

**THE FAILURE OF THE UN SECURITY COUNCIL IN SETTLEMENT
OF THE CONFLICT IN ABKHAZIA, GEORGIA, UNDERMINES
THE FUNDAMENTALS OF THE INTERNATIONAL LEGAL ORDER**

(AGGRESSIVE SEPARATISM VS. INTERNATIONAL COMMUNITY)

At last, the secret of Polichinelle has been disclosed – Russia revealed its face, which had been hidden very carefully manner for many years, notwithstanding of perennial participation of its regular and irregular troops in the conflict and endless financial and economic support by the Moscow authorities rendered to the separatist authorities in Abkhazia, inalienable part of Georgia, recognized to be such by the entire international community of states – UN, OSCE, EU, Council of Europe and even the CIS.

Under the pretense of a facilitator the Russian Federation did everything to prepare a direct annexation of Abkhazia. Having initiated an aggressive war against Georgia in the so called region of South Ossetia and Abkhazia (Kodori Gorge) and consequently occupied these regions, the Russian Federation recognized the independence of these “republics” and after ultimately entering in military agreements with them, began to transform them into the springboards of its armed forces violating all the norms of international law.

It is high time to once again make conclusions about Georgia's long-lasting struggle within the framework of the UN for restoration of its territorial integrity and the role of this organization in a full-scale settlement of this conflict.

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Approximately twenty years have passed since breking out a military insurgence by hostile leaders of one of the regions of Georgia – Autonomous Republic of Abkhazia, in order to separate this one if the ancient regions of Georgia from the country. Controlling 2/3 of the territory of the autonomous republic, Georgia accepted mediation by the Russian Federation and on 3 September, 1992 in Moscow an agreement on ceasefire and separation of forces was signed.

However, separatists breached the agreement. In October 1992 by using thousands of mercenaries, mainly from the Russian Federation in addition to some fighters from the states of the Middle East, where Abkhazian Diaspora exists, as well as regular Russian troops dislocated in Abkhazia since the Soviet era. The Georgian Governmental forces were forced out and afterwards ethnical Georgian population of Abkhazia was subjected to savage treatment. As a result no ethnic Georgian remained in the region. However, the ethnic Georgians constituted 46 percent of the population before the conflict. Later on, announced to be the terrorist number one Shamil Basaev, exercised his terrorist practice as a Minister of Defense of Abkhazia and became notorious employing extreme cruelty towards Georgian population with his so called “Abkhazian battalion”, composed of the ethnic Chechen fighters.

These forces, occupying districts of Abkhazia, Georgia step by step from 14 August, 1992 to 27 September, 1993, targeted ethnic Georgians and first of all civilian population: politicians, teachers, doctors, writers, cultural workers. They were destroying Georgian architectural and archeological monuments, which could prove the inhabitance of ethnic Georgians in Abkhazian region since the ancient times.

Survivors, under the pressure of physical reprisal, were forced to leave their native places in Abkhazia, which was declared “Independent State”. As a result more than 6 thousand people, mostly civilian population were killed, nearly 250 thousand Georgians were forced to escape blood freezing horrifying humiliations, tortures, shootings.

Apart for ethnic Georgians, nearly 100 thousand persons of other ethnic origin escaped from Abkhazia, including ethnic Russians, Greeks, Armenians, Estonians. Even thousands of Abkhazians left native land, unwilling to be the part of the Fascist Regime. Thus, in 1996 4/5 of the regions' population was out of Abkhazia, Georgia borders.

Continuing to deny the right of refugees and internally displaced persons to freely return to their places of origin under the agreement of 1994, elaborated with the participation of the United Nations High Commissioner for Refugees, separatists were feverishly populating Abkhazia with mercenaries and other persons; aimed at changing the

demographical situation in the region. Those, who dare to return into their native places in the district of Gali, were threatened, terrorized and in May 1998 exiled again.

All these events were reported systematically, in the form of Statements of the Republic of Georgia State Committee on Investigation of the Policy of Genocide and Ethnic Cleansing against the ethnic Georgian population of Abkhazia, Georgia, were brought before the international community. This included first of all the UN Security Council and the Human Rights Commission.¹ The same information had been submitted to the OSCE and the CIS.

The following circumstances need certain attention.

Initially, in autumn 1993, just after the ceasefire agreement was reached, on the request of the Georgian Government, the UN Secretary-General sent a fact-finding mission to investigate serious violations of international humanitarian law, including reports on “ethnic cleansing”.

The Mission, composed of three representatives of the United Nations Centre for Human Rights, was tasked to determine in very short term whether the reports of the Georgian side were legitimate.

In November the Mission presented its report to the UN Secretary-General – this was the result of the work carried out by the Mission during 5 days in Abkhazia and 2 days in Tbilisi.

Certainly, it was difficult for the Mission to determine whether the accusations were rightful, as it was impossible to gather reliable information in depopulated, “liberated from the Georgians” Abkhazia.

Unfortunately, the Mission had no opportunity to acquire detailed information from Georgian refugees and displaced persons settled in the Western part of Georgia. However the report presented to the UN Secretary-General was giving more or less accurate information apart from some inaccuracies related to historical facts.²

Having noticed that human rights violations were committed by both parties, the Mission ascertained that **infringements by the Abkhazian forces and their mercenaries, in territory where military operations were not conducted any more and where there were only civilians, had the most mass and severe character** (Paras. 18,19,20,21,22,27,28,29,33-37,38, etc.).

Understanding that in such a short visit the Mission could not undertake the full-scale studying of a situation and extensive verification of facts, it gave a following conclusion: “On the basis of the collected information the Mission could not establish, whether the authorities of each of the parties have at any given moment of time carried out the active, purposeful policy to clear the areas which are under their control, either from Abkhazian, or from ethnic Georgian population. Only the further careful investigation and evaluation will allow establishing the convincing image of the corresponding facts” (ibid, para 52).

However, this was exactly what was never done afterwards, and that had negative influence on the overall process of regulation of the conflict in Abkhazia, Georgia.

Summits of the OSCE and reports of its mission to Georgia were even harsher:

“We (the OSCE participant states) express deep concern over “ethnic cleansing”, the massive expulsion of people, predominantly Georgian, from their living areas and the deaths of large numbers of innocent civilians”.³

“We (the OSCE participant states) **condemn the “ethnic cleansing” resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia.** Destructive acts of separatists, including obstruction of the return of refugees and displaced persons..., undermine the positive efforts undertaken to promote political settlement of this conflict”.⁴

“The Abkhazian authorities **continue realization of a policy of the violent ethnic cleansing,** aimed to prevent considerable repatriation in the district of Gali, or in any other place in Abkhazia. **Applied tactics varies from simply oral intimidations and short-term arrests before murders... Some most terrible atrocities, apparently, have been made by order from Sukhumi...**”.⁵

¹ E/CN. 4/194/123, E/CN. 4/195/139, E/CN. 4/196/146; UN Doc. S/194/225, S/195/200; E/CN. 4/197/132.

² UN Doc. S/26725, 24 November 1993.

