

Russian Federation: Legal Aspects of War in Georgia

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RUSSIAN FEDERATION
LEGAL ASPECTS OF WAR IN GEORGIA

Executive Summary

This report reviews legal aspects of Russia's invasion into Georgia in August 2008 and Russia's recognition of Georgia's separatist enclaves' independence. The report includes an analysis of relevant aspects of international law and Russian domestic law, as well as an evaluation of Russia's legal justification for its actions. The report also provides historic background of the conflict and commentaries on laws regarding the deployment of the Russian military abroad.

I. Introduction

On September 8, 2008, the International Court of Justice began considering a case submitted by the Republic of Georgia against the Russian Federation accusing it of breaching the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and of conducting “violent discriminatory acts by armed forces in concert with separatist militia and foreign mercenaries.”¹ This is the first time that Russia or the former Soviet Union, the country that ceased to exist in 1991 and to which Russia is a legal successor, has been called before this principal judicial body of the United Nations. The submission of the claim followed the August 8, 2008, invasion by Russian military forces of sovereign Georgian territory, Russia's attempt to change the borders of this independent country,² and the strengthening of the Russian military and political presence in the Georgian province of South Ossetia.

II. Historic Background of the Conflict

Ossetians are an ethnic Iranian group that became Christian in the early Middle Ages under Georgian and Byzantine influence. A consolidated Ossetian Kingdom was created in the eighth century A.D., but in the thirteenth century, having been driven out by invading Mongols, they arrived from the north to the area where they now reside, establishing large Ossetian communities in Georgia. After the Soviet troops occupied Georgia in 1921 and included it in the Soviet Union as a constituent republic, the South Ossetian Autonomous District was established

¹ Press Release, International Court of Justice, *Georgia Submits a Request for the Indication of Provisional Measures*, Aug. 14, 2008, available at <http://www.icj-cij.org/docket/files/140/14661.pdf> (last visited Sept. 24, 2008).

² *Putin Eliminates Borders Between Russia and South Ossetia*, ROSSIISKAIA GAZETA [RG], Sept. 25, 2008 (Russian Government-owned daily newspaper), available at <http://www.rg.ru/2008/09/25/granica-putin-anons.html> (last visited Sept. 27, 2008).

in 1922 in the territory of the Central Province of Georgia. Some argue that this was granted by the Bolsheviks to the Ossetians in return for their assistance in fighting against a democratic Georgia and favoring local separatists, because this territory had never been a separate principality before.³ A similar North Ossetian Autonomous District was created within the Russian Federation, dividing an established ethnic group by a state border. Regardless of active ethnic interaction during the Soviet period, many all-Georgian villages existed in South Ossetia, and the Ossetian population was mainly concentrated in the towns of Tskhinvali and Java. In the early 1990s (before the recent conflicts), two-thirds of the region's population was Ossetian and one-third Georgian, while about 100,000 ethnic Ossetians continued to live in Georgia outside the South Ossetian region.⁴

In the 1990s, a secession movement supported by the Russian government was initiated in South Ossetia. The intent was to unite the province with Russian North Ossetia.⁵ Georgian actions aimed at returning the region to Tbilisi's control triggered a conflict in which 2,000 to 4,000 people were killed.⁶ Pursuant to a Russian-brokered ceasefire and agreements concluded in June 1992, Russian, Georgian, and Ossetian peacekeeping units totaling 1,100 men established their camp near Tskhinvali, the capital of South Ossetia.⁷ President Mikheil Saakashvili of Georgia attempted to increase border control and limit smuggling operations in the region. He also sent police, military, and intelligence personnel into the region. In response, Russia sent several hundred paramilitary elements and reinforced South Ossetian authorities with Russian high-level law enforcement officials.⁸

Regardless of the different peace plans proposed by Georgian authorities, in November 2006, a popular referendum was held in South Ossetia to reaffirm its independence from Georgia. Ninety-nine percent of voters supported the referendum.⁹ In response, the Russian authorities actively started to grant Russian citizenship to South Ossetians and to issue them Russian passports.

On April 16, 2008, then Russian President Vladimir Putin issued a Decree ordering his Cabinet to establish "special relationships" with the South Ossetian government and to open a

³ MIKHAIL KOSVEN, *NARODY KAVKAZA [PEOPLE OF THE CAUCASUS]* 11 (Moscow: Nauka, 2002).

⁴ Ekaterina Arkhipova, *The Borders Between Azerbaijan, Georgia, and Russia: Soviet Heritage*, *CENTRAL ASIA AND THE CAUCASUS*, 2005, No. 6, at 33.

⁵ Mark Saroyan, *Beyond the Nation-State: Culture and Ethnic Politics in Soviet Transcaucasia*, in *NATIONALISM AND SOCIAL CHANGE* 404 (Ronald Suny ed., University of Michigan Press, 1996).

