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Legal norms or *ad hoc* fixes? International legal aspects of Russian military involvement in conflict settlements in the Caucasus

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ABSTRACT

This article provides a comparative analysis of the legal grounds for the deployment of the Russian Armed Forces in a series of conflicts in the Caucasus, namely in the disengagement between North Ossetia and Ingushetia (1992–1994), South Ossetia/Georgia (1992–2008), Abkhazia/Georgia (1994–2008), and in the Russian–Georgian War of 2008. The difficulties in codifying certain actions from the point of view of international law are detailed. The article discusses whether the political and military actions of Moscow in various Caucasian conflicts were driven and interconnected by one and the same logic, or were purely *ad hoc* fixes. Cases where Russia's actions have been legitimized by securing mandate from a regional intergovernmental organization are differentiated from cases where it has acted on the basis of intergovernmental agreements, as well as from the application in certain cases of Article 51 ("the right of individual or collective self-defence") of the UN Charter. The legitimacy or illegitimacy of the deployment of the Russian Armed Forces abroad is considered in the context of, and in comparison with, a series of cases where force has been used in conflicts by coalitions under a UN mandate, as well as by NATO and some Western powers.

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Introduction

Interference and intervention by the great powers and some intergovernmental organizations in regional international or internal political conflicts has become an important and widespread characteristic of modern international relations. Such interference is qualified and justified by various types of references to international law. However, considering the ambiguous and sometimes contradictory nature of certain areas of international law, especially when legal argumentation is mixed in with political debates, vested interests and hidden or even obvious inconsistencies in the legal interpretations of conflicts may manifest themselves.

A number of inter-ethnic and political conflicts and struggles have been raging in the various regions of fluctuating territorial status in the Northern and Southern Caucasus

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over the past three decades (North Ossetia / Ingushetia, Chechnya, Dagestan, Nagorny Karabakh, Georgia/South Ossetia/Abkhazia/Adjara, etc.).

This article considers the international legal aspects of use of military force in the North Ossetia – Ingushetia (1992–1994), South Ossetia/Georgia (1992–2008), Abkhazia/Georgia (1994–2008) and Russia – Georgia (2008) conflicts, as well as the involvement of the Russian military in political contradictions over these hostilities.[1]

This article investigates whether the political and military actions of Moscow and, specifically, the legal interpretations of its own actions in various Caucasian conflicts were driven and interconnected by one and the same logic, or were they purely ad hoc fixes? Was Moscow at all interested in legally justifying its involvement in these military conflicts? Or was it simply acting pragmatically? As David Siroky points out, "External support often flows from strong states to strong regions in weaker states" (Siroky 2016, 63). Both Moscow and its opponents elaborated (often *post-factum*) and inserted into the international political discourse more or less solid legal or pseudo-legal interpretations of the coercive actions and use of military force in Caucasian conflicts listed above. The question of how the political motivations of the parties to the conflicts, as well as those of the great powers involved, were dressed (or camouflaged) in legal categories and interpretations remains, as does the degree to which this camouflage worked.

Russia as a "third force": the disengagement operation between North Ossetia and Ingushetia

The tendency towards self-determination and inter-ethnic separation in North Ossetia, a region that remained a constituent entity of the Russian Federation following collapse of the Soviet Union,[2] started to intensify in the early 1990s, when inter-ethnic tensions between North Ossetia and bordering Ingushetia heated up. There were clashes on the streets, armed groups started to appear, kidnappings became commonplace, and internally displaced persons started to flood into Vladikavkaz (the capital of North Ossetia), the Right Bank and Prigorodny districts of North Ossetia, Mozdok, Nazran (the capital of Ingushetia) and Malogbek district of Ingushetia. The President of the Russian Federation announced a State of Emergency in the region by Decree No. 1324 "On the Introduction of a State of Emergency Regime in the Territories of North Ossetia and the Ingush Republic."[3]

Initially, the federal centre (Moscow) tried to alleviate the conflict through the use of militias that were subordinate to the Ministry of Internal Affairs. But lightly equipped (practically non-armed) and poorly trained militias, as well as other Ministry of Interior-subordinated forces proved unable to resist highly motivated ethnic combatants. Moscow took the decision (that in principle went against the constitutional norms of most countries) to deploy heavily armed forces subordinated to the Ministry of Defence (that is, forces that are trained to use deadly force against external enemies) in a domestic conflict. The disengagement operation ended up as impressively large in scale: the Ministry of Defence and the Ministry of Internal Affairs deployed a total of 6960 military personnel, 116 tanks, 276 armoured personnel carriers (APCs) and 156 artillery units.

A ceasefire agreement was reached between North Ossetia and Ingushetia, but control over its implementation (and the ceasefire agreement was violated on multiple occasions) required the active deployment of military contingents over vast territories. The military

personnel was tasked, among other things, with disengaging the sides involved in the conflict; disarming the armed groups in Mozdok and the Right Bank and Prigorodny districts; preventing new armed groups from moving into the region; protecting the weapons arsenals of the North Caucasus military district from potential seizure by the military groups of any side; patrolling Vladikavkaz and the airport region; and carrying out special operations in the Malogbek and Nazran districts of Ingushetia. The state of emergency was repeatedly extended for certain districts of Ossetia and Ingushetia until mid-1994.

