Georgia-Russia International Legal Relations in XVI-XVIII centuries

1. The first Georgia-Russia treaty of protection (1587-1589)

In 80-s of the XVI century the most important stage of Georgia-Russia relations started. That was prompted by the necessity of solving problems of securing the Southern borders of Moscow State in general and Caspian trade roots in particular. In the beginning of April 1587 Tsar (King) of Moscow decided to render to the King of Kakheti Alexander II (Eastern part of Georgia) a military protection and sent ambassadors to proceed with formalities aimed at concluding such a treaty.

Few months later, on 28th April, 1587 Alexander "kissed the cross on the Oath Charter, signed and sealed it". Ambassadors returned to Moscow and handled the document to the Tsar. In 1589 the new ambassadors visited Alexander and delivered "the Granting Charter with the Gold Sealing".

What was the legal meaning of the above mentioned treaty?

First of all it should be mentioned that Georgian, Russian and the Western scholars differ in their opinions on these problems: "subjection in form of vassality" (S. Soloviov, S. Belokurov, S. Iushkov, Iv. Javakhishvili, I. Tsintsadze), "Subjection in sense of vassality and protectorate" (Z.Avalishvili), "Subjection", "Treaty of Mutual Assistance", "Protection", "Vassality" (N.Berdzenishvili), "Protectorate, excluding vassality" (M. Kheltuplishvili, N. Korkunov), "Protection" (W. Allen), "Establishment of Diplomatic Relations" (D.M.Lang).

It is not difficult to reveal a quite strange picture: the treaty had been analyzed and evaluated from the stand point of international law practice and theory of the XIX-XX centuries. To find a proper meaning of the treaty under consideration we have to use legal terms and meaning accepted in the theory and practice of international law in XVI-XVIII centuries.

The analysis shows that in the mentioned period theory and practice of international law differentiated two types of dependence of states – suzerainty and protection basing on the legal foundation of a dependent state's authority. The main question to be asked was: to whom belongs the right of supreme ownership of the land

(territory). As it is known in the society of feudalism all the political and legal institutions were based on the possession of the land.

The forms of suzerainty were confined by the institute of vassality: “investiture, tribute or/and rendering of military assistance “against all and each”. The main fiture of the vassality proper was the obligation of a holder of sovereignty over a fibal state to relinquish his right to posses the territory under his sovereignty putting it under the suzerainty of another state. In case if a vassal violated undertaken obligations of “servicing” he was obliged to leave the territory, leaving it at the possession of the suzerain (Joan Bodin, Les six livres de la Republique, 1608, p.101–164).

The forms of protection were based on diametrically different principles: if a protégé (client, adherent) was obliged formally perform the same “services” as a vassal (investiture, tribute or/and rendering of military assistance against all and each), he remained to be a holder of supreme right of possession of the state territory even if he had to break the agreement.

A clear cut picture of forms of dependency in XVI-XVIII centuries can be found in the Emmer de Vattel book “The Law of Nations or the Principles of Natural Law” (1758) (http://www.lonang.com/exlibris/vattel/vatt-116.htm).

“Chapter 16 of the Protection Sought by a Nation, and its Voluntary Submission to a Foreign Power

§192. Protection - WHEN a nation is not capable of preserving herself from insult and oppression, she may procure the protection of a more powerful state. If she obtains this by only engaging to perform certain articles, as to pay a tribute in return for the safety obtained,- to furnish her protector with troops,- and to embark in all his wars as a joint concern,- but still reserving to herself the right of administering her own government at pleasure, - it is a simple treaty of protection, that does not all derogate from her sovereignty, and differs not from the ordinary treaties of alliance, otherwise than as it creates a difference in the dignity of the contracting parties.

§193. Voluntary submission of one nation to another - But this matter is sometimes carried still farther; and, although a nation is under an obligation to preserve with the utmost care the liberty and independence it inherits from nature, yet when it has not sufficient strength of itself, and feels itself unable to resist its enemies, it may

lawfully subject itself to a more powerful nation on certain conditions agreed to by both parties: and the compact or treaty of submission will thenceforward be a measure and rule of rights of each. For, since the people who enter into subjection resign a right which naturally belongs to them, and transfer it to the other nation, they are perfectly at liberty to annex what conditions they please to this transfer; and the other party, by accepting their submission on this footing, engages to observe religiously all the clauses of the treaty.

§194. Several kinds of submission - This submission may be varied to infinity, according to the will of the contracting parties: it may either leave the inferior nation a part of the sovereignty, restraining it only in certain respects, or it may totally abolish it, so that the superior nation shall become the sovereign of the other, - or, finally, the lesser nation may be incorporated with the greater, in order thenceforward to form with it but one and the same state: and then the citizens of the former will have the same privileges as those with whom they are united."

Having revealed the meaning of "Vassality", "Protection" and "Subjection" in accordance with the international law during XV-XVIII centuries as well as international law practice of the Moscow state we have tried to determine a real legal nature of Kakheti – Moscow treaty of 1587-1589. Analysis of "the Oath Charter" and "the Granting Charter" as well as forms of diplomatic relations between Kakheti and Moscow brings us to the conclusion that we face a treaty that imposes on Moscow the obligation to protect by its military forces Kakheti from any aggression, in return Kakheti undertakes some obligations having a military character but keeping untouchable prerogatives of its supreme authority inside and outside of the kingdom.

It is true that Kakheti sometimes is named as «холоп», (Kholop) – Subject, but it can be explained by a new character of these relations for which there ware no proper terms so far elaborated. That's why everywhere where we see terms "Podanstvo" and "Kholopstvo" they immediately are followed by the term "Vo oborone" (being under military protection): In return Alexander was undertaking the obligation to recognize the "supremacy" and "dignity" of Moscow King and render military assistance. In other spheres Alexander was free "in his activities" in domestic and international affairs. That was the meaning of the term "Vo oborone". That indicates to a specific character of Kakheti-Russian relations on the edge of the XVI-XVII

centuries - first time in the history of Moscow State and Kakheti Kingdom a treaty of protection was concluded, based on the really free will of parties, and leaving untouchable domestic and international capacity of protegé.

That's why we come to the conclusion that the legal nature of the Kakheti – Russian treaty of 1587-1589 can be determined only as "a treaty of protection", based on the mutual obligation of military assistance, providing Kakheti with the status of dependent but not subjected state, possessing all the prerogatives of a sovereign state.