⁶ GLENN E. CURTIS ED., *ARMENIA, AZERBAIJAN, AND GEORGIA: COUNTRY STUDIES* 26 (Library of Congress, Federal Research Division, 1995), individual reports from compilation available at <http://lcweb2.loc.gov/frd/cs/> (enter country name in search box; last visited Sept. 26, 2008).

⁷ The text of the agreements was published on the website of the South Ossetia Control Commission's Peacekeeping Force, at <http://www.peacekeeper.ru>.

⁸ JIM NICHOL, *ARMENIA, AZERBAIJAN, AND GEORGIA: POLITICAL DEVELOPMENTS AND IMPLICATIONS FOR U.S. INTERESTS* 8 (CRS Report for Congress, June 17, 2008).

⁹ Iury Sulaberidze, *The Nature of Political Split: The Rose Revolution*, *CENTRAL ASIA AND THE CAUCASUS*, 2007, No. 1, at 79.

representative office of the Russian Foreign Ministry in Tskhinvali.¹⁰ This act *de facto* recognized the independence of South Ossetia from Georgia and was used by the South Ossetian authorities, which were under protection of the Russian forces, as permission to initiate the expulsion of ethnic Georgians from the territory of South Ossetia. On August 1 and 2, 2008, ethnic Georgian villages in the territory of the South Ossetian Autonomous District were bombarded by the South Ossetian paramilitary self-defense force. With the purpose of protecting the population and restoring law and order in South Ossetia, Georgian troops were brought to the territory of this autonomous district on August 7, 2008. The next day, active units of the Russian Armed Forces invaded Georgia, destroying its military, transportation, and economic infrastructure within and outside of the South Ossetian territory. The necessity of defending Russian citizens living in South Ossetia from Georgian military attacks was cited as the justification for Russian actions. After completing the military occupation of the Georgian province of South Ossetia, expelling Georgians and Georgian authorities from the region, and securing the pro-Russian government of South Ossetia, the President of the Russian Federation, Dmitry Medvedev, issued decrees on the recognition of state independence of the Republic of South Ossetia,¹¹ raising questions about the possible annexation of this Georgian land by Russia in the future.¹²

III. Laws on the Use of the Russian Military Abroad

Under the Russian Constitution, the President is the Commander in Chief, but declarations of war and control over the presidential right to use armed forces outside of Russian territory are prerogatives of the legislature.¹³ Article 81 of the Russian Constitution states that a war can be declared only in the event of aggression against Russia or the immediate threat of aggression. Citing article 51 of the United Nations (U.N.) Charter, which provides for the state's right of self-defense, the Russian Federal Constitutional Law on Martial Law (art. 3.2) defines aggression against Russia as a foreign military invasion or an attack on Russian territory, or occupation or annexation; the blockade of ports or shoreline, bombardment of territory, or application of other warfare against Russia or its military personnel regardless of their location; or the supply of militias and mercenaries by a foreign state, or providing its own territory to a third party for an attack on Russia.¹⁴ In the case of such aggression, the President shall declare martial law, order the armed forces to start combat actions, and immediately notify both chambers of the Federal Assembly (the Russian legislature), which is required to pass an appropriate law within 48 hours. If the Presidential decree on martial law is not approved, the

¹⁰ Order of the RF President, RG, Apr. 18, 2008, at 1.

¹¹ Decree of the Russian Federation President on Recognition of the Republic of South Ossetia, No. 1261 of Aug. 26, 2008, available at <http://document.kremlin.ru/doc.asp?ID=047560> (official site; last visited Aug. 28, 2008).

¹² Philip Pan, Jonathan Finer, *Russia Says Two Regions in Georgia Are Independent*, WASHINGTON POST, Aug. 27, 2008, at A10.

¹³ Constitution of the Russian Federation, adopted by the All-Nation Referendum on Dec. 16, 1993.

¹⁴ SOBRANIE ZAKONODATLESTVA ROSSIYSKOI FEDERATSII [COLLECTION OF RUSSIAN FEDERATION LEGISLATION, hereafter SZ RF] 2002, No. 5, Item 375 (official gazette).