In the history of Russian military operations this prolonged episode is qualified as an *internal peacekeeping operation*. This requires some explanation, as it may be more appropriate to give it the status of "internal police operations", given that the armed forces were used on the territory of a constituent entity of the Federation, and not abroad. The internal troops of the Ministry of Internal Affairs of the Russian Federation and the armed forces that disengaged the sides in the conflict between Ossetia and Ingushetia resolved operational and tactical tasks that were structurally similar to those that are typical for the international peacekeeping practices. Moscow actually played the role of an external "third force" in the conflict that did not support either of the sides. This impartiality is what makes the measures and disengagement tactics it employed similar to those of a peacekeeping operation.

The actions of the Russian military in North Ossetia / Ingushetia took place at precisely the same time (from the summer and autumn of 1992 onwards) that structurally similar operations were being carried out in Moldova/Transnistria, South Ossetia / Ingushetia and Tajikistan. All these actions were subjectively perceived by the Russian military, politicians and the general public as belonging to the same one chain, in other words, as different manifestations of one and the same method of conflict resolution, with the deployment of a disengaging "third force", or as peacekeeping operations.

Obviously, from the point of view of the international law, the actions of the Russian military were nevertheless considered an internal police operation aimed at the restoration of peace, law, order and stability in the country's own territory. There was no definition of counter-terrorist operations in Russian legislation at the time, and the massive clashes between representatives of confronting ethnic groups did not resemble terrorist activities. However, the methods and tactics used, as well as the fact that the mission was identified as a "peacekeeping operation", allows us to make the suggestion that a specific analytical (though not legal) category of "internal peace operation" be established – one that resembles the definition of an international peacekeeping mission in terms of its principles, but is carried out on the country's own territory.

At the same time, this category is only applicable in cases where the central authorities do not take a side in the conflict, but rather work to disengage the sides in a conflict (say, ethnic groups) as a "third force". From this point of view, the actions of the Russian military in Chechnya and Dagestan do not fall under this category (as Moscow was a "side in the conflict"), while the experience of the operation in North Ossetia / Ingushetia in 1992–1994, while successful and effective on the whole, remains a unique example of an internal peacekeeping operation. In the cases of Chechnya and Dagestan, these territories had separatist aspirations, which turned Moscow into another side in the conflict. Conversely, the case of North Ossetia/Ingushetia did not have a separatist element and was, in essence, an inter-ethnic conflict that created space for disengagement by a third party.

The self-contradictory notion of "internal peacekeeping" (or, better, "internal peace enforcement", as the sides to the conflict did not agree in any legal form to the central authorities interfering in the conflicts (moreover, they did not have a "ceasefire" agreement in place and talks had not been opened by the time operation started) is connected with the international debates on "Green Helmets" and "Blue Helmets" in peace operations. According to some analysts (Bebler 2015), the use of "Green Helmets" (heavily armed regular troops subordinated to the ministries of defence of nation-states that never went through any special UN "Blue Helmet" peacekeeping training and do not possess non-lethal weapons) for peacekeeping purposes disqualifies operations for being attributed as "peacekeeping missions".

We must admit, however, that the Russian operation to resolve the conflict in North Ossetia/Ingushetia did not attract the same level of criticism from the international community as its coercive actions in Chechnya and Dagestan later did. This much is confirmed, among other sources, by the detailed overview of the scholarly literature on conflicts in North Caucasus by Jean-François Ratelle (Ratelle 2015), and by the overview of Western literature by Galina Yemelianova (Yemelianova 2015). The main reason for this is the legal nature of the application of force as a "police operation in a country's own territory" that recognizes the relatively (though not fully) neutral nature of the interference of the central authorities to resolve a conflict between two constituent entities of a highly multinational area of the country.

A "Trilateral operation" in South Ossetia (1992–2008)

At present, only Russia and a small number of other states officially recognize South Ossetia as a sovereign state. However, the fact that a 16-year deployment of the Russian contingent in the area of a frozen conflict (from 1992 to 2008) initially prevented bloodshed between the people of Ossetia and Georgia, but later ended in a war between Russia and Georgia deserves a separate analysis.

Unlike Russia's interference in Abkhazia and Tajikistan in the early 1990s, not only did the 1992 operation to stabilize the borders of the territory controlled by South Ossetian separatists lack a United Nations (UN) mandate, but it did not have a mandate from the Commonwealth of Independent States (CIS) heads of states either. Thus, it cannot be named a "peace operation of the regional interstate organization". It has different legal grounds, namely, a trilateral agreement between the parties to the conflict and Russia.

The Kremlin did not plan out Russia's involvement in the conflict in advance. But there were numerous circumstances that motivated Moscow to take action, including the factor of inter-Ossetian relations that "bridged" the conflict with Russian territory. The insurgence of illegal armed groups from North Ossetia (mostly rooted in "Ossetian brotherhood", but somewhat tacitly approved by the Russian authorities) and the assistance provided to South Ossetia by North Ossetia in the form of moving money and weapons across the border – all this was, in legal terms, military assistance from the territory of neighbouring state (Russia) to separatists in the territory of another sovereign state (Georgia). And that provoked certain resistance and concerns in Moscow.

