

Comparative Analysis of Two Basic Principles of International Law - Territorial Integrity of State and Self-determination of Nations on Example of Kosovo and Abkhazia

Abstract

The main goal of the research is to analyze in details and present the two basic principles of international law - the right to self-determination of nations and territorial integrity of the state on the example of the Kosovo and Abkhazia conflicts. In particular, a significant part of the paper is devoted to the legal assessment of the Kosovo and Abkhazian conflicts and revealing the main differences that are linked to the legal aspects of Kosovo conflict, on the one hand, and the conflict in Abkhazia, on the other hand.

The article focuses on a detailed analysis of facts why the West, particularly North Atlantic Treaty Organization (NATO)³ involvement in the Kosovo conflict and recognition of Kosovo's independence by the majority of the international community is partly legitimate and, on the other hand, from the international legal and political viewpoints, Russia's involvement in the Abkhazian conflict and the recognition of the so called "independence" of Abkhazia has no legal basis at all. The final part of the work discusses what the international community should do in the future regarding the protection of the principles of international law.

Introduction

The issues related to separatism and irredentism are one of the biggest global problems of the past centuries as well as the modern world. The various ethnic and religious groups living in different regions of our planet are constantly fighting with different intensity to maintain their own national identity, which is often followed by a demand of separation from the particular state and establishment as an independent state (separatism), or adherence to another state (irredentism). In many cases, representatives of different ethnic groups form illegal armed formations and carry out their fight in violent ways. In this case, the biggest problem is that such religious or ethnic groups are often supported by foreign powers (specific state, lobby groups operating in foreign countries, private companies). Georgia belongs to many countries that have lost control over two historic regions due to indirect and direct aggression of foreign state having imperialist ambitions.

In this respect, Georgia is not the only exception that has lost its control over its territory due to interference by foreign forces. At the end of the 90s of the last century, this problem was also raised in Serbia, that lost control over Kosovo's territory as a result of NATO's military campaign from March to June 1999.

Based on the abovementioned, the main goal of the research is to analyze in details the legal basis of the Kosovo and Abkhazian conflicts.

Hence, the main question within the research is to determine whether there is any legal basis for Kosovo or Abkhazia to become an independent state? What are the main common and divergent legal aspects in the cases of Kosovo and Abkhazia conflicts? Based on this, due to the specificities of the topic, it is possible to establish the following research questions:

- Did NATO in 1999 and Russia in 2008 violated norms of international law in the framework of military operations carried out on the territory of Serbia and Georgia?

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³ See official webpage <<https://www.nato.int>>.

- Were there any international legal norms protected during interference of external forces on the territory of Serbia and Georgia?
- When can the principles of territorial integrity and self-determination of nations be simultaneously protected?

The qualitative research existing within social sciences was used in the course of working on the article: based on various legal documents, the paper analyzes various international and domestic legal documents of the country concerning two conflicts on the territory of Georgia and Serbia. In addition, the work will greatly focus on the political aspects of these conflicts, the role of external forces in both of them and their legal and political consequences.

Basic Principles of International Law

The basic principles of international law are the most general, basic and universally recognized rules of international public law on legal conduct of states, that are the basis of the whole international legal system and express the common will and interests of the international community; They are based on the general ethical values and principles established nowadays as a result of the human development process and are compulsory for all states existing on the world map and for other legal subjects.⁴

Every basic principle of international law is a legal norm and have priority compared with the domestic norms of states that are involved in world political processes.⁵

The obligatory nature of the principles of international law is based on a universally recognized, general international treaties or international custom. These principles are set out in the Charter⁶ of United Nations (UNO)⁷ (Chapter 1, Article 2) and also in the United Nations Declaration of the 1970 on the Principles of International Law.⁸ They are associated with friendly relations and co-operation between states and are recognized as explanatory instruments of UN Charter in Helsinki Final Act⁹ of the Organization for Security and Co-operation in Europe ("OSCE")¹⁰ signed in 1975.¹¹

These principles are: 1. The sovereign equality of states; 2. Refraining from the threat or use of force; 3. The territorial integrity of states; 4. Inviolability of frontiers; 5. Settlement of international disputes by peaceful means; 6. Non-intervention in internal affairs of the state; 7. Equal rights and self-determination of peoples; 8. Respect for human rights; 9. Duty of co-operation among States in accordance with the UN Charter; 10. The fulfillment in good faith of obligations under international law.¹²

Self-determination of nations and principle of territorial integrity of the state

Two basic principles of international law - territorial integrity of state and self-determination of nations are clearly contradictory to each other. It is necessary to note that after the Second World War, the position of the international community in relation to the status of the specific territories was inhomogenous. If, for some various political and legal reasons, the international community or the state-supported the independence of the particular territories, in other cases - preferred the principle of territorial integrity¹³.

⁴ Aleksidze, L., Giorgadze, L., Kvachadze, M., International Human Rights Law, Dictionary-Directory, GCI, Tbilisi, 2005, 283.

⁵ Id.

⁶ Available at <<http://www.un.org/en/charter-united-nations/>>.

⁷ See official webpage <www.un.org>.

⁸ Available at <[https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/2625\(XXV\)](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/2625(XXV))>; See also Basic Facts about the United Nations, United Nations Department of Public Information, New-York, 2005, 269.

⁹ Karumidze V., International organizations, educational union 'knowledge', Tbilisi, 2004, 233-235.

¹⁰ Official webpage <<https://www.osce.org>>.

¹¹ Aleksidze L., Contemporary International Law, Dictionary-Directory, GCI, Tbilisi. 2004.

¹² Игнатенко, Г. В., Международное Право, 2-е издание, Норма, Москва, 2002, 121-134.

¹³ The clear example of this is the Kosovo and Abkhazia cases when the West supported Kosovo's independence, and Russia supported maintenance of Serbian territorial integrity. In the case of Abkhazia, vice versa the West supported Georgia's territorial integrity and Russia supported independence of Abkhazia.

This polemic continues until today in the legal, as well as political context, and a clear example of this is the different attitude of the international community and individual states towards the legal status of Kosovo and Abkhazia, about what we will talk below.

After the Second World War, the international community, first of all, UNO has been actively involved in determining different territories in the regions around the world. In particular, since the establishment of the United Nations, one of its major structures was the United Nations Trusteeship Council, which was created based on Chapter XIII of the UN Charter. It consisted of 5 permanent members of the UN Security Council (USA, Great Britain, France, China, USSR)¹⁴. During the work of the Trusteeship Council, in 1945-1994, its 11 subordinated territories gained political independence¹⁵. In addition, measures taken by the United Nations regarding the decolonization policy, that was based on "equal rights and self-determination of the peoples"¹⁶ and concrete Articles of the appropriate chapters (XI, XII and XIII) of the Charter of the United Nations, was related to the liberation of the dependent people from colonial ruling. Since 1960, in the matters of granting independence to particular countries the UNO has been relied on the Declaration on the Granting of Independence to Colonial Countries and Peoples¹⁷ adopted by UN General Assembly. This document is also known as "Decolonization declaration".