Federation Council (the upper chamber of the legislature) invalidates the Decree, which shall be considered void.¹⁵

The authority to deploy Russian armed forces abroad is prescribed similarly. The Constitution empowers the Federation Council to permit the use of the armed forces abroad, upon the request of the Russian Federation President. The President's request for parliamentary approval for the use of Russian armed forces in foreign countries is required for each instance of sending Russian troops abroad and is to be accompanied by a timetable with a defined date for the full return of Russian troops from abroad. If the operation is prolonged, or if it is impossible to meet the deadline for the return of troops, an additional presidential request to the Federation Council and a new parliamentary approval are required.¹⁶

On July 7, 2006, the upper chamber of the Russian legislature unanimously passed a resolution entitled "On Using Formations of Armed Forces of the Russian Federation and Special Purpose Detachments Outside the Territory of the Russian Federation With the Purpose of Preventing International Terrorist Activities."¹⁷ The adoption of this Resolution appears to accord with the constitutional requirement of parliamentary control over the presidential right to use armed forces abroad. The Resolution applied the constitutional definition of armed forces to all Russian military personnel and permitted the President to send abroad any person in uniform, even those who were not officially considered to be a part of the Russian Federation armed forces and were prohibited from involvement in operations abroad pursuant to the Federal Antiterrorism Law.¹⁸

In Russia, the regular military consists of the armed forces under the Ministry of Defense. However, according to the Constitution, the uniformed services of the Russian Federation subordinated to the President include the troops of the Federal Security Service (the former KGB), internal troops (analogous to the U.S. National Guard), and troops of the Ministry for Emergency Management. Officers of these troops are subject to all Russian military laws and regulations. Following the constitutional interpretation, the use of any military personnel abroad is subject to parliamentary approval and control, similar to those approvals necessary for the use of regular armed forces abroad.

Additionally, in response to the President's proposal, the legislators stated that this Resolution would be in force indefinitely during the entire period of time needed to eliminate the threat of a terrorist act abroad against Russia or its citizens, or against stateless individuals permanently residing in Russia. It appears that, despite the fact that the approval of each use of Russian armed forces abroad is under the exclusive jurisdiction of the upper chamber of the Russian legislature, the 2006 Resolution freed operations abroad from parliamentary control and allowed the President independently to use the Russian military abroad and without time restrictions, as long as use of the military is justified by antiterrorist goals.

¹⁵ Boris Topornin, KOMMENTARIJ K KONSTITUTSII ROSSIJSKOI FEDERATSII [COMMENTARIES TO THE RUSSIAN FEDERATION CONSTITUTION] 143 (1998).

¹⁶ *Id.* at 151.

¹⁷ SZ RF 2006, No. 29, Item 3144.

¹⁸ SZ RF 2006, No. 11, Item 1146.

Federal Law No. 93 of 1995 on the Procedure of Providing Civil and Military Personnel for Operations to Restore International Peace and Security regulates the participation of Russian military personnel in peacekeeping operations.¹⁹ The Law defines general issues regarding parliamentary control over the decision to send Russian peacekeeping units for international operations and establishes the rules of recruiting, training, and sustaining the activities of members of these peacekeeping units. A separate provision prohibits the service of draftees abroad as well as their participation in military operations, including peacekeeping operations, leaving this duty to professional officers and volunteers.

IV. Legal Grounds for the Russian Military Presence in Georgia

A) Military Bases

After the dissolution of the Soviet Union, Russia became the legal successor to the Soviet Union and inherited the former Soviet armed forces. Military units located outside of Russia in other constituent Soviet republics were divided between Russia and those republics according to bilateral agreements. Many military units that were transferred under Russia's jurisdiction remained in their regular locations and were transformed into Russian military bases. In Georgia, Russia had four military bases. The agreement on terms of the bases' closure, their transfer under Georgian jurisdiction, and the exit of Russian troops from Georgia was ratified by the Russian legislature on October 13, 2006.²⁰ The last Russian military base was closed in 2007, and troops were removed to Russian territory, except for those units that were involved in the peacekeeping operations in Abkhazia and South Ossetia.

B) Presence in Abkhazia

Russian individual and paramilitary units were actively involved in the military conflict in Abkhazia in its initial stages. Russian volunteers from Chechnya and other Russian North Caucasus provinces were involved in ethnic cleansing against the Georgian population in Abkhazia and in combat actions against regular Georgian forces.²¹ The formal presence of Russian troops in the zone of the Georgian-Abkhazian conflict was sanctioned by the President of the Russian Federation, who on June 9, 1994, issued a decree²² aimed at implementing the decision made by the heads of the Commonwealth of Independent States (CIS) Member States²³ to conduct an operation to secure peace in Abkhazia. Despite the fact that at this time there was no legal requirement for parliamentary approval of participation in peacekeeping operations,²⁴

¹⁹ SZ RF 1995, No. 26, Item 2401.

²⁰ SZ RF 2006, No. 44, Item 4530.

²¹ Memoirs of Russian participants in these events are published online, at <http://suxumi.narod.ru/pages/20.html> (last visited Sept. 22, 2008).

²² SZ RF 1994, No. 7, Item 690.

²³ The CIS is a loose union of selected former Soviet republics.