The Georgian National Guard (formed under the first Georgian President, Zviad Gamsakhurdia, and led by the "warlord" Tengiz Kitovani) acted to forcibly restore control over the South Ossetian territory after the abolition of its autonomy in December 1990. In

response, the Russian leadership strongly urged the Georgian side to stop its attempts to resolve the conflict in a coercive manner. Moscow even threatened to bomb the Georgian capital of Tbilisi if it continued its military assault. The Georgian authorities had no choice but to enter into negotiations and sign the *Agreement on Principles of Settlement of the Georgian–Ossetian Conflict* on June 24, 1992.

According to the Agreement, a "zone of disengagement" 80 km long was established along de facto borderline between the two sides, and armed groups were required to withdraw troops from the zone. Russia also took responsibility, in the name of demilitarization, to withdraw two military regiments (equipped with attack helicopters and possessing mining and demining capabilities) from South Ossetian territory that had been deployed there since Soviet times.

The Joint Control Commission for Georgian–Ossetian Conflict Resolution involving the parties to the conflict and Russia was established. Mixed groups of military observers (from Georgian, Ossetian and Russian militaries) were also subordinated to the Commission, as were Trilateral Peacekeeping Forces, which paired Russian soldiers with Georgian and Ossetian units that were loyal to local authorities in order to prevent hostile actions on the part of armed groups and fighters that were not.

It is important to note that the Agreement was co-signed not only by the Russian and Georgian authorities, but also by the separatist South Ossetian authorities (non-state actors). This involvement of non-state actors turned the Agreement from an intergovernmental accord into a document with a somewhat mixed status (Sbornik … 1999). In fact, the Agreement regulated internal conflict in Georgia, but simultaneously internationalized it by providing an international legal ground for the presence of the Russian contingents in the region of this internal conflict and for the participation of external forces in its settlement.

The conflict remained in a frozen state from 1992 until 1995. Aiming to move towards a settlement of the conflict (and at the recommendation from the Organization for Security and Co-operation in Europe (OSCE)), in 1995, the Georgian Parliament denounced the decision (made during the rule of the former President of Georgia Zviad Gamsakhurdia) that had deprived South Ossetia of its autonomous status. In response, South Ossetia rescinded the formal decision to separate from Georgia. Yet, according to the Stockholm-based SIPRI Institute, during that period, Tbilisi did not control 90% of the autonomous territory (SIPRI 1996). A mutual amnesty was declared for those who had taken part in the hostilities. Georgia–Ossetia relations took on the status of a *de facto federation*, with Ossetia being afforded a very high level of autonomy.

Russia served as a guarantor of the agreements. From the international legal perspective, Moscow's participation in the South Ossetian settlement was nothing less than a legitimate intervention of one state (Russia) in the internal affairs of another sovereign state (Georgia) by its own request and in accordance with a documented invitation. In this case, Russia's actions can only be considered a "peacekeeping operation" by way of analogy. Still, an analogy is quite fitting insofar as the organizational and tactical parameters of the operations were similar to those of the international peacekeeping missions carried out by the UN. But it is important to draw a distinction between Russia's involvement in the conflict *before* the ceasefire agreement was reached, and the role it played *after* the agreement was concluded. Russian troops stationed in South Ossetian territory before the agreement was signed should not be confused with the peacekeeping forces. These

troops were not involved in the formation of the Trilateral Forces and were soon withdrawn from the region.

At the same time, the contingents that formed the Trilateral Forces performed typical peacekeeping tasks: disengagement of the sides; assistance in disarming and demobilizing armed groups; confiscation of weapons that had fallen into the hands of the civil population, etc. What was not typical for UN practice, though, was the involvement of military elements from the warring sides in the disengagement forces. The same practice was applied in Moldova/Transnistria when trilateral peacekeeping forces were established there. Interestingly, a decade later, the UN and African Union (AU) started to adopt a similar approach (that involved placing loyal contingents from the conflicting sides in UN or AU multinational contingents) in their operations in Africa from time to time, and since then the UN has avoided criticizing this practice.

The OSCE Mission was quite active in the region. It successfully participated in the efforts to monitor the implementation of ceasefire agreement, as well as in the organization and mediation of negotiations. The Mission was relatively large in size (as an average above 60 observers), and all the sides noted how useful its presence was.

The policy line of Tbilisi regarding the conflict changed during Mikheil Saakashvili's first term as president in 2003–2008. In 2005, Saakashvili launched an operation that was aimed at returning full control over the autonomous republic of Adjara to the central Georgian authorities. The Adjarian leadership did not possess any military resources to repel Saakashvili's operation, and folded quickly. After the successful operation in Adjara, the Georgian leadership set about preparations for a similar incursion into South Ossetia and towards Abkhazia in 2007–2008 (International Crisis Group (ICG) 2004). The Georgian President wrongly assumed that Russia would remain passive in the offensive operation against Ossetia, as it had done in the case of Adjara, and not interfere. However, the Georgian leadership was not able to repeat the success it had enjoyed with respect to Adjara and failed to take control of South Ossetia and Abkhazia. The two self-proclaimed *de facto* states possessed quite organized and relatively well-armed military forces (formations), and Russian peacekeeping forces, as well as observer missions of the UN and the OSCE, were present in both of them.