³ Meeting of the Head of States and Government of the OSCE Participating States, 4 and 5 December 1994, in “Towards a Genuine Partnership in a New Era”. UN Doc. S/1994/1435, Annex. Budapest Decisions, Regional Issues, Georgia, para. 2.

⁴ Lisbon Summit Declaration, 3 December 1996. UN Doc. S/1997/57, Annex, para. 20.

⁵ The report of the OSCE mission in Georgia and the UN's personnel in Tbilisi “on the Situation regarding Human Rights in Gali region Georgian Republic, visit to the West Georgia and Gali region, controlled by Abkhazians”. 19-21 April 1996.

In November 1999, in the declaration adopted at the OSCE Istanbul Summit, participant states reiterated their strong condemnation of the “ethnic cleansing”, as formulated in the Documents of Budapest and Lisbon Summits, resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia, Georgia, and of the acts of violence committed against returnees to Gali Region in May 1998 aimed at frightening those wishing to return therein.⁶

The UN Security Council shared this position and permanently was “recalling the conclusions” of the Budapest Summit of the Conference on Security and Cooperation in Europe regarding the situation in Abkhazia, Georgia, and “declare[ed] unacceptability of demographic changes in result of the conflict”.⁷

The Council of the Heads of the Member-States of the CIS also supported conclusions of the Budapest meeting, having quoted the above-stated position in Minsk, in the Statement of the Council of Heads of the States and Government of CIS on 26 May 1995.

On 14 November 1996 European Parliament adopted the resolution in relation with the elections appointed by Abkhazian separatists on 23 November which, *inter alia*, provides for the following: “European Parliament is deeply concerned about the great number of refugees from Abkhazia living in Georgia, and deeply concerned about the **continuing process of ethnic cleansing in the Abkhaz region**”

...2. Stresses that a final peaceful solution to the conflict in Abkhazia should be based on a comprehensive political settlement, respecting the sovereignty and territorial integrity of Georgia within its internationally recognized borders.

...3. Stresses that elections can only be held in Abkhazia after the determination through negotiations of the political status of Abkhazia and with the guaranteed possibility of full participation for all refugees and displaced persons”.

On 30 January 1997 the UN Security Council “Recall[ed] the conclusions of the Lisbon Summit of the OSCE regarding the situation in Abkhazia, Georgia, and reaffirm[ed] the unacceptability of the demographic changes resulting from the conflict (Para. 9). The Security Council reiterated its **demand that the Abkhaz side accelerate significantly the process of voluntary return of refugees and displaced persons without delay or preconditions**” (Para. 11).⁸

However, insufficient action and reaction of the international community on events in Abkhazia, Georgia, and sabotage by the separatists of recommendations of the UN Security Council and OSCE on a constructive approach to development of the political status of Abkhazia: “as a part of the State of Georgia within the limits of its internationally recognized borders”, have induced the authorities in Sukhumi to attempt to legalize results of “ethnic cleansing”. Ignoring opinion of the UN Security Council, European Parliament and OSCE, separatists organized so-called elections of parliament in the depopulated territory of Abkhazia (out of 540,000 only about 150,000 inhabitants remaining) on 23 November 1996.

This political mockery was stamped by the international community as illegal.

Some while ago, in May 2008 the UN General Assembly adopted a Resolution. In this Resolution first time ever within the UN it was directly stressed that General Assembly “recalling all relevant Security Council resolutions, and noting the conclusions of the Budapest (1994), Lisbon (1996) and Istanbul (1999) summits of the OSCE, 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 “ethnic cleansing”.⁹

As clearly appears from the above cited, the international community of states unequivocally recognized that the Abkhazian separatists conducted and are still conducting, in the territory under their effective control “ethnic cleansing”, using the most inhumane methods that lead to mass killing and violent exile of the ethnic Georgian population, constituting almost half of the population of Abkhazia before the conflict.

⁶ OSCE Istanbul Summit Declaration, 19 November 1999, para. 17, www.osce.org.

⁷ S/RES/1336/(1996); S/RES/1065/(1996).

⁸ S/RES/1096/(1997).

⁹ UN Doc. A/RES/62/249 (2008).

The UN Security Council got involved in the conflict settlement in Abkhazia, Georgia, at a later stage – in July 1993 when, following the request of Georgia, the Security Council undertook a number of actions. The Security Council called parties to the conflict to end military actions and requested the Secretary-General to begin immediately the necessary preparations for sending a team of 50 military observers to Abkhazia “once the cease-fire is implemented”.¹⁰

On 27 July 1993 an Agreement on Cease-fire and the Mechanism of its Implementation in Abkhazia was reached in Sochi . The following provisions shall be mentioned from the agreement:

“1. Usage of aviation, artillery, navigation and other military equipment is strictly prohibited.

The additional forces shall not be dispatched to the conflict zone (on the territory of Abkhazia); the mobilization shall not be announced; military equipment and ammunition shall not be delivered without agreement, as well as the construction of objects for military infrastructure.

2. Georgian-Abkhaz-Russian interim monitoring groups (3-9 people) shall start operation from 29 July 1993. The sides shall agree the composition and personnel of the groups.

Interim monitoring groups shall observe cease-fire regime. They will be dislocated in Sukhumi, Gulripshi, Ochamchire, Gudauta, Novi Afon, Tkvarcheli, Gagra and Gali.

And if necessary, upon agreement of the sides, such groups will be dislocated in other places as well. The monitoring groups are authorized to enter any place of the conflict of their interest after informing the sides about their intention. The conflicting sides shall secure protection of monitoring groups and provide them with adequate living conditions and means of transportation”.

Establishment of the Joint Commission, with the UN and the OSCE representatives, on the settlement of situation in Abkhazia was also envisaged.

“5. The sides shall consider necessity of inviting international observers and peacekeepers to the conflict zone. The number and structure of peacekeeping forces will be defined only after consultations with the UN Secretary general and Security Council, provided the parties agree.

6. Stepwise demilitarization of the conflict is commenced”.

Immediate delivery of international observers was carried out and in 10-15 days after cease-fire was in force, the Georgian military formation shall be withdrawn from the territory of Abkhazia.

Concurrently all armed formations, groups and individuals shall be withdrawn from the conflict zone.

In accordance with the Moscow Final Document signed on 3 September 1992, the Unit of Interior Forces of Georgia shall be created from the local population in the conflict zone accommodated in barracks. Later on this unit will be included in the multinational internal troops of Abkhazia.

Armed formations of Abkhazia were included in the Regiment of Interior Troops that exercised the barracks regime of operation and perform the function of internal troops until comprehensive settlement of the conflict (Protection of rail and motor routes, important objects).

All of these activities were carried out under the strict control of the Joint Commission.

The international observers are deployed on the rivers Gumista, Psou and Inguri.

The international peacekeeping forces will be used to observe cease-fire and protect public safety, as well as the Russian military contingent temporarily located in the zone of the conflict, upon the consultations with the United Nations.

The sides to the conflict shall secure protection of multi ethnic population.

The measures for returning of refugees to the places of their permanent residence will be carried out.

In order to solve the problems relating to the refugees the Joint Commission shall set up special groups.

