

Institute for European Studies at Tbilisi State University

Master thesis

**The concept of humanitarian intervention in line with
Russian-Georgian conflict**

by

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Tbilisi

2010

Abstract:

The aim of this research is to discuss the general problem of humanitarian intervention in international law and its importance in modern international politics. The research question of this thesis is whether the invasion of Russian Federation on humanitarian reasons is in compliance with international law.

In the very beginning, there will be overviewed the different views of the defining the concept of humanitarian intervention. By discussing the views of various scholars and law specialists, as well analyzing the principles of just war, in this paper will be presented the general criteria and specific conditions in which humanitarian intervention could be justified.

After that it will be discussed the general practice of humanitarian intervention. This will be done by analyzing the case study, specifically Russian –Georgian conflict, which took place in August 8, 2008

This will be done by considering the principles of international humanitarian law .Using the article 51 of the UN charter, Geneva conventions, and its additional protocols which are applicable in the time of war for humanitarian law.

To discuss this case, will be analyzed the arguments of both parties of the conflict. To prevent subjectivism and be more objective, here will be presented different positions of both governments which were interviewed with international observers and international organizations.

Since discussing the arguments of both parties of the conflict will be given legal qualification for the activities of both sides, and will be concluded that Russia failed the implementation of those principles, which are required for justification of humanitarian intervention in international humanitarian law.

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ABBREVIATIONS

CERD- International Convention on the Elimination of All Forms of Racial Discrimination

CIS- Commonwealth of Independent States

CSCE -Conference on Security and Cooperation in Europe

ECHR - European Court for Human Rights

EU -European Union

EUMM- European Union Monitoring Mission

HRL -Human Rights Law

HRW- Human Rights Watch

ICC- International Criminal Court

ICJ -International Court of Justice

ICISS- international commission on intervention and state sovereignty

ICTRT- Hatchery Scientific Review Group Review and Recommendations

IDP- Internally Displaced Person

IHL -International Humanitarian Law

IIFMCG -Independent International Fact-Finding Mission on the Conflict in Georgia

NATO- North Atlantic Treaty Organization

PACE - Assembly of the Council of Europe

SKP -Investigative Committee of the Prosecution Service of the Russian Federation

UN- United Nations

1.1. Introduction

The concept of humanitarian intervention is highly debated and complicated issue in political sciences, as well as in international law. In modern world, the increasing role of human rights law make it evident that what happens in one state is the concern of another state. The growing interdependence of states makes international organizations and third states more and more difficult to ignore internal civilian conflicts. Hence, the role of international community is grown and they have more will to take their contribution in internal conflicts and demand implementation of international humanitarian law.

Much is written and discussed around the concept of humanitarian intervention, but still, there is not a clear, evident attitude toward it. States and international organizations, as well as scholars in politics and international law have their own arguments.

This study tries to explore the problem of the concept of humanitarian intervention by analyzing argument of supporter and opponents of this doctrine. Here will be discussed the general practice of military humanitarian intervention. Also, will be talked briefly about the general practice of humanitarian intervention and will be analyzed in what circumstances it was morally or legally justified. After discussing this issue, will be made a comprehensive analysis with the actions, which took place in Georgia, in 2008 and which was called “Russian Georgian conflict”.

The main purpose of this paper is not to find out which part of the conflict were rights or wrong, but discuss whether Russia’s invasion in Georgia on Humanitarian ground is in compliance with international law. This will be done by discussing Russian-Georgian arguments and also by evaluating international organization’s consultations.

In the very end, by using content analysis it will be found out the role of European Community in this conflict, and discuss about its effectiveness. By Generalization the concrete case the purpose of this paper will be to made generalization of humanitarian intervention and discuss its effectiveness.

1.2. Research Methodology

Here will be presented the methodological approaches, which are used in the thesis. In this section will be discussed qualitative content analyzes, case study, comparative analysis, research strategy, research questions, types of timing and types of data.

Qualitative content analysis, case study and comparative analysis will be used as research methodology for writing this thesis.

Research strategy is deductive. Here, explanation is achieved by constructing a deductive argument to which the phenomenon to be explained is the conclusion. The discussion process is directed from general view to the specific one.

The research question of this thesis is whether the invasion of Russian Federation on humanitarian reason is in compliance with international law.

The paper starts with general definition of the concept of humanitarian intervention .after it is followed analysis of general approach of the problem which stands in international community. General practice of humanitarian intervention will be used as case study of this research.

Two types of data will be used in the thesis: Secondary, which means that data is collected by collected some other researcher and are used in their raw form and tertiary data-secondary data that have been analyzed by someone else.