102 new independent states have been formed on the political map of the world during the "Cold War" as a result of the political situation and reforms made by the international community after World War II.¹⁸

After the end of "Cold War", splitting of the Union of Soviet Socialist Republics ("USSR"), Yugoslavia and Czechoslovakia resulted in the creation of 22 new independent states on territories of the aforementioned countries. A new state – Eritrea emerged in 1993 on the continent of Africa, that was separated from Ethiopia, and in 2012 – South Sudan. At the same time, the new state was created in 2004 in South East Asia Timor-Leste (formerly East Timor), which gained independence from Indonesia as a result of a universal referendum. Hence, today the UN has 193 full member states.¹⁹

Although after the Second World War, as a result of the decolonization process, the international community had been welcoming the establishment of new states on the world political map, that was also reflected in UN declarations, it prioritized the territorial integrity of states by signing the Helsinki Final Act in 1975.²⁰

Taking into consideration the above-mentioned facts, the World Community is still facing both political and legal dilemma, as it relates to the particular controversial territory. The situation is complicated due to the fact that nowadays there are about 200 sovereign states on the world map, and the number of nations on the planet exceeds 5000.²¹ Considering this situation, according to 2014 data, there are 414 conflict regions in the world today²². Of course, the situation will be uncontrollable if all the nations start wanting to create an independent state.

Taking into consideration this, the problem of the international community is to make a choice between the main principles of international law towards a particular disputed territory when, on the one hand, there is a threat of separatism and, on the other hand, irredentism risk.

That is why it is interesting to review legal aspects of Kosovo and Abkhazia conflicts from the legal point, including the international legal aspects.

¹⁴ Supra note 8, 13.

¹⁵ These territories are: Ghana, Somalia, Cameroon, Togo, Rwanda, Burundi, the United Republic of Tanzania, Samoa, Nauru and Papua New Guinea and Palau.

¹⁶ Supra note 8, 283-286.

¹⁷ Kodua, E., Beraia, L., Dictionary-Directory of Social and Political Terms, Logos Press, Tbilisi 2004.

¹⁸ Chitadze, N., World Geography. Political, Economic and Demographic Dimensions, Scholars Press, Germany, 2017, 70.

¹⁹ See at <<https://www.un.org/en/member-states/>>.

²⁰ Kegley, C., Blanton, S., World Politics. Trend and Transformation, Wadworth, Cengage Learning, USA, 2011, 353.

²¹ Neidze, V., The social-economic geography of the world, Lega, Tbilisi, 2004, 46.

²² Chitadze, N., supra note 19, 116.

To answer the asked question, it is necessary to review each conflict in details, first of all, in the legal context.

Kosovo

The modern Kosovo territory historically has been part of the Kingdom of Serbia for centuries. In 1389, a historic battle between the armies of Kingdom of Serbia and the Ottoman Empire²³ was conducted on Kosovo field, that ended with the victory of the Ottomans, as a result of which Serbia became part of the Ottoman Empire for almost five centuries.²⁴ By the initiative of the empire leaders, the ethnic Albanians believing in Islam were being settled in the modern Kosovo area. After the end of the Russian-Turkish War at the end of the 19th Century, in particular, by the decision of the Berlin Congress held in 1878, Serbia gained independence from Ottomans²⁵. After the end of the first world war, as a result of splitting the Austrian and Ottoman Empires, the peoples of the South Slavs in their composition were united as one state that was called the Kingdom of Serbians, Slovenes and Croatsians, and from 1929 the Kingdom of Yugoslavia²⁶. In the aftermath of the Second World War, in particular, since 1945 the Communist dictatorship was established in Yugoslavia and created the Socialist Federated Republic of Yugoslavia, composed of 6 Socialist Republics. Kosovo Autonomous Province was part of Serbia - one of the socialist republics²⁷. In 1989, Yugoslav President Slobodan Milosevic abolished the Kosovo's autonomy, that led to further aggravation of the situation.²⁸ In 1995, at the end of the war in one of the former republics of Yugoslavia, namely in Bosnia and Herzegovina attention of the international community was attracted to Kosovo, where the Albanian Kosovans demanded independence from Serbia. The clashes between the Kosovo Liberation Army and the Serbian police were becoming more frequent²⁹.

The situation reached a culmination in 1998, when an open conflict between the Serbian police and the "Kosovo Liberation Army" fighters resulted in the deaths of about 1,500 people and up to 400 000 people were forced to leave their permanent residence.

Based on the above mentioned, NATO stepped into the process of normalization of the situation similarly to the Bosnian conflict. On May 26, 1998, two main goals of the alliance regarding Kosovo were determined on the session of NATO's Council of Ministers of Foreign Affairs, namely³⁰:

- Peaceful resolution of the crisis;
- Ensuring stability and security in neighboring states where the main focus will be on Albania and Macedonia.

On August 12, 1998, the statement of the Secretary General of the Alliance was disseminated, which stated that in case of military confrontation and continuing violence regarding peaceful civilians in Kosovo, NATO would be forced to plan possible military-peacekeeping operations to eliminate the crisis³¹.

Almost a month and a half later, on September 24, 1998, the NATO Council again discussed the situation in Kosovo and declared that the Alliance was ready to start air campaign if needed³². On 9 October of the same year, both sides supported the strengthening of international efforts to finalize the crisis on the NATO-Russia Joint Council meeting.

²³ Available at <<https://www.britannica.com/event/Battle-of-Kosovo-1389-Balkans>>.

²⁴ *Somel, A. S.*, Historical Dictionary of the Ottoman Empire, Scarecrow Press, Oxford, 2003, 268.

²⁵ *Shafer, K. A.*, The Congress of Berlin of 1878: its origins and consequences, Portland State University, 1989, 50.

²⁶ *Chanturia, G.*, The social-economic and political geography of the world. Publishing House "Saqartvelos Matsne". 2004.

²⁷ NATO Handbook, Public Diplomacy Division. Brussels, 2006, 149. Available at <<https://www.nato.int/docu/handbook/2006/hb-en-2006.pdf>>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Chitadze, N.*, The North Atlantic Alliance, the main guarantor of peace and stability in the world, Magenta Prints, 2008, 108.

³¹ *Id.*, 109.

³² *Id.*, 110.

For the purpose of preventing the conflict, on October 24-25 senior officials of NATO, Gen. Clarke and Naumann visited Belgrade and met with President of Yugoslavia *Milosevic*. They were trying to persuade the Belgrade to stop the violence.

It is noteworthy that the visit of NATO's top military officials and the overall, NATO's diplomatic activity resulted in a temporary outcome, which was noted in the statement of the NATO Secretary General on October 27 where he welcomed the meeting of NATO's leaders and the President of Yugoslavia, but later, in particular, since the beginning of 1999 as a result of the mass violation of human rights on the Kosovo territory, the number of refugees was increasing more and more.

Taking into account the problems, the political situation in Kosovo and in the entire region, forced the Alliance to take more radical measures, inasmuch as despite multi-round negotiations, from the beginning of 1999 the Yugoslavia Government renewed repressions against the Kosovar Albanians, which led to resistance from the so-called "Kosovo Liberation Army". The peaceful population was forced to massively leave their homes. The number of refugees reached 210 thousand in mid-February, 1999. The real danger of humanitarian catastrophe was created in the midst of Europe. The criticism of NATO was becoming louder and louder in the Western media and the broader public circles³³.

Against the backdrop of the anti-public policies of the Yugoslav government, NATO was increasingly considering an alternative to use force, for which serious military preparations were launched in the respective military structures of the alliance.

