

**VITAL ROLE OF OSCE IN CONDEMNING
ETHNIC CLEANSING OF GEORGIAN POPULATION
IN ABKHAZIA, GEORGIA, BY THE INTERNATIONAL COMMUNITY**

At its sixty-second session, on 29 May 2008, the General Assembly of the United Nations adopted extraordinary Resolution concerning the "Status of internally displaced persons and refugees from Abkhazia, Georgia", which for the first time in the UN practice acknowledged the fact of ethnic cleansing of Georgians in Abkhazia. The Resolution reads as follows: "*Recalling* all relevant Security Council resolutions, and noting the conclusions of the Budapest (1994), Lisbon (1996) and Istanbul (1999) summits of the Organization for Security and Cooperation in Europe, in particular the reports of "ethnic cleansing" and other serious violations of international humanitarian law in Abkhazia, Georgia...

Emphasizes the importance of preserving the property rights of refugees and internally displaced persons from Abkhazia, Georgia, including victims of reported "ethnic cleansing", and calls upon all Member States to deter persons under their jurisdiction from obtaining property within the territory of Abkhazia, Georgia, in violation of the rights of returnees..."¹

It is noteworthy that from the very outset of the conflict the United Nations Security Council, as well as General Assembly avoided acknowledging "ethnic cleansing" in resolutions adopted by them; however, by 1992-1993 definition of a crime against humanity such as "ethnic cleansing" was increasingly introduced. And what is more, the growing occurrence of crimes in the territory of the former Yugoslavia persuaded the United Nations General Assembly to acknowledge "ethnic cleansing" as a form of genocide, which was exercised through mass killing, torture, terror and other inhuman means against a group of people of other ethnic origin.²

On 24 May 1994 the Final Report of the Commission of Experts established by the United Nations Security Council was published, which provided for a concept of "ethnic cleansing", defined as follows: "ethnic cleansing" is a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. To a large extent, it is carried out in the name of mis-guided nationalism, historic grievances and a powerful driving sense of revenge. This purpose appears to be the occupation of territory to the exclusion of the purged group or groups".³

Another report mentioned that "this policy is implemented through the following means: killing, torture, illegal detention and imprisonment, illegal executions, rape and sexual violence, placing civil population in ghettos, forced displacement, deportation, purposeful armed attacks on civilians and civilian objects, or threatening such an attack".⁴

Such a definition fully fits the frame of definition of genocide, but an emphasis was still shifted to "ethnic cleansing", as Muslims represented a small part of the multi-million population in Bosnian Serbia of Bosnia and Herzegovina. Formally, as defined by lawyers, in order to be recognized as a victim of genocide, person shall belong to a specific minority group, which is not a part of majority population living throughout entire territory of a country (the Muslim population living in Bosnia and Herzegovina was considered to be such a group).

International tribunal for the Former Yugoslavia, has not once stated that "ethnic cleansing" is a set of actions directed against a certain group of civilians, perceived to be one or several national or political groups; these acts shall be attributed to one and the same model: these are the state planned and organized actions... they have a common goal: to organize "ethnic cleansing" at a particular territory and create a new state. These actions serve as means to exercise policy of "ethnic cleansing".

¹ United Nations General Assembly Resolution A/RES/62/249, 29 May, 2008.

² See: United Nations General Assembly Resolution A/47/121 December 18, 1992.

³ UN Doc. S/1994/674, para.129, 24 May 1994.

⁴ UN Doc. S/25/277, para.56.

Based on this the Trial Chamber consider that the above-mentioned acts constitute “crimes against humanity”.⁵

In 1994 a State Commission was established in Georgia in order to reveal facts of “ethnic cleansing/genocide” committed against the Georgian population in Abkhazia and to ultimately submit the respective material to an international tribunal. Chairmanship of the Commission was conferred on me. The Commission, with the support of the Georgian Prosecution Service, based on meetings with the population displaced from Abkhazia, and photo and video material obtained by journalists, commenced studying the outrageous tragedy that had taken place in Abkhazia.

Reports, listing and summing up the facts established by the respective time, were disseminated within the UN Security Council and Human Rights Commission on a yearly basis. The first document was drafted as a Statement.⁶

Starting from 1995, the documents distributed, along with providing for lengthy information on the concrete facts, contained scientific assessment of the practice. For instance, the title of the document submitted to the United Nations Human Rights Commission was “Ethnic cleansing/genocide is the main tool for aggressive separatism in Abkhazia”. The document considered such issues as: 1. Genocide/Ethnic cleansing as an international crime against humanity; 2. Fascist ideology of separatists and its implementation in practice; 3. Facts revealing the policy of ethnic cleansing/genocide exercised against the Georgian population in Abkhazia.⁷

The subsequent report was of the same format.⁸

The reports provided for comparison of the practice of ethnic cleansing in other regions of the world and of the tragedy that had occurred in Abkhazia. It is known, that 6,000 peaceful civilians died as a result of the barbarian policy, and over 200,000 Georgians were expelled from Abkhazia through terror and inhuman treatment due to the only reason of being Georgians. The latter completely fitted the definition of “ethnic cleansing” as provided by international experts and tribunals in their conclusions.

