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The War between Russia and Georgia – Consequences and Unresolved Questions

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A. Introduction

"The [Parliamentary] Assembly condemns the recognition by Russia of the independence of South Ossetia and Abkhazia and considers it to be a violation of international law and of the Council of Europe's statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and reiterates its call on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and to fully respect the sovereignty and territorial integrity of Georgia, as well as the inviolability of its borders."[1]

Such is the wording of the resolution of the Parliamentary Assembly of the Council of Europe half a year after the five-days-war between Georgia and Russia that broke out in the night between 7 and 8 August 2008. The message is clear and unequivocal without much diplomatic balancing between different positions. The strong language used is quite unusual for an international political body such as the Parliamentary Assembly. It thus takes a clear stance in the struggle between Russia and Georgia about the legal status of the break-away regions Abkhazia and South Ossetia and expects Russia as a member State to comply with its harsh resolution. The Russian press denounced the demands to be "unacceptable" as it would lead to another war in the Caucasus, if Russia fulfilled the demands;[2] the overall negative tone of the resolution was explained as a reaction of the Assembly to the unfortunate lobbying of the Russian delegation and thus as a loss in a political game.[3]

It is not to be expected that the conflict will be solved on the basis of resolutions of the Parliamentary Assembly, although both Georgia and Russia are members of the Council of Europe and obliged to stick to its basic principles. But the Parliamentary Assembly's voice is not strong enough to lead the way in this long-lasting conflict. Many international organisations and institutions have already been and still are active in the peace-building

1 Parliamentary Assembly of the Council of Europe Res. 1647, 28 January 2009.

2 *Cf.* the echo in the Russian press: L. Korotun, 'The resolution of the Parliamentary Assembly on the consequences of the war in the Caucasus is not objective and brings into discredit this international organisation', in *Golos Rossii*, 1 Februrary 2009; Dar'ja Iur'eva, Resolution without extreme positions, The Parliamentary Assembly has refused to „punish" Russia, *Rossijskaja Gazeta*, 29 January 2009.

3 M. Zygar, 'Russia was defeated in words', *Kommersant* No. 15 (4070), 29 January 2009) http://www.kommersant.ru/doc.aspx?DocsID=1109854 (last visited 23 April 2009).

process in the Caucasus. It was the European Union that brokered the conditions of the cease fire.[4] The United Nations continue to be „actively seized of the matter", although they deal explicitly with Abkhazia where the UNOMIG[5] peacekeeping forces are deployed[6] and only implicitly with the situation in South Ossetia.[7] Legal solutions to the conflict are being sought before the International Court of Justice[8] and the European Court of Human Rights.[9] Nevertheless, despite all efforts, the conflict is "refrozen"; the basic questions that had been unresolved between the early 1990s and the outbreak of the war in 2008 remain unresolved ever since.

The legal assessment of the situation given by Georgia is completely opposed to the legal analysis of the problems by the Russian authorities. The main purpose of this article is to explain the divergent views of the two opponents and to analyse if South-Ossetia and Abkhazia had a right to secession based on the principle of self-determination.

4 *Cf.* the Six Points Peace Plan of 12 August 2008 available at http://smr.gov.ge/ uploads/file/Six_Point_Peace_Plan.pdf (last visited 23 April 2009).

5 United Nations Observer Mission in Georgia.

6 *Cf.* SC Res. 1808, 15 April 2008, SC Res.1839, 9 October 2008; SC Res. 1866, 13 February 2009, all available at http://www.un.org/Depts/dpko/missions/unomig/unomigDrs.htm (last visited 23 April 2009).

7 The affirmation contained in the SC Res. 1808 of 15 April 2008 of the „commitment of all Member States to the sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders" is important for the assessment of the situation both in Abkhazia and in South Ossetia.

8 *Cf.* Georgia institutes proceedings against Russia for violations of the Convention on the Elimination of All Forms of Racial Discrimination, Press Communication of the ICJ, 12 August 2008, available at http://www.icj-cij.org/docket/files/140/14659.pdf (last visited 23 April 2008); on the background of the complaint *cf.* A. Nußberger, 'Der „Fünf-Tage-Krieg" vor Gericht: Russland, Georgien und das Völkerrecht', 11 *Osteuropa* (2008), 19-40; The ICJ has already ordered provisional measures: *cf. Case Concerning Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation*), Request for the Indication of Provisional Measures, available at www.icj-cij.org/docket/files/140/14801.pdf?PHPSESSID=ff0566746dfa5f5f123b2dfe39389430 (last visited 9 March 2009).

9 *Cf. State Complaint Georgia v. the Russian Federation,* documented in *Europäische Grundrechte-Zeitschrift* 2007, 242; *cf.* Nußberger, *supra* note 8, 24-40.

B. The Controversy Over the Legal Status of South Ossetia and Abkhazia – Basic Standpoints

The controversy begins with how to name what happened in August 2008 and triggered all the consequences– was it a "war between Georgia and Russia" or was it a "military action of the Georgian leadership against the population living on the territory of South Ossetia"? The Russian delegation to the Parliamentary Assembly of the Council of Europe claims that by calling it a "war between Russia and Georgia" the Parliamentary Assembly "gave a wrong diagnosis, prescribed the wrong medicine and suggested to Russia to cure the illness with the wrong means."[10] If there is already no consensus on how to qualify the outbreak of the hostilities and who were the real opponents – let alone who was the aggressor[11] – there cannot be any common understanding of the consequences.

While the Russian side claims that Georgia has not only illegally waged an aggressive war against South Ossetia, but also violated basic human rights in such a way that the South Ossetians could rely on their right to self-determination and declare their independence from Georgia, Georgia holds that it acted according to international law when it defended the integrity of its own territory. It denies any right to secession based on the principle of self-determination to the South Ossetian people and considers the break-away region still as a part of its territory. Therefore the deployment of the Russian military on the territory of South Ossetia is interpreted as an illegal occupation. The Russians, on the contrary, claim that they have concluded valid international treaties with the independent Republic of South Ossetia;[12] and the stationing of troops[13] is therefore based on a valid international treaty.