7. Russian military troops temporary deployed on the territory of Abkhazia keep the strict neutrality.

The status of temporary presence, functioning conditions, duration and specifications for withdrawal of the military forces and borderguards of the Russian Federation shall be specified in the agreements.

The parties shall secure protection of Russian military servicemen and their families”.¹¹

¹⁰ UN Doc. S/RES/849(1993) Para 2.

¹¹

On 6 August 1993 the UN Security Council decided that “an advanced team of up to ten United Nations military observers be deployed to the region as soon as possible to begin to help verify compliance with the cease-fire as envisaged in the cease-fire agreement, the mandate of the team to expire within the three month and contemplates that this advance team will be incorporated into a United Nations observer mission if such a mission is formally established by the Council”(Resolution 854 (1993).

Soon the UN Secretary-General sent 5 military observers comprising the first UNOMIG with the following interim mandate:

“a) to maintain contacts with both sides to the conflict and military contingents of the Russian Federation;
b) to monitor the situation and report to headquarters, with particular reference to any developments relevant to the efforts of the United Nations to promote a comprehensive political settlement”.

However, despite the fact that Georgian side withdrew heavy machinery out of Abkhazia and transferred its shutters of artillery to the UN observers and Russia, the Abkhazian separatists and their allies bean mass attack on Sukhumi on 16 September 1993. The Georgian army actually barehanded tried to stop the opposing party comprised of the Abkhaz insurgents, the armed groups of Chechens led by Bassayev, and the selected groups of the “former” soldiers and officers of the Russian army and special troops, supported by air strikes from planes SU-25 and SU-27, operated by pilots belonging to the Armed forces of Russia, as confirmed by the documents found with the pilot from the crashed plane SU-27, was bombing Sukhumi and other civilian targets. The Georgian side managed to return shutters from arms and to bring techniques only by the end of fights when the outcome of the battle was almost predetermined.

Unfortunately, the UN observers did not supervise process of withdrawal of troops and weapons by the Abkhazian side and involuntarily let separatists to hide the weapon and use it for the attacks in future.

The UN Security Council was called. It reacted against the happened by declaring the following:

“[The Security Council,] p[d]eeply concerned at the human suffering caused by conflict in the region, and at reports of “ethnic cleansing” and other serious violations of international humanitarian law,

Determining that continuation of the conflict in Abkhazia, Republic of Georgia, threatens peace and stability in the region,

- 1) Affirms the sovereignty and territorial integrity of the Republic of Georgia;**
- 2) Reaffirms its strong condemnation of the grave violation by the Abkhaz side of the cease-fire agreement of 27 July 1993 between the Republic of Georgia and forces in Abkhazia, and subsequent actions in violation of international humanitarian law;**
- 3) Condemns also the killing of the Chairman of the Defense Council and Council of Ministers of the Autonomous Republic of Abkhazia;**

...

8) Calls on all states to prevent the provision from their territories or by persons under their jurisdiction of all assistance, other than humanitarian assistance, to the Abkhaz side and in particular to prevent the supply of any weapons and munitions”.¹²

However this was a belated decision, as the fights had stopped already on 27 September as it has been noted above, the separatists had managed to occupy almost all territory of Abkhazia, and about 6,000 innocent ethnically Georgian inhabitants were killed, along with over 200,000 being expelled.

The resolution adopted almost in twenty days after, despite its resolute tone, was still a resolution adopted under Chapter VI of the Charter of the United Nations – “Peaceful Means of Disputes’ Settlement”. This means that the resolution considered a group of separatists as the party equal in rights in the conflict, without whose consent no decision could have been made in respect of a large-scale settlement of the conflict in Abkhazia.

After September of 1993 on the confrontation line of the parties the armistice had been established. Despite the absence of peacekeeping forces, the parties in the conflict observed obligations under the cease-fire agreement, abstaining from any actions which might have had aggravated conditions. However, the reaction of the UN Security Council read in some of the paragraphs, nevertheless alerted separatists and forced them to soberly estimate a situ-

¹² UN Doc. S/RES/876(1993).

ation, in correspondence with the will of the international community of the states to try to fix the reached success. It gave to the Security Council an opportunity to structure additional military observers of the United Nations in number of 50 persons; therefore UNOMIG consisted of 60 military observers.¹³

The UN Secretary General conveyed his Special Representative to Tbilisi in order to organize Georgian-Abkhazian meetings chaired by him, UN Secretary General Special representative.

These meetings, known as “Geneva negotiations”, resulted in Memorandum of Understanding between the Georgian and the Abkhaz sides, signed by those sides and Russian Federation on 1 December, 1993 in Geneva.

Group of experts, led by a well-known Swiss Professor Giorgio Malinverni, was established to define the political status of Abkhazia.

During the first expert level talks held between the parties in Moscow on 15-16 December, 1993, the Abkhaz side objected to the mentioning Abkhazia as a part of Georgia. However, Prof. G. Malinverni relying on the facts stated that:

“The political status of Abkhazia should be defined with full respect of the sovereignty and territorial integrity of the Republic of Georgia, which means considering Georgia’s territorial integrity within the borders of the former Georgian Soviet Socialist Republic.

At the same time political status of Abkhazia should provide protection of its governmental and legislative institutions, also its state symbols”.¹⁴

I would like to refer to the document – Terms and Definitions used in the Documents on Georgian-Abkhazian Conflict as agreed between the Parties – the attachment of which contains information on groups headed by Prof. Malinverni.

According to this document, the term “territorial integrity of the Republic of Georgia” means guaranteeing “the borders of the former Georgian Soviet Socialist Republic, as a member of the former USSR” (The Moscow Agreement of 3 September, 1993, Para 1. UN SC Resolution 876, Para 1).

Under the “territory of Abkhazia” the territory of the former Abkhazian Autonomous Soviet Socialist Republic containing part of Georgian SSR is considered (Sochi Agreement of 27 July, 1993).

On the request of the Georgian, side in Communiqué on the second round of negotiations between the Georgian and Abkhaz sides in Geneva on 11-13 January, 1994 the willingness on expansion of the United Nations peacekeeping mission was declared:

“The Parties agreed that the establishment of favourable conditions for further progress towards apolitical settlement and the practical implementation of agreements will be promoted by the deployment of a full-scale peacekeeping operation in Abkhazia. **They have appealed to the UN Security Council at its forthcoming consideration of the activities of the United Nations Observer Mission in Georgia (UNOMIG) for an appropriate expansion of its mandate, *inter alia*, to entrust it with control of the non-resumption of hostilities in the zone of conflict. The parties continued to favour the deployment in the conflict zone of the UN peacekeeping forces or other forces authorized by the United Nations. They expressed their mutual consent to the use of a Russian military contingent as part of such forces.**

Within five days after deployment in the zone of conflict, in accordance with a decision of the UN Security Council, of an additional number of international observers and following the arrival of peacekeeping forces the Parties shall carry out the withdrawal of all armed units, with their weapons and military equipment, from the Inguri River and other possible lines of active confrontation in the conflict zone to a distance to be determined by the officers commanding the peacekeeping forces and UNOMIG, with the agreement of the parties. Simultaneously, international observers and peacekeeping forces will enter the areas thus formed.