²⁴ This requirement was introduced by Federal Law No. 93 of June 23, 1995, but was not implemented during the Russo-Georgian war in August 2008. Even though Russian military actions were called the Peace Enforcement Operation by the Russian Government, the Russian legislature was not informed of the use of Russian

the President submitted his decree to the Federation Council for confirmation. The decree was not confirmed but a special parliamentary resolution permitted the formation of the peacekeeping force.²⁵ After a series of decrees issued by President Yeltsin, which extended the term of the peacekeeping force's tour of duty,²⁶ in 2003, the Federation Council expressed its agreement with having the Russian military force remain in Abkhazia until full completion of the peacekeeping operation, upon the request of one of the parties involved (Russia, Georgia, and Abkhazia).

C) Military Involvement in South Ossetia

Initially, the military contingent in South Ossetia consisted of two Soviet regiments, which were transferred under Russian jurisdiction after the breakup of the Soviet Union. These troops were withdrawn from South Ossetia in July 1992, and were replaced by the Russian peacekeeping unit following the conclusion of the Agreement on Principles of the Resolution of the Georgian-Ossetian Conflict in the Russian city of Sochi on June 24, 1992.²⁷ The Agreement was signed by the presidents of Russia and Georgia, and leaders of the Autonomous Province of South Ossetia within the Republic of Georgia, with the purpose of stopping military hostilities in the region by establishing a three-part peacekeeping force consisting of Georgian, Russian, and South Ossetian components. In order to prevent the possibility of Russian military involvement in the conflict, article 2 of the Agreement specified the demilitarization of the conflict zone and provided for the removal of all Russian troops not included in the peacekeeping force from the territory of South Ossetia within twenty days. In addition, all South Ossetian self-defense forces were to be disbanded immediately.

The Agreement emphasized the ban on combat actions and stated that the role of the peacekeeping force was to stop activities of all military formations that were not controlled by the parties to the Agreement and to prevent any subsequent conflicts, including military conflicts. The peacekeepers were commanded by the force commander and were supposed to eliminate military groups that violated the regime of the conflict zone, using only their own munitions. Outside of the conflict zone, the peacekeepers were not allowed to conduct operations but they could assist Georgian law enforcement authorities in apprehending unlawful combatants. No law authorized Russian military actions or even presence, peacekeeping or otherwise, on Georgian territory outside the conflict zone.²⁸

regular armed forces abroad in this operation conducted on foreign territory and no parliamentary resolution was issued in this regard.

²⁵ VEDOMOSTI FEDERALNOGO SOBRANIYA ROSSIYSKOY FEDERATSII [BULLETIN OF THE RUSSIAN FEDERATION FEDERAL ASSEMBLY] 1994, No. 6, Item 262 (official publication).

²⁶ SZ RF 1997, No. 30, Item 3602.

²⁷ The collection of the Law Library of Congress does not include the official version of the Agreement. The text analyzed in this Report was published on the website of the South Ossetia Control Commission's Peacekeeping Force, at <http://www.peacekeeper.ru>.

²⁸ For a full description of the Russian invasion of Georgian territories, *see*, Philip Pan, Jonathan Finer, *Russia Says Two Regions in Georgia Are Independent*, WASHINGTON POST, Aug. 27, 2008, at A1.

Denouncing economic sanctions and blockades against South Ossetia, the Agreement declared the right of free movement of goods, services, and people, eliminating border and customs controls between South Ossetia and the rest of the Georgian territory. A Control Commission was established to monitor the activities of the peacekeeping force. In October 1994, the newly adopted Statute on the Control Commission added the OSCE (Organization for Security and Co-operation in Europe) Mission in Georgia to the list of the Commission members and extended the scope of the Commission's duties to include:

- Coordination of the activities of the peacekeeping forces;
- Elaboration and implementation of measures aimed at resolving political, military, law enforcement, economic, humanitarian, information, and other problems;
- Developing a dialogue between the parties involved;
- Participation in the return of and assistance to refugees and other displaced persons;
- Economic restoration of the conflict zone; and
- Monitoring human rights and protecting national minorities in the conflict zone.

Although the goal of the Agreement was to prevent any possibility of involvement of Russian Armed Forces in the conflict (art. 2), it was cited by Russian President Medvedev as the legal foundation for Russian military involvement in the conflict when he publicly announced the military incursion into Georgia on August 8, 2008.²⁹ This argument appears to be overstated because the Agreement did not foresee the possibility of urgent unilateral reinforcement of the peacekeeping force and did not allow for the use of regular military units for peacekeeping purposes on South Ossetian territory. Although the peacekeeping force in South Ossetia was sanctioned by the joint authorities of the CIS, no decision of the CIS authorized Russia to apply military force on the territory of a foreign state. Moreover, since Georgia withdrew from the CIS on August 13, 2008, and denounced its multilateral obligations under the CIS agreements at the time, Russia's continued application of the CIS framework to South Ossetian conflict resolution would appear to be suspect and the status of the peacekeeping forces should be reviewed. Expulsion of the Georgian contingent of the peacekeeping force from the South Ossetian territory and the exclusion of Georgia from the conflict resolution process appears to be another violation of the 1992 Agreement.

