

## THE RUSSIAN-GEORGIAN WAR: IMPLICATIONS FOR THE UN AND COLLECTIVE SECURITY

### *RUSYA-GÜRCİSTAN SAVAŞI'NIN KOLLEKTİF GÜVENLİK VE BM ÜZERİNDEKİ ETKİLERİ*

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#### **ABSTRACT**

This paper examines UN's involvement in Georgia following the dissolution of the Soviet Union and analyzes implications of the 2008 Russian-Georgian War for the international state system, the UN itself and collective security. It presents definitions of humanitarian intervention, self-defense, sovereignty and territorial integrity promoted by the UN as correct notions in theory but frequently conflicting concepts in practice. The war between Russia and Georgia, along with the cases of South Ossetia and Abkhazia, serves as a case study demonstrating the difficulties of regional dispute resolution when international principles conflict and geopolitics comes into play. The paper shows that the UN's role in providing for international security after the Russian-Georgian war has been undermined and that there is a clear need for reforms within the UN, realignment of its vision, purposes, and especially principles. Better reconciling, legally and practically, the frequently exclusive conceptions of territorial integrity and self-determination, state sovereignty and humanitarian intervention is essential to help prevent or mitigate breaches of international law and collective security the UN positions but not quite serves as a sole guarantor of.

**Key Words:** UN, Russia, Georgia, Security, International Law

#### **ÖZET**

Bu çalışma Sovyetlerin dağılmasını takiben Birleşmiş Milletler'in Gürcistan'a yönelik politikalarını incelemekte ve 2008 Rus-Gürcü Savaşı'nın uluslararası devlet sistemi, kolektif güvenlik ve Birleşmiş Milletler açısından etkilerini analiz etmektedir. Makale Birleşmiş Milletler tarafından desteklenen insancıl müdahale, meşru müdafaa, egemenlik ve bölgesel bütünlük gibi kavramları teoride doğru ancak pratikte sık sık çatışan nosyonlar olarak değerlendirmektedir. Rusya ve Gürcistan arasındaki savaş, Güney Osetya ve Abhazya meseleleriyle beraber, uluslararası ilkeler birbiriyle geliştiğinde ve jeopolitik devreye girdiğinde bölgesel çatışma çözümlerindeki zorlukları gösteren bir örnek olay olarak ortaya çıkmaktadır. Bu çalışma Birleşmiş Milletler'in Rus-Gürcü Savaşı'ndan sonra uluslararası güvenliği sağlama yönünde rolünün zayıfladığını ve Birleşmiş Milletlerin kendi içinde reformlara, vizyonunu, amaçlarını ve özellikle ilkelerini tekrar düzenlemeye açıkça ihtiyacı olduğunu göstermektedir. Toprak bütünlüğü, self-determinasyon ilkesi, devlet egemenliği ve insancıl müdahale gibi çoğu kez birbiriyle çatışan kavramları yasal ve pratik olarak uzlaştırabilmek, BM'nin öne sürdüğü uluslararası hukuk ve kolektif güvenliğin ihlal edilmesini önlemek açısından hayati öneme sahiptir, ancak bu tek başına yeterli değildir.

**Anahtar Kelimeler:** BM (Birleşmiş Milletler), Rusya, Gürcistan, Güvenlik, Uluslararası Hukuk

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## Introduction

The collapsed peace process around Georgia's two breakaway provinces, which eventually led to the Russian-Georgian War in 2008, reveals a number of fundamental dilemmas of the international state system. The case brings to the fore some of the discrepancies and inconsistencies around notions of "sovereignty," "territorial integrity," and "inviolability of borders" on the one hand and "humanitarian intervention," "self-determination," and "individual/collective self-defense," on the other. Though all of these notions in principle were designed contribute to world peace, in practice their conflicting nature poses challenges to the international system and collective security.

The United Nations, as the only universal body authorized to undertake measures to uphold collective security, has promoted some of these dilemmas for decades following WWII. With the democratization and spread of human rights regimes around the world, especially evident since the collapse of the Soviet Union, issues of humanitarian emergencies and self-determination of peoples facing abusive practices in their homelands have become more salient. Justifications for humanitarian interventions as protective mechanisms to provide for human and state security became stronger, inevitably coming to conflict with the existing notions of "sovereignty" and "territorial integrity." The current paper will examine the UN's involvement in the conflict in Georgia and, in the context of the conflicting notions above will analyze implications of the Russian-Georgian War for the international state system, the United Nations and the collective security.