Despite the military preparations, the focus was still on the political solution of the crisis. As a result of NATO's activity and international pressure, the Belgrade authorities had to resume negotiations with the Kosovo Albanians. The negotiation process was held on February 6, 1999, in the French city of Rambouillet. The difficulty of the negotiation process was that Serbians, who considered Kosovo as a part of Yugoslavia, did not agree with the deployment of NATO's peacekeeping forces in Kosovo, in which they were supported by Russia. On the other hand, Kosovar Albanians were expressing their position and they refused to disarm if they did not receive guarantees for holding a referendum on Kosovo's political status. Ultimately, as a result of Western political circles' activity, agreeing with the Kosovo Albanians on the proposed offer became possible, but due to the Belgrade's unconstructive position the negotiation process broke down in March.³⁴

In early March, the NATO repeatedly warned Belgrade authorities that if it did not stop military operations and gross violation of legal norms in Kosovo, which resulted in the violence against peaceful civilian population of Kosovo, if the offered proposals in Rambouillet were unacceptable for Yugoslavia, the Alliance would be compelled to start military operation.

Finally, it is important to remark that the attitude of Alliance toward the tense situation in Kosovo was characterized with certain difficulties and contradictions, but eventually, the existence of this crisis had great positive influence on changes in NATO, as it significantly contributed to the growth of international authority of the organization (parallelly to the fall of the UN authority) and adaptation of its functions and goals to modern reality. NATO's actions in Kosovo have greatly influenced the new understanding of principles of international law and norms, which was primarily due to the fact that a precedent of carrying out a large military operation outside NATO was created, the main purpose of which was to prevent ethnic cleansing, to stop the violence. This, in general, served to the restoration of justice and safeguarding moral principles. In addition, after World War II it was the first time when the Alliance of the democratic states gave priority to the restoration of justice and the protection of moral value over the existing international norms and, when the alliance's every attempts to peacefully solve conflict in Kosovo did not bring real results

³³ Id.

³⁴ Id., 111.

due to unconstructive position of Yugoslavian authorities, NATO was forced to undertake a military operation against a sovereign state (the Federal Republic of Yugoslavia); As it is known, the reason for this was a large-scale ethnic cleansing that Milošević regime carried out against the Kosovar Albanians, i.e. against ethnic minority of this country.³⁵

In terms of international law, the most important point of this operation was that due to opposition by permanent members of the United Nations Security Council – the Russian Federation and China who were against carrying out military operations on Yugoslav territory by NATO – the Alliance was forced to undertake a military campaign without the sanction of the UN Security Council.

After the situation in Kosovo had become more complicated, NATO faced the dilemma that became a subject of wide discussions in western democracies and the political circles. The problem was that the West was facing a very difficult question: in particular, what policy should the Alliance carry out if the effort and political pressure did not affected to Yugoslavian leaders and the anti-democratic regime of Milosevic continued persecution and repression of the Kosovar Albanians. It was clear that in this case, at some point, NATO would be forced to use military force, like in the Bosnia's conflict. However, as it has already been noted, the situation was more difficult because the existing norms in international law, based on which the use of force and coercive establishment of peace could be possible based on Article VII of the Charter of United Nations, and the practical implementation of this provision could be only possible after the adoption of UN Security Council resolution; Perhaps, this would have been impossible, as it was already known that indeed Russia would use veto right in the Security Council due to its famous sympathies to Serbians. Taking into consideration these factors, if NATO followed the existing norms of law, it would have been forced to accept the gross violation of the elementary norms of law by the retrograde government of Yugoslavia, first of all, violation of one of the main principles of international law, human rights protection.³⁶

The development of such scenario could have caused great and irreparable damage to the North Atlantic Alliance's authority and at the time when the role of the alliance in the Euro Atlantic space was continuously increasing, and while the organization was perceived as the main guarantor of the protection of security and justice not only in Europe but all over the world. The leaders of NATO were well aware of this.

Apart from this, the problem was not only about the possible damage to NATO's authority, but also the continuation of violence in Kosovo could have a devastating influence on neighboring countries and possibly on the entire Balkan Peninsula. First of all, it is noteworthy that Albania, as well as Albanian population of Macedonia, who constituted about 20% of the population of the country, could interfere in the conflict to defend the Kosovar Albanians. That's why NATO, because of the anti-democratic policy of the Belgrade, would not allow the creation of a new conflict center and European crisis in the Balkans, even if using force was needed for this.

On the other hand, the West was well aware of the danger posed by NATO's interference in the Kosovo Conflict regarding relations between NATO and Russia, and while the anti-Western tendencies in Moscow were increasingly strengthening, it was quite realistic that bypassing the United Nations, without Russia's consent, the Alliance's attempt to solve Kosovo problem may worsen the relations with the official Moscow.

Due to the contradictory situation, NATO's decision of legal and the political character which was linked to the principal choice about using or not using force required firm solidarity and courageous steps from the allies.

As we have already noted, before the final decision on the Kosovo conflict by NATO, the West has addressed a wide variety of diplomatic activities in Kosovo to ease the situation. Leading state figures, experts and representatives of Euro-Atlantic structures were involved in this process. This

³⁵ Id., 112.

³⁶ Id., 113.

issue became the main topic in the NATO Council. It should be noted that the organization also conducted extensive consultations in the Euro-Atlantic Partnership Council, where participants from NATO member states and partner countries were discussing the situation in Kosovo at different levels. The most important aspect of the discussion was the development of methods and forms of practical cooperation between NATO and partners in the field of peace, which aimed to promote peace in the Euro-Atlantic space. These consultations later turned into Kosovo's peacekeeping operation.

In early March, the NATO repeatedly warned Belgrade authorities that if they did not stop military operations and gross violations of legal law norms in Kosovo, which was resulting in the violence against the civilian population of Kosovo and, also, if the offered proposals in Rambouillet were unacceptable for Yugoslavia, the Alliance would be compelled to start military operation. Despite this call, Milosevic's regime ignored the NATO's proposals, and in response, on March 24, 1999, the director of NATO's Defence Policy and Armed Forces Planning Service decided to launch an operation on "Allied forces"; Air raids against Yugoslavian military units started within a few hours after the end of meeting. It is noteworthy that NATO expressed its readiness to protect all the provisions of the 1949 Geneva Conventions³⁷ and the 1954 Hague Convention,³⁸ and only carry out the operation against the Yugoslavian military infrastructure and take all measures to prevent "coloreal damage" that, in turn, meant the protection of civil objects and peaceful population. As it was stated, the main aim of the military operation was to reduce the Yugoslavian military potential and, therefore, reduce the scope of humanitarian catastrophe risk in Kosovo.³⁹

The North Atlantic Alliance demanded five main conditions from Yugoslavian leadership to stop the military campaign:

- Termination of military operations and violence in Kosovo;
- withdrawal of Yugoslavian armed forces from Kosovo;
- Placement of international peacekeeping forces in Kosovo;
- Returning refugees to their places of residence and co-operation with international humanitarian organizations to enable them to help the civilian population;
- Continuation of the process that was started in Rambouillet for reaching the political settlement of the conflict.

NATO's decision to use military force against a sovereign state represented a new stage in the 50-year history of the Alliance. This bold step by the Alliance was substantially changing not only the alliance's concept, but international law, too.

For example, according to the NATO Statute, the Alliance had the power to use military force only if there was an armed attack against any member state of NATO, in particular, Article 5 of the NATO Statute⁴⁰ states: "the Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. At the same time, if we rely on the NATO charter, the former Yugoslav territory is located outside the area of responsibility for the North Atlantic Alliance⁴¹

³⁷ Aleksidze, L., Giorgadze L., Kvachadze M., supra note 4, 297.