There shall be complete disarmament and withdrawal of all kinds of volunteer units and individuals participating in the conflict. **Inspections by international observers are permitted at crossing points on the Psou River.**

¹³ UN Doc. S/RES/892(1993).

¹⁴ Report on first expert-level discussions, responsible for Preparation of Recommendations on defining the political status of Abkhazia (15-16 December 1993, Moscow), submitted by Prof. Giorgio Malinverni to the chairman of the group Eduard Brunner, the Special Representative of the UN Secretary General in Georgia.

The Parties appeal to the Security Council for an intensification of the international civilian presence in the conflict zone and for this purpose it would be necessary to deploy appropriate civilian experts who will assist in resolving the problems of refugees and other humanitarian issues".¹⁵

The following statement shall be cited from the Communiqué:

The Parties agreed to begin on 10 February, 1994, the implementation of the phased process of the return of the refugees and displaced persons to Abkhazia, and as first step to the Gali region. The Parties will take necessary measures to ensure the safety of refugees, displaced persons and personnel involved in this operation. The Abkhaz side has the primary responsibility for the reception and security of the refugees and also of the above-mentioned personnel. Moreover, the UN and the Russian Federation call upon to render them assistance in creating a safe environment conduct to the return of refugees and displaced persons".

The UN SC could not organize to send peacekeeping forces to Abkhazia. However, UN SC Resolution 896 has taken into account the reports of the Secretary-General concerning the ways of possible peacekeeping operations in Abkhazia, Republic of Georgia, and even agreed to make some steps in this direction if these would be a significant progress in finding ways for political settlement at the next round of negotiations in Geneva on 22 February, 1994, the Security Council couldn't manage to send any peacekeeping forces.

The very Resolution contains some exceptionally important statements:

"The UN Security Council,

...

11) recognizes the right of all refugees and displaced persons effected by the conflict **to return, without pre-conditions, to their homes in the secure conditions**, calls upon the parties to honour the commitments they have already made in this regard, and urges the parties to come to an expeditious agreement, including a binding timetable, that would assure the rapid return of these refugees and displaced persons in secure conditions;

12) **Condemns any attempts to change the demographic composition of Abkhazia, Republic of Georgia, including by repopulating it with persons not previously resident there"**.

However, the Abkhazian party continued to sabotage constructive decisions on the status, declaring itself independent from Georgia. Therefore, all Geneva meetings, having Abkhazian side considering the offered conditions, came to an end without results. The notorious influence was made by the Russian side, who though formally declared neutral actively supported the Abkhazian side during the negotiations.

In Resolution 901 the UN Security Council "Urging the parties to achieve as soon as possible substantive progress towards a political settlement based on its principles set out in its previous resolutions so that the Security Council may adequately **consider the possible establishment of a peace-keeping force in Abkhazia, Republic of Georgia**."

2) Requests the Secretary-General to report to the Council by 21 March 1994 on whatever progress has been made in the negotiations and on the situation on the ground, with special attention to circumstances **which might warrant a peace-keeping force and on the modalities for such a force**;

3) **Stresses the right of all refugees and displaced persons to return to their homes in secure conditions, throughout Abkhazia, Republic of Georgia**, and urges the parties to come to an expeditious agreement with a view to facilitating the effective realization of this right;

4) Urges also the parties to resume the negotiations as soon as possible and to achieve substantive progress towards a political settlement, including on the political status of Abkhazia, respecting fully the sovereignty and territorial integrity of the Republic of Georgia, based on the principles set out in its previous resolutions, so that the **Security Council may adequately consider the possible establishment of a peace-keeping force in Abkhazia, Republic of Georgia"**.¹⁶

In these circumstances Georgia had to take into consideration an opinion of the international community and to accept the Statement for measures on political settlement of the Georgian-Abkhazian conflict and consequently sign the Quadrilateral Agreement on Voluntary Return of Refugees and Displaced Persons at a meeting in Moscow in

¹⁵ Collected Documents, *Supra* note 11, pp. 21-23.

¹⁶ UN Doc. S/RES/901(1994).

the format of the Geneva negotiating process together with the Abkhaz side, with the presence of representatives of Russia, the UN and OSCE, on 4 April, 1994. The signed Agreement, despite a number of accepted compromises made first of all by the Georgian side, could have led to mass return of exiled persons and to the beginning of a meaningful dialogue on the status of Abkhazia.

From the very first days after the signature however it became clear that the Abkhaz side interpreted the documents unilaterally and tried to prove both the independence, and its right of filtration and sabotage of process of returning of refugees and internally displaced persons. It will suffice to mention that until the present time only 311 persons have officially returned within the frame of the quadrilateral agreement (There are tens of thousands returnees back to their places of origin at their own risk).

The UN Security Council, while welcoming these documents, was still postponing dispatching the peacekeepers in Abkhazia, Georgia.

On 15 April, 1994, the Council of the CIS Heads of States adopted a statement, highlighting the following:

“In the documents, which were adopted in the process of negotiations on settlement of the Georgian-Abkhaz conflict under the auspices of the UN and facilitation of Russia, starting from December of the last year, are included appeals to the UN Security Council on the immediate commencing of peacekeeping operations (PKO) with inclusion into the UN peacekeeping forces of the Russian troops. Realization of this operation shall facilitate the settlement of the most acute problem – secure return of tens of thousands of refugees to their native places. But the decision on implementation of the PKO is not so far adopted.

The situation in the conflict zone needs immediate actions. It is inadmissible to delay the deployment of the peacekeeping forces therein.

Confirming its endeavors for immediate solution of refugees’ problems, protection of human rights and national minorities, principal of territorial integrity of the Republic of Georgia and guaranteeing the *statehood of Abkhazia*, the countries of the Commonwealth of Independent States – members of the agreement on collective security – appeal to the Security Council of the UN to adopt immediate decision on conducting peacekeeping operation in Abkhazia.

The Council of the Heads of States expresses readiness in case, if for some reason such decision is not approved in the nearest future, in compliance with the principles and the essence of the agreement, meant to provide for peaceful and secure development of the member-states, with agreement of the sides in the conflict to introduce to the conflict zone the peacekeeping Forces, composed of the armed units of the interested parties to the treaty.

We appeal to all the member states of the Commonwealth of Independent States with a call to participate in the peacekeeping mission in the zone of the Georgian-Abkhaz conflict.

All the actions of the CIS member states, parties to the Agreement on Collective Security – shall be combined with the supportive actions of the UN and the OSCE. The positive role might have been played by the international observers who were already deployed in Abkhazia under the decision of the UN SC and their close cooperation with the command of the peacekeeping forces. **We would also welcome the readiness of the UN to support such peacekeeping operation by additional contingent”.**¹⁷

The situation was progressively aggravating.

On 14 May, 1994, the Agreement on Cease-fire and Separation of forces was signed in Moscow. The Georgian and Abkhaz sides therein reaffirmed their commitment to the “non use of force”. The creation 12 meters safety zones and also zones of restriction of arms on the both sides of the Inguri river was agreed. Peacekeeping forces of the CIS tasked to co-operate closely with the UNOMIG entered these zones to provide patrolling and monitoring over the fulfillment of the parties’ obligations. At that time the UNOMIG consisted of about 200 observers and support personnel.