The use of Russian armed forces in South Ossetia also appears to contradict Russian domestic military legislation. The legislature was not informed by the nation's President about the use of the Russian military in combat actions abroad, and the operation was not approved by the legislature, as is required by the Constitution and other federal laws. Although no formal legal statement was announced, the spokesperson of the Federation Council explained that Resolution No. 219 of July 2006, which allows the president to use armed forces abroad at any time to fight terrorists, is not applicable in this situation because the military operation in South Ossetia was not aimed at fighting international terrorists.³⁰ Legal uncertainties related to the violation of peacekeeping operation conditions and the absence of a proper war-related

²⁹ Statement of the Russian Federation President, RG, Aug. 9, 2008, *available at* <http://www.rg.ru/2008/08/09/zayavlenie.html> (last visited Sept. 18, 2008).

³⁰ Sergei Mulin, *Palba v Neformalnoi Obstanovke [Shooting in Unregulated Circumstances]* NOVAIA GAZETA, No. 61, Aug. 21, 2008, at 10.

parliamentary resolution raised other legal questions, such as the status of war prisoners, or the use of conscripts in combat operations abroad, which is prohibited by Russian law, and forcing draftees to conclude military service contracts.³¹

D) International Law and Operations in South Ossetia

On August 8, 2008, the President of Russia characterized the Georgian attack on the South Ossetian town of Tskhinvali and surrounding areas as “an act of aggression,” and stated that Russia’s involvement was an act of providing assistance to defend against the attacking Georgian troops.³² However, an act of aggression can be recognized by the U.N. Security Council only upon evaluation of all the circumstances surrounding a military incursion. Moreover, an act of aggression requires use of the armed forces of a state against the sovereignty, territorial integrity, or political independence of another state.³³ Similarly, military assistance in the form of self-defense can be provided to another state only pursuant to formal agreements on this issue. None of these requirements was met in the events of August 8, 2008. Despite the fact that South Ossetia declared its independence from Georgia, it had not achieved the status of an internationally recognized independent state. On August 8, 2008, South Ossetia remained an integral part of Georgian territory, which excludes the possibility of Georgian aggression against South Ossetia and undermines the use of this international law principle in as justification for Russia’s action.

International law may deem the use of force lawful when it is justified by the principle of necessity, even if under other circumstances such actions would be considered illegal. However, in this case, according to the International Court of Justice, the interested state cannot be the only party that decides whether the requirement of necessity was met or not.³⁴ If Russia wants to use this argument, it must prove to the international community that the military occupation of South Ossetia and the remaining Georgian territory was the reasonable, proportionate, and only possible response to damage inflicted on Russia, its citizens, and their property, as required under the Convention Respecting the Laws and Customs of War on Land (Hague IV), Oct. 18, 1907.³⁵ In this case, Russia has to prove that its troops were fighting not Georgian individuals, but units of the Georgian armed forces; that military but not civilian infrastructure was the subject of the Russian attack; that it targeted warfare but not means of public and private transport; that it attempted to prevent the enemy’s ability to resist but did not indiscriminately kill Georgian soldiers; and that it provided humane treatment for the wounded and prisoners.

³¹ Liubov Chizhova, *Russian Draftees are Forced to Conclude Military Service Contracts*, RADIO FREE EUROPE/RADIO LIBERTY NEWS REPORT, available at <http://www.svobodanews.ru?Article/2008/08/22/20080822181046147.html> (last visited Sept. 17, 2008).

³² Dmitry Medvedev, *My ne Dopustim Beznakazannoi Gibeli Sootechestvennikov* [We will not Let Our Compatriots Die], RG, Aug. 9, 2008, at 1.

³³ Definition of Aggression, United Nations G.A. Res. 3314, 29th Sess. (Dec. 14, 1974), available at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement>.

³⁴ BOLESŁAW BOCZEK, INTERNATIONAL LAW: A DICTIONARY 412 (Scarecrow Press, 2005).

³⁵ The full text of the Convention is available online, at <http://www.yale.edu/lawweb/avalon/lawofwar/hague04.htm>.