10 M. Vignanskij & A. Mineev, 'Wrong diagnosis', 14 *Vremja Novostej* (online), 29 January 2009.

11 *Cf*. the analysis of the war in South Ossetia from the international perspective: A. Nußberger, 'Völkerrecht im Kaukasus – Postsowjetische Konflikte in Russland und Georgien', *Europäische Grundrechte-Zeitschrift* (2008), 457-466; O. Luchterhandt, 'Völkerrechtliche Aspekte des Georgien-Krieges', 46 *Archiv des Völkerrechts* (2008), 435-480 (Völkerrechtliche Aspekte des Georgien- Krieges).

12 Reference is made to the Russian-South-Ossetian *Treaty on Friendship, Cooperation and Mutual Assistance*, ratified by the Russian Parliament on 4 November 2008.

13 According to the Report of the Secretary General on the situation in Abkhazia, Georgia, UN Doc S/2008/631, 3 October 2008; pursuant to the SC Res. 1839, 9 October 2008, there have been deployed 3, 700 troops in South Ossetia.

The situation is somewhat different in Abkhazia. It had not been attacked by Georgian troops during the Russian-Georgian war in 2008. Therefore, according to the Georgian point of view, there cannot be any justification for the break-away of this part of its territory and for the deployment of Russian troops. Russia, on the contrary, argues that a military threat to Abkhazia was imminent. It therefore acted in order to prevent human rights violations similar to those allegedly committed by Georgia in South Ossetia. The stationing of troops[14] is justified on the basis of international treaties concluded with the independent Republic of Abkhazia.[15]

Thus there are parallels between the situation in South Ossetia and in Abkhazia. In some international documents such as the resolutions of the Parliamentary Assembly of the Council of Europe they are considered together.[16] This does not apply to the resolutions of the Security Council.[17] Immediately after the war on the 23 October 2008, Georgia has passed a law "On Occupied Territories" which embraces both what is called the "Territory of the Autonomous Republic of Abkhazia" and the "Tskhinvali region (territory of the former Autonomous Republic of South Ossetia)" thus defining one common legal regime for both regions.

The present situations in Abkhazia and South Ossetia are therefore quite similar. Nevertheless, the different roots and developments of the conflicts have to be taken into account. The present article is mainly focussed on the situation in South Ossetia, but also gives some indications on the particularities of the Abkhaz-Georgian conflict.

Despite all the complexities of the situation there is one core question of international law that has to be answered in order to assess the legal situation in South Ossetia and Abkhazia: Did these territories have a right to secession from Georgia based on international law? If yes, the Russian Federation was right to recognize South Ossetia and Abkhazia as independent States. If yes, the Russian Federation could conclude international treaties

14 According to the Report of the Secretary-General (see *supra* note 13) the same amount of troops is deployed to Abkhazia and South Ossetia.

15 Reference is made to the Russian-Abkhaz Treaty on Friendship, Cooperation and Mutual Assistance, ratified by the Russian Parliament on 4 November 2008.

16 *Cf.* Parliamentary Assembly of the Council of Europe Res. 1633, 2 October 2008, available at http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1633.htm (last visited 13 March 2009); Parliamentary Assembly Res. 1647, 28 January 2009 , Parliamentary Assembly Res. 1648, 12 January 2009, available at http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1648.htm (last visited 13 March 2009).

17 See *supra* notes 6 and 7.

with South Ossetia and Abkhazia. If no, the Russian Federation is guilty of an illegal intervention in matters within the domestic jurisdiction of a member State of the United Nations and has violated international law. If no, the deployment of Russian troops in South Ossetia and Abkhazia constitutes an "illegal occupation".

C. Right to Self-determination and Right to Secession – an On-going Dispute in International Law

I. Basic Antinomy Between the Right to Secession and the Principle of Territorial Integrity

While the right to self-determination, the roots of which can be traced back to the late 18th Century Age of Enlightenment,[18] is quite unanimously recognized in international law,[19] there is a fierce controversy about the consequences that might be drawn from it. The problem is that the right to self-determination does not stand alone, but has to be read together with the principle of territorial integrity. As a matter of fact, these two principles are legal antinomies and cannot be easily harmonized.[20] Therefore it can be argued that the right to self-determination implies only the right to an adequate democratic representation within a multi-national, plural-ethnic State and the right to an adequate protection of the rights and interests of the mi-

18 E. Mc Whinney, *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law. Failed States, Nation-building and the Alternative, Federal Option*, (2007), 1; W. G. Grewe, *Epochen der Völkerrechtsgeschichte*, 2nd ed. (1988), 493-495.

19 *Cf.* the wording of Article 1 (2) of the United Nations Charter as well as Article 1 of the *International Covenant on Civil and Political Rights* and Article 1 of the *International Covenant on Economic, Social and Cultural Rights*; *cf.* also the International Court's holding in the *East Timor Case (Portugal v. Australia)* that the principle of self-determination is „one of the essential principles of contemporary international law", ICJ Reports 1995, 102, para. 29.

20 See Mc Whinney, *supra* note 18, 5; T. Schweisfurth, *Völkerrecht* (2006), 382; A. Verdross & B. Simma, *Universelles Völkerrecht,* 3rd ed. (1984), 320, K. J. Partsch, 'Selbstbestimmung', in R. Wolfrum & C. Philipp (eds), *Handbuch Vereinte Nationen*, 2nd ed. (1991), 745*;* S. Hobe & O. Kimminich, *Einführung in das Völkerrecht*, Tübingen, Basel 8th ed. (2004), 114-115*;* M. Herdegen, *Völkerrecht*, 7th ed. (2008), 250-252; T. Stein & C. von Buttlar, *Völkerrecht*, 11th ed. (2005), 258-259; D. Murswiek, 'The Issue of a Right of Secession – Reconsidered', in C. Tomuschat (ed.), *Modern Law of Self-Determination*, (1993), 37-38.

nority group, but nothing more. This might justify the demand to a particular constitutional status of the minority group within the general system, although even that is not a necessary conclusion. As the right to self-determination has to be balanced against the principle of „territorial integrity" it cannot be interpreted as a guarantee of a right to secession unless very specific conditions are met. In this context it is argued that the right to self-determination can mutate into a right to secession if the minority group is categorically and permanently excluded from the participation in the political process and its elementary human rights are violated. It is generally assumed that gross human rights violations such as genocide must occur.[21]