### 1. Setting the Stage: A Collapsed Peace Process

The collapse of the Soviet Union triggered separatist trends in the Caucasus region. Peacekeeping missions and Russia's military presence in the framework of the Commonwealth of Independent States (CIS) helped bring stability to military situation and established an institutionalized peace process in the region that would remain "frozen" for years.<sup>2</sup> The conflicts in Moldova, Nagorno-Karabakh, and Georgia have been most prominent. The case of Georgia was especially difficult given centrifugal forces within the country from three provinces: Adjara, Abkhazia, and South Ossetia. After ousting a rebellious Adjara's leader, Aslan Abashidze, in May 2004, the Georgian leadership undertook the strategy of defreezing the Abkhazia and South Ossetia conflicts.<sup>3</sup> Though the case of Adjara was successful, the other two proved to be especially hard, and violent.

Following Abkhazian proclamation of its independence from Georgia and ensuing conflict, the UN Observer Mission in Georgia (UNOMIG) was established to monitor the 1994 "Agreement on Ceasefire and Separation of Forces

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<sup>2</sup> H.G. Heinrich, Professor at the Diplomatic Academy of Vienna, "Frozen Crisis in the Caucasus: Can the Circle Be Unsquared?" 31<sup>st</sup> *Vienna Seminar*, (Vienna: Diplomatic Academy, 2001), p.109.

<sup>3</sup> Khutsishvili George in Newman E. & Richmond O., *Challenges to Peace-building: Managing Spoilers During Conflict Resolution*, (New York: United Nations University Press, 2006), p.296.

between Georgia and Abkhazia," known as Moscow Agreement. The latter mandated the CIS Peacekeeping Force (CISPKF) estimated at 1,600 strong as of 2007.<sup>4</sup> The UNOMIG, which currently has 134 military observers, 17 police, 85 international civilian personnel and about 175 local civilian staff, has been monitoring compliance with the Moscow Agreement and observing the operations of the CIS peacekeeping force.<sup>5</sup>

The war between Georgia and South Ossetia over the latter autonomous status brought the two sides to the 1992 "Agreement on the Principles of Settlement of the Georgian-Ossetian Conflict between Georgia and Russia." Known as Sochi Accords, the agreement established ceasefire and Joint Control Commission responsible for coordinating the 1,500 Joint Peacekeeping Forces (JPKF) equally drawn from Russia, Georgia, North and South Ossetia. OSCE Mission to Georgia was undertaken in 1992 to provide additional monitoring in South Ossetia.<sup>6</sup> A large scale humanitarian crisis following the conflicts resulted in 300,000 internally displaced people and refugees. The breakaway provinces and Georgia entered the situation of "no peace, no war."<sup>7</sup>

The UN, OSCE and CIS all affirmed Georgia's territorial integrity.<sup>8</sup> Russia's official position since the end of the hostilities was based on its recognition of Georgia's territorial integrity. Russia committed itself to seek an "agreement toward mutually acceptable model of reincarnation in common state, or towards any other status acceptable for the parties to conflict and the custodians."<sup>9</sup> All the UN Security Council resolutions and positions of member states have unambiguously adhered to the territorial integrity of Georgia.<sup>10</sup> However, Russia monopolized all the ensuing negotiations in Georgia, and exerted its influence within the UN Security Council on related decisions. It was provided the mandate in accordance with the Group of Friends of the UN Secretary-General (five countries that supervise the process: the USA, the UK, France, Germany, and Russia). Despite involvement of other states in the supervision process, Russia enjoyed the privilege of being the leading country in negotiations, with the Group of Friends de facto letting Georgia fall into Russia's traditional sphere of influence.<sup>11</sup>

Russia's State Duma encouraged the two provinces to apply for a status within the Russian Federation. Russian Ministry of Foreign Affairs, Defense, and the Federal Security Services expressed their support for secessionism, which

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<sup>4</sup> *Annual Review of Global Peace Operations* 2008, Project of the Center on International Cooperation, (London: Lynne Rienner Publishers, 2008), p.90.