³⁸ Id., 298.

³⁹ Id., 312.

⁴⁰ Available at <https://www.nato.int/nato_static_fl2014/assets/pdf/stock_publications/20120822_nato_treaty_en_light_2009.pdf>.

⁴¹ Id.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.”

In addition, the Article 1 of the NATO's Statute indicates the following: “the Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.”

Consequently, we can make a conclusion that both the first and 5th Articles of the NATO Statute clearly point to the fact that NATO's activity is based on the basic principles of the UN Charter. In addition, it is very important to consider paragraph 7 of Article 2 of the UN Charter, which states that the international community has no right to interfere with the internal political affairs of the sovereign state. In particular, the Charter emphasizes that: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”⁴²

Despite the great respect for the above-mentioned legal documents from NATO, the Alliance and its member states have firmly expressed their position that state sovereignty should not be used as immunity for committing a crime against humanity. Thus, NATO in its actions preferred moral beginnings and the principle of human rights protection over international law and this can be considered a revolutionary occurrence, because taking into account the existing realities, the Alliance to some extent, by itself took UNO's right to take the decision on using force against sovereign country in the case if the authorities of this country were committing a crime against humanity, moreover, with regard to its actions it envisaged to safeguard civilians from genocide, NATO expressed its respect for the Convention on the Prevention and Punishment of the Crime of Genocide of 1949⁴³ and to the basic principles of the Universal Declaration of Human Rights⁴⁴ adopted in 1948.

On June 10, 1999, as a result of NATO's military campaign that lasted for 77 days, NATO Secretary General said that he had ordered the Supreme Commander-in-Chief of the United Forces of NATO in Europe to stop the aviation military actions. This decision was adopted by consultations with the North Atlantic Council and based on information of General Clark, according to which the Yugoslavian forces started withdrawal from Kosovo.⁴⁵ The agreement on the withdrawal of Yugoslavian armed forces from Kosovo was signed on June 9, 1999.⁴⁶

On June 10, 1999, the UN Security Council adopted a Resolution No.1244, in which it welcomed the adoption of the principle for crisis settlement in Kosovo by the United Republic of Yugoslavia, including the principles that were directed on the ending of the violence and the withdrawal of the military contingent.⁴⁷ It was announced that the UN Security Council decided to send military and civilian observers under the patronage of the UN.

⁴² Basic Facts about the United Nations. United Nations Department of Public Information. New-York, 2005, 5.

⁴³ Available at <<https://www.matsne.gov.ge/ka/document/view/1219170>>.

⁴⁴ Available at <https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf>.

⁴⁵ See <<https://www.nato.int/kosovo/press/p990610a.htm>>.

⁴⁶ Supra note 27, 150.

⁴⁷ Available at [https://undocs.org/S/RES/1244\(1999\)](https://undocs.org/S/RES/1244(1999))

The first units in Kosovo were entered on June 12, 1999. According to the military-technical agreement,⁴⁸ the Kosovo forces (KFOR) constituted 50,000 military servants. As a result of NATO's activity 1 million 300 thousand internally displaced persons became able to return to the homes.⁴⁹ According to data of 2007, there were about NATO contingent of 16,000 military servants in Kosovo.⁵⁰

Later, to determine the status of Kosovo, the UN administration was set up in Kosovo, as well as the Commission headed by the former president of Finland *Martti Ahtisaari*, which should determine the final legal status of Kosovo. The Commission came to the conclusion that Kosovo should be granted state independence. On February 17, 2008, the Kosovo Parliament adopted the Declaration of Independence,⁵¹ that was supported by the Western and other leading states, except Russia and China.

Despite recognition of Kosovo's independence by the leading countries worldwide and notwithstanding the fact that, it is a *de facto* independent state, it is united in several international organizations, it had an independent delegation on the World Olympiad in 2016 and others. Today's social-economic situation is very difficult in Kosovo,

It is noteworthy that the UN International Court did not satisfy the Serbia's lawsuit and decided that Kosovo had a legal basis to gain independence.⁵² However, according to the principles of international law, Kosovo did not become a full subject of law, because in order for the country to be a full-fledged subject, it must be a member of UNO. However, there are specific rules for country to be entered in United Nations, in particular, the UN Security Council would make a recommendation, as a result of the general consensus backed by all permanent members of the Security Council and submit UN General Assembly. General Assembly makes decision by the majority of votes about the country's membership. Due to constant resistance from Russia and China, the Kosovo issue cannot be finally resolved.

Abkhazia

After the events that took place in Kosovo, of course, it is necessary to discuss one of the most painful issues for Georgia, i.e. conflict of Abkhazia, first of all, from the legal perspective. As it is known, Abkhazia is also trying to create an independent state like Kosovo.

Abkhazia and Kosovo have one main resemblance, namely both these territories, respectively, represent the historic regions of Serbia and Georgia. The modern territory of Abkhazia, in different periods of Georgian history, belonged to Colchide, then Egrisi kingdoms, since 975 to the United Kingdom of Georgia, which is also confirmed by Russian sources.⁵³ Later, in the second half of the 15th century, when Georgia's unity collapsed and the country was divided into three kingdoms and five principalities, Abkhazia principality was considered as the Georgian state unit. This principality was abolished by the Russian Empire in 1864.⁵⁴

After the restoration of state independence of Georgia, in particular in 1918-1921, Abkhazia was part of the Democratic Republic of Georgia and enjoyed full autonomy. Namely, according to the Constitution of Democratic Republic of Georgia that was adopted on February 21, 1921, in accordance with Article 107 of chapter 11 of the supreme law of the country, which was related to the autonomous units of Georgia, Abkhazia (Region of Sukhumi) enjoyed autonomous rights⁵⁵. Particularly, the Constitution noted the following: eleventh chapter refers to the autonomous

⁴⁸ Supra note 27, 150.

⁴⁹ Chitadze N., supra note 31, 116.

⁵⁰ Id.

⁵¹ Id., 11.

⁵² *Richemond-Barak, D.*, The International Court of Justice on Kosovo: Missed Opportunity or Dispute 'Settlement'? Hague Yearbook of International Law, 2011, 12. Available at <[http://portal.idc.ac.il/Faculty Publication.Publication?PublicationID=1616&FacultyUserName=YmFyYWsuZGFwaG5l](http://portal.idc.ac.il/Faculty%20Publication/Publication?PublicationID=1616&FacultyUserName=YmFyYWsuZGFwaG5l)>.

⁵³ Прохоров, А. М., Советский Энциклопедический Словарь, 1988. Available at <<https://www.twirpx.com/file/2301484/>>.

⁵⁴ Khorava, B., Abolishment of the Abkhazian Principality and Mikheil Sharvashidze. Available at <<http://www.georoyal.ge/?MTID=5&TID=64&id=711>>.

⁵⁵ Available at <http://constcentre.gov.ge/failebi/1921_clis_konstitucia_33442.pdf>.

governance and consists of the two Articles. The inseparable parts of the Republic of Georgia - Abkhazia (Sokhumi District), Muslim Georgia (Batumi Province) and Saingilo (Zaqatala District) are granted local autonomous governance"⁵⁶.