In 2007, Tbilisi refused to extend the mandate for the presence of Russian peacekeepers in South Ossetia and started to demand their withdrawal. Before that, Moscow had insisted that its military was on Georgian soil at the "invitation" of the legitimate government, and that this was fully in line with the provisions of Chapter VI of the UN Charter. However, there was no confirmation on this invitation, which thus made Russia's military presence in the country illegal. However, instead of withdrawing its contingent, Russia took a more active stance this time. It was this clash of interests of Georgia and Russia in South Ossetia and Abkhazia that led to the war between two states in 2008.

The Russian operation under the CIS mandate in the Abkhazia–Georgia conflict

Of all the operations in the post-Soviet space that have involved the Russian Armed Forces, the operation in Abkhazia under the mandate of the CIS was, more than any other, oriented towards compliance with international peacekeeping standards. This can be explained, first of all, by the fact that the operation was launched relatively late into the game.[4] By that time, the attempts to create the Joint CIS Armed Forces had been

replaced by national systems of command over armed forces in Russia, Georgia and other states. The issue of making a distinction between national armed forces and the international peacekeeping contingent was thus seriously considered in the course of preparations for the operation. The Russian military and political leadership had already overcome the mentality of the early 1990s, when contingents in the former republics were considered to be parts of the united military infrastructure. Politicians started to take the limitations imposed by international law, as well as the international standards regarding actions on the territory of another sovereign state, into consideration. It was also significant that a special Observer Mission of the United Nations was already operating in Abkhazia by the time the Russian Armed Forces became involved in the operation.[5]

Tensions in Georgia–Abkhazia relations had been bubbling since 1989, when an All-Abkhazian Congress demanded that Abkhazia be granted independence from Georgia. This provoked the general sentiment among Georgian politicians and the general public in 1989–1990 that Abkhazia should be deprived of its autonomous status. The rule of the nationalist President Zviad Gamsakhurdia from October 1990 to January 1992 sharpened these contradictions even further. Armed hostilities broke out more than once in 1992–1994, and the crisis caused an outflow of Georgian refugees from Abkhazia (Fischer 2009).

On October 24, 1992, the Russian and Georgian leaders co-signed a letter to the UN Secretary-General requesting that UN peacekeeping forces be sent to the conflict region and Russian armed forces contingents be included in them. Russia confirmed that, in the case of the UN operation, these contingents would not request "Blue Helmet" status and would not apply for UN financing. However, the UN rejected the request, citing the absence of a ceasefire and impossibility of conducting a traditional peacekeeping operation.

Several rounds of diplomatic negotiations took place in Geneva in the autumn of 1993 and spring of 1994. On April 15, 1994 the CIS Collective Security Council recommended that a peacekeeping operation be launched in Abkhazia. To provide legal grounds for the operation, President of Georgia Eduard Shevardnadze sent a formal request to the Council of CIS Heads of States on May 10, 1994 to deploy peacekeeping forces to the area of the conflict. A similar request was submitted by President of Abkhazia Vladislav Ardzinba on May 15, 1994 (International Crisis Group (ICG) 2013).

The Agreement on a Cease-Fire and Separation of Forces was signed on behalf of the parties to the conflict by J. Ioseliani and S. Jinjolia on May 14, 1994 (Konflikty v Abkhazii [Conflicts in Abkhazia] 2008). The document served as the legal grounds for the subsequent deployment of the peacekeeping forces under the aegis of the CIS. In late May, Executive Secretary of the CIS Ivan Korotchenya visited the heads of the CIS states, one after the other, collecting signatures for the document that would allow the CIS peacekeeping forces to be deployed. While Korotchenya managed to get a number of signatures, in practice only Russia provided contingents for the forces.[6]

On July 24, 1994, the United Nations Security Council adopted a resolution on the Abkhazian conflict that formed the practical grounds for cooperation between the UN and the CIS and defined the rules for the two entities to work side by side and complement each other. The main point of this resolution was that the UN gave its "blessing" to the peacekeeping efforts of the CIS, as well as to the CIS policy regarding the return of refugees. Thus, the contingent of the Russian armed forces that was part of the international

peacekeeping forces mandated by the CIS and approved by the UN remained in Abkhazia from 1994 to 2008 to ensure stability in the region. The contingent has varied in size and functions, and has had to apply coercive measures from time to time.

Several parameters complicated the operation itself and its recognition by the international community. The actions of the Russian military involved coercion, including clashes in Kodori Valley, the shelling of Sukhumi and the sea blockade of Abkhazian shores (Lynch 2006). The incorporation of coercive actions in accordance with Chapter VII during the operation ran counter to the "Chapter VI-type" nature of Russia's involvement ("consent of the parties to the conflict").

Though, *post-factum*, the operation was codified as "peacekeeping under the mandate of the regional inter-state organization (CIS)", it was de facto launched before all the necessary legal documents within the CIS and the Russian Parliament had been drawn up and co-signed. Instead of organizing a full-scale CIS summit with debates and voting, the CIS Executive General (Ivan Korotchenya) visited several CIS capitals to collect the signatures of presidents. According to the CIS practice of "consensus minus non-interested states", most presidents of Central Asian countries did not participate in the decision-making process, citing the absence of direct geopolitical connections to the operation in the Caucasus. And finally, one sole country (Russia) provided a military contingent and financing for the operation, though on paper the operation was carried out upon a multinational CIS mandate.