The definition of such preconditions for the exercise of an external right to self-determination can be based on the famous statement contained in the "Friendly Relations Declaration": "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."[22]

Although in theory it might be possible to agree on the above-mentioned prerequisites for the right to secession, in practice the legal assessment is often rendered difficult by the time-factor. Outbreaks of violence between ethnic groups do occur. But do they justify secession if the situation has calmed down afterwards and the multi-ethnic State has even offered far-reaching guarantees of autonomy? Is it still possible to argue that it is intolerable for the minority to stay within the State? The problem is intricate. The principle of self-determination would be a "*nudum ius*" if it did not grant a relief in situations of continuing violence and hatred within the borders of a State. But on the other hand the principle of territorial integrity is a factor of stability that cannot be underestimated. With the secession of a minority group and the break-up of the unity of the State the former majority will form a new minority within the new State. Thus, as a rule,

21 *Cf*. the examples given by K. Doehring, *Völkerrecht,* 2nd ed. (2004), 347; suppression of religious freedom, prohibition of inter-marriage, abolition of the protection of property and wide-spread confiscations, severe punishments without fair trial; see also H.-J. Heintze, 'Äußeres Selbstbestimmungsrecht der Völker', in K. Ipsen (ed.), *Völkerrecht*, 5th ed (2004), 424-425*;* as well as the authors quoted in *supra* note 20.

22 GA Res. 2625 (XXV), 24 October 1970.

the tensions between the ethnicities are not solved, only the relationship between minority and majority is reversed. The alternative is what often happens: an act of ethnic cleansing that expels the former majority population from the territory of the new "homogeneous" State. In this case, one gross human rights violation is answered by another one; the chain of hatred and revenge becomes endless. Such developments can never be seen in conformity with international law. In any case, therefore, secession based on the principle of self-determination should be considered to be only the *ultima ratio* solution if all other possibilities have been tried out in vain.

II. The Case of Kosovo

The most relevant and most controversial case – outside the context of de-colonialization – is the case of the Kosovo[23] which declared its independence on 17 February 2008 explicitly alluding to "the years of strife and violence in Kosovo that disturbed the conscience of all civilised people". The *opinio iuris* of the international community as to the legality of Kosovo's declaration of independence was completely divided. Russia and Serbia were clearly opposed,[24] some European countries as well as the United

[23] There is already abundant literature on the problem of Kosovo's declaration of independence and the ensuing problems of international law; see e.g. C. Schaller, 'Die Sezession des Kosovo und der völkerrechtliche Status der internationalen Präsenz', 46 *Archiv des Völkerrechts* (2008) 2, 131-171; S. Cvijic, 'Self-determination as a Challenge to the Legitimacy of Humanitarian Interventions: The Case of Kosovo', 8 *German Law Journal* (2007) 1, 57-79; M. Goodwin, 'Special Issue Introduction – What Future for Kosovo? From Province to Protectorate to State? Speculation on the Impact of Kosovo's Genesis upon the Doctrines of International Law', 8 *German Law Journal* (2007), 1; P. Hilpold, 'Auf der Suche nach Instrumenten zur Lösung des Kosovo-Konfliktes: Die trügerische Faszination von Sezession und humanitärer Intervention', in J. Marko (ed.), *Gordischer Knoten Kosovo/a: Durchschlagen oder entwirren?* (1999), 157-189; G. Nolte, 'Kein Recht auf Abspaltung', *Frankfurter Allgemeine Zeitung* (online), 13 February 2008, available at http://www.faz.net/s/RubDDBDABB9457A437BAA85A49C26FB23A0/Doc~EDD236A7785834BEDB55B003983C0159B~ATpl~Ecommon~Scontent.html (last visited 13 March 2009); K. William Watson, 'When in the Course of Human Events: Kosovo's Independence and the Law of Secession', 17 *Tulane Journal of International and Comparative Law* (2008) 1, 267-293.

[24] Statement of the Russian Representative Churkin: „The 17 February declaration by the local assembly of the Serbian province of Kosovo is a blatant breach of the norms and principles of international law – above all of the Charter of the United Nations – which undermines the foundations of the system of international relations. […] The unilateral declaration of independence and its recognition are incompatible with the

States were clearly in favour, many countries were undecided. These divergent attitudes are reflected in the follow-up: 55 States (amounting to roughly more than one quarter of the UN member States) have recognized Kosovo as an independent State. On the initiative of Serbia the UN General Assembly voted to refer Kosovo's declaration of independence to the International Court of Justice in October 2008. The ICJ is asked to give an advisory opinion on the legality of Kosovo's declaration of independence from Serbia. It is interesting to note that 77 countries voted in favour, 6 against and 74 abstained.[25]

It is also controversial whether the case of Kosovo can be considered as a "precedent" in international law. In the preamble to Kosovo's declaration of independence it is underlined that "Kosovo is a special case arising from Yugoslavia's non-consensual breakup and is not a precedent for any other situation". Those countries which have recognized the independence of Kosovo have set out with all clarity that Kosovo is not a precedent for other territorial conflicts;[26] those countries strongly opposed to the step taken by Kosovo argue that, as a matter of fact, it is a precedent.[27] From the point of view of international law this debate is somewhat odd as "precedents" are not a source of international law. It might be argued that a new international customary law has developed on the basis of State practice and *opinio iuris*. But even if the requirements for the creation of new rules of customary law are watered down,[28] a unique case leading to a major dispute

provisions of the Helsinki Final Act, which clearly specify the principles of inviolability of frontiers and territorial integrity of States." UN-Doc. S/PV.5839, 18 February 2008.

25 *Cf.* The General Assembly of the United Nations requests an advisory opinion from the Court on the unilateral declaration of independence of Kosovo, Press Communication of the ICJ, 10 October 2008, available at http://www.icj-cij.org/docket/files/141/14797.pdf?PHPSESSID=e2e2cff31f3715097a4cbbb309856e7d (last visited 13 March 2009).

26 *Cf.* on the *sui generis* thesis UN Doc. S/2007/168, para. 15.