<sup>5</sup> "UN Mission in Georgia Thrown into Uncertainty by Recent Conflict", *The UN News Center*, 6 October 2008, (<http://www.un.org/apps/news/story.asp?NewsID=28437&Cr=Georgia&Cr1>).

<sup>6</sup> *Annual Review of Global Peace Operations* 2008, Project of the Center on International Cooperation, (London: Lynne Rienner Publishers, 2008), p.131.

<sup>7</sup> Khutsishvili George in Newman E. & Richmond O., *Challenges to Peace-building: Managing Spoilers During Conflict Resolution*, p.282.

<sup>8</sup> Vladislav Ardzinba in *Russian-Georgian Relations: Perspective on Abkhazia*, (Tbilisi:Free Georgia Newspaper, 2004), p.27.

<sup>9</sup> *Ibid.*, p.286.

<sup>10</sup> *Ibid.*, p.295.

<sup>11</sup> *Ibid.*, p.282.

indicated Russia's biased approach and intervention in a sovereign country's internal affairs. Most Abkhaz and South Ossetians have also obtained Russian citizenship. Notwithstanding the ceasefire agreements, no substantive agreement on the status of the breakaway provinces has been achieved, leading to a "collapsed peace process."<sup>12</sup> Georgian leadership has increasingly viewed Russia as a manipulative mediator in both conflicts since the 1990's. As a Georgian commentator George Khutsishvili put it: "A custodian of the peace process acting as insider...loses legitimacy as an objective mediator."<sup>13</sup> Following the collapse of the Soviet Union weakened Russia has exploited the conflict in order to maintain its presence in the Caucasus and counterbalance the increasing influence of the West.<sup>14</sup>

After Putin and Saakashvili assumed powers in respective countries, the conflict intensified as asserting Russia experienced difficulties in keeping defiant and pro-Western Georgia in its orbit. Following what many speculate was a West-sponsored "Rose Revolution" in Georgia in November 2003, Saakashvili pledged to restore Georgia's territorial integrity by incorporating the breakaway provinces of Abkhazia and South Ossetia. He publicly announced that "Georgia will be whole again."<sup>15</sup> At the same time Saakashvili made clear that military option was off the table.<sup>16</sup>

Saakashvili's desire to bring Georgia into military and political Western institutions, the NATO and the EU, significantly damaged its relations with the Kremlin whose growing power demanded a corresponding degree of allegiance, increasingly so within the former Soviet space. Russia was uneasy about rising Western influence and especially disliked Georgian leadership for its course.<sup>17</sup> By the end of 2008 Russia had withdrawn its two remaining military bases from Georgia following the latter's demands. The polemic was accompanied by Russia's economic pressure on Georgia ranging from fruit and wine import bans to allegedly purposeful cuts of energy delivery into the country. Angered by NATO's decision that Georgia should one day be a member, Russia continued its trade and travel embargo on Georgia.<sup>18</sup> The two provinces became useful cards for Russia to promote its wider objectives in the region.

Georgian attempts to run parallel administrations in South Ossetia met great opposition from Russia that viewed Georgia's actions as undermining the peace process. After Saakashvili closed the Ergneti Market outside of Tshhnval as part

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<sup>12</sup> Ibid., pp.285-6.

<sup>13</sup> Ibid., p.298.

<sup>14</sup> Heiemia Gurer, Roving Ambassador of the Ministry of Foreign Affairs in Vienna for the Southern Caucasus and the Central Asian States, "Conflicts in the South Caucasus, an Overview," 31<sup>st</sup> Vienna Seminar, Diplomatic Academy, Vienna, 2001, p.95.

<sup>15</sup> Ibid., p.296.

<sup>16</sup> "Statement of the Ministry of Foreign Affairs of the Russian Federation 1246," *Permanent Mission of the Russian Federation to the UN*, 26 August 2008, ([http://www.un.int/russia/new/MainRootrus/docs/off\\_news/260808/newru2.htm](http://www.un.int/russia/new/MainRootrus/docs/off_news/260808/newru2.htm).)

<sup>17</sup> "After the War," *The Economist*, 16 October 2008, ([http://www.economist.com/displayStory.cfm?story\\_id=12415100](http://www.economist.com/displayStory.cfm?story_id=12415100)).