In the end, the United Nations did not change the status of the mandate of the United Nations Observer Mission in Georgia (UNOMIG) from observation to UN peacekeeping functions, and did not grant the status of UN peacekeepers to the Russian contingents, although it did confirm that the UN had approved the conflict resolution activities of the CIS as a regional interstate organization.

However, the CIS operation did achieve some definite positive results. In general, the operation successfully brought an end to the violence in the region and disengaged Georgian and Abkhazian armed groups. The operation served political settlement ends, as negotiations were launched between the Georgian and Abkhazian sides, creating conditions for relatively regular rounds of talks. Political and military interaction of the sides stepped up to a satisfactory level. The military components of the CIS Peacekeeping Forces and UNOMIG were able to work well together (International Crisis Group (ICG) 2013). The UN Secretary-General and the Security Council were satisfied with the degree to which they were kept up to date about the activities of the CIS Peacekeepers. The "division of responsibilities" between the operation of the regional intergovernmental organization (CIS) and the UN observer operation is a precedent that is worth studying.

The Russian–Georgian war of 2008 in the context of international law

Before the armed clashes of August 2008, Georgia and Russia took actions that had an irreversible impact on the escalation of the conflict. From 2005 onwards, the government of Mikheil Saakashvili (who succeeded Eduard Shevardnadze) sought to minimize and eventually freeze Georgia's participation in the CIS entirely, re-orienting the country towards potential membership in NATO. In August 2008 Georgia formally started (and in 2009 finalized) procedures of withdrawal from the CIS. This step had, among other things,

one very important consequence: given that Russian forces were present in Abkhazia on the basis of a CIS mandate, the mandate itself had to be re-examined in light of Georgia's withdrawal from the Commonwealth.

Georgia had been instigating "small clashes" on the Ossetian borders since 2004, threatening the relative status quo that had existed in the region from 1994 to 2004. Moscow, in turn, started doling out Russian passports to any South Ossetia and Abkhazian who wanted one in 2004–2005. And the fact that the Georgian military opened fire on tens of thousands of citizens possessing Russian passports (along with the murder of 15 Russian peacekeepers from the contingent located in Ossetia) served as the main legal basis for Russia to apply Article 51 of the UN Charter ("the right of individual or collective self-defence"), as well as an excuse and pretext for the introduction of Russian armed forces into Georgian territory in August 2008.

Russia employed contingents from the 58th Army of the North Caucasus Military District that entered South Ossetian territory from North Ossetia through the Roki Tunnel on the night of August 8, 2008. The next day, contingents from the 76th Pskov Division, the 98th Ivanovo Division, as well as special purposes components of the 45th Reconnaissance Regiment, were redeployed to Ossetia. Russian Black Sea Navy units were advanced to the shores of Abkhazia.

A diplomatic settlement to the conflict and the conclusion of a ceasefire agreement were achieved under mediation of President of France Nicolas Sarkozy. France played an active role in the process as it held by rotation the Presidency of the European Union at the time. Obviously, Sarkozy did not have time to coordinate his steps with all the EU members. He limited his consultations to telephone conversations with the leaders of the United States, the United Kingdom and Germany, and rushed to Moscow, and then to Tbilisi. Six principles of a peaceful settlement were worked out during his meeting with President of the Russian Federation Dmitry Medvedev, which Sarkozy presented as mediator in the conflict settlement to President Saakashvili the next day. The initial draft agreements included a point on opening an international dialogue on the status of South Ossetia and Abkhazia once the ceasefire was in place. However, this point was removed from the text of the document at the insistence of the Georgian President and substituted with the formulation "The opening of international discussions on the modalities of security and stability of South Ossetia and Abkhazia."

How should the events of August 2008 be considered and codified from the perspective of international law? The Georgian side qualified that Russia had acted as an aggressor and had interfered in the internal affairs of a sovereign state (i.e. Georgia). At the same time, applying of qualification of "aggression" in international practice remains a prerogative of the UN Security Council, while none of the UN resolutions (not even a "Western" draft proposed to the UN by France) contained the term "aggression" or "aggressor". In the first official statement given by the Russian President during the crisis, he called Russia's actions "operations of forcing Georgia to peace". From that moment on, the Russian side avoided referring to the actions perpetrated by its military as a "war" and qualified them as an "extended peacekeeping operation" (Rossiya-Gruziya 2014). The contingent that had been deployed in Georgian territory was called "a reinforced peacekeeping contingent".

Later on, Russia referenced the "responsibility to protect" principle in a number of its statements (an emerging norm introduced by the UN report in 2000s promoting the

necessity to interfere even through the "walls" of national sovereignty when there is an urgent necessity to stop a humanitarian catastrophe, ethnic cleansing or genocide). Moscow's reference to responsibility to protect (R2P) principles was itself somewhat contradictory, because the Russian leadership had openly criticized the "responsibility to protect" approach in the past for its attempts to circumvent "legitimate rulers" and intervene in countries and societies against the will of governments. We should concede, however, Moscow has based its actions on the logic of "responsibility to protect" at various times in the past (Markedonov and Suchkov 2020). This applies both to its actions in Georgia, as well as in the cases of Moldova/Transnistria and (later) Ukraine/Donbass.