27 E.g. Russia argues that the independence of the Kosovo creates a precedent for Europe, see the statement of the President of the Duma Boris Gryslov, 1 April 2008, Ria Novosti; available at http://de.rian.ru/world/20080401/102673108.html (last visited 13 March 2009); an analysis of the differences and similarities between Kosovo on the one hand and the break-away regions in Georgia on the other hand is provided by A. Aksenenok, 'Self-determination between the law and realpolitik', 5 *Rossija v global'noj politike* (2006) available at http://www.globalaffairs.ru/ articles/6214,html (last visited 9 March 2009).

28 *Cf.* on the discussion on "instant custom": J. Kammerhofer, 'Uncertainty in the Formal Sources of International Law: Customary International Law and Some of Its Problems', 15 *European Journal of International Law* (2004) 3, 523-553, R. Kolb, 'Se-

within the international community does not fulfill the requirements set by Article 38 of the Statute of the ICJ for new customary law to come into existence. And even if the declaration of independence and the ensuing recognition of Kosovo as an independent State by many other States were interpreted as triggering off the creation of a new rule, the States denying Kosovo's right would have to be considered as persistent objectors. Therefore they would be excluded from relying on such a new rule themselves.

D. South Ossetia's Right to Secession

The conflict between Russia, Georgia and South Ossetia has a long prehistory dating back to the early days of the Russian Revolution or even further back to the times of the Russian Empire.[29] The basic problems is that the Ossetians, who are ethnically different from boththe Russians and the Georgians, are divided into two groups, in the North Ossetians and the South Ossetians separated by a high chain of mountains of the Caucasus. Whereas North Ossetia was integrated first into the Russian Empire and then into the Russian Socialist Federative Soviet Republic (RSFSR), South Ossetia had a different fate. It also had belonged to the Russian Empire in the 19th century, but was separated from North Ossetia and integrated into the administrative district of Georgia. When Georgia declared its independence in 1918, a civil war broke out between the Bolshevik South Ossetians and the Menshevik Georgians that led – in the view of the South Ossetians – to genocide.[30] After Georgia had been re-conquered by the Red Army South Ossetia was declared to be part of the Georgian Soviet Republic. The autonomous status as an "autonomous region" was enshrined in all the Soviet constitutions.[31]

Under Soviet rule ethnic tensions and conflicts were suppressed. With the end of the Soviet Union they broke out like eruptions. At several points

lected Problems in the Theory of Customary International Law', 50 *Netherlands International Law Review* (2003) 2, 119-150.

29 *Cf*. the overview given by O. Luchterhandt, Gescheiterte Gemeinschaft, Zur Geschichte Georgiens und Südossetiens', 11 *Osteuropa* (2008), 97-110 (Gescheiterte Gemeinschaft); M. S. König, 'Der ungelöste Streit um Südossetien', in M.-C. von Gumppenberg & U. Steinbach (eds), *Der Kaukasus. Geschichte – Kultur – Politik*, (2008), 123; for the perspective of a Russian historian teaching at North Ossetia University *cf*. M. Bliev, *South Ossetia in the Midst of Russian-Georgian conflicts* (2006), 15-303.

30 *Cf*. Bliev, *supra* note 29, 361-375.

31 *Cf*. Article 15 of the Soviet Constitution of 1924, Article 25 of the Soviet Constitution of 1936 and Article 87 of the Soviet Constitution of 1977 determining that the South Ossetian autonomous Oblast is part of the Georgian Socialist Soviet Republic.

in the progression of events – during the collapse of the Soviet Union, after the civil war in 1992, during the period of the frozen conflict between 1992 and 2008 – the South Ossetians might have had a legal right to secession. They tried to secede in 1992, but were not successful, as no other State recognized their independence. The last and decisive step – this time supported by Russia – was taken after the military conflict in August 2008.

I. Separatist Developments in the Final Period of the Soviet Union

According to the Preamble to the Minsk Agreement of 8 December 1991 concluded between the heads of State of the RSFSR, the Ukrainian SSR and the Byelorussian SSR the Soviet Union had "terminated its existence as a subject of international law and a geopolitical reality".[32] This was confirmed in the "Declaration of Alma-Ata" by ten of the fifteen former Soviet Republics.[33] Already before this final step was taken some of the former Soviet Republics faced separatist tendencies within their borders fixed on the basis of Soviet law. This is true for the RSFSR where many of the autonomous regions declared their sovereignty and asked for a redistribution of competences.[34] Tatarstan, for example, declared that it was only associated with the RSFSR and based its relationship to Russia on international law. Chechnya as a part of the Ingush-Chechen autonomous region went even one step further and declared its independence on 6 September 1991.[35] Similar movements were to be observed in other former Soviet Republics such as in the Moldovan Soviet Socialist Republic concerning

[32] Agreement Establishing the Commonwealth of Independent States (Minsk Agreement), 8 December 1991, *Diplomaticheskiy Vestnik* (1992) 1; English translation: 31 ILM (1992) 1, 142-146.

[33] Documents of Alma Ata of 21 December 1991, *Diplomaticheskiy Vestnik* (1992) 1, 6-13*;* English translation 31 ILM (1992) 1, 147-154.

[34] *Cf.* M. Kazancev, 'Rechtliche Probleme der Wechselbeziehung zwischen der Russischen Verfassung und dem Föderationsvertrag', *Osteuropa Recht* (1994), 383-392.

[35] See H. Sauer & N. Wagner, 'Der Tschetschenien-Konflikt und das Völkerrecht, Tschetscheniens Sezession, Russlands Militärinterventionen und die Reaktionen der Staatengemeinschaft auf dem Prüfstand des internationalen Rechts', 45 *Archiv des Völkerrechts* (2007), 53-83.