It should be mentioned that the Protocol attached to this Agreement emphasizes that the peacekeeping forces and “its presence should promote a safe return of refugees and displaced persons, especially to the Gali region”.¹⁸

¹⁷ The Statement of the Council of the CIS Heads of States, on 15 April 1994. Collected Materials, *Supra* note pp. 35-36.

¹⁸ Collected Documents, *Supra* note 11, pp.28-30.

The UN Security Council welcomed the above-mentioned and stressed again that **“this progress would allow the Council to reconsider the possible establishment of a peace-keeping force in Abkhazia, Republic of Georgia”**.¹⁹

At the same time the UN Security Council reaffirmed the importance of decision of all refugees and “call[ed] upon the parties, in particular the Abkhaz side, to achieve substantive progress without further delay towards a comprehensive political settlement” “Demand[ed] that the **Abkhaz side accelerate significantly the process of voluntary return of refugees and displaced persons** by accepting a timetable on the basis of that proposed by the Office of the United Nations High Commissioner for Refugees, and further demand[ed] that it guarantee the safety of spontaneous returnees already in the area and regularize their status in accordance with the Quadripartite Agreements”.²⁰

By recalling the fact that in the preamble of the resolution the UN Security Council expresses deep concern about “the continued obstruction of such return by the Abkhaz authorities” and recalls the “conclusions of the Budapest summit of the Conference on Security and Cooperation in Europe (S/1994/1435, annex) regarding the situation in Abkhazia, Georgia”, the negative assessment of separatists’ actions by the Security Council becomes obvious.

However, subsequently only little has changed – the Abkhaz side was continuously refusing to discuss the status of Abkhazia, suggesting that it was already recognized as an “independent republic of Abkhazia”, and was refusing to negotiate on returning of expelled persons until the full-scale settlement of the conflict.

On 26 May, 1995, the Summit of the CIS in Minsk made a statement on the conflict in Abkhazia, Republic of Georgia, which reads as follows:

“More than a year and a half has passed since the process of full-scale settlement of the armed conflict in Abkhazia, the Republic of Georgia had started. Despite the peacekeeping efforts of Russia and the CIS in general and also the UN and the OSCE, this process is far from the settlement.

The conflict has caused the death of thousands of mainly civilian population. Over 300,000 people were forced to leave their permanent places of residence. Nearly entire ethnic Georgian population which constituted 47% of population of Abkhazia appeared outside it.

The Budapest Summit of the OSCE expressed a deep concern in relation with the ethnic cleansing, mass expulsion of the predominantly Georgian population from their places of residence and death of a large number of innocent civilians.²¹

In the resolution 993 (1993), the UN Security Council indicated “continued” impediments from the side of the Abkhaz authorities to the return of the IDPs and Refugees”.

The obstructive position of separatists has resulted into a harsh and resolute negative response from the summit of the CIS on 19 January, 1996. Some of the assessments of the separatists actions are cited herewith:

“... recalling the Memorandum of 10 February, 1995 (Almaty), on Maintaining the Peace and Stability in the Commonwealth of Independent States and the Declaration by the Council of the Heads of States of 26 May, 1995 (Minsk),

Confirming its commitments pursuant to the aforementioned documents not to support separatists’ regimes, not to establish political, economic and other cooperation with them, nor render any economic, financial, military or other assistance,

Noting in this regard the necessity **to undertake complex of measures to influence the Abkhaz side,**

Acting in compliance with the UN Charter,

has decided:

1. To condemn the destructive position of the Abkhaz side that blocks the reaching the mutually acceptable agreement on political settlement of the conflict, dignified and safe return of refugees and displaced persons to their places of their permanent residence ...

¹⁹ UN Doc. S/RES/937(1994).

²⁰ UN Doc. S/RES/1036(1996).

²¹ Collected Documents, *Supra* note 11, pp. 59.

... 6. **Confirming, that Abkhazia is an inalienable part of Georgia, the member-states of the Commonwealth of Independent States, without consent of the Government of Georgia:**

a) will not exercise trade-economic, financial, transport or other operations with the authorities of the Abkhaz side;

b) will not engage themselves in official contacts with the representatives or the officials or the structures existing on the territory of Abkhazia, nor with the members of military formations established by them.

7. Member-states of the Commonwealth of Independent States will not permit the functioning of representations of the authorities of neither the Abkhaz side on their territories, nor the persons in a capacity of official representative of those authorities.

8. Reaffirming its firm commitment to the comprehensive settlement of the conflict in Abkhazia, Georgia, and first of all to the immediate and unconditional return of refugees and displaced persons to their places of residence in safety and dignity, the member-states of the Commonwealth of Independent States appeal to the United Nations to support the **measures of influence on the Abkhaz authorities adopted by the CIS member-states and advice all member-states of the UN to align to these measures**".²²

Soon it had become clear that the so called "CIS peacekeeping operation" in reality was a purely Russian endeavour aimed at separating Abkhazia from the rest of the Georgian territory helping separatists to continue building up their military and economic infrastructure, pursue the policy of ethnic cleansing. It is enough to mention that during 1994-1997 2,000 civilians were killed in the Gali region, many houses were burned down and thousands were left without any means for survival.

The disruptive position of separatists was condemned at the Summit of OSCE in Lisbon on 1 December, 1996. The adopted Declaration contains the following provision:

"20. We reaffirm our utmost support for the sovereignty and territorial integrity of Georgia within its internationally recognized borders. **We condemn the "ethnic cleansing" resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia. Destructive acts of separatists**, including obstruction of the return of refugees and displaced persons and the decision to hold election in Abkhazia and in the Tskhinvali region/South Ossetia, undermine the positive efforts undertaken to promote political settlement of these conflicts. We are convinced that the international community in particular the United Nations and the OSCE with participation of the Russian Federation as the facilitator, should continue to contribute actively to the search for a peaceful settlement".²³

In the resolution adopted on 30 January, 1997, the UN Security Council:

"... Noting with deep concern the continued failure by the parties to resolve their differences **due to the unpromising position taken by the Abkhaz side**, and underlining the necessity for the parties to intensify without delay their efforts, under the auspices of the United Nations and with the assistance of the Russian Federation as facilitator, to achieve an early and comprehensive political settlement of the conflict, including on the political status of Abkhazia within the State of Georgia, which fully respects the sovereignty and territorial integrity of Georgia;

Noting with concern resent frequent violations on both sides of the Moscow Agreement of 14 May 1994 on a Cease-fire and Separation of Forces (S/1994/583, annex I) (the Moscow Agreement), as well as acts of violence organized by armed groups operating from south of the Inguri River and beyond the control of the Government of Georgia;

...

3. **Reaffirms its commitment to the sovereignty and territorial integrity of Georgia, within its internationally recognized borders, and to the necessity of defining the status of Abkhazia in strict accordance with these principles, and underlines the unacceptability of any action by the Abkhaz Leadership in contravention of the principles, in particular the holding on 23 November 1996 and 7 December 1996 of illegitimate and self-styled parliamentary elections in Abkhazia, Georgia;**

...

²² Collected Documents, *Supra* note 11, pp. 77-79.