Finally, after the end of "Five-Day War" and after consultations between the relevant departments within the Ministry of Foreign Affairs of the Russian Federation, Moscow changed the international legal interpretation of its own actions and took the following stance: Russia's policy was an act of self-defence in accordance with the Article 51 of the UN Charter. In the course of the debates in the UN and other organizations, Russian officials repeatedly stressed the following circumstances in support of such a legal qualification, as follows.

First, at the direct order of the President of Georgia and Commander-in-Chief of the Armed Forces, the Georgian military murdered 15 Russian military officers from the Trilateral peacekeeping contingent, and that by itself corresponds to the classical definition of an assault of one state against another state.

Second, and even more important, tens of thousands of Ossetian inhabitants possessing Russian passports (and thus Russian citizenship) fell under the fire of Georgian military troops in Tskhinvali. A massive armed assault against the citizens of a country (Russia), even those located outside that country's borders, is an assault on the country itself and thus serves to legitimize its use of armed force in response and for self-defence, including the counter-assault on the territory of the country that initiated the armed hostilities. The last point (regarding the legitimization of counter-actions against an aggressor country) was argued by Moscow with reference to the United States sending military troops to Afghanistan in 2001 in "self-defence" after the 9/11 terrorist attacks that were presumably initiated from Afghanistan. Washington also referred to Article 51 of the UN Charter (self-defence) as justification of its actions.

It is worth mentioning that Russia called both its operations in Abkhazia and South Ossetia in the early 1990s "peacekeeping operations" (as did the people in those regions themselves), but this qualification was only applied by analogy with the practice of UN operations, while in actual fact none of the operations in Georgian territory had a UN mandate. The term "peacekeeping" can only be applied as long as the actions of the third party (Russia) remain a relatively impartial disengagement, with no participation as a side in the conflict. The size of the peacekeeping mission can only be increased, and its functions altered, by a decision that carries the same legal weight as the initial decision that established the legal ground for such military involvement in the first place. In this case, by a formal decision of the CIS on Abkhazia and by a new inter-governmental agreement between then Russian, Georgian and Ossetian authorities.

The operation in Georgia stopped being a "peacekeeping operation" in the narrow sense provided for by Chapter VI of the UN Charter the moment that the party to the

conflict (the Government of Georgia) on whose territory the conflict took place withdrew its approval of and extracted its contingent from Trilateral forces. And rhetoric of "peace enforcement operation" in the narrow sense of coercive actions as provided for by Chapter VII of the UN Charter could only be applied if the operation is based upon a mandate (resolution) of the UN Security Council with the clear definition of the purpose and scope of coercive actions. Thus, both types of peace operation could not be legally applied to Russia's actions in August 2008.

The term "humanitarian intervention", meaning interference motivated by humane principles to protect the civil population, is absent in the UN Charter, as are the notions of "peacekeeping" or "peace enforcement". However, they can all be read, as lawyers say, "between the lines" of international legal arrangements. The notion of "humanitarian intervention" fills the legal gap that emerges when there is no classical "peacekeeping based upon the consent of the sides", and no consensus in the international community regarding coercive peace enforcement, but still the international community is obliged to act and do something to stop a bloody conflict. The applicability of the notion of "humanitarian intervention" to the conflicts in the Caucasus was recognized by former EU Special Representative to Russia Ambassador Michael Emerson as part of the project "A Stability Pact for the Caucasus" developed by the Brussels-based Centre for Policy Studies (CEPS) (Stability Pact 2000).

Numerous Western analysts, such as Sabine Fischer (Fischer 2009), Charles Hille (Hille 2010), Jafalian (Jafalian 2011) and Bruno Coppieters (Coppieters 2011), to name only few, have raised the issue of the legitimacy or illegitimacy of the deployment of Russian armed forces abroad. The actions of Russia can be understood and explained in a wider legal and historical context. They can be likened to the measures taken during the Yugoslavian crisis of 1999 (when NATO carried out bombings without the authorization of the UN), the Western coalition's invasion of Iraq in 2003, and Kosovo proclaiming independence from Serbia. In other words, these are comparable crisis moments in international relations that evoked splits in the international community and clashes on the issues of the legitimacy of actions taken by the parties to a given conflict.

The massive use of military force by the Georgian side against civilian objects (artillery shelling and bombing) that led to significant casualties among the civil population moved the fight for the territorial integrity of the Georgian state to a different level, a different category, namely to the category of the potential massive loss of human life and high victim count, which the international community had to prevent. This thus posed the question of whether it would be appropriate to categorize the Russian operation as a humanitarian intervention operation, as some Russian sources described in A. Tsyganok's overview of Russian interpretations of the 2008 events do (Tsyganok 2014). However, because Russia itself took a clearly negative stance to the very notion of humanitarian intervention, it would be inappropriate to apply it to Russian actions either in the early 1990s or in 2008.