Transnistria and in the Azerbaijan Soviet Socialist Republic concerning Nagornyj Karabach.[36]

II. South Ossetia's Right to Self-determination During the Collapse of the Soviet Union

The conflict between South Ossetia and Georgia has to be seen as a remnant of the unresolved ethnical conflicts in the Soviet Union as well. It broke out long before the final collapse of the Soviet Union. The first decisive step was the redefinition of the legal status of South Ossetia by the regional South-Ossetian Soviet. Although, according to the Soviet Constitution of 1977, South Ossetia had been an "autonomous region",[37] it demanded the status of an "autonomous republic", which, by definition, has a much broader range of competences according to the Soviet Constitution.[38] This was not only in contradiction to the Soviet Constitution where the status of all federal parts were clearly and explicitly defined, but also to the Constitution of the Georgian Soviet Socialist Republic. Therefore the Presidium of the Supreme Soviet of Georgia declared the resolution of South Ossetia for null and void.[39] Nevertheless, on 20 September 1990 South Ossetia declared its "sovereignty" based on the right to self-determination of the peoples. On 21 December 1991, after a bloody civil war, South Ossetia declared its independence,[40] right on the same day when the Commonwealth of Independent States was founded in Alma-Ata. Subsequently this resolu-

36 J. Smith, '„Soviet Orphans": the historical roots of the Transdniester, Nagorny Karabakh, Abkhaz and Southern Ossetian conflicts', *Sravnitel'note Konstitucionnoe Obozrenie* (2006) 4, 128.

37 *Cf.* Article 86 of the Soviet Constitution: An Autonomous Region is a constituent part of a Union Republic or Territory. The Law on an Autonomous Region, upon submission by the Soviet of People's Deputies of the Autonomous Region concerned, shall be adopted by the Supreme Soviet of the Union Republic.

38 Article 82 of the Soviet Constitution**:** An Autonomous Republic is a constituent part of a Union Republic. In spheres not within the jurisdiction of the Union of Soviet Socialist Republics and the Union Republic, an Autonomous Republic shall deal independently with matters within its jurisdiction. An autonomous Republic shall have its own Constitution conforming to the Constitutions of the USSR and the Union Republic with the specific features of the Autonomous Republic being taken into account.

39 Resolution of 16 November 1989 based on Article 115 para. 10 of the Georgian Constitution; reprinted in V. S. Chizhevsky (ed.), *Southern Ossetia – eternally together with Russia! Historical-legal foundation of the adherence of the Republic Southern Ossetia to Russia. Collection of documents and materials* (2004), 24.

40 Document reprinted in Chizhevsky, *supra* note 39, 91-92.

tion was confirmed by a referendum on 19 March 1992.[41] At the same time the people voted for a re-unification with Russia. But Moscow did not fulfil South Ossetia's plea to be integrated in the Russian Federation, although it was reiterated several times in the following years.[42] Neither was South Ossetia recognized as an independent State by any member State of the United Nations.

1. South Ossetias Self-definition as an "Autonomous Republic" in 1989

The legal question that arises in this context is whether South Ossetia could rely on the right to self-determination in order to redefine its status. At that time it was a sub-regional unit of a State that itself was integrated in a *de iure* federal State.[43] Two questions have to be answered in this context: Were the Ossetians in possession of the right to self-determination? And, if yes, would the right to self-determination be a sufficient basis for claiming a redefinition of the constitutional status – in contradiction to the then valid and applicable Constitution?

The right to self-determination is a collective right. It belongs to the "peoples". Minorities distinct from the majority group of the population can rely on the right to self-determination if they form "a people". The definition of "minorities" comprises objective and subjective criteria. Although there is no consensus on how to define minorities, the definition suggested by Capotorti is generally accepted: "A minority is a group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity directed towards preserving their

41 Document reprinted in Chizhevsky, *supra* note 39, 94-95.

42 On the Russian politics in the Caucasus after the collapse of the Soviet Union *cf.* A. Manutscharjan, 'Russlands Kaukasuspolitik unter den Präsidenten Boris Jelzin und Wladimir Putin', in E. Reiter (ed.), *Die Sezessionskonflikte in Georgien* (2009), 181-217; J. Perovič, 'From Disengagement to Active Economic Competition: Russia's Return to the South Caucasus and Central Asia', 13 *Demkratizatsijy* (Winter 2005), 61-85; A. Y. Skakov, 'Russia's role in the South Caucasus', 2 *Helsinki Monitor* (2005), 120-126.

43 *Cf.* Article 70 of the Soviet Constitution (1977): The Union of Soviet Socialist Republics is an integral, federal, multinational state formed on the principle of socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics.

culture, traditions, religion or language."[44] – In this sense the Ossetian population living in Georgia can be considered as a "minority" people forming a people and can therefore claim to have the right to self-determination. As explained above, this status conveys certain rights on the basis of international law such as the right to political participation and to the protection of the specific interests of the minority. But the right to self-determination does not automatically convey a specific privileged status in a given constitutional system. It is true that according to Soviet constitutional law the legal status of an "autonomous region" was less privileged than the status of an "autonomous republic". Autonomous republics had the right to take part in decision-making on the Union level and "to ensure comprehensive economic and social development on its territory, facilitate exercise of the powers of the USSR and the union republic on its territory, and implement decisions of the highest bodies of state authority and administration of the USSR and the Union Republic" (Article 83 of the Soviet Constitution). Furthermore, it was stipulated that the territory of an Autonomous Republic could not be altered without its consent (Article 84 of the Soviet Constitution). But such concrete privileges cannot be deduced from the right to self-determination. The determination of the constitutional status of minority groups is a matter of domestic affairs.

2. South Ossetias Declaration of Sovereignty in 1990

The declaration of sovereignty pronounced by South Ossetia on 20 September 1990 has to be seen within the context of the collapse of the Soviet Union. During that period all Soviet Republics and many autonomous republics and autonomous regions first declared their "sovereignty" and subsequently their "independence". "Sovereignty" was understood as the right freely to determine the political status and economic and social development irrespective of objections from the central government; "independence" was the last step in the process of secession and meant the foundation of a new State on the basis of international law.

In the process of the dissolution of the Soviet Union the international community accepted the move towards sovereignty and independence by the Soviet republics, but denied the same rights to the autonomous republics and autonomous regions. This attitude can be based on the one hand on con-

[44] F. Capotorti, 'Minorities', in Rudolf Bernhardt (ed.) *Encyclopaedia of Public International Law*, Volume 3 (1997), 411.

stitutional considerations and on the other hand on the *uti-possidetis* principle in international law.

The Russian Constitution contained one very famous provision that had been without any practical meaning throughout the whole history of the Soviet Union, but served as a legal lever in the process of dissolution. The provision is short and concise and reads as follows: "Each Union Republic shall retain the right freely to secede from the USSR." (Article 72). But, according to the explicit wording of the Soviet Constitution, such a right is guaranteed only to the Soviet Republics,[45] but denied to all other regional entities defined in the Constitution such as autonomous republics, autonomous regions and autonomous areas. Therefore South Ossetia had no constitutional right to declare its sovereignty as a first step towards independence.