<sup>18</sup> Ibid.,

of anti-smuggling campaign, and ordered troops deployment at the border with South Ossetia, violence increased significantly, threatening to erupt into war.<sup>19</sup> Russia started solidifying its influence and bargaining power in what seemed to be more a design for conflict management than a desire for mediated settlement.<sup>20</sup>

## 2. The Russian-Georgian War: Stepping on UN's Dilemmas

### 2.1. UN's Unclear Response to the Present and Future

A point of no return came in August of 2008 when reckless Georgian leadership violated the ceasefire agreement by attacking Russian peacekeepers and launching heavy artillery attacks on South Ossetia in the attempt to regain the breakaway territory. To deter Georgian aggression, Russia responded with force of its own into the Georgia proper. Russian Ministry of Foreign Affairs put the outcome of the War this way: "...Saakashvili himself put a cross on Georgia's territorial integrity."<sup>21</sup>

Russia's disproportionate use of force was not only premised on the idea of swiftly stopping the violence, but on a variety of other imperatives, of which Russia's intentions to block NATO's advance to its borders is especially salient. NATO's expansion since 1990's and intentions of Georgia and Azerbaijan (as well as Ukraine) to join western political and security institutions have been increasingly threatening Russia, requiring it to undertake more effective security measures in the region.<sup>22</sup> Russia felt betrayed by its American counterpart, which vigorously pursued with eastern European countries a new mission for NATO, despite Clinton's sharp justifications: "Some say we no longer need NATO because there is no powerful threat to our security now. I say there is no powerful threat in part because NATO is there."<sup>23</sup> Russia was relieved to see Georgia's and Ukraine's NATO membership plans to be denied in 2007 by France, Italy and Germany which constitute "Old Europe" for the US but "Traditional Partners" for Russia. However, more so when the Baltic countries, reminded of the 1939 Ribbentrop-Molotov Pact and Soviet domination during the Cold War, were intensely promoting NATO's expansion and stood in solidarity with the Georgian leader following the August war. The war, however, sent a clearer signal to Georgia and Ukraine about Russia's intentions to press the countries to turn "east" rather than "west" and take a firm control over its

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<sup>19</sup> *Annual Review of Global Peace Operations* 2008.

<sup>20</sup> Heiemaria Gurer, Roving Ambassador of the Ministry of Foreign Affairs in Vienna for the Southern Caucasus and the Central Asian States, "Conflicts in the South Caucasus: An Overview," 31<sup>st</sup> *Vienna Seminar*, (Vienna: Diplomatic Academy, 2001).

<sup>21</sup> *Permanent Mission of the Russian Federation to the UN*, "Statement of the Ministry of Foreign Affairs of the Russian Federation 1246".

<sup>22</sup> Major General Yuri Ivanov, Deputy Chief of Staff, North Caucasus Military District, "Russia's National Security Problems in the Transcaucasus in the Era of Globalization" in "Countdown to War in Georgia: Russia's Foreign Policy and the Media Coverage of the Conflict in South Ossetia and Abkhazia," *East-View*, 2008, pp.437-451.

<sup>23</sup> John Mearsheimer, *The Tragedy of Great Power Politics*, (New York: Norton, 2001), p.379.

traditional sphere of influence.<sup>24</sup> Russia has long sought to establish security in the Trans-Caucasus that serves as a strategic buffer zone in the south by making sure that no foreign military is close to its borders.<sup>25</sup>

Another important consideration affecting Russia's strategic calculus in the war concerns Georgia's ongoing attempts to "bridge Europe with Central Asia" through energy export and transit networks.<sup>26</sup> The world's largest gas producer, Russia views it vital to maintain a near-monopoly on gas exports from Central Asia which increase its economic power and diversify its exports. Moreover, control over gas transit and exports will determine Russia's strategic influence in Eurasia, especially in regard to Europe that significantly depends on Russia for its gas imports.