Because the separatist territories were not recognized by anyone on the day the war started, Russia cannot characterize its actions as providing military and defense assistance. The only possible justification could be the outdated Soviet doctrine of international law, which recognized the right to use arms in the fight for national liberation and state independence if no other choice was left to the striving people. Under the Soviet concept, such people were subjects of public international law and the right to self-defense was applicable to them.³⁶

V. Russia's "Protection of Citizens" Justification

A) Justification of Military Use

When Russia attacked Georgia, the highest Russian officials justified the operation by pointing to the need to protect Russian citizens living in South Ossetia from what Moscow's leaders chose to call "genocide" by the Georgian army in South Ossetia,³⁷ purporting to follow the internationally accepted mode of behavior when governments must protect their citizens using military means, if necessary.³⁸

The first attempt to interpret Russian military actions as necessary protection of its fellow citizens and to explain the legality of involvement in a military operation abroad was made on August 13, 2008, by the Chairman and Chief Justice of the Constitutional Court of the Russian Federation, Valery Zorkin, who published his own interpretation of article 61 of the Russian Constitution, which provides for the protection of Russian citizens outside of the country, in the official government-owned daily newspaper, *Rossiiskaia Gazeta*.³⁹ According to Chief Justice Zorkin, it is absolutely legal for a sovereign state to apply the full force of its military and destroy the armed forces of a foreign state if the goal of such an operation is to secure the lives of its compatriots who are permanently living abroad, in the case of a military conflict on the foreign territory where they reside.⁴⁰ He stated that the peace enforcement operation conducted by the Russian military in South Ossetia was in accordance with article 14.5 of the Russian Federal Law on the State Policy in Regard to the Fellow Citizens Residing Abroad, which provides that, if a foreign state violates recognized norms of international law and human rights in regard to Russian expatriates, the Russian Federation shall undertake efforts authorized by

³⁶ Boris Tuzmakhamedov, *Ot Politicheskikh Deklaratsii k Pravovym Dovodam* [From political declarations to legal arguments], NEZAVISIMAIA GAZETA, No. 186, Sept. 2, 2008, at 3.

³⁷ Transcript of the Meeting of the Russian President with the Members of the International Valdai Club, Sept. 12, 2008, available at http://www.kremlin.ru/eng/speeches/2008/09/12/1644_type82912type82917type84779_206409.shtml (official website of the RF President; last visited Sept. 18, 2008).

³⁸ Andreas Umland, *A Shield of a Passport*, RUSSIA PROFILE, Aug. 21, 2008, published online by ISI Emerging Markets, at <http://site.securities.com> (subscription database; last visited Sept. 24, 2008).

³⁹ Valery Zorkin, *Peace Enforcement and Human Rights*, RG, Aug. 13, 2008, at 1, available at <http://www.rg.ru/2008/08/13/zorkin.html> (last visited Sept. 18, 2008). Under Russian law, the authoritative interpretation of the Constitution can be given only by the Constitutional Court in a formal ruling.

⁴⁰ *Id.*

international law to defend their interests.⁴¹ Zorkin concluded that, by invading Georgia, Russia fulfilled its obligations to its fellow citizens.⁴²

Chief Justice Zorkin's explanations excluded a diplomatic solution and did not consider the legality of military actions on the territory of a foreign state, where such actions are not sanctioned by an international body. Also, he did not take into account two major facts associated with the presence of Russian citizens on the Georgian territory. The first is that the large population of Russian nationals was created artificially by handing Russian citizenship to residents of Georgian separatist regions, the policy that was conducted during the last ten years with the purpose of weakening Georgia's sovereignty.⁴³ The second important fact is that South Ossetians who recently became Russian citizens were not merely individuals living in a foreign country but were actively engaged in creating their own independent state within the territory of another country.

B) Russian Passport Policy in South Ossetia

In the Republic of Georgia and in the Russian Federation, issues of citizenship are regulated by laws on citizenship. The Georgian Law on Citizenship was adopted on March 25, 1993.⁴⁴ The Law on Citizenship of the Russian Federation was passed on May 31, 2002.⁴⁵ Neither act recognizes dual citizenship nor states that an individual who is a citizen of one of these countries can be a citizen of another country. In Russia, possession of foreign citizenship neither entails legal consequences nor affects one's legal status, except in particular instances specified by law. Under article 32 of the Georgian Citizenship Law, the citizenship of an individual who has acquired foreign citizenship shall be terminated. Both laws state that the main document identifying one's citizenship is the nation's passport. Possession of a passport from Georgia or Russia is proof of admission to Georgian or Russian citizenship, respectively.