After the violent upheaval of democratic regime in Georgia and the establishment of Communist regime (February 25, 1921), there was an attempt to declare "independence of Abkhazia" (March 31, 1921);⁵⁷ However, in the end, Abkhazia was part of united Georgia as the so called "Contractual Republic", which has been interpreted in the USSR constitutions since 1924 as "autonomous republic", as it has formally existed since 1931.⁵⁸ Since February 19, 1931, Abkhazia has been officially autonomous republic according to the Constitution of Abkhazia as well as the Constitution of Georgia.⁵⁹

Under the 1936 and 1977 constitutions of the USSR, ultimately the legal status of autonomies was determined. In particular, the autonomous formations constituted an integral part of the Soviet Union member states. In addition, the Autonomous Soviet Socialist Republic of Abkhazia was the only autonomous formation in the former Soviet Union, which had a special article in its constitution about the state language - Abkhazian.⁶⁰

In spite of this, Abkhazia (part of the population), due to the secret encouragement by the central Soviet authorities has repeatedly expressed desire to leave the Soviet Socialist Republic of Georgia. This demand was contrary to the principle of historical justice, as it was noted, Abkhazia was always a Georgian political unit, as well as opposing to intention of the majority of the population of Abkhazia *per se*, as considering the fact that according to the data of 1989, the population amount on the territory of Abkhazia constituted 525 thousand people, from which 213 thousand were ethnic Georgians,⁶¹ we can conclude that the majority of Abkhazian population (not only ethnic Georgians) were against the withdrawal of Abkhazia from Georgia that was confirmed by the results of the referendum conducted on the territory of Georgia on March 31, 1991, about what we will talk below.

The second factor was that from the legal point, the demand of the separatist part of Abkhazia's society for exiting from Georgia was contrary to the Constitution of the Soviet Union, which was still functioning in Georgia at that time (until the collapse of the USSR). In particular, according to Article 78 of the Constitution adopted by the Soviet Union in 1977, "the territory of a Union Republic may not be altered without its consent. The boundaries between Union Republics may be altered by mutual agreement of the Republics concerned, subject to ratification by the Union of Soviet Socialist Republics."⁶² Furthermore, according to Article 79 of the Constitution of the USSR, "A Union Republic shall determine its division into territories, regions, areas, and districts, and decide other matters relating to its administrative and territorial structure."⁶³ Nevertheless, "legal war" was started between the Central Government and Abkhazia; In particular, on March 31, 1991 a

⁵⁶ Id.

⁵⁷ On March 31, 1921, the independent Soviet Socialist Republic of Abkhazia was declared. The outcome of this move was creation of a dangerous precedent and the "mine" of separatism was put into operation. However, it was so illogical and unjustified step that the central government soon cancelled this decision and Abkhazia again returned into Georgia. In December 1921, Abkhazia entered the Georgian SSR by Union Treaty, and in 1931 the Abkhazian Union Republic became the autonomous Soviet Socialist Republic of Abkhazia in the composition of Georgian SSR. See *Songhulashvili, A.*, Political status of Abkhazia Georgia (1921-31), Matters of modern and contemporary history, №12, Tbilisi, Universal, 2014, 66-79.

⁵⁸ In the constitution of the Soviet Union of 1924 Abkhazia is referred to as an autonomous socialist republic, however it is entered into composition of the Georgian SSR based on the treaty.

⁵⁹ *Pipinashvili, D.*, South Caucasus conflicts and regional stability problems, Tbilisi State University, 2009. 113-114.

⁶⁰ Id.

⁶¹ *Mamardashvili, G., Tsuladze, G., Maghlaperidze, N., Sulaberidze, A.*, Demographic Development of Georgia, Yesterday, Today, tomorrow, Ilia State University, Institute of Demography and Sociology, 109. Available at <<https://iliauni.edu.ge/uploads/other/39/39660.pdf>>.

⁶² Available at <<http://www.hist.msu.ru/ER/Text/cnst1977.htm#iii>>.

⁶³ Id.

referendum was held on the territory of Georgia main question of which was: "Do you agree with restoration of the state independence of Georgia based on the Independence Act of May 26, 1918?" More than 90% of the Georgian population participated in the referendum and more than 98% of the country's population supported Georgia's independence. About 60% of the population on the territory of the autonomous republic of Abkhazia participated in this referendum and 99% of them supported Georgia's independence.⁶⁴ On the basis of referendum results, on April 9, 1991, the Supreme Council of the Republic of Georgia adopted a decision on "Restoration of State Independence of Georgia", on the same day, the legislative body of the country adopted a declaration which stated that "Georgia granted full autonomy to the Abkhazian people"⁶⁵.

In January 1992, after the change of government in Georgia, the Military Council of Georgia made a statement "on the restoration of the Constitution of 1921"⁶⁶. As it was already mentioned, according to Article 107 of the 1921 Constitution, Abkhazia has enjoyed autonomous status as part of the united Georgia.⁶⁷ Since the Military Council has been canceled and, instead, the State Council was established, the new government of Georgia has numerously made a statement that it expressed its readiness to conduct negotiations with the Abkhazian Autonomous Republic leadership about the determination of the status of the Autonomous Republic of Abkhazia. However, on the background of civil confrontation in Georgia, due to active encouragement by Russia, the Abkhazian separatist forces took advantage of the situation and on the July 23, 1992, some deputies of the Supreme Council of Abkhazia passed a resolution⁶⁸ on the restoration of the 1925 Constitution⁶⁹ of Abkhazia, which, in fact, meant seceding from Georgia.⁷⁰ This resolution was adopted by some of the deputies of the Supreme Council when Georgian deputies were not present at the session⁷¹. At the same time, the constitutional amendment needed support of more than two-thirds of the deputies, and only half of the deputies attended the meeting, so the decision was illegal and clearly contradicted to the (current) Constitution⁷² of Abkhazia itself. In particular, at that time the constitution adopted in 1978 was effective on the territory of Abkhazia. According to Article 163 of this document, the amendments to the Constitution of Abkhazia was possible only if not less than 2/3 of the total number of deputies supported it. By this time, Georgians were the national majority in Abkhazia. In particular, according to the general census of the population of 1989, 44% of the population of the Autonomous Republic of Abkhazia were Georgians, namely at that time 213 000 ethnic Georgians lived in this historic region of Georgia and the percentage of ethnic Abkhazians was 17%.⁷³ Nevertheless, according to the electoral legislation in Abkhazia that was in force at that time, when the majoritarian electoral system was effective in the autonomous republic, Abkhazians were represented by 28 deputies in the supreme council when the number of the Georgian deputies was 26 and as for non-abkhazian and non-Georgian deputies (they were representing 39% of population), only 11 deputy mandates were assigned for them⁷⁴. Clearly, this election legislation contradicted to democratic legal norms and it had nature of pure apartheid⁷⁵ when one of the ethnic groups had more political rights than others. Such a situation was only advantageous for forces hostile to Georgia's territorial integrity. Consequently, the Supreme Council of Abkhazia of such composition approved a number of "laws" that clearly contradicted to the Constitution of Georgia. For example, as already mentioned, on July 23, 1992, the Supreme Council of the Autonomous

⁶⁴ Available at <<https://www.radiotavisupleba.ge/a/otsdakhuti-tseli-damoukideblobis-agdgenis-referendumidan/27646279.html>>.

⁶⁵ Available at <<https://matsne.gov.ge/ka/document/view/32362?publication=0>>.

