally carried out an attack to the civilian population (Human Rights Watch, 2009).

### *International Response*

The participation of the Russian Federation in the conflict was assessed as unlawful by Western countries. Foreign Secretary of UK David Miliband mentioned: “The Georgia crisis has provided a rude awakening. The sight of Russian tanks in a neighboring country on the 40th anniversary of the crushing of the Prague Spring has shown that the temptations of power politics remain. The old sores and divisions fester. And Russia is not yet reconciled to the new map of this region. The Russian President says he is not afraid of a new Cold War. We don't want one. He has a big responsibility not to start one. In all international institutions, we will need to review our relations with Russia” (Blair, 2008).

On 11 August 2008, US Ambassador at UN Zalmay Khalilzad mentioned that the Russian Federation has expanded the boundaries of the conflict: “This is completely unacceptable and crosses a line. Moscow "is on the wrong side here" and risks damaging its ties with Washington and the West. The days of overthrowing leaders by military means in Europe -- those days are gone” (CNN, 2008).

On 8 August 2008, the Russian representative at the Security Council declared that it was Georgia who refused to resolve the conflict through diplomacy and chose intervention in South Ossetia. At that time a Georgian diplomat charged Russia with the pre-planned military invasion. The Russian response was that Georgian aggression was against the fundamental principles of the UN Charter, in particular, against the principle of the prohibition of the use of force. The Russian representative was continuously trying to assure the Security Council that the Georgian side violated international law.

The Security Council maintains the position that humanitarian intervention is allowed only after primary authorization of it. The official representative from UK mentioned that humanitarian aid shouldn't be used as the explanation for foreign military forces in Georgia. (U.N. SCOR, 63d Sess., 5952d mtg. at. 2, U.N. Doc. S/PV.5952, 2008).

Correspondingly, the response of the international community to the Russian aggression against the territorial integrity of Georgia was unanimous - Georgia became a victim of the imperial ambitions of a neighboring state.

*Invasion of Russian Federation in South Ossetia from the point of view of International Law*

The primary aim of the UN charter is enshrined in its preamble: “to save succeeding generations from the scourge of war... to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained..” (UN Charter, 1945, Preamble).

To attain these goals the charter prohibits “the threat or use of force and calls on all Members to respect the sovereignty, territorial integrity and political independence of other States”(UN Charter, 1945, Article 2(4)). There are 2 exceptions from this rule: the use of force by the primary authorization of the Security Council (UN Charter, 1945, Article 42) and the right of individual and collective self-defense, when an assault is conducted against a UN member state and the Security Council takes adequate measures to protect international peace and security (UN Charter, 1945, Article 51). The International Court of Justice (ICJ), in a case of Military and Paramilitary Activities in and against Nicaragua, mentioned that unilateral humanitarian intervention is unlawful and assessing the US activities in Nicaragua, emphasized: “while the US is trying to explain the use of force in the context of the protection of human rights – the use of force is not the adequate method to protect human rights” (ICC, Military and Paramilitary Activities, 1986).

Pursuant to the fact that the UN charter strictly emphasizes the principle of the protection of state sovereignty, it is extremely difficult to justify unilateral humanitarian intervention.

During the Second World War, the majority of acts of humanitarian intervention were conducted under the right to self-defense and the states which used such argument had been subject to fierce criticism, since it had nothing in common with the right to protect human rights. Since 1990, the situation has slightly changed; The UN Security Council justified an act of

humanitarian intervention in Somalia (23. S.C. Res. 794, U.N. Doc. S/RES/794, December 3, 1992) and Sierra Leone (28, S.C. Res. 1270, U.N. Doc. S/RES/1270, October 22, 1999) when these countries were so called “failed states”. In another case in a similar situation, e.g. in Liberia and Central African Republic, Security Council issued only a retroactive authorization, which means that conflict was already present. The Russian Federation, justifying its activities in South Ossetia based on the right to protect human rights, was trying to assure the Security Council that Russia was the only state who could protect Ossetians from Georgian aggression. Furthermore, Russia considered that it had the right to self-defense since Russian citizens were residing in South Ossetia.