Both, Russian and Georgian citizenship laws are based on the principle of permanent residency during a specified period of time in the territory of the state before the Citizenship Law entered into force. Both laws provide for the possibility of acquiring citizenship following special procedures if the established requirements are met. Before 2002, Russian law allowed residents of former Soviet republics to apply for citizenship if they had not become citizens of their newly independent states. The procedure was extremely complex and required repeated trips to Russian consular offices or relocating to Russia. However, the new Citizenship Law of Russia introduced a simplified procedure of citizenship acquisition for former citizens of the Soviet Union regardless of their place of residence, if they reside in the former Soviet republics and were not able to acquire citizenship from those republics and remain stateless individuals.

⁴¹ *Id.*, citing SZ RF 1999, No. 22, Item 2670.

⁴² *Id.*

⁴³ Alexander Osipovich, *Controversial Passport Policy Led Russians Into Georgia: Analysts*, AGENCE FRANCE-PRESSE, Aug. 21, 2008, available at <http://www.hfhrpol.waw.pl/pliki/21August.pdf> (scroll to page 9) (last visited Sept. 24, 2008).

⁴⁴ 1 LEGAL ACTS OF GEORGIA 51 (1998) (the most commonly used translation of Georgian laws).

⁴⁵ SZ RF 2002, No. 22, Item 2031.

Those individuals are admitted to Russian citizenship upon submission of a written petition to a Russian consular office in the republic of their permanent residency. They receive Russian travel passports as a proof of their Russian citizenship.

In Abkhazia and South Ossetia the application process was simplified even further, and people could apply even without leaving their homes. Russian nationalist non-governmental organizations with close ties to Russian officialdom simply took their papers to a nearby Russian city for processing. Reportedly, following this regulation, up to 90 percent of South Ossetia's population of under 100,000 used this opportunity to acquire Russian citizenship,⁴⁶ and a special series of Russian travel passports was designated for issuance in South Ossetia. Relocation to the Russian territory is not required for former Soviet citizens in order to obtain Russian citizenship; however, according to the Russian Citizenship Law (art. 14.4), all citizens of the former Soviet Union who registered their residence in Russia on or before July 1, 2002, were eligible for automatic acquisition of Russian citizenship if they expressed such intention before January 1, 2008. The relatives of such individuals who arrived in Russia later are also eligible for a simplified citizenship acquisition procedure.

In 2006, the separatist Republic of South Ossetia, which is a part of the Republic of Georgia, passed its own Citizenship Law, that provides in art. 6.1 for the right of South Ossetians to acquire Russian citizenship in addition to their domestic South Ossetian citizenship; however, this law was not recognized by the Georgian authorities. According to media reports, about 64,000 people had received South Ossetian passports, which serve as domestic identification cards, by the end of 2006.⁴⁷ This move does not change their status because South Ossetia is not recognized as an independent state and its passports are not considered to be valid documents by the Georgian authorities.

VI. Legal Justification and Consequences of Recognizing the Independence of Separatists

A) Russian Attempts to Justify Recognition

On August 26, 2008, after both chambers of the Russian legislature submitted to Russian President Medvedev their recommendations to recognize Abkhazia and South Ossetia as independent states, he signed official decrees on recognition.⁴⁸ The Chairman of the Federation Council of the Russian Federation (the upper chamber of the legislature) explained the legality of such recommendations by reference to a former Soviet law, which allowed a constituent republic to leave the Soviet Union after conducting a secession referendum. According to him, the fact that Abkhazia and South Ossetia did not have individual referendums while they were autonomous republics within Georgia preserves their former Soviet status, separates them from independent Georgia, and makes them subjects of international law and sovereign states.⁴⁹ If

⁴⁶ *Id.*

⁴⁷ *South Ossetia Began to Issue Its Own Passports*, NOVOSTI RUSSIAN INFORMATION NEWS AGENCY REPORT, Aug. 15, 2006, available at <http://www.klerk.ru/more/?55419> (last visited Sept. 19, 2008).

⁴⁸ RG, Aug. 27, 2008, at 1.

⁴⁹ Alexander Krasulin, *Ot Pervogo Litsa [Statements of the Parliament's Chairman]*, PARLAMENTSKAIA GAZETA, No. 52, Aug. 22, 2008, at 3.

this logic were followed, the constituent components of the Russian Federation, which did not participate in the all-Russian referendums, should also be recognized as independent states.

Russian documents on the recognition of South Ossetian and Abkhazian state independence cite the U.N. General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States (Resolution 2625), of October 24, 1970,⁵⁰ as legal grounds for recognition. This Declaration, to which Russia is a signatory, imposes on all participating states the obligation to refrain from the use of force against other states and requires the states to settle international disputes by peaceful means. It provides that international relations shall be based on every state refraining from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country, and in this regard the Declaration seems to be at odds with Russian actions in Georgia. The principle of self-determination by the people, which was used by the Russian authorities, shall apply under international law, according to the Declaration, but the document emphasizes that this principle shall be applied with the purpose of bringing about the speedy end of colonialism and securing orderly disbandment of colonial empires. That was the goal of introducing the principle of sovereign equality of the states. Because Georgia never had a colonial relationship with the separatist territories, the application of this Declaration to justify the recognition of South Ossetian and Abkhazian state independence does not seem to be appropriate.