⁶⁶ *Pipinashvili P.*, supra note 59, 83.

⁶⁷ Available at <<https://www.constcourt.ge/ge/publications/books/1921-wlis-saqartvelos-demokratiuli-respublikis-konstitutsia.page>>.

⁶⁸ Available at <<http://www.parliament.ge/uploads/other/18/18506.pdf>>.

⁶⁹ *Id.*

⁷⁰ *Mkurnalidze, G., Samkharadze, G.*, Politology, Knowledge press, 2000, 186.

⁷¹ *Id.*

⁷² Text of the Constitution is Available at <http://apsnyteka.org/file/konstitutsiya_abkhazskoy_ASSR_1979.pdf>.

⁷³ *Chitadze N.*, Geopolitics, Universal, 2011, 319.

⁷⁴ *Id.*

⁷⁵ Available at <<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=6&t=2883>>.

Republic of Abkhazia adopted a resolution on the restoration of the 1925 Constitution of Abkhazia, according to which the 1978 Constitution of Abkhazia (within which Abkhazia was part of the Georgian SSR as an autonomous republic) was repealed and the 1925 Constitution of Abkhazia was restored. It should be noted that the enactment of this so-called constitution was not even made under conditions of the Soviet regime. At the same time, the third congress of Abkhazian Councils decided to complete the presented draft constitution and comply it with the Constitution of the Georgian SSR and the Constitutions of South Caucasian socialist federative soviet republics. The text of the Constitution, which was reviewed by the third congress of Abkhazian councils, has not been published. According to the Constitution of 1925, all ethnic groups of the Abkhazian SSR were provided with the right to free development and use of native language both in their national-cultural and general state institutions, however, the Russian language was recognized as the language of the Abkhazian SSR state institutions⁷⁶.

It is noteworthy that after the start of military actions in Abkhazia, international legal responsibility for the situation in Abkhazia, first of all, shall be imposed on Russia. Under the Resolution "on Aggression" adopted by the General Assembly of United Nations in 1974, Russia has made indirect aggression against Georgia, as a result of the training of the North Caucasian militants in the Russian territory and sending them to Abkhazia, as well as the financing of separatist gangs and supplying them arms in 1992-1993.⁷⁷ In addition, during military actions, namely, on September 3, 1992, on May 14, 1993, on July 27, 1994, between the Georgian and Abkhazian parties signed a ceasefire agreement by intermediation of Russia that was severally breached by the Abkhazian party due to encouragement from Russia.⁷⁸ In particular, if we consider the last peace treaty,⁷⁹ the Georgian side fulfilled all the terms of the treaty of July 27, 1993, and withdrew heavy equipment from Abkhazia.⁸⁰ Despite that, after this, the Abkhazian side (in fact, the North Caucasian irregular soldiers, the Cossacks, and the Russian military servicemen), or *de facto* Russia began to attack Sokhumi, as a result of which, Georgia lost control of the largest part of the Abkhazian territory during September 27-30, 1993.⁸¹

Consequently, in parallel with the indirect aggression against Georgia, Russia violated two other fundamental principles of international law, namely "the duty of the State to cooperate with each other in compliance with the Charter of United Nations " and the "fulfillment of obligations in good faith under international law".⁸²

The dialogue between the Georgian and Abkhazian sides had been resumed since 1994, according to the agreement⁸³ signed on April 4, 1994, both sides expressed readiness to "deploy the CIS's⁸⁴ collective security forces in a conflict zone"⁸⁵. Since May 20, 1994, Russian "peacekeepers" were placed in the conflict zone under the aegis of the CIS forces along the administrative border between the Autonomous Republic of Abkhazia and the rest of Georgia.⁸⁶ Later, Russia has repeatedly assisted the separatist regime of Abkhazia through "peacekeeping forces" but simultaneously created an illusion that it supported Georgia's territorial integrity. In 1994 and 1996, Russia along with other states, within the framework of the OSCE, in particular, on Budapest (1994)⁸⁷ and Lisbon Summit

⁷⁶ Available at <<http://www.parliament.ge/uploads/other/18/18506.pdf>>.

⁷⁷ Available at <<http://hrlibrary.umn.edu/instree/GAres3314.html>>.

⁷⁸ *Pipinashvili, D.*, supra note 60, 83.

⁷⁹ Available at <<http://abkhazia.gov.ge/page/conflictCronology>>.

⁸⁰ Id.

⁸¹ Id.

⁸² Available at <<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=6&t=7514>>.

⁸³ Available at <<http://www.parliament.ge/uploads/other/18/18509.pdf>>.

⁸⁴ Id.

⁸⁵ *Pipinashvili, D.*, supra note 60, 157.

⁸⁶ Id.

⁸⁷ See webpage <https://www.osce.org/event/summit_1994>.

(1996),⁸⁸ supported resolutions in relation to "ethnic cleansing of Georgians" in the territory of Autonomous Republic of Abkhazia.

In spite of everything, in 2008, Russia conducted a direct aggression against Georgia, it was a response to the recognition of Kosovo by international community. In response to this process, Russia has adopted a resolution on the recognition of "independence" of Abkhazia and "South Ossetia" regions, but, of course, it is not possible to talk about *de facto* independence in these regions, as the situation in Abkhazia and Tskhinvali region is fully under the control of the Russian Federation.

Comparison of Russian and Western positions regarding Kosovo and Abkhazia

The positions of the West and Russia are radically different from each other regarding Kosovo and Abkhazia. Of course, it is interesting to note that the West supported Kosovo's independence from Serbia, but it supports Georgia's territorial integrity. Russia has the opposite position, it supports the territorial integrity of Serbia, and at the same time recognizes Abkhazia's independence from Georgia.

It is necessary to consider the following circumstances: the international democratic community has a more legal and moral leverage to justify Kosovo's independence, inasmuch as before the Kosovo Conflict, the military intervention of NATO stopped the genocide of Bosnian Muslims in 1992-1995 during the Bosnian conflict: one of the worst examples of crime against humanity in this former republic of Yugoslavia is the case when Bosnian Serbians supported by the former Yugoslav president Slobodan Milosevic's regime buried alive 6,000 Bosnian Muslims in Srebrenica.⁸⁹ At the same time, in conditions of existence of the UN Security Council resolution, by NATO's active involvement the territorial integrity of Bosnia and Herzegovina was maintained and Dayton peacekeeping agreement was signed in 1995 that provided peaceful co-existence of the three main ethnic groups (Serbians, Croats, Bosnian Muslims) in Bosnia.⁹⁰

While talking about the Kosovo issue, it should be noted that despite the fact that NATO did not take into account requirements of the several principles of international law, in particular the individual Article of Chapter VII of the UN Charter, it was based on the political reality that existed at the Balkan Peninsula at that time. In particular, the West was actively seeking the support of Russia and China on the Kosovo issue in the UN Security Council, but Russia supported the political regime of the country (Yugoslavia), which committed crime against civilians in the territory of Bosnia, which obviously contradicted to the 1950 UN Universal Declaration of Human Rights,⁹¹ 1966 Covenant on Civil and Political Rights,⁹² the Rome Convention on Human Rights⁹³ adopted by the Council of Europe in 1950 and the United Nations Convention of 1948 on the Elimination of All Forms of Genocide⁹⁴.