²³ UN.Doc. S/1997/57, Annex.

6. Calls upon the parties, in particular the Abkhaz side, to achieve substantive progress without further delay towards a comprehensive political settlement, and further calls upon them to cooperate fully with the efforts undertaken by the Secretary-General, with the assistance of the Russian Federation as facilitator;

...

8. Reaffirms the right of all refugees and displaced persons affected by the conflict to return to their homes in secure conditions in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994 on voluntary return of refugees and displaced persons (S/1994/397, annex II), condemns the continued obstruction of that return, and **stresses the unacceptability of any linkage of the return of refugees and displaced persons with the question of the political status of Abkhazia, Georgia;**

...

9. **Recalls the conclusions of the Lisbon summit of the OSCE (S/1997/57, annex) regarding the situation in Abkhazia, Georgia, and reaffirms the unacceptability of the demographic changes resulting from the conflict;**

...

10. **Reiterates its condemnation of killings, particularly those ethnically motivated and other ethnically related acts of violence;**

...

11. Reiterates its demand that the Abkhaz side accelerate significantly the process of voluntary return of refugees and displaced persons without delay or preconditions, in particular by accepting a timetable on the basis of that proposed by the Office of the United Nations High Commissioner for Refugees (UNHCR), and further demands that it guarantee the safety of spontaneous returnees already in the area and regularize their status in cooperation with UNHCR and in accordance with the Quadripartite Agreement, in particular in the Gali region;²⁴

On 28 March, 1997, the CIS Summit in its decision “on Implementation of the Measures for Conflict Settlement in Abkhazia, Georgia, stated:

“... Confirming its commitment to the sovereignty and territorial integrity of Georgia,

Taking note of the Declaration of Lisbon Summit of the Heads of OSCE member-states (December 1996) condemning the “ethnic cleansing” resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia”, as well as obstruction to the return of refugees and displaced persons,

Being guided by the provisions of the “Memorandum on Peacekeeping and Stability in the Commonwealth of Independent States” (Almaty, 10 February, 1995) and Declaration of the Council of the Heads of States of the Commonwealth of Independent States (Minsk 26 May, 1995) on elimination of separatism as the most important prerequisite for stability in the Caucasus and regulation of conflicts in this region,

Condemning the position of the Abkhaz side blocking the reaching the mutually acceptable agreement on political regulation of the conflict in Abkhazia, Georgia, and return of refugees and displaced persons to the places of their permanent residence,

Noting that the measures undertaken pursuant to the Decision of 19 January, 1996, on conflict settlement in Abkhazia, Georgia, have considerably encouraged the process of negotiations”.²⁵

On 31 July, 1997, the UN Security Council:

“...3. Reaffirm[ed] its commitment to the sovereignty and territorial integrity of Georgia, within its internationally recognized borders, and to the necessity of defining the status of Abkhazia in strict accordance with these principles, and underlines the **unacceptability of any action by the Abkhaz leadership in contravention of these principles;**

...

²⁴ UN Doc. S/RES/1096(1997).

²⁵ Collected Documents, *Supra* note 11, pp. 88.

6. Not[ed] the Addendum to the Report of the Secretary-General, supports the intention of the Special Representative of the Secretary-General to resume the adjourned meeting in September, and call[ed] upon in particular the Abkhaz side to engage constructively at this resumed meeting;

7. Stress[ed] that the primary responsibility for reinvigorating the peace process rests upon the parties themselves, call[ed] upon them, to achieve substantive progress without further delay towards a comprehensive political settlement, and further calls upon them to cooperate fully with the efforts undertaken by the Secretary-General and his Special Representative, with the assistance of the Russian Federation as facilitator;

9. Recall[ed] the conclusions of the Lisbon summit of the OSCE (S/1997/57, annex) regarding the situation in Abkhazia, Georgia, and **reaffirm[ed] the unacceptability of the demographic changes resulting from the conflict;**

10. **Reiterat[ed] its condemnation of killings, particularly those ethnically motivated, and other ethnically related acts of violence;**

11. Reaffirm[ed] the right of all refugees and displaced persons affected by the conflict to return to their homes in secure conditions in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994 on voluntary return of refugees and displaced persons (S/1994/397, annex II), **condemn[ed] the continued obstruction of that return, and stresses the unacceptability of any linkage of the return of refugees and displaced persons with the question of the political status of Abkhazia, Georgia;**

12. Reiterat[ed] its demand that the Abkhaz side accelerate significantly the process of voluntary return of refugees and displaced persons without delay or preconditions, in particular by accepting a timetable on the basis of that proposed by the Office of the United Nations High Commissioner for Refugees (UNHCR), and further demand[ed] that it guarantee the safety of spontaneous returnees already in the area and regularize their status in cooperation with UNHCR and in accordance with the Quadripartite Agreement, **in particular in the Gali region**".²⁶

The Abkhaz side, pursuing its destructive policy, abandoned the Geneva negotiating process and returned to negotiations only in July 1997; however it again obstructed a possibility of a constructive dialogue. The Abkhaz side did object the granting the Group of Friends of the Secretary-General the right to officially participate in negotiations.

The Group of Friends – the United States of America, France, Germany, the United Kingdom (Russia, the member of the group, participated as a “facilitator” from the very outset) – were actively trying to contribute to the full-scale settlement of the conflict. However, the Group was officially deprived of its right to participate in the Geneva negotiations. Nevertheless, on 17-19 November, 1997, the Geneva negotiating process was resumed between the Georgian and Abkhaz sides under the auspices of the Special Representative of the Secretary-General for Georgia. The Russian Federation participated as a facilitator, along with OSCE. The status of the states of the Group of Friends of the UN Secretary-General was agreed at the meeting. Despite the opposition of the Abkhaz side blaming the Group of Friends in the predisposition and pro-Georgian positions finally an agreement was reached, as stated in the “Final Statement on the Results of the Resumed Meeting between the Georgian and Abkhaz sides”. The document was granting the Group of Friends a status similar to the status of other observers. The document provided that: “they [the Group of Friends] may participate in meetings and sessions, make statements and proposals on various aspects of the peace process, including a political settlement. They are not the sides to the negotiations and shall not be invited to sign documents agreed upon by the sides during the negotiations”.

The enduring disruptive position of the separatists made the CIS to fix even stricter position. In its decision on additional measures for the conflict settlement in Abkhazia, Georgia, signed on 28 April, 1998, the Council of the Heads of States of CIS:

“... Being guided by the provisions set out in the “Memorandum on Peacekeeping and Stability in The Commonwealth of Independent States” (Almaty, 10 February, 1995) **on Elimination of the Threat of Separatism as Important Precondition to Stability and Conflicts’ settlement in the Region, Reaffirming all its previous decisions, in particular of 19 January, 1996, and of 28 March, 1997,** aimed at achieving the comprehensive settlement of the conflict in Abkhazia, Georgia, and stressing the necessity of their implementation,

Once again expressing serious concern that due to the failure of the implementation of previous decisions made within the framework of the Commonwealth no process of organized return of refugees has commenced,

²⁶ UN Doc. S/RES/1124(1997).