One of the dominant interests of international law is to guarantee stability. The dissolution of States is unavoidably connected with instability and insecurity. In order to minimise these negative consequences the *uti-possidetis* principle which developed within the context of decolonialization is widely acknowledged in international law.[46] The *uti-possidetis* principle means that former internal State boundaries are regarded as boundaries between newly independent States. In the dissolution process this principle is strictly applied. Thus the inviolability of the former bounda-

[45] The Soviet Union consisted of the following 15 Republics: the Russian Soviet Federative Socialist Republic, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the Uzbek Soviet Socialist Republic, the Kazakh Soviet Socialist Republic, the Georgian Soviet Socialist Republic, the Azerbaijan Soviet Socialist Republic, the Lithuanian Soviet Socialist Republic, the Moldavian Soviet Socialist Republic, the Latvian Soviet Socialist Republic, the Kirghiz Soviet Socialist Republic, the Tajik Soviet Socialist Republic, the Armenian Soviet Socialist Republic, the Turkmen Soviet Socialist Republic, the Estonian Soviet Socialist Republic.

[46] *Cf. Case Concerning the Frontier Dispute* (Burkina Faso v. Republic of Mali), ICJ Reports 1986, 554, 565, 566; *Case Concerning the Frontier Dispute* (Benin v. Niger), ICJ Reports 2005, 90, 108. The *uti-possidetis* principle was also applied in the dissolution process of Yugoslavia, *cf.* the statement of the Arbitration Commission of the International Conference on Yugoslavia responding to a request from Serbia on 20 November 1991: "Third – Except where otherwise agreed, the former boundaries become frontiers protected by international law. This conclusion follows from the principle of respect for the territorial status quo and, in particular, from the principle *uti possidetis*. *Uti possidetis*, though initially applied in settling decolonization issues in America and Africa, is today recognized as a general principle" (reprinted in 3 *European Journal of International Law* (1992) 1, 182-184); this approach is criticised by S. R. Ratner, 'Drawing a Better Line: *Uti possidetis* and the Borders of New States', 90 *American Journal of International Law* (1996), 590-624 and P. Radan, *The Break-up of Yugoslavia and International Law* (2002), 244-245.

ries between the Soviet Republics is acknowledged in all the founding documents of the Commonwealth of Independent States.[47] It is once more confirmed in the "Declaration on the recognition of sovereignty, territorial inviolability of the boundaries between the States which are members of the Commonwealth of Independent States".[48] The consequence of this principle for sub-regional units of former republics is that they are denied the right to secession. The process of dissolution is stopped on the first federal level and does not continue on subsequent level.

3. South Ossetias Declaration of Independence in 1991

On 26 April 2007 the Parliament of South Ossetia adopted a "Declaration on the genocide of the South Ossetians in the period between 1989 and 1992".[49] It states that what happened between 1989 and 1993 had been a national liberation fight of the peoples of South Ossetia against Georgian national chauvinism and separatism". The actions of Georgia had been "an aggression based on an imperialist and fascist ideology" and the actions of the Georgian leadership had to be qualified as "genocide".[50] As a matter of fact there were fights between Georgian troops of the Ministry of the Interior and South Ossetians in 1991 which led to a high death toll and the destruction of many villages.[51] The outbreak of violence was fuelled by ideology, by what can be seen as an over reactive nationalism on both sides after the far-reaching suppression of national culture and heritage under Soviet rule. Under the slogan "Georgia for the Georgians" the Georgian President Gamzachurdia had promoted a nationalist policy suppressing minority rights, and the possibility that members of ethnic minorities even be denied Georgian citizenship was discussed.[52] But despite the atrocities of the civil war it is difficult to prove that the South Ossetians were victims of "genocide". Contrary to the situation in Kosovo the international community did

47 See *supra* notes 32.

48 Reprinted in *Dejstvujuščee meždunarodnoe pravo* (1996), 196-197.

49 Regnum News Agency, available at http://www.regnum.ru/news/630844.html (last visited 13 March 2009) and http://osgenocide.ru/2007/05/18/print:page,1,deklaracija_o_genocide_juzhnykh_osetin_v_19891992_gg_i_ego_politikopravovaja_ocenka.html (last visited 13 March 2008).

50 *Cf.* paragraphs 1-3 of the resolutive part of the declaration.

51 *Cf.* Bliev, *supra* note 29, 416; Luchterhandt, Gescheiterte Gemeinschaft, *supra* note 29, 107; J. Gerber, *Nationale Opposition und kommunistische Herrschaft seit 1956* (1997), 216-217.

52 *Id.,* 217.

not actively intervene. The Russian troops as well as volunteers from North Ossetia engaged in the fighting and pushed back the Georgians. The conflict was ended on 24 June 1992 by the signature of an "Agreement on the principles for the regulation of the Georgian-Ossetian conflict" by the Russian President Yeltsin, the Georgian President Shewardnadze and representatives of North and South Ossetia.[53]

In this situation, could the South Ossetians invoke the right to self-determination in order to justify secession from Georgia? They had been denied political participation and had suffered from discriminatory human rights violations. Nonetheless, it is difficult to argue that secession was the *ultima ratio* in 1992 as all sides agreed to try to find political solutions to the conflict.[54] The nationalist Georgian President Gamzachurdia had been replaced by the more moderate President Shewardnadze. The international community did not deem it necessary to intervene. There was a chance of a peaceful solution of the conflict without separation of the territories.

III. South Ossetia's Right to Secession After the Russian-Georgian War in 2008

Between 1992 and 2008 the conflict between South Ossetia and Georgia was considered to be "frozen". Neither could the fugitives and internally displaced people return to their houses in South Ossetia, nor did Georgia recognize South Ossetia's declaration of independence. There were occasionally outbreaks of violence, but no large-scale military confrontations. Despite the declarations of good will to achieve a peaceful solution of the conflict, negotiations on various levels did not bring any tangible results. Georgia tried to arouse awareness of the situation before the international community, but his appeals to the United Nations[55] were not followed by any diplomatic activities. On 15 October 2004 South Ossetia adopted a new Constitution which stipulates in Article 1: "The Republic of South Ossetia is

53 Bjulleten meždunarodnych dogovorov 1993, No. 8, 25.

54 *Cf.* the declaration of principle contained in the Agreement of 24 June 1992: "The parties to the conflict reconfirm their obligation to resolve all controversial questions in a peaceful way without the application or threat of violence."