In addition, NATO maximally protected basic principles of international humanitarian law on the Kosovo's territory, in particular the Geneva Convention of 1949, which imposed responsibility on the party involved in military actions⁹⁵, to maximally ensure the safety of civilian people and objects in the conflict zone as well as the requirements of the Hague 1954 Convention,⁹⁶ according to which, the battling State (or organization) must take the maximum responsibility for the protection

⁸⁸ See webpage <<https://www.osce.org/mc/39539?download=true>>.

⁸⁹ Chitadze, N., supra note 31, 117.

⁹⁰ Supra note 28, 118.

⁹¹ Karumidze, V. supra note 9, 341.

⁹² Id.

⁹³ Id.

⁹⁴ Available at <<https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>>.

⁹⁵ Available at <<https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>>.

⁹⁶ Available at <<http://unesdoc.unesco.org/images/0018/001875/187580e.pdf>>.

of historical and cultural monuments. Fairness needs to note that as a result of bombardments carried out by the North Atlantic Alliance for 72 days, which, only targeted to attack military objects of Yugoslavia, more than 2,000 peaceful civilians were killed, but instead tens of thousands of lives were saved.⁹⁷ In this military campaign, the NATO member states used only military air force and no land operations had taken place.

As for the Russian intervention in the Abkhazia conflict, the scenario of military actions differs radically from Kosovo. In particular, first of all, the Kremlin's intervention provoked separatism and its stimulation in the Autonomous Republic of Abkhazia. In Abkhazia and the Tskhinvali region, Russia maximally supported armament of separatist armed groups and promoting fomentation of separatism. This is proved also by the fact that in June 1992, during the events in Tskhinvali region, the Vice-President of Russia was threatening that the Russian military air force would bomb Tbilisi if the Georgian army entered Tskhinvali.⁹⁸ In addition, Russia supported the terrorist groups that were subsequently sent from the Russian territory to fight against Georgians in Abkhazia. Russia supported a terrorist group – the so called "Confederation of Mountain Peoples" created by its own initiative, while leaders of this terrorist group claimed that Georgia should be declared as "a terrorist hazard zone".⁹⁹ Exactly this fact and "cooperation" of Russia with the terrorist groups, can be considered as a clear example of "state terrorism".¹⁰⁰

The Resolution No. 13/159¹⁰¹ was adopted by the UN in 1984 in relation to "State Terrorism", according to which "the UN condemns any form of state terrorism and calls on UN member states not to support any terrorist organizations"¹⁰². By its actions, Russia has violated the fundamental principles of this resolution. In addition, if we rely on the 1974 UN resolution on aggression¹⁰³, where the indirect and direct aggression is emphasized,¹⁰⁴ in case of Abkhazia in 1993-1994 as well as in South Ossetia, by promoting separatism and terrorism, Russia committed indirect aggression against Georgia, and, later, after the end of military actions until August 2008, continued financing and supporting separatist regimes¹⁰⁵.

It should be noted that the forms of military actions implemented by NATO and Russia radically differs from each other. On the one hand, NATO basically bombarded the Yugoslavian military facilities, which ultimately led to the suspension of genocide and ensuring the return of civilians to their homes. Russia responded with large-scale aggression against Georgia when different parts of Russia's land powers invaded in Abkhazia and Samachablo; Besides, the Russian military air force bombed military as well as civilian facilities and invaded naval vessels in Georgian territorial waters. In parallel to these, Russia launched cyber attacks against Georgia to carry out informational war, namely, the web-pages of the main state agencies (the Administration of the President, the Ministry of Foreign Affairs and the Ministry of Defense) were out of order.

In 2008, as a result of direct aggression, the United Nations Resolution¹⁰⁶ adopted in 1974 was violated. Russian aircrafts illegally invaded in Georgian airspace about 200 times.¹⁰⁷ This fact contradicts to the 1944 Chicago Convention on Airspace¹⁰⁸, which states that the sovereign state has the jurisdiction over the airspace above a land territory of a particular country and, of course, its

⁹⁷ *Bonnén, P.*, Towards a Common European Security and Defence Policy: The Ways and Means of Making it a Reality, LIT, Berlin, Hamburg, Münster, 2003, 188.

⁹⁸ *Chitadze, N.*, supra note 70, 322.

⁹⁹ *Id.*

¹⁰⁰ Available at <<http://www.un.org/documents/ga/res/39/a39r159.htm>>.

¹⁰¹ Available at <<http://www.un.org/documents/ga/res/39/a39r159.htm>>.

¹⁰² *Id.*

¹⁰³ Available at <<http://hrlibrary.umn.edu/instreet/GAres3314.html>>

¹⁰⁴ *Aleksidze, L.*, supra note 11, 7.

¹⁰⁵ *Pipinashvili, D.*, supra note 60, 87.

¹⁰⁶ Available at <http://hrlibrary.umn.edu/instreet/GAres3314.html>

¹⁰⁷ *Chitadze, N.*, supra note 70, 327.

¹⁰⁸ Available at <https://www.icao.int/publications/documents/7300_orig.pdf>. For explanations see, *Игнатенко, В.*, supra note 12,

violation is unacceptable. As a result of the invasion of Russian military vessels into Georgian territorial waters, the 1982 Convention on Maritime Law¹⁰⁹ was violated, according to which the "territorial waters" of a specific state in the 12-mile zone of the independent country's coastal zone are controlled. As a result of mediation by chair country of European Union - France – on August 12, 2008, Russia undertook obligation to return its troops to the positions where they were before August 8, 2008,¹¹⁰ however, this obligation has not been fulfilled yet, that is contrary to the basic principle of international law, "fulfilling international agreements in good faith".¹¹¹

Overall, as a result of Russian aggression, the Georgian villages on the territory of former South Ossetia were ruined, and approximately 50,000 civilians were forced to leave their homes and enter into territory controlled by Georgia.

It is also important that negotiations with Russia about the status of Kosovo have been carried out for the years, including the UN Security Council adopted Resolution No. 12/44¹¹² regarding Kosovo in 1999, which envisaged the settlement of the Kosovo conflict. In Kosovo, along with NATO's peacekeeping contingent, Russian "peacekeeping" battalion was also deployed.¹¹³

In addition, the UN's internal administration mission was established in Kosovo¹¹⁴. It had four main functions, namely: the civilian administration, which directly was managed by the UNO, Humanitarian Aid, headed by the United Nations High Commissioner for Refugees¹¹⁵; Democratization and institutional building, that was coordinated the OSCE; Economic reconstruction and development that was supervised by the European Union. In 2001-2002, the international community facilitated the conducting elections, in which a 120-seat assembly was elected, and later presidential elections were held in Kosovo, which was recognized as legitimate by the United Nations.

In the case of Abkhazia and the Tskhinvali region, in fact, both regions were uncontrolled territories, and *de facto* authorities without any legitimacy were subordinated to Russia; Russia was acted independently from the international community, which culminated in a large-scale aggression against Georgia and the Kremlin's unilateral decision about independence of Abkhazia and the so called South Ossetia.