It is to be mentioned, that more than 150,000 of peoples belonging to other ethnic groups also had to leave the region

The last, summing-up report was of a particular extent and all-inclusive (38 pages, plus the maps. See the annex) – *Report of the Policy of Ethnic/Genocide Conducted in the Territory of Abkhazia, Georgia, and the Necessity of Bringing to Justice the Persons Who Committed These Crimes in Accordance with International Principles of Due Process.*⁹

Unfortunately, as I mentioned already, both – the Security Council as well as the Human Rights Commission “circumvented” to include this topic into the agenda, however the Special Rapporteur Eide did straightforwardly mentioned in the Report that violating the territorial integrity of Georgia was followed by ethnic cleansing in Abkhazia.¹⁰

The first international organization which from the very beginning echoed the tragic developments taking place in Abkhazia was nonetheless the Organization for Security and Cooperation in Europe (OSCE). Already in 1994 the Budapest Summit participating states expressed their deep concern over “‘ethnic cleansing’, the massive expulsion of people, predominantly Georgian, from their living areas and the deaths in large number of innocent civilians”.¹¹

However, the most comprehensive, though concise definition of the policies carried out by the separatists in Abkhazia is included into the Lisbon Summit Declaration (dated 3 December 1996): “We

⁵ International Tribunal for Former Yugoslavia; In the Trial Chamber, Prosecutor v. Radovan Karadzic and Ratko Mladic Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, 90-91, 11 July, 1996.

⁶ Statement dated 15 February 1994 of the Republic of Georgia State Committee for Investigation and Reevaluation of Materials Concerning the Policy of Genocide and Ethnic Cleansing Against the Georgian Population in Abkhazia, and Submission of Such Materials to an International Tribunal – UN Security Council doc. S/1994/225 26 February 1994.

⁷ UN Security Council, doc. S/1995/200, 14 March 1995; UN ECOSOC, Commission on Human Rights, Fifty-First Session, doc. E/CN.4/1995/139, 8 February 1995.

⁸ E/CN.4/1996/146, 10 April 1996.

⁹ Report on the Policy of Ethnic Cleansing/Genocide Conducted in the Territory of Abkhazia, Georgia, and a Necessity of Bringing to Justice the Persons Who committed these Crimes in accordance with International Principles of Due Process – UN Doc. A/52/16; S/1997/317, 16 April 1997.

¹⁰ E/CN.4/Sub.2/1994/36, 6 July 1994, para. 31.

¹¹ Meeting of the Heads of State and Government of the OSCE Participating States, 4 and 5 December 1994, in “Towards a Genuine Partnership in a New Era”, UN Doc. A/49/800-S/1994/1435, annex. Budapest Decisions, Regional Issues, Georgia, para. 2.

(the OSCE member states – L.A.) condemn the ‘ethnic cleansing’ resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia”.¹²

In November 1999 in the Declaration adopted at the OSCE Summit convened in Istanbul the states “reiterated” their “strong condemnation as formulated in the Budapest and Lisbon Summit Documents, of the “ethnic cleansing” resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia, Georgia, and of the violent acts in May 1998 in the Gali region exercised against the returnees, the goal of which was provoking fear within those willing to return ... we recommend that a fact-finding mission with the participation of the OSCE and the United Nations be dispatched early next year to the Gali region to assess, *inter alia*, reported cases of continued “ethnic cleansing”.¹³

Unfortunately, the above-mentioned Commission has not been created however attributing such an importance in the OSCE declaration to the conflict in Abkhazia and once again condemning egregious crime of “ethnic cleansing” perpetrated by separatists had immense importance for mobilizing attention of the international community.

It is worth mentioning that when discussing a draft formulation of the Declaration in Lisbon, the Russian Delegation was categorically against its adoption, as we had used the term “resulting” in the present continuous tense. According to the statements of Russia, starting from 1994 the Russian peacekeepers were stationed at Enguri and no ethnic cleansing had happened there since. Therefore, according to the position of the Russian delegation, the term “resulting” should have been changed with the term “resulted”.

Their position was altered as I submitted to them the afore-mentioned Report of the OSCE mission and the list of names of over 1,000 persons killed during the peacekeepers’ presence in Gali region.

I also submitted to them the EU Parliamentary Resolution of November 14, 1996, which stated that “Parliament is concerned... due to continuing process of ethnic cleansing in Abkhazia region.”

One more note shall be made here, as the term “mass destruction” was changed in the Russian translation in a manner that the word stood not for physical extermination of population, but more for demolition or ruining buildings, deriving from the position that “destruction” also means demolition. I had to deal with reinstating justice in this case as well and ultimately the final version of the translation in Russian was formulated in the following manner: “**и́но̀земе́цтвo** “**ýòíè÷àñéóþ ÷èñòéó**”, **èìòìðàÿ àóðòàæàððîñÿ à ìàññîâîì òíè÷÷òàéèè è ìàññèóðòòàáîì èçàìàéèè à ìññîâîì àðóçèííèâî ìàññàéìèÿ àáõàçèè**”. (Emphasis made by me – L.A.).