55 *Cf.* remarks of H. E.Mikheil Saakashvili, President of Georgia, On the Occasion of the 59th Session of the UN General Assembly, 21 September 2004, 4th plenary meeting, Document A/59/PV.4, 11-16: "a global solution with global guarantees that would lead to the establishment of the fullest and broadest form of autonomy – one that protects culture and language and guarantees self-governance, fiscal control and meaningful representation and power-sharing at the national government level."

a sovereign democratic State based on the rule of law. It is founded as a result of the self-determination of the people of South Ossetia." But this was a one-sided action as well, not followed by any reaction of the international community.

The independence of South Ossetia was recognized by Russia almost immediately after the "Five-days-war" between Russia and Georgia. President Dmitry Medvedev justified the adoption of the relevant decrees[56] with reference to various international legal documents: "A decision needs to be taken based on the situation on the ground. Considering the freely expressed will of the Ossetian and Abkhaz peoples and being guided by the provisions of the UN-Charter, the 1970 Declaration on the Principles of International Law Governing Friendly Relations Between States, the CSCE Helsinki Final Act of 1975 and other fundamental international instruments, I signed Decrees on the recognition by the Russian Federation of South Ossetia's and Abkhazia's independence. Russia calls on other states to follow its example. This is not an easy choice to make, but it represents the only possibility to save human lives."[57]

The decisive question therefore is if South Ossetia had a right to secession after what had happened in August 2008. Immediately after the outbreak of the war both the South Ossetian and the Russian side reproached Georgia for having committed "genocide".[58] The numbers of people killed were said to be in the thousands.

There are not yet any results of international investigations into the origins and course of the conflict and in the violations of international humanitarian law and human rights committed during the war. Although an international fact finding commission was established by the EU on 2 December 2008, it could not start its work as both Russia and the *de facto* authorities in South Ossetia have refused to allow the EU monitors access to the territory.[59] Nevertheless, in the retrospective it is clear that the reports on genocide were exaggerated. According to independent estimates quoted by the Council of Europe a month after the end of the conflict about 300 per-

56 Decrees of the President of the Russian Federation on the recognition of the Republic of Abkhazia and the Republic of South Ossetia on 26 August 2008, SZRF 2008, No. 35, Pos. 4011.

57 Statement by President Dmitry Medvedev on 26 August 2008, available at http://www.kremlin.ru/eng/speeches/2008/08/26/1543_type82912_205752.shtml (last visited 13 March 2009).

58 *Cf*. the statement of President Medvedev on 26 August 2008, *supra* note 57.

59 *Cf*. Parliamentary Assembly of the Council of Europe, Res. 1647 (2009), *supra* note 1.

sons were killed and approximately 500 wounded on the South Ossetian and Russian sides and 364 persons killed and 2,234 wounded on the Georgian side.[60] Even if the attack during the night from 7 to 8 August 2008 is considered as insidious, there is no proof of an intention to extinguish the South Ossetian people.[61]

It might be argued that every military attack against a minority group provides already a pretext for secession. But this cannot be confirmed on the basis of State practice considering the more or less tacit acceptance of federal interventions against separatist movements, e.g. in China (Tibet) or Russia (Chechnya).

Unlike the situation in Kosovo in South Ossetia there were no long-lasting international negotiations with the aim of finding a compromise. Secession and recognition of South Ossetia as a new State therefore cannot be regarded as "*ulitma ratio*" in a process without any alternative.

While the "*opinio iuris*" of the international community concerning the declaration of independence of Kosovo is divided, the situation in South Ossetia can be compared to the situation in the Turkish Republic of Northern Cyprus which has been recognized as independent State only by one State, namely Turkey. The same is true in the case of South Ossetia, although the example of Russia has been followed by one State, namely Nicaragua.

E. Abkhazia's Right to Secession – Differences in Comparison to South Ossetia

I. Historical Roots of Abkhazia's Independence

Unlike South Ossetia Abkhazia can look back to a long tradition of independent statehood. It was an independent empire since the 15th Century before it came under the reign of the Osman and then the Tsarist Empire (1810). After its annexation in the 19th Century it remained an administrative district up to the end of the Russian Empire. In 1918 after the suppres-

60 *Cf.* Parliamentary Assembly of the Council of Europe, Res. 1633 (2008) on "The consequences of the war between Georgia and Russia", see *supra* note 16.

61 For the crime of genocide it is not necessary that a certain amount of people is killed. But, as stated in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, the acts must be "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such", *cf.* also Luchterhandt, Völkerrechliche Aspekte des Georgien-Krieges, *supra* note 11, 475-480.

sion of a Bolshevik revolt Abkhazia was integrated into Georgia. In 1921, after Georgia had been re-conquered by the Red Army Abkhazia and Georgia were transformed into two independent Soviet Republics. Only in 1931 Abkhazia came fully under the rule of Tbilissi; it was downgraded from a Soviet republic to a Soviet autonomous republic. This was due to the will of Stalin.[62]

On this background it might be asked if it is fair to apply the *uti-possidetis* principle to Abkhazia and thus to confirm Stalin's arbitrary decision as a basis for all further developments. It is not without irony that Putin stresses that "those who insist that those territories must continue to belong to Georgia are Stalinists - they stick to Yosif Visarionovich Stalin's decision."[63] If Abkhazia had remained a Soviet Republic, it would have had the right to secession and independence after the collapse of the Soviet Union. Although there is some truth in this critique of the *uti-possidetis* principle it has to be acknowledged that the case of Abkhazia is no exception in this regard. The *uti-possidetis*-principle was developed in the process of decolonization. As a rule, it served to guarantee the immutability of arbitrarily fixed borders – the borders fixed by the colonial empires. But this negative consequence of the *uti-possidetis* principle was generally accepted for the sake of stability. A re-definition of State borders might be even more dangerous to peace and security worldwide. Therefore it is justified to apply the *uti-possidetis* principle to Abkhazia as well.