Conclusion

In conclusion, it should be noted that, in terms of international legal recognition, the West gained a complete victory over Russia, inasmuch as more than 100 states recognized Kosovo's independence and nowadays Kosovo is *de facto* state.¹¹⁶ As for Abkhazia, it has not achieved *de facto* independence not only because the independence of Abkhazia is recognized by only five countries, but also because of political, economic, legal and other situation, as well as the strategic objects placed in Abkhazia are fully controlled by Russia. Russian "border guards" protect so-called "State Border" of Abkhazia between Abkhazia and the rest of Georgia. Approximately 70% of the budget of Abkhazia is created with money transferred from Russia.¹¹⁷ When we talk about the status of any region, *inter alia* disputed region, it is necessary to take into account also the standards of the Montevideo Convention¹¹⁸. The Convention defines specifically which region can satisfy the standards of the

¹⁰⁹ Id.; Text of the Convention is Available at <https://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf>.

¹¹⁰ Chitadze, N., supra note 70, 328.

¹¹¹ Aleksidze, L., Giorgadze L., Kvachadze M., supra note 4.

¹¹² Chitadze, N., supra note 70, 112.

¹¹³ Supra note 27, 113.

¹¹⁴ United Nations Interim Administration Mission in Kosovo – UNMIK. See webpage: <<https://unmik.unmissions.org/about>>.

¹¹⁵ United Nations' High Commission of Refugees – UNHCR.

¹¹⁶ Available at <http://www.mfa-ks.net/?page=2,224>

¹¹⁷ See information at webpage: <<http://old.itv.ge/projects/analytics/?page=detail&id=170426>>.

¹¹⁸ Available at <<http://www.oas.org/juridico/english/treaties/a-40.html>>.

independent state and which cannot. There are four main standards presented: a) permanent population: b) a defined territory: c) government; d) capacity to enter into relations with other states.¹¹⁹

According to these standards, Kosovo is more compliant with legal standards, however, Kosovo has not yet become a full-fledged subject of international law, since for this it is required to be a full member of the United Nations Organization, and the last requires going through appropriate procedures. In particular, when considering the issue of admitting a new member in the UN, the UN Security Council shall take an appropriate recommendation and submit it to the UN General Assembly. In turn, the General Assembly makes a decision based on the recommendation of the Security Council by the majority of votes regarding membership of the new state in the United Nations.¹²⁰ Russia will always use veto right together with China in the UN Security Council regarding accepting Kosovo in UNO. Despite this, Kosovo has become a full member of various international governmental and non-governmental organizations, for example, the Kosovo Olympic Committee is a full member of the International Olympic Committee.¹²¹

All above-mentioned factors were taken into consideration by the UN International Court and lawsuit of Serbia was not satisfied: ICJ concluded that Kosovo had every legal right to declare independence¹²²

As regards the international legal recognition of Abkhazia and the former South Ossetian Autonomous District, Russia's policy has failed in this direction, the Kremlin has failed to establish the occupied territories as international legal entities.

In addition, it is necessary to take into consideration other important legal, political or moral aspects, according to which, in contrast to Abkhazia, justification of granting Kosovo independence is possible. Namely:

- None of the Georgian authorities have ever questioned Abkhazia's autonomy in the composition of united Georgia. Abkhazia has always enjoyed wide autonomy inside Georgia. As for Kosovo, its autonomous status was canceled by the central government of Yugoslavia in 1989¹²³;
- Before the 1992 armed conflict in Abkhazia region, most of Abkhazia's population wanted independence of Georgia and Abkhazia to be part of Georgia, that was confirmed on March 31, 1991 by the results of the referendum held in the whole territory of Georgia including the Autonomous Republic of Abkhazia.¹²⁴ As for Kosovo, considering the fact that about 90% of Kosovo's population were ethnic Albanians, the will of the absolute majority of the population of this region was separation of Kosovo from Serbia and creation of an independent state¹²⁵;
- In the case of Kosovo, the Serbian Government committed the crime against humanity when it carried out the genocide of ethnic Albanians in this area. In the case of Abkhazia, through the support of Russia by direct involvement of terrorist extremist armed formations, ethnic cleansing was carried out mainly against representatives of the Georgian nationality supporting the territorial integrity of Georgia, which was confirmed on the OSCE's 1994 Budapest¹²⁶ and 1996 Lisbon¹²⁷ Summits.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Available at <<https://www.olympic.org/news/127th-ioc-session-comes-to-close-in-monaco>>.

¹²² Available at <<https://www.webcitation.org/5rRB9e3bz?url=http://www.icj-cij.org/docket/files/141/15987.pdf>>.

¹²³ Supra note 28, 149.

¹²⁴ Available at <<https://www.radiotavisupleba.ge/a/otsdakhuti-tseli-damoukideblobis-agdgenis-referendumidan/27646279.html>>.

¹²⁵ Supra note 28, 150.

¹²⁶ Available at <https://www.osce.org/event/summit_1994>.

¹²⁷ Available at <<https://www.osce.org/mc/39539?download=true>>.

To justify the demand for the so called independence of Abkhazia, Russian political circles or political scientist close to it or the Kremlin highlight the circumstance that, in its own time, if Georgia was entitled to be separated from the Soviet Union, at the same time, why Abkhazia would not have the right to independence from Georgia? Of course, there are relevant historical, political or legal arguments about why Georgia had the right to create an independent state and Abkhazia did not have and still does not have the same rights.

In particular, the territory of present-day Abkhazia has always been included in various Georgian States during different historical periods (Kolkhida, Egrisi, United Georgia, Democratic Republic of Georgia) and Georgia has historically never been part of Russia, therefore Georgia (or its separate Kingdoms and Principalities) was forcibly occupied by Russian Empire as a result of violation by the official Petersburg the essential terms of Treaty of Georgievsk¹²⁸ (which among other issues stipulated preservation of statehood of Kartli-Kakheti kingdom) signed between the kingdom of Kartli-Kakheti and the Russian Empire in 1783, and later by Soviet Russian, respectively in 1801¹²⁹ and in 1921¹³⁰. At the end of the 80's of the previous century, Georgia's demand for withdrawal from the USSR did not contradict itself even with the Soviet Constitution, where, under Article 72 of the Constitution of the USSR, each Union Republic shall retain the right freely to secede from the USSR; At the same time, as already noted, under Article 78 of the Constitution of the USSR, the territory of a Union Republic may not be altered without its consent (in this case Georgia).¹³¹

Overall, it is necessary to remark that determining the legal status of each disputed territory requires special attention from the international community. In this regard, the international community must thoroughly examine all legal, historical, political and other aspects related to the State's territorial integrity and self-determination of nations, to, ultimately, determine what legal or other mechanisms exist for maintenance of the territorial integrity of the state or for determining principle of self-determination of nations? For example, it should be established whether this territory was previously illegally occupied or annexed by another state or historically it was a part of a particular state? whether the rights of any nation has been violated or not in the concrete state? Probably, in this case, it is necessary to increase the role and place of the UN International Court in the modern international legal or the political system.

It is necessary to note that the principle of self-determination of the nations does not directly imply granting full independence to a particular nation. In this case, for the purpose of preserving the identity of the particular nation, first of all, it is envisaged to grant broader cultural, political, economic, religious or other kind of autonomy to every nation in the world. Considering the fact that the process of decolonization in the world is largely completed and more than 130 independent states appeared on the world political map after World War II,¹³² the principal priority for the international community must be the principle of state territorial integrity and inviolability of the frontiers.

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¹³⁰ Available at <http://www.parliament.ge/files/1112_27363_761965_okupacia-1921.pdf>.

¹³¹ Available at <<http://www.hist.msu.ru/ER/Etext/cnst1977.htm#iii>>.

¹³² *Chitadze, N.*, supra note 19, 141.

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