Noting with concern that **due to the obstructive approach of the Abkhaz side, the negotiations on determining the political status of Abkhazia, Georgia, are frozen,**

Deeply concerned about the holding election of so-called local self-governance in Abkhazia, Georgia, that **cannot be recognized legitimate against the background of undefined status of Abkhazia, unresolved problems of the return of refugees and displaced persons causing the tension towards the comprehensive settlement in the conflict zone**

Decided:

...

"2. To consider inadmissible further delay of the organized return of refugees and displaced persons to the entire territory of Abkhazia and to accomplish their return to the Gali region (within the old lines) before the end of 1998 on the basis of the mechanisms elaborated by representatives of the sides, the Russian Federation and UNHCR,

Actions for the economic recovery of the region and the regulation of the border and customs regimes should only be taken in immediate, direct connection with the process of the steady, organized return of refugees and displaced persons, first of all to the Gali district (within the old borders).

To strongly recommend to the sides to the conflict to consider and resolve the question of the establishment, at the stage of the return of refugees and the full normalization of life in the Gali district (within the old borders), of a temporary transitional administration, which would work with the direct participation of the intermediaries, the United Nations and OSCE;

...

4. To express deep concern due to the fact that the provisions of the decision of the Council of Heads of State of the Commonwealth of 28 March, 1997, concerning the expansion of the security zone have remained unimplemented.

To call upon the Abkhaz side to revert to this question, consider it and resolve it positively.

In case of opposition to the return of refugees and the emergence of a threat to peace and security in the region, to consider the introduction of appropriate changes in the nature and content of the peacekeeping operation on the basis of the relevant provisions of the UN Charter.

5. The Council of Heads of State of the Commonwealth calls upon the Member States of the Commonwealth of Independent States, signatories to the decisions on the deployment of Collective Peacekeeping Forces (hereinafter – *CPF*) in the Georgian-Abkhaz conflict zone and on determining the mandate for the peacekeeping operation in the Georgian-Abkhaz conflict zone to take a more active part in the peacekeeping operation together with the Russian Federation, at present bearing the whole burden of this operation

7. To consider it essential to approach the UN to include into the UN Observer Mission in Georgia of a group of observers from the Members States of the Commonwealth of Independent States²⁷.

In the above cited decision, not only the provisions sharply condemning position of the Abkhaz side (stated in a preamble and paragraphs 2 and 4 of the decision) attracts attention, but also a risk to address to the chapter VII of the UN Charter. Even though the decision does not directly mention this, it is impossible to interpret the last sentence of the paragraph 4 in another manner.

Thus, by May 1998 the United Nations, CIS and OSCE demanded from separatists:

- a) To immediately begin return process of exiled persons, having separated this issue from the decision on the status of Abkhazia as a part of Georgia;
- b) To end the destructive actions aimed at:
 - i) breaking the peace process of settlement of the political status of Abkhazia;
 - ii) "legalising" the authorities established without participation of the majority of the population, and first of all the expelled ethnic Georgian population, constituting before the beginning of the conflict almost half of the population of the Abkhaz Autonomous Republic.

²⁷ Collected Documents, *Supra* note 11, pp. 281-284.

c) creating the temporary mixed administration, starting from Gali region.

However, as a reaction to the above, in May 1998 the confrontation was provoked in Gali region again, according to the report of UN Secretary-General (S/1998/647), resulting into nearly 40,000 persons from Gali region again being compelled to search for shelter on other bank of river Inguri. Thousand houses were burnt for restoration of which UNCHR had spent 2 million US dollars.

The Georgian side has considered that these actions constituted a new wave of ethnic cleansing against the ethnic Georgian population of Abkhazia.

On 30 July, 1998, the UN Security Council in principle agreed with this opinion:

The Security Council:

"... 3) Express[ed] its deep concern at the significant outflow of refugees resulting from the recent hostilities **demand[ed] in particular that the Abkhaz side allow the unconditional and immediate return of all persons displaced since the resumption of hostilities in May 1998;**

4) Condemn[ed] the deliberate destruction of houses by Abkhaz forces, with the apparent motive of expelling people from their home areas²⁸.

Therein, the Security Council "recall[ed] the conclusions of the Lisbon summit of the OSCE (S/1997/57, annex) regarding the situation in Abkhazia, Georgia, and reaffirms the unacceptability of the demographic changes resulting from the conflict"

It is difficult to express in more clear terms the position of the Security Council concerning the continuing ethnic cleansing, the victim of which largely was and still is the Georgian population of Abkhazia.

In decision on further steps towards the settlement of conflict in Abkhazia, Georgia, the summit of CIS²⁹ on 2 April 1999 decided:

"... 7) To ensure the implementation of the measures provided for in the decisions of the Council of Heads of State of the Commonwealth of 28 March, 1997 and 1998 with regard to the broadening of the security zone and the redeployment of the Collective Peacekeeping Forces on the basis of the mechanism developed by the parties to the conflict.

8) To consider unacceptable any delays in the process of the organized return of refugees and displaced **persons to all parts of Abkhazia, Georgia**, first of all to Gali district (within its old borders) with the provision of safety.

To urge the Abkhaz side to revert to this issue, consider it and resolve it in a positive manner.

In the case of opposition to the return of refugees, or a threat to peace and security in the region, to consider making appropriate changes in the nature and content of the peacekeeping operation on the basis of the provisions of the UN Charter applicable to such circumstances.

9) To urge the parties to the conflict to resolve the issue of the establishment, during the phase involving the return of refugees and complete normalization of life in Gali district (within its old borders), of temporary transitional administrations that would work with the direct participation of the mediators, the UN and the OSCE.

10) Measures for the economic rehabilitation of the region should be taken only in direct association with the process of the steady and organized return of refugees and displaced persons(S/1999/392).

As noted above the CIS Istanbul Summit did resolutely condemn ethnic cleansing in Abkhazia (**Footnote 30, WHICH I CAN NOT INSERT DUE TO FORMAT**)

On the Yalta Summit the CIS Member States once again recognized the territorial integrity and sovereignty of Georgia and its dedication to the principles of the Almaty Memorandum on Supporting the Peace and Stability in the CIS (Alma-Aty, 26.05.95) and Decision "On the Measures on Conflict Settlement in Abkhazia, Georgia" (Moscow, 19.01.96). The latter condemned separatism as a whole and particularly in Abkhazia and formulated countermeasures.³⁰

Meanwhile the UN Security Council again appealed "to both sides" and demanded to display without delay the will to achieve political settlement of status of Abkhazia within the state of Georgia, requested the parties to display

²⁸ UN Doc. S/RES/1187(1998).

²⁹ Collected Documents, *Supra* note 11, pp. 128-129.

³⁰ See above the Lisbon Summit Declaration, Para 17.

the will to settle the conflict by dialogue and mutual compromises (from RES.1225(1999), 20.01.99 till RES.1494(2003), 30.07.2003).

The entire history of settlement of the conflict in Abkhazia confirms that Georgia did all possible to facilitate the achievement of full-scale settlement of the conflict; The resolutions of the UN, OSCE, and the CIS do confirm this thesis.