For this paper will be used three types of timing:

Cross-sectional- Be confined to the present time,

Extend over a period of time – *longitudinal*;

Be confined to the past- *historical*Comparative analysis is being used in order to make comparison arguments which are presented by scholars about the problem of humanitarian intervention .as well analyzing the arguments of Russian and Georgian sides.

2.1. The Practice of Humanitarian Intervention in International Law

Since the end of the cold war, the international conditions have been changed. A lot of problems connecting with civil wars, conflict resolutions or conflict preventions were raised on the international arena. These shifts presented that there was a need for effective joint international actions, which would address the issues such as peace and world security, human rights and sustainable development of global scale. With these new conditions, a new kind of international law and spirit was made and the concept of humanitarian intervention became very active in international affairs as well as in international law and played a great role in the process of shaping international relations in 1990s. During this period, for common action fourteen peacekeeping operations was taken with the authorization of Security Council.

Humanitarian intervention in legal way is defined as a violation of a nation-state's sovereignty for the purpose to protect the life of human being from government repression or civil breakdown. There are different types of humanitarian intervention: It can be taken in different forms, such as: material assistance, sanctions, which mean implementation of non-military pressure, to stop abusive practices, and military intervention, which includes dispatching military forces to stop humanitarian disaster.¹

There have been many military interventions, in recent days. In April, 1991 United Nation intervened in northern Iraq to create 'safe havens' in April 1991 and after that, in 1992 to protect Shiite Muslims. United States and Britain have also intervened in Iraq in 2003. It was said that this was vital to protect the human rights in Iraq. The recent interventions were done by the United Nations in Somalia. United national imposed arms embargo in January 1992 and then United Nations send its troops to enforce the peace and to defend those supplying aid .there was a similarity in the measures with the former Yugoslavia as it applied also an arms embargo in 1991, granting UNPROFOR permission to deploy force to defend itself in 1992, and creating safe areas in a number of places including Srebrenica and Sarajevo in 1993. These activities were not done only by the UN, but single states have also

¹ Can military intervention be "humanitarian"? Author: Alex de Waal and Rakiya Omaar. Source: Middle East report, No.187/188, Intervention and North-south politics in the 90's (Mar.-Jun.1994), pp.2-8. published by: Middle East Report and Information Project

taken intervention. For example, India intervened in East Pakistan in 1971 and America intervened in Grenada in 1983. And, the most important event in the practice of humanitarian intervention is NATO's bombing campaign in 1999 against the Federal Republic of Yugoslavia. International community argued that it was vital for preventing the oppression, slaughter, and ethnic cleansing of Kosovo's.²

Military Humanitarian Intervention is one of the most problematic issues in International Security. The international model of humanitarian intervention leaves a set of unanswerable questions, which leads a great discussion around this concept. Scholars of international law explicitly examine the normative issues, but often the result of the arbitrary judgments which justifies humanitarian intervention leaves fundamental misunderstanding of international system. Intervention into armed conflicts with humanitarian purposes sets some political or prudential questions, such as whether there is a right or duty to intervene or whether intervention is in accordance with ethical issues.

The normative perspective of Humanitarian Intervention is grounded in international law and especially in human rights. To the end of twentieth century respect for human rights became very important issue for political or ethic discussions. The main problem which is focused in this scope is how to maintain balance between human rights and state sovereignty. This is crucial especially in contemporary world, as there are more sovereign states, then ever been.

The debate about the concept of humanitarian intervention has a long history. This concept includes a lot of contradictions such as International legal order between sovereignty and human rights as well as the prohibition of the use of force and the protection of human dignity. It also underlines evidence and motive in the formation of international law. There are different points of views in scholars. Some of them think that the right of humanitarian interventions should be legal, others reject this idea, and third group of scholars thinks international law should say something about the matter. As neither the writings of publicists

² Simon Caney, "justice beyond borders a global political theory", Published in the United States by Oxford University Press Inc., New York 2005 p227

nor the state practices give a coherent meaning of this “right”, Chesterman concludes that the legal concept of humanitarian intervention is argued to be incoherent.³

This concept of humanitarian intervention is not discussed only from international law perspective; it is a very hot topic in politics and international affairs. Intervention and politics are almost indivisible. That’s why scholars of both wings have a set of arguments, which makes this topic more complicated. Some supporters of non-intervention consider intervention as the international aggression toward nation state. Michael Walzer thinks that it stands against the most important thing, such as the right of a people “to become free by their own efforts” if they can. He believes that non-intervention is the guarantee that their success or failure will not be impeded or prevented by foreign power.⁴

There is a great controversy between international law scholars, as well as scholars in international affairs. A group of scholars support to the concept of intervention while others are against it. Supporters of non-intervention, believes that “making legislation is political, the implementation of law is also political to the core”. The example of such case is Iraq, when on the consent of group of states had attempt to use the legal norms against another state. One more example is United Nations action in Bosnia during the war 1992-1995. The organization was criticized that it dropped impartiality and took sides for justice and law to occur.