II. The Involvement of the Security Council in Abkhazia's Struggle for Independence

After 1989 developments in Abkhazia was quite similar to developments in South Ossetia.[64] Violent conflicts broke out already in July 1989. In 1990 Abkhazia declared its independence. Civil war began in August 1992 when paramilitary groups and parts of the national guards invaded Abkhazia without the consent of the new President Shevardnadze. On 14

62 J. Schmidt, 'Konfliktursachen Abchasien und Südossetien', in E. Reiter (ed.), *Die Sezzessionskonflikte in Georgien* (2009), 110.

63 *Cf*. the interview with Vladimir Putin, available at http://www.cnn.com/2008/WORLD/europe/ 08/29/putin.transcript/ (last visited 13 March 2009). Putin refers in his statement both to Abkhazia and to South Ossetia.

64 *Cf*. U. Gruska, 'Abchasien – Kämpfe um den schönsten Teil der Schwarzmeerküste', in M.-C. von Gumppenberg & U. Steinbach (eds), *Der Kaukasus. Geschichte – Kultur – Politik* (2008), 102-109.

May 1994 the Russian Federation brokered an "Agreement on the ceasefire and separation of forces"[65] controlled by – mainly Russian – soldiers of the CIS and about 120 military observers of the United Nations. The presence of UNOMIG troops in Abkhazia is a distinctive feature in comparison to the situation in South Ossetia.[66] Furthermore, it seems that in Abkhazia – with the exception of the Kodori Vally and the Gali region[67] – it was more or less the total Georgian population that fled to mainland Georgia whereas in South Ossetia in the Tchinvali region there were still Georgian villages.

Abkhazia's legal struggle for independence was formally accomplished in the early 1990s. The starting point was different from the one in South Ossetia as Abkhazia was an autonomous republic and not merely an autonomous region. When Georgia abolished the Soviet-era constitution and restored the Democratic Republic of Georgia's 1921 constitution on 21 February 1992,[68] Abkhazia was granted a status of "autonomy", but without any specific legal guarantees. Therefore on 23 July 1992 the Abkhaz Supreme Soviet reinstated the 1925 Constitution,[69] according to which Abkhazia was "united with the Soviet Socialist Republic of Georgia on the basis of a special Union Treaty" (Article 4), providing for federation between Georgia and Abkhazia on equal footing. Abkhazia adopted a new Constitution on 26 November 1994[70] confirmed by referendum on 3 October 1999.

III. The Subordinate Role of Abkhazia in the Russian-Georgian War

There is no doubt about the attack on Georgian troops on Tsinchvali during the night of 7 - 8 August 2008. However, Abkhazia was not attacked. Nevertheless, Russian troops started a military invasion during the war. Even if Russia's involvement in the war is considered to be legitimate on

65 Available at www.usip.org/library/pa/georgia/georgia_19940514.html (last visited 13 March 2009).

66 *Cf*. Security Council Resolutions, avaialbe at http://www.un.org/Depts/dpko/missions/unomig/unomigDrs.htm (last visited 13 March 2009).

67 According to the resolution of the Parliamentary Assembly of the Council of Europe 1648 (2009), *supra* note 16, 1,500 ethnic Georgian fled from the Kodori valley during the war in August in only 100 remained there.

68 *Cf*. http://www.parliament.ge/files/1_5718_330138_27.pdf (last visited 23 April).

69 Available at http://www.abkhaziagov.org/ru/state/sovereignty/constitution_1925.php (last visited 23 April 2009).

70 Available at http://www.abkhaziagov.org/ru/state/sovereignty/index.php (last visited 23 April 2009).

the basis of the right to self-defence in so far as its peace-keeping soldiers had been attacked,[71] military actions in far-away Abkhazia can never be justified.[72] In Abkhazia, there were neither human rights violations nor anything comparable to "genocide". The United Nations had and continue to have a peace keeping mandate. Therefore there was no change in the situation due to what happened in South Ossetia and therefore there is no new factual basis that might justify Abkhazia's right to secession. *De lege lata* the threat of human rights violations is no justification for secession; otherwise the principle of territorial integrity would be undermined too easily. The recognition of Abkhazia as an independent State by Russia might be considered as a "windfall" in connection with the developments in South Ossetia. It does not have any basis in international law.

In April 2008 the Security Council had confirmed the "commitment of all Member States to the sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders." It has not changed its assessment since.

F. Conclusions

International law is generally hostile towards secessions. Although the right to self-determination is considered as part of *ius cogens* existing State borders are delineated on the basis of the *uti-possidetis* principle and the right to secession is granted only in cases of gross human rights violations and genocide. There might be many compelling political and legal arguments against such a restricted approach. But the consequences of the declaration of independence of Abkhazia and South Ossetia provide instructive examples of the intrinsic dangers of secessions. The information provided by the Resolution of the Parliamentary Assembly on the "Consequences of war between Georgia and Russia" speak for themselves: "The Assembly is especially concerned about credible reports of acts of ethnic cleansing committed in ethnic Georgian villages in South Ossetia and the „buffer zone" by irregular militia and gangs which the Russian troops failed to stop. It stresses in this respect that such acts were mostly committed after the signing of the ceasefire agreement on 12 August 2008 and continue to-

71 *Cf.* Nußberger, *supra* note 11, 460-466.

72 *Cf.* Luchterhandt, 'Völkerrechliche Aspekte des Georgien-Krieges', *supra* note 11, 435-480.

day."[73] – "Some 192,000 persons were displaced as a consequence of the war. The Assembly is concerned that a total of 31,000 displaced persons (25,000 from South Ossetia and 6,000 from Abkhazia) are considered to be "permanently" unable to return to their original places of residence. These numbers should be seen in the context of the approximately 222,000 persons who remain displaced from the previous conflict in the early 1990s."[74]

De-facto regimes allegedly based on the right to secession do not seem to be able to secure a life in peace and security to all.

[73] Parliamentary Assembly of the Council of Europe, Res. 1633 (2008), *supra* note 16, para. 13.

[74] Parliamentary Assembly of the Council of Europe, Res. 1633 (2008), *supra* note 16, para. 15.