Why did the UN, a party to negotiations since the early 1990's, fail to preserve peace and security in the region, and what is its future role in the conflict? The UN's weak cooperation with the OSCE and its inactive role in the resolution of the conflict are some of the answers. The Joint Assessment Mission to the Gali District in Georgia in the framework of the UN-led Geneva process in 2000 was the case of successful cooperation between the UN and OSCE, which was lacking in other instances.<sup>27</sup> The UN failed to secure respect of Georgia's territorial integrity in the "frozen" conflicts and provide numerous refugees and IDPs a right to a safe return and accommodation.<sup>28</sup> UN failures also stem from Russia's regional ambitions in the Caucasus and Georgia's "aggressive integration" initiatives that significantly constrained UN's ability to facilitate substantive resolution of the conflict that in essence rested with Russia. The complexity of the conflict, hostility of parties, lack of regional security arrangements in the volatile Caucasus region, and the conflicting interests of Russia, Turkey, and Iran contributed to the UN's failure.<sup>29</sup> Of no less importance in impeding the UN efforts, at least in Abkhazia, is the perception of the Abkhazians that the UN has been biased in the process in favor of the Georgian side while disregarding pleas for Abkhazian independence. However, the UN was very successful in laying the ground for negotiations and frequent exchanges between all sides. It provided the parties with necessary tools to

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<sup>24</sup> Ariel Cohen, "The Russian-Georgian War: A Challenge for the U.S. and the World", *The Heritage Foundation*, 11 August 2008, (<http://www.heritage.org/research/RussiaandEurasia/wm2017.cfm>).

<sup>25</sup> Stanislav Chernyavsky, director of a division of a Fourth Department of the CIS Countries, Russian Ministry of Foreign Affairs, "The Caucasian Track of Russia's Foreign Policy" in "Countdown to War in Georgia: Russia's Foreign Policy and the Media Coverage of the Conflict in South Ossetia and Abkhazia," *East-View*, 2008, pp.423-36.

<sup>26</sup> Vasil Sikharulidze, Georgian Ambassador to the US, "Georgia-Russia Conflict: The Latest," *The Washington Post*, 15 August 2008, (<http://www.washingtonpost.com/wpdyn/content/discussion/2008/08/15/DI2008081502199.html>).

<sup>27</sup> Georgio Burduli, First Deputy Minister of Foreign Affairs of Georgia, "How Effective Has the OSCE Been in the Caucasus?," *31<sup>st</sup> Vienna Seminar*, (Vienna: Diplomatic Academy, 2001), p.60.

<sup>28</sup> Dieter Boden, Special Representative of the UN Secretary-General for Georgia, "The Role of the UN in the Settlement of the Conflict in Abkhazia, Georgia," *31<sup>st</sup> Vienna Seminar*, (Vienna: Diplomatic Academy, 2001), p.57.

<sup>29</sup> *Ibid.*, pp. 57-59.

proceed with negotiations, but ultimately the willingness and commitment to use them was in the hands of the entities themselves.<sup>30</sup>

The UN's post-war involvement in the conflict has not been very satisfactory. Russia's presence in the UN Security Council makes it difficult to pursue promising solutions that might entail disadvantages for Russia as a regional player. Active involvement of the EU in mediating between Russia and Georgia also demonstrates UN's inability of swift and effective response, despite Russia's own speedy actions to bring the issue of Georgian aggression to the attention of the Security Council. The presence of big powers in the UN makes it effective in some cases and unproductive in others, depending on the stakes involved and relation thereof to any big power.

Following the War, the UN Security Council Resolution 1839 extended the UNOMIG mandate by four months in the conflict zone, and expressed satisfaction with the deployment by the EU of an independent civilian observer mission in Georgia of about 200 observers.<sup>31</sup> Ban Ki-moon's rhetoric, however, pinpoints to UN's unclear agenda in the conflict following the August War. He notes that "it seems unlikely that the Russian-led Commonwealth of Independent States peacekeeping force in the Abkhazia region will have any role in the separation of forces between the two sides, and it is still unclear what arrangement, if any, will fulfill this function."<sup>32</sup> It is also not clear whether the Moscow Agreement will remain in force, and what it would entail for the UN's role in the conflict. The Secretary General put it right: "Under these circumstances, it is too early at this stage to define the role that UNOMIG may play in the future."<sup>33</sup> Both the UN Security Council and the UN General Assembly were also unable to make a legal determination on whether Russia committed aggression when it responded to a real threat from Georgia.<sup>34</sup> Instead, it increasingly seems that EU will assume a major mediating role in the conflict. The EU mediator, Pierre Morel, following multilateral Geneva talks in February 2009, announced that Russia and Georgia agreed to develop plans on preventing ongoing security incidents in Abkhazia and South Ossetia.<sup>35</sup> Numerous conflicts, including the Russian-Georgian War, have revealed fundamental and uneasy dilemmas that the international state system in the face of the UN has been facing and failing to address.