The abovementioned argument of the Russian Federation cannot be justified using the right to self-defense. In the case *Nicaragua v. USA* (Supra note at 17), the ICJ emphasized that using the right of individual self-defense shall be based on the reciprocal activities of states who are the direct victims of the conflict. None of the evidence reveals that Georgian troops crossed the border of South Ossetia and entered to the North Ossetia, correspondingly, Russian argumentation about the right to use self-defense is unfounded. Furthermore, it is more difficult to justify the Russian invasion in Gori pursuant to the Sochi Agreement (Supra note at 7), since UN charter states that it is primary obligation of all states to respect of another state’s territorial integrity and refrain from invading another state (UN Charter, 1945, article 103). Correspondingly, Russian activities in South Ossetia under the argument of self-defense is a violation of international law. The Russian Federation never asked the Security Council for the authorization to conduct an invasion in South Ossetia. The argument, that the decision of the military alliance to conduct an operation is more substantiated than a unilateral decision to invade another state.

Antonio Cassese, the first president of the International Criminal Tribunal of Former Yugoslavia (ICTY) suggested creating “certain strict requirements”, which must be followed in case of using force, when the Security Council, in practice, would be dysfunctional after using a right of veto apart from one of the states. Cassese underlined: “in combination with other sensitive issues, collective reaction is necessary on the activities of killing people, which is serious crime against mankind”(Cassese, 1999, pp. 791-792, 798). The idea of multilateralism is defended in this case, since in cases of intervention by

several states (together) in another state, the likelihood of the violation of international law is less likely. Correspondingly, according to Cassese, Russian intervention in South Ossetia didn't suffice the criteria of collective reaction of states.

Furthermore, even in this case, Russia would have had to prove that widespread violation of human rights occurred on the territory of South Ossetia, - the use of force would have been the last measure, correspondingly, Russia should have taken all measures to deescalate the situation (e.g. Russia should have applied to the UN and to other states in order to deescalate the conflict). Russia completely ignored the abovementioned fact, furthermore, arises the grounded suspicion that Russia was waiting for the right moment to invade Georgia. Correspondingly, it is needless to say that Russia exhausted all alternative measures to resolve the conflict (Rukhadze, 2009, p.53). The use of force unilaterally, without any kind of cooperation with other states or international organizations is against the article 2(4) of the UN charter. Additionally, those who intervene in another state with the argument of protection of human rights, instigate hostilities and lastly, are trying to conduct military aggression (Goodman, 2006, pp. 107-109).

### *Conclusion*

In conclusion, it should be emphasized that pursuant to the aforementioned line of reasoning, the Russian Federation violated international law, when it conducted an unauthorized humanitarian intervention in South Ossetia, since, first – as the party of the conflict, Russian Federation refused to deescalate the conflict and conversely, invaded in the territory of another state; second – while conducting an military operation, the Russian Federation crossed the border of the conflict and bombed other regions of Georgia (e.g. town of Gori), correspondingly didn't comply to the proportionality principle; the third – there was a lack of evidence that systematic and widespread human rights violations took place in South Ossetia; and fourth – when the state conducts humanitarian intervention, the place where the intervention is held should not be the part of the economic or political interest of that state. In this line of reasoning it must be emphasized that Russia intentionally violated the territorial integrity of



Georgia. This argument is backed by the statement of Russian president Dmitri Medvedev in Washington in November 2008 at the foreign relations council when he outlined that one of the priorities of foreign policy of Russian Federation is to protect its interest in post-soviet states.

International law is designed to regulate the relationships between states which is based on the principle of sovereignty and protection of the international legal rules. Correspondingly, it aspires to protect and strengthen the stability of the “state system” (the relationship between sovereign states). While Humanitarian intervention is infringing on stability after the act of invasion by one state to another countries territory and creates very dangerous precedent, since if other states use the same methods in their activities, - widespread chaos will be inevitable in international relations. Correspondingly, humanitarian intervention is undermining the fundamental principle of international law – prohibition of the use of force.

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