One more evident example is the destiny of the so-called “Boden Document” elaborated by Special Representative of the UN Secretary General with the participation of the Group of Friends.

It is true that this document did not corresponded to positions of Georgia in everything, however Georgia agreed to use it as a ground for negotiations about the status and return of the expelled.

However Abkhaz side not only rejected this document, as in the past it did with others, it even refused to discuss the document for a simple reason that the document defined the status of “Abkhazia as a part of Georgia”. Declaring themselves as independent, the separatists demanded from Georgia to recognize independence of Abkhazia as a key condition to starting negotiations about the status of Abkhazia; i.e. the Abkhaz separatists were redirecting this issue into a scope of the international legal relations of two independent subjects of international law. This does definitely contradict the modern international law and the resolutions of the UN Security Council, OSCE, CIS, the European Union and the Council of Europe.

The fact is that, acting within the limits of the Chapter VI of the UN Charter – “Peaceful Means of the Conflict Settlement”, the UN Security Council again and again hoped for “good will” of the separatists.

In its resolution the UN Security Council³¹ welcomed “the finalization of drafting” of the “Boden Document”, “Strongly urg[ed] the parties, in particular the Abkhaz side, to receive the document and its transmittal letter in the nearest future, to give them full and open consideration, and to engage into constructive negotiations on their substance without delay thereafter, and call[ed] on others having influence over the parties to promote this outcome” (Para 6).

As the official position of the separatists was made clear, to refuse even to touch that document, the UN Security Council in its resolutions 1462 (2003) 30.01.03 and 1494 (2003) 30.07.03 once again considered it possible to state that the purpose of these documents was to facilitate the negotiations between the sides, under the leadership of the United Nations, on the status of Abkhazia within the State of Georgia, and this was not an attempt to impose or dictate any specific solution to the sides (paras 5 and 6 respectively); the UN Security Council underlined that “the process of negotiation leading to a lasting political settlement acceptable to both sides will require concessions from both sides” (Para 6 and 7).

In these resolutions the Security Council just “deeply regrets the continued refusal of the Abkhaz side to agree to a discussion on the substance of this documentp.” (Paras 5 and 7).

The contradictions are abundantly clear between separate paragraphs and in the paragraphs itself – from the both Georgian and Abkhaz sides the concessions requested, though the Georgian side has supported “The Boden Plan”, but the Abkhaz one refused to carry out the Council’s recommendation. The fact that this is only recommendation is confirmed by the phrases in paragraph 5, and first of all by the provision according to which the purpose of this document is to facilitate meaningful negotiations between the parties, under the auspices of the United Nations, on the status of Abkhazia within the State of Georgia, and this is not an attempt to impose or dictate any specific solution to the parties.

And again separatists refused to discuss the given document and it was stuck in the middle of nowhere.

This tendency proceeded until August 2008 – the Security Council continued adopting the resolutions condemning actions of the Abkhaz separatists hampering the broadening of controlled zone by police forces of the United Nations and their introduction to Gali region; Again and again Security Council declared inadmissible violent change of the demographic structure, which arose as a result of conflict, confirmed the rights of all expelled to return to their houses in a conflict zone.³²

Despite the fact that the new stage of the Geneva negotiations of responsible representatives of the Group of Friends of the UN Secretary General organized under the auspices of the United Nations (February, July 2003) has

³¹ UN Doc. S/RES/1393(2002).

³² UN Doc. S/RES/1615(2005), S/RES/1656(2006), Resolutions of 2007.

begun, the meetings of presidents of Georgia and Russia were held, during which the new effort on achievement of a full-scale settlement of the conflict was considered, the situation in the conflict zone did not change: again the sanctions imposed on the separatist regime were not upheld by the Russian side, especially by the heads of the regions of the Russian Federation, operating illegally; The railway communication between Sochi and Sukhumi continued free functioning. Despite the application of Georgia to the General Assembly of the United Nations, the speed of granting the Russian citizenship to the population of Abkhazia did not drop; the acquisition of the property located in the territory of Abkhazia, including illegal acquisition of the property of violently displaced persons by the Russian authorities, physical and legal bodies, preceded. These actions flagrantly violated international law, the sovereignty of Georgia, and its legislation, declaring invalid any agreements concluded with the separatist regime.

The greatest danger constituted the fact that Russian passports given out with ease appeared in hands of terrorists, drug dealers, etc., who densely settled in conflict zones, on the territories outside the control of the Georgian authorities, population of which territories had been given preferential exit and entrance on territory of Russia.

The authorities of Russia asserted in every possible manner that they “will not admit the slightest infringement of the rights of citizens of Russia in Abkhazia and in South Ossetia”.

It is quite clear that the international community of states, and first of all the United Nations, was obliged to find the new means to respond effectively to cynical challenges from the side of separatists.

It should be noted that in July 2008 the author of this article wrote:

“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 proposal 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).³³

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 had 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, without the consent of Georgia, introduction of the so-called railway army forces for the sake of reconstruction of strategically important roadsp”.³⁴

Today, as this article is being drafted, in June 2009, it is clear to all that aggression of Russia and its occupation of Georgia, particularly Abkhazia and so-called South Ossetia, was prepared long time ago and entered into a final phase as soon as rapprochement of Georgia and NATO became obvious and after the statement of this organization “that Georgia will become indispensable member of this organization” (see annex).

Having violated the agreement with the European Union, the so-called Sarkozy-Medvedev’s Six-point plan, Russia has gone further away and, violated all of existing universally recognized norms of international law and decisions of the United Nations, OSCE, the European Union, the Council of Europe and the very CIS, when officially recognized independence of separatist regimes, having occupied them and transformed them into *de facto* and recognized them *de jure* integral parts of the Russian Federation.

It is amazing that while the European Union did everything to stop Russian aggression against Georgia, the UN Security Council did not mention anything on this roughest infringement of the Charter of the United Nations.

Trying to justify such position of the UN Security Council and its refusal to accept strict measures within the limits of the chapter VI of Charter, ones refer to possible application of the veto by Russia, though today it is already clear, that Russia is not a “facilitator”, but the active party to the conflict and according to paragraph 27(3) of the Charter of the United Nations “Permanent member of the Council who is a party to a dispute shall abstain from voting”.

³³ Basic Principles for Determining the Status of Abkhazia within a New State Structure of Georgia – doc S/1999/813, annex.

³⁴ Levan Alexidze, Vital Role of OSCE in Condemning Ethnic Cleansing of Georgian Population in Abkhazia, Georgia, by the International Community. – “Journal of International Law”, Tbilisi, State University, 2008 #1, pp. 42-43.

The fact that Russia is the party in the conflict is confirmed by the documents accepted within the frameworks of the Council of Europe, the European Union, NATO demanding to stop occupation of Georgia and to annul an illegal recognition of independence of regions of Georgia.

How long will the policy of appeasement, not only of the aggressive separatism but also the aggressive super-state, flagrantly violating the basic norms of the international moral and international law, last?! But one is assured that if the UN Security Council had at least tried to discuss the problem of Russian-Georgian war on a public meeting, the Russia's veto would have isolated the aggressor morally and politically, as it occurs within the frameworks of the OSCE, the European Union, NATO and the Council of Europe.

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