Upholding the principles of "territorial integrity" and "sovereignty" on the one hand, and promoting "self-determination" and justifications for

<sup>30</sup> Ibid., pp. 58-59.

<sup>31</sup> "EU Council Conclusions on Georgia/Russia", *The EU at the UN*, October 13 2008, ([http://www.europa.eu/articles/en/article\\_8216\\_en.htm](http://www.europa.eu/articles/en/article_8216_en.htm)).

<sup>32</sup> "UN Mission in Georgia Thrown into Uncertainty by Recent Conflict", *The UN News Center*, 6 October 2008.

<sup>33</sup> Ibid.

<sup>34</sup> Herbert Bix, "Lessons From the War in Georgia," *Asia Times Online*, 22 October 2008, ([http://atimes.com/atimes/Central\\_Asia/JJ22Ag02.html](http://atimes.com/atimes/Central_Asia/JJ22Ag02.html)).

<sup>35</sup> Nick Cumming-Bruce, "Russia and Georgia Agree on Security Measures for Abkhazia and South Ossetia", *International Herald Tribune*, 18 February 2009, (<http://www.iht.com/articles/2009/02/18/europe/georgia.php>).

"humanitarian intervention" on the other, the states have paralyzed the United Nations. The exclusive principles have impeded the UN from providing for peace and security in some cases while facilitated the resolution of others. The Russian-Georgian War demonstrated UN's incapacity not only to prevent the war but also to effectively deal with the subsequent crisis. Infringement on Georgia's territorial integrity on humanitarian grounds by Russia acting in self-defense to provide for regional security and right of peoples to self-determination indicates conflicting relationships between the UN principles and goals.

## **2.2. Uneasy Case: Territorial Integrity and Self-determination**

The UN has been besieged by its own devices for years. Pledging to uphold rights of peoples to self-determination and freedom of governance meant more headaches for states having considerable ethnic minorities that are unable to enjoy their rights and freedoms within existing borders. While Georgia's territorial integrity is *de jure* unquestionable, there is plenty room in the international law (the UN Charter), rhetoric (human rights), and practice (the case of Kosovo), that at least *de facto* push the principle of self-determination to statehood. Georgia denied South Ossetia and Abkhazia, which are populated by distinct peoples formerly possessing their own statehoods, right to self-determination in the 1990's, triggering three bloody wars thus far.

Georgia's denial of self-determination to both provinces in an acceptable form and recent "aggressive integration" initiatives infringed on human rights of South Ossetians, who Georgia claims to be their own people, jeopardizing regional peace and security and further questioning the legitimacy of the Georgian rule over the two breakaway provinces. The UN charter makes clear that the member-states seek "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."<sup>36</sup> And that they ensure "with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;" and aim "to develop self-government, to take due account of the political aspirations of the peoples."<sup>37</sup> Georgia has not followed the legal script.

Russia's Recognition of Abkhazian and South Ossetian independence, just as that of Kosovo by about 50 states earlier, was an illegal act. Recommendation of the UN Security Council for a final decision by the UN General Assembly is required for a new state to come into being.<sup>38</sup> Russia's unilateral recognition of independence of the two provinces undermined Georgia's territorial integrity. A former speaker of the Georgian parliament and current opponent of Saakashvili Nino Burjanadze described Russia's actions

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<sup>36</sup> The UN Charter Section on the Purposes of the United Nations, (<http://www.un.org/aboutun/charter/>).

<sup>37</sup> The UN Charter, Article 73, (<http://www.un.org/aboutun/charter/>).

<sup>38</sup> *Ibid.*, Article 4.

vividly: "This would be like cutting off one's arms and legs."<sup>39</sup> The United States, the Foreign Ministers of the G-7 and the European Union have condemned Russia's recognition decision.<sup>40</sup> So has the European Council, which called on others not to follow Russia's suit.<sup>41</sup> Overlooked, however, was 2008 February recognition of Kosovo's independence by some states, which not only antagonized Russia but also set the stage for further precedents that would undermine international law already in August 2008.