There are plenty of examples in international practice where humanitarian intervention has preceded the formal adoption of a collective decision or mandate by the international authorities. This was the case with the peace enforcement operation against Slobodan Milosevic in 1999, which only received a mandate from the UN three months (eleven weeks) after it had commenced. A similar situation happened with the operation of the

international coalition that entered Iraq in 2003, when UN Security Council resolution legitimizing the foreign presence in Iraq was only issued after Baghdad had been captured. A number of states actively opposed and criticized the use of force without UN Security Council authorization (Russia, China, India and some other states in the first case, and Russia, France, Germany and some other states in the second). However, after several months of coordination and diplomatic battles, the operations finally received the approval of the international community and preserved their status as "operations of the international community" and "operations known to and supported by the United Nations".

There are also precedents of smaller-scale special operations of certain states on the territories of others, for example, the Israeli military operation in Lebanon in 2007 that Israel and the United States qualified as "anti-terrorist", as well as the examples of Turkish operations against the Kurds in the northern regions of Syria and Iraq. Back in February 2008, when Kosovo proclaimed independence and the United States was actively campaigning for it to be recognized as a new independent state, Russia warned that it might apply the same logic of a "specific case" to the formation of new independent states in the Caucasus (International Crisis Group (ICG) 2011).

When Russia recognized the independence and statehood of Abkhazia (Ukaz No. 1260 2008) and South Ossetia (Ukaz No. 1261 2008), less than 25% of states recognized Kosovo's independence, with one in every four EU member states not recognizing it. As a result, there was a kind of symmetrical situation of semi-recognition (partial recognition) whereby Kosovo was recognized by Western states (and was not recognized by Russia and its allies, as well as by many developing countries), while the new self-proclaimed states in the Caucasus were recognized by Russia, but not the West (International Crisis Group (ICG) 2010).

The crisis in South Ossetia and Abkhazia demonstrated that peacekeeping activities, as well as inter-ethic and territorial conflicts remain a field of projection and clash of interests of great powers. Russia's recognition of Abkhazia and South Ossetia as independent states and the further request from these states that Russia deploy its armed forces on their territories led to a new legal situation. Once Moscow had formally recognized these new independent states, Russian armed forces could no longer keep the title of "peacekeeper" (meaning a "third" and relatively impartial) force and thus became a "party to the conflict" that protects its old and new military allies. In Russian discourse, the presence of Russian forces in South Ossetia and Abkhazia received the status of "Russian foreign military bases abroad" that are situated in these countries by the formal request of their authorities (Dogovor 2014, 2015). But because neither territory is recognized by the international community, most Western observers reject the legitimacy of placing foreign military bases there.

The fact that these states are not recognized by certain other countries and international structures means that this kind of military presence cannot be removed from the "grey zone" of international law. However, in the context of comparable actions of the other states mentioned above, the situation is described in Moscow by the formula that was often used by Western powers to justify their actions in Yugoslavia and Iraq: "*Not completely legal, however, legitimate.*"

In general, the modern Russian legal estimation of the events of August–September 2008 in terms of international law contains three components. At the first stage, from

the early 1990s until the middle of 2008, before Georgia started the massive artillery shelling of Tskhinvali and before the Georgian component withdrew from the Trilateral peacekeeping forces, the presence of Russian troops in South Ossetia/Abkhazia/Georgia could have been qualified as participation in multilateral peace operations (under the mandate of the CIS in Abkhazia, and by an intergovernmental Russian–Georgian agreement in Ossetia).

At the second stage, from the beginning of the active military phase in early August 2008 until the recognition by Moscow of the new states, the actions of Russia are qualified by Moscow itself as self-defence in accordance with Article 51 of the UN Charter in response to Georgia's military attack against Russian military peacekeepers and the citizens in South Ossetia who possessed Russian passports and Russian citizenship and who were thus under the protection of the Russian state.

At the third stage, after Moscow recognized the statehood of Abkhazia and South Ossetia, the presence of Russian contingents in these two state formations ceased to be self-defence and was transferred to the status of intergovernmental military cooperation (and later, the formation of the Russian/CSTO (Collective Security Treaty Organization) military bases abroad) on the grounds of official applications of the authorities of these states and following the signing of inter-governmental agreements between Russia, Abkhazia and South Ossetia. But obviously, in the eyes of many states and political forces, the legality of such a military presence in another country depends on whether they recognize (or otherwise) the statehood of Abkhazia and South Ossetia as two new independent states.

Conclusion

The following conclusions can be drawn from the cases considered in this paper. The involvement of the Russian Armed Forces in various conflicts in the Caucasus did not take place under a single political scenario or with a universal set of tactics. Rather, it was quite pluralistically interpreted by Kremlin with the aim of legitimization on an *ad hoc* basis through quite different legal grounds. And each of these interpretations/justifications had problems and evoked more or less grounded criticism from Kremlin's political opponents.

Legitimization through the documented request of the inviting government and reconfirmed by another non-state party to the conflict. This formula of legitimization was applied to the Yeltsin–Shevardnadze Agreements of 1992 regarding the settlement of the South Ossetian conflict and covered the presence of the Russian military contingent (as a part of Trilateral forces) in Ossetia/Georgia from 1992 until the Russian–Georgian War of August 2008. This justification was rather successful while the Tbilisi authorities continued to renew its invitation. When President Saakashvili demanded the withdrawal of the Russian contingent in 2007, Russia refused and the contingent remained in Georgia illegally.