In humanitarian literature, much is written whether the right of humanitarian intervention exists. The great challenge which stands in international law is that there should be equation between what is legitimate with what is legal. In the case of Iraq, moral cases are absolutely clear, but we can’t say it about legal basis, which remains very shaky. According to

³ Simon Chesterman, “Just war or just peace? Humanitarian intervention and international law”; Oxford 2002 p.2,

Navari, international legal order is not enough coherent and adequate in defending or understanding justice.⁵

21st century presents a lot of new and different types of challenges in international affairs, and then it was for example in the first half of 20th century, when world wars occurred. With this new conditions and realities, it was obvious that new standards of conduct in international and national affairs became necessary. To meet with these new changed circumstances, were the main motivation for the creation of many new international institutions. But their mandate and capacity were not in enough compliance with international need and modern expectations. So, International intervention to protect human rights was needed to bring international norms in compliance with international need and expectations.

Much has been changed since the creation of United Nations. A lot of new international actors, such as broadly expended range of states, non-state or institutional actors, with wide range of new voices, perspectives and interests were emerged. Human rights and human security became a key priority for these new institutional actors. In 1993, UN High Commissioner for Human Rights and the international criminal tribunal for the former Yugoslavia were created. In 2001 very important institution International Criminal Court was established. The Statue of International Court was which ratified by 60 countries. Other institutions, such as UN High Commissioner for Refugees, ICRC and International federation of Red Cross implement their obligation quite successfully. Creation of many non-state actors and their appearance on the international affairs also catalyzed the debate about humanitarian intervention and make it conducted in front of the broad public.⁶

⁵. Author (s): Mona Fixdal and Dan Smith, "Humanitarian Intervention and Just War", source: Mershon International Studies Review, Vol. 42 No. 2(Nov, 1998), pp.283-312, published by: Blackwell Publishing on behalf of The International Studies Association. Accessed:12/03/2010 04:39

⁶ International Commission on Intervention and State sovereignty," The responsibility to protect, December,2001

As respect for human rights in temporary world is a central subject and responsibility in international relations, respect for human rights became a very crucial part of international law. The rights of people are guaranteed by the Universal declaration of Human Rights, the four Geneva Conventions with two additional protocols on international humanitarian law in armed conflict, the 1948 Convention on the Prevention and Punishment of the Crime of genocide, the two 1966 Covenants relating to civil, political, and social, economic and cultural rights and the adoption of the statute for the establishment of an International Criminal Court in 1998. These agreements determine what is and what is not acceptable by states, but the main decision, when to intervene is accepted absolutely political.⁷

2.2. Humanitarian intervention and humanitarian law

The principle of non-intervention is a part of customary international law and is based on the concept of respect for state sovereignty.⁸ Intervention is prohibited by the Charter of the UN, article 2, which stands the “principle of the sovereign equality of all its members.”⁹ Each state has right to decide freely by virtue of the principle of state sovereignty. As international court of the justice mentioned in the case of Nicaragua, sovereignty includes the choice of political, economic, social and cultural systems as well as the formulation of foreign policy. ¹⁰ This principle of respect for other states sovereignty became another principle with

⁷ “The responsibility to protect”, report of the international commission on the intervention and state sovereignty, December 2001,

⁸ Maloclm N. Shaw &David, International Law, fifth edition, Cambridge University Centre, 2003. P.1039

⁹ UN charter, art 2(1)

¹⁰ ICJ Reports, 1986, pp. 14, 108; 76 ILR, p. 442. See also S. McCaffrey, 'The Forty-First Session of the International Law Commission: 83 AJIL, 1989, p. 937.

is connected with other principles such as prohibition of the use of force and non-intervention.¹¹

Article 2(7) of the UN charter, provides that the UN may not intervene in domestic matters of sovereign state:” Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”¹²

The chapter VII of the charter is about the “action with respect to threats to the peace, breaches of the peace, and acts of aggression”. As article 51 provides:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security. “

As these articles determine, UN must not intervene in the state domestic jurisdiction, if there is not violation of chapter VII of the charter. This provision has provoked debates in the UN, and it was accepted that colonial issues were not to be regarded as falling within the article 2(7) restriction.¹³

This law is mandatory for nations bound by the appropriate treaties. There are also other customary unwritten rules of war. By extension, they also define both the permissive rights of these powers as well as prohibitions on their conduct when dealing with irregular forces and non-signatories.