### 2.3. State Sovereignty and Individual Sovereignty: Which is Righter?

Individual sovereignty is a fairly new concept in international affairs. It undermines the Westphalian order that has emphasized state sovereignty as a supreme guiding principle of international affairs since 1648. Polish President Lech Kaczynski is a clear proponent of state sovereignty when he notes that "illegal military aggression" occurred in Georgia and that "Fundamental principles of international law, i.e. [the] inviolability of borders and territorial integrity were infringed."<sup>42</sup> Indeed, the United Nations Charter reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."<sup>43</sup> But have Russia's actions been inconsistent with the Purposes of the United Nations? After all, Russia's response demonstrated a need to preserve peace and security in the region by repelling Georgian aggression against South Ossetia, to protect human rights and lives of the small people of South Ossetia, and defend its own citizens and peace-keepers by invoking the UN-chartered principle of a right to self-defense. The UN Charter does not impair "the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security," says the international legal document.<sup>44</sup>

Furthermore, Russia claims that Georgian aggression and genocide in South Ossetia led to 2,000 deaths.<sup>45</sup> The Concept of "Responsibility to Protect," or R2P, adopted by then UN Secretary-General Kofi Annan [and by more than 150 states at the UN World Summit in 2005] was to be employed only "for genocide, war crimes, ethnic cleansing or crimes against humanity."<sup>46</sup> If the Russian claims

<sup>39</sup> "After the War," *The Economist*, 16 October 2008.

<sup>40</sup> Daniel Fried, Assistant Secretary for European and Eurasian Affairs of the US Department of State, "EU/UN/OSCE-Sponsored Talks on Georgia", 15 October 2008, (<http://www.state.gov/p/eur/rls/rm/110992.htm>).

<sup>41</sup> "Georgia-Russia Conflict: Extraordinary European Council Presidency Conclusions," *The EU at the UN*, ([http://www.eu-un.europa.eu/articles/en/article\\_8116\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_8116_en.htm)).

<sup>42</sup> "Eastern European Leaders Voice Concern about Georgia during UN Debate," *The UN News Center*, September 24 2008, (<http://www.un.org/apps/news/story.asp?NewsID=28240&Cr=general+assembly&Cr1=debate>).

<sup>43</sup> *Ibid.*, The UN Charter Section on the Purposes of the UN.

<sup>44</sup> *Ibid.*, The UN Charter, Article 51.

<sup>45</sup> "After the War," *The Economist*, October 16 2008

<sup>46</sup> "The UN and Humanitarian Intervention," *The Economist*, 15 May 2008, (<http://www.economist.co>

are true, then Russian actions have been in conformity even with the R2P as they sought to protect the people of South Ossetia on humanitarian grounds. Despite questions surrounding the legality of the concept that conflicts with issues of sovereignty and inviolability of borders, Russia's actions could actually receive political legitimacy, if not the legal approval.

When French foreign minister and proponent of the R2P Bernard Kouchner argued for intervention into Myanmar after the country was hit by a cyclone in 2008, officials from China, Vietnam, the South Africa, and even Russia ridiculed the idea.<sup>47</sup> It shows that state sovereignty continues to be the inviolable principle in international affairs, although the case of Russia points to Russia's national interests, legal or illegal from the perspective of the international law, that Russia is willing to defend by invoking and popularizing the elements of the R2P during and after the August War. But regardless of the validity of the raised claims, a big dilemma remains. Does "individual sovereignty" trump "state sovereignty" in dire humanitarian emergencies? Tension between the principle of "state sovereignty" on the one hand and "humanitarian intervention" on the other has been apparent for a long time, with some countries emphasizing the enforcement powers in Chapter VII of the UN Charter and others upholding state sovereignty even in times of humanitarian emergencies.<sup>48</sup> The Charter affirms the principle of "sovereignty" by stating that "nothing should authorize intervention in matters essentially within the domestic jurisdiction of any state." At the same time, Chapter VII of the Charter authorizes the UN Security Council to undertake actions in cases of a "threat to the peace, breach of the peace or act of aggression."<sup>49</sup> Although no Security Council authorization took place during the War to send Russian Army to Georgia to stop it from attacking South Ossetia despite Russia's attempts to bring the issue to the UN Security Council, the dilemma is obvious, just as Russia's military response invoked in self-defense. The use of force in the international relations is legitimate in practice and in theory only when pursued as an act of self-defense or in accordance with authorization of the UN Security Council.<sup>50</sup>

### **Conclusion: Implications for UN and International Security**

The Eastern European countries speaking at the UN General Assembly following the Russian-Georgian war emphasized that the UN's role in providing for international peace and security has been undermined.<sup>51</sup> Indeed, not only the UN failed to bring parties to a resolution and prevent Georgian aggression since the end of hostilities in the early 1990's, it also is unclear about its future role in resolving the conflict in the war's aftermath. The statement pinpoints to

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m/world/international/displaystory.cfm?story\_id=11376531).