B) Legal Consequences of Recognition

Regardless of the fact of formal state recognition of Abkhazian and South Ossetian independence by Russia and Nicaragua, it appears that this act has no legal consequences for the parties involved. After World War II, all international recognition of a state's sovereignty is conducted by the United Nations, which includes almost all existing state formations. The decision to accept a state to the United Nations is made by the General Assembly after the Security Council agrees with the proposal. The Kosovo case demonstrated that the unwillingness of even one Security Council member state to accept the newly established country may extend the recognition process for an indefinitely long period.

Because the independence of South Ossetia and Abkhazia was recognized only by Russia and Nicaragua, Russia may find itself in a situation similar to that of Turkey in Northern Cyprus, where Turkish troops were deployed nine years before the unilateral declaration of Northern Cyprus' independence in 1983. Since then, no country has recognized the sovereignty of this territory except for Turkey, which holds its troops in Northern Cyprus under a treaty concluded with the authorities of this self-proclaimed republic. The international community views Turkish presence there as an occupation, and the United Nations regularly adopts resolutions that call for non-recognition of this territory.⁵¹

⁵⁰ Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations, United Nations G.A. Res. 2625, 25th Sess. (Oct. 24, 1970), available at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement> (last visited Sept. 24, 2008).

⁵¹ See, e.g., U.N. Security Council Resolution on the situation in Cyprus, S.C. Res. 1251, U.N. Doc. S/Res/1251 (June 29, 1999), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N99/191/62/PDF/N9919162>.

C) Threats of Russian Sanctions Against Non-Supportive States

On September 1, 2008, during a TV interview broadcast nationwide, Russian President Medvedev suggested the possibility of introducing sanctions against those states that take an unfriendly position toward Russia because of the war in Georgia.⁵² Russia has no previous experience in introducing sanctions against a foreign state,⁵³ although it passed the Federal Law on Special Economic Measures on December 30, 2006, which allows the head of the Russian state to impose financial and economic restrictions against foreign countries.⁵⁴ If implemented, this law may limit scientific, humanitarian, or tourist cooperation, or other economic measures may be introduced at the discretion of the President upon informing the Federal Assembly of this decision. According to the law, such measures can be introduced when an immediate reaction is required to respond to actions of a foreign state that violate international law or threaten Russia's security or the rights of its citizens. Because the law does not provide for measures against foreign legal entities or individuals, and cannot affect the issue of migration, which is of significant importance in Russo-Georgian relations, amendments to this law were recently introduced in the Russian State Duma (the lower house of the legislature) to address these matters.⁵⁵

VII. Concluding Remarks

An analysis of Russian and international law, as well as the review of how the “peace enforcement operation” was conducted by Russia in Georgia in August 2008, leads one to conclude that no international or domestic legal act can justify the Russian military invasion of the sovereign territory of the Republic of Georgia, or the recognition of the self-proclaimed independence of Georgian separatist regions by the Russian Federation. It appears that these actions were conducted in violation of major international law principles and Russian national legislation. By siding with the separatists, Russia automatically became a party to the conflict and made it impossible for itself to be an arbiter or a peacekeeper in this conflict, thereby decreasing its role in future negotiations on the status of these provinces.⁵⁶ Treaties signed by Russia with separatist provinces cannot be recognized because these territories are not recognized as states, which may make Russian activities aimed at fulfilling Russia's obligations under these treaties illegal. Russia's military deployed in the regions may be recognized as an

[pdf?OpenElement](#) (last visited Sept. 26, 2008), and subsequent resolutions, including the most recent, S.C. Res. 1818, U.N.Doc. S/Res/1818 (June 13, 2008), available at http://www.un.org/Docs/sc/unsc_resolutions08.htm (last visited Sept. 26, 2008).

⁵² Ivan Rodin, *Sanktsii – Ne Problema* [Sanctions Are Not a Problem], NEZAVISIMAIA GAZETA, No. 186, Sept. 2, 2008, at 1.

⁵³ All previously established import restrictions were always explained by sanitary reasons, although they often were politically motivated.

⁵⁴ SZ RF 2007, No. 1(1), Item 44.

⁵⁵ Rodin, *supra* note 52.

⁵⁶ See Alexander Goltz, *Tsena Sokruthitelnogo Otveta* [The Price of a Victorious Response], available at <http://www.ej.ru/?a=note&id=8331>.

occupational force and Russia may be forced to withdraw its armed forces from the territory of Georgia.

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