¹¹ Malcolm N. Shaw & David, International Law, fifth edition, Cambridge University Centre, 2003, p1039

¹² UN charter, art2(7)

¹³ Malcolm N. Shaw & David “international law” fifth edition p1083

International law considers civil wars as the absolutely internal matters, but self-determination conflict may become exceptions. As there is not general rule against rebellion, wars within the state are regulated by the domestic jurisdiction, and are the matter of domestic law. As well as third parties are involved, it becomes the subject of international law. It is very difficult to find out whether a humanitarian intervention is justified or not in particular case. M.N. Shaw considers it difficult, as relevant legal rules in reality cannot operate as it is intended in classical law.

From general perspective, aid to the recognized governmental authorities is legitimate, when it is proved that other states encourage such assistance to rebels. In this case, it is obvious that doctrine of collective self-defiance allows other states to intervene lawful to the authority sides. General position is not the same in the case of rebellions. The aid to the rebellions is more complicated issue in international law. According to the 1970 Declaration on Principles of International Law:

“No state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state.”

This declaration also imposes obligations to every state, which “shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country.” On the basis of this part of the convention, in the case illegal interventions it can be argued that aid to the rebels is acceptable. This was used by a number of states in the case of their invasion for example in Afghanistan, where soviet forces invaded on the ground of Humanitarian intervention.

Humanitarian intervention is permitted only in strictly defined situations. According to the article of 2(4) of the UN charter:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. “

According to the art 2(4) of the UN charter states are called to refrain from the threat or use of force against another state. It does not cover the self-determination situations, where a

people resort to force against the colonial power.¹⁴ Recently such situations were regarded as purely internal matters. So, the colonial authority could use this as necessary to suppress a riot or rising without the issue impinging upon article 2(4). With the growing tendency of accepting self-determination as a legal right, the question about the legitimacy of the use of force was raised. The Security Council discussed at great length in the debates of the Special Committee leading to the adoption of the Declaration on Principles of International Law in 1970.¹⁵

On the event, the Declaration emphasized that all states were under a duty to refrain from any forcible action which deprives people of their right to self-determination. The Declaration also noted that such people could receive support in accordance with the purpose and principles of the UN Charter.¹⁶ But as show mentions, “this formulation could not be taken as recognition of a right of self-defense inherent in peoples entitled to self-determination. “ The UN Charter is neutral. International law does not forbid rebellion as it neither confirms nor reject a right of rebellion nor leaves it within the purview of domestic law.¹⁷

As show mentions, articles 2(4) and 51 of the Charter now apply to self-determination conflicts so that the peoples have a valid right to use force in self-defense is controversial and difficult to maintain. It is more likely the principle of self-determination itself provides that where forcible action has been taken to suppress the right, force may be used in order to counter this and achieve self-determination. As show defines, the use of force to suppress self-determination is now clearly unacceptable, as is help by third parties given to that end.¹⁸

The question whether third-party can provide assistance to peoples struggling to attain self-determination is highly controversial, and became the subject of disagreement between

¹⁴ Malcolm N. Shaw & David “international law” fifth edition, p 1036

¹⁵ Malcolm N. Shaw & David “international law” fifth edition 1037

¹⁶ Malcolm N. Shaw & David “international law” fifth edition 1037

¹⁷ Malcolm N. Shaw & David “international law” fifth edition 1037

¹⁸ Malcolm N. Shaw & David “international law” fifth edition 1038

Western and some Third World states. There are a number of UN General Assembly resolutions that called states to provide all forms of moral and material assistance to peoples, in such conditions, but the legal situation is not clear and armed help appears to be unlawful.¹⁹

It is very difficult to reconcile with this article, as “state sovereignty” sometimes is artificial defining in order to justify the violations or to establish the right of intervention in customary law. This justification mostly happens when forceful states intervene into the weaker states territories. Humanitarian intervention is permitted in international law if it was used to restore the democracy. The example of such case was in Panama, when USA intervened to restore the democracy in 1989. In the case if the main purpose of intervention is not the restore democracy, based on the provisions of UN charter, intervention is not allowed in international law.²⁰

If we consider the practice of Humanitarian Intervention, in some extreme cases there is a need to save a large number of lives. In such cases, it is really necessary that some international measures be taken. The most important case was Kosovo in 1999, which raised a question of humanitarian intervention. NATO supported the repressed ethnic Albanian population in the province of former Yugoslavia and took a range of bombing campaign without UN authorization. In this case the great debate was taken whether this action was justified from international law. Security Council by twelve votes to three rejected a resolution which condemned NATO’s use of force. After this conflict, when the agreement between NATO and Yugoslavia was reached, the Security Council adopted resolution 1244 (1999) . this resolution welcomed the withdrawal of Yugoslav forces from the territory and decided *upon the deployment under UN auspices of international civil and