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Kishore Mahbubani, "The Case against the West: America and Europe in the Asian Century," *Foreign Affairs*, May-June 2008, p.114.

<sup>51</sup> Ibid., "Eastern European Leaders Voice Concern about Georgia during UN Debate."

fundamental problems in the international legal framework: smaller states can still be easily tossed around by bigger states despite the UN's rhetoric of "sovereignty," "territorial integrity" and "inviolability of borders." But there is another side of the story as well that adds complexity to the interaction of states in the modern world.

The UN's commitment to human rights, self-determination, individual sovereignty and individual/collective self-defense often conflicts with its desire to strongly uphold principles of state sovereignty and territorial integrity. All the principles are morally and legally justified and should not be removed from legal framework governing relations amongst states and peoples. But the ambiguous wording of the UN Charter does not sit well with equally ambiguous reality. The UN record has clearly been less than satisfactory in its history of existence. Paul McCartney quite subtly questioned the UN's usefulness in the wake of its birthday: "Will we still need it, will we still feed it, when it's 64?"<sup>52</sup>

The UN has received more than sufficient blame for its actions and inactions. But the UN is not a unitary body, and this makes it difficult. Producing unanimous decisions and promoting common and legitimate actions under the organization's auspices has always been uneasy. The UN looks more like a "body of national interests" rather than an international community. States, big and small, frequently pursue conflicting interests, legally disregarding some principles of the international law and seeking its protection along other equally legal principles at the same time. The Estonian President Toomas Hendrik Ilves is right in principle but wrong in timing when he said in the aftermath for the Russian-Georgian War that "the principles governing relations between States has been seriously damaged."<sup>53</sup> The UN, as international body responsible for maintenance of peace and security, has been long ripe for reforms. Its inability to adopt fast to realities of the day conceals more breaches of international law, threatening peace and security in the future.

The practice of recognition of states in the cases of Kosovo, Abkhazia and South Ossetia, has been undermined. If only some UN members are able to get away with their unilateral illegal decisions concerning territorial integrity of some and recognition of independence of others, then not only the sense of international community becomes irrelevant, but the whole structure of the international system as exemplified and perpetuated by the UN gets eroded. If practices of self-determination and recognition of states are illegally extended to numerous ethnics groups around the world, the international system risks imploding, not least due to the emergence of a big number of new states through bloody process at the expense of existing states.

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<sup>52</sup> Martin Sieffu, "UN Helps Prevent World War, But Not Much Else", 24 October 2008, ([http://www.upi.com/news/issueoftheday/2008/10/24/UN\\_helps\\_prevent\\_world\\_war\\_but\\_not\\_mu\\_ch\\_else/UPI-51921224861764/](http://www.upi.com/news/issueoftheday/2008/10/24/UN_helps_prevent_world_war_but_not_mu_ch_else/UPI-51921224861764/)).

<sup>53</sup> "Eastern European Leaders Voice Concern about Georgia during UN Debate", UN News Center, 28 September 2008, (<http://www.un.org/apps/news/story.asp?NewsID=28240&Cr=general+assembly&Cr1=debate>).

The purpose of the United Nations, when it was established in 1945, sought to provide for peace and security and avoid another big war. The realities of the day make clear the need for the UN to realign its vision, purposes, and principles. How can it better reconcile, legally and practically, the exclusive principles of territorial integrity and self-determination, state sovereignty and humanitarian intervention? The record of history demonstrated the uneasy and fundamental dilemmas that the international community has been facing for quite a long time. And the Russian-Georgian War has only reopened another page. As long as the international community in the face of the United Nations remains a "body of national interests," with states, democratic and dictatorial coexisting in and abusing the international system, the UN will be unable to translate the world into either "Agenda for Peace" of the early 1990's or Kantian vision of "perpetual peace."

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