The adoption of a mandate for an operation of multinational forces from the relevant regional intergovernmental organization. This formula was applied in the case of the Commonwealth of Independent States (CIS) mandate of 1994 regarding the presence of the multinational CIS forces in Abkhazia, which was overlapped by and interfaced with the UN observatory mission in that region. Problems justifying such missions are procedural

in nature. Instead of having a formal discussion of the issue of the CIS collective mandate at the CIS summit, the Secretary General of the CIS "cruised" the CIS capitals and collected the signatures of some (not all) CIS heads of state under the mandate for operation in Abkhazia. And even after the decision was considered to have been "adopted" only one country (Russia) provided contingents and financing for the operation that nominally was a "collective CIS peace operation".

The appeal to the UN for permission to supplement Russian contingents to the UN-mandated operation, without granting them "Blue Helmet" status. A similar appeal was filed in 1994 regarding the continuation of the operation in Abkhazia, but it was not approved by the UN. The problems envisaged by the UN included the need to ensure that peacekeepers were neutral and unbiased, as well as willingness to avoid peacekeeping status being assigned to "Green Helmets" subordinated to the Ministry of Defence of the Russian Federation, instead of the UN-trained "Blue Helmets."

Referring to Article 51 of the UN Charter ("the right for individual or collective self-defense") was chosen *post-factum* by Moscow (instead of an earlier version, which referenced a "wider peace operation") as a justification for deploying a Russian military contingent in Georgian territory in the course of the "Five-Day War" in August 2008. The claim to legitimacy by alleging "self-defence" following the artillery shelling of Tskhinvali, home to thousands of Russian passport holders, was problematic, as these passports had been systematically distributed to people in South Ossetia and Abkhazia in the years leading up to the war. The mass granting of citizenship to the inhabitants of a neighbouring country was itself legally dubious. What is more, these actions of self-defence spilled over into the territory of another state (not only to the territory of South Ossetia, but also to adjacent areas of mainland Georgia), which prompted the question of the proportionality and limits of self-defence.

The signing of an intergovernmental agreement on military cooperation and assistance between Russia and South Ossetia, as well as between Russia and Abkhazia, after their diplomatic recognition by Moscow. Obviously this military assistance remained one-sided: the small and relatively weak de facto states had almost nothing to offer Russia in terms of military cooperation other than lands and manpower to service Russian military bases on their territories.

The signing of the 1994 agreement between Russia and Georgia on the placement of foreign military bases abroad, specifically regarding four Russian military bases on Georgian territory. At that time, the agreement provided legitimate justification for the Russian military to be present in Georgia. Georgia agreed as it expected Russia to help Tbilisi deal with separatists in parts of its territories (this help never materialized). These expectations were based, in turn, on the logic that, in the mid-1990s Moscow was battling with separatism itself – in Chechnya, Dagestan and Tatarstan – and "logically" should have helped Georgia to preserve its territorial integrity. After the 2008 war, Russia signed new agreements on the placement of (partially the same) Russian military bases, but this time with South Ossetia and Abkhazia as new independent states following their diplomatic recognition by Russia. The problem here lies in the fact that these territories are not recognized by most countries. While the agreements made with the Shevardnadze government in 1994 were quite legal from the point of view of traditional international law, the new arrangements on bases with Tskhinvali and Sukhumi are not.

Such a plurality of the legal approaches implemented by Moscow, in addition to the persistent search for legal grounds for its military actions, demonstrates an absence of any unified or pre-orchestrated strategy of the Russian authorities to adhere to military force as means of resolving inter-ethnic conflicts. Although a last resort, Moscow saw military force as quite instrumental and unavoidable, and then proceeded to "legitimize" its actions through any channel it could – on the basis of arrangements with the UN, through regional organizations (the CIS), or through bilateral inter-state agreements. This proves that Moscow's machinations were little more than *ad hoc* solutions to problems that presented themselves. It also demonstrates the willingness of Moscow to avoid the image of a brutal *revisionist* state, and to explain and present its actions in the Caucasus as corresponding sometimes to the "spirit", and sometimes to the "letter" of the rules and principles of the international law and order, even in the highly irregular conditions of the Caucasian conflicts that have broken out in the post-Soviet period.

Notes

1. Nagorno-Karabakh is not included here because there has never been a peacekeeping operation in the region and, in contrast to Georgia, there is no Russian military presence there.
2. Even in Soviet times, North Ossetia and South Ossetia belonged to different Soviet republics – the Russian Soviet Federative Socialist Republic and the Georgian Soviet Socialist Republic, respectively.
3. Decree No. 1324 of the President of the Russian Federation was signed on November 2, 1992.
4. The Russian military contingent entered Abkhazia on June 13, 1994.
5. The UN Observer Mission in Georgia (Abkhazia) was deployed in August 1993.
6. The Russian side provided 1762 soldiers and officers, three military helicopters, 16 pieces of artillery, 94 APCs, 158 trucks, etc.

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