It is to be mentioned that even at the CIS earlier summits Russia was made to follow the general position of the participating states and agree to condemn “ethnic cleansing” in Abkhazia. For example, the fact of ethnic cleansing in Abkhazia was directly recognized at the Summit held in Minsk on 26 May, 1995: the OSCE Budapest highest level meeting expressed concern over “ethnic cleansing”, mass expulsion of predominantly Georgian population and death of a big number of innocent civilians.¹⁴

The position of the United Nations Security Council is notable. If we take into account the fact that decisions in this body are made with the majority vote (9 affirmative votes out of 15 are required), including positive votes of all the permanent members of the Security Council, as well as the fact that there always was and still persists a threat from Russia to exercise a right to veto with regard to any action and decision relating to peaceful settlement of conflicts (Chapter VI of the United Nations Charter), not to say anything about possibility of undertaking action in case of a need of coercive measures for the purpose of stopping acts of aggression and maintaining peace (Chapter VII of the United Nations Charter), there is no possibility over and over again to declare directly occurrence of “ethnic cleansing” in Abkhazia. However, OSCE assessments were and continue to be so strong that Security Council “recalls” in all of its resolutions adopted during 1995-2006 the OSCE Budapest

¹² Lisbon Summit Declaration, 3 December 1996, UN Doc. A/51/76, appendix I, para. 20. I have to mention extremely important work accomplished by Mr. Tamaz Diasamidze, who has collected and published the acts related with the conflicts in Abkhazia and Tskhinvali region in Georgian, Russian and English languages – Regional Conflicts in Georgia – The Autonomous Oblast of South Ossetia, The Autonomous SS Republic of Abkhazia (1989-2002), The Collection of Political-legal Acts”, Tbilisi, 2003.

¹³ OSCE Istanbul Summit Declaration, 19 November, 1999 par. 17, www.osce.org.

¹⁴ Collected Materials Concerning Regulating the Conflict in Abkhazia, Georgia, adopted in 1992-1999, UNDP, Tbilisi 1999 pp.59-60.

decisions and following that the conclusions of the Lisbon and Istanbul Summits and considers the demographic changes as a result of the conflict in Abkhazia unacceptable.¹⁵

It is to be mentioned here that until 2006 all the resolutions included a reference to the Lisbon and Istanbul decisions, such as for example in the resolution adopted in 2002, the Security Council “recalls” the Lisbon (S/1997/57, Annex) and the Istanbul Summit conclusions concerning the situation in Abkhazia, Georgia.¹⁶

Notwithstanding the fact that since 2006 the Council does not use this formula it systematically reaffirms the Resolutions containing the above-mentioned formula.¹⁷

The United Nations Security Council has taken very inactive role in resolving the conflict in Abkhazia lately, it leaves without any reaction sabotage exercised by the separatists and an uncompromising refusal to consider proposals submitted by any international organization (the Boden Plan) or the Government of Georgia (one of which was disseminated by Georgia as the Security Council document in 1999), as they confirm Abkhazia being a part of Georgia and they recognize inviolability of territorial integrity and sovereignty of Georgia.¹⁸

The current policy of Russia with regard to the conflict in Abkhazia backs up the separatist regime both *de facto* and *de jure*. Despite the fact that Russia has never formally recognized “independence” of Abkhazia, the former has actually established close relations with the separatist, that is expressed in dropping economic blockade, mass granting of the Russian nationality, establishing official legal relations with the separatist bodies, strengthening peacekeeping forces without the consent of Georgia, introduction of the so called railway army forces for the sake of reconstruction of strategically important roads, and in general commencement of a process of “economic revival” of the Abkhazia region, while hundreds of thousands of displaced population remain in utmost severe material conditions. It is apt to recall here that according to all the existing documents, any kind of economic reconstruction in the region shall be closely linked with the irreversible process of return of the refugees and internally displaced persons to Abkhazia.

The separatist regime has absolutely no right to hold any election in a factually depopulated Abkhazia (out of population of 550,000 there are less than 150,000 remaining in Abkhazia, the majority of the ethnic Abkhaz live outside the region without an intention of returning to the devastated homeland).

In this state of affairs the United Nations General Assembly Resolution, adopted despite the harsh opposition of Russia, is yet another reminder to the international community that when hundreds of thousand innocent people fall victims of the intentions of separatists in any region (notwithstanding how small and under inhabited it may be) the international organizations may not hold a passive stance; the vigorous fight for protection of such precious rights of contemporary civilization is indispensable.

The endowment of the Organization for Security and Cooperation in Europe in undertaking this noble duty is enormous.

¹⁵ See: United Nations Security Council 1036/1996/12 January 1996; 1065-1996, 12 July 1996.

¹⁶ See: Resolutions 1427/29 July 2002; 1582/28 June 2005; 1615 (2005); 1656 (2006).

¹⁷ See: Resolutions 1656 (2006); 1716 (2006)... 1808 (2008).

¹⁸ Basic Principles for Determining the Status of Abkhazia within a New State Structure of Georgia – Doc. S/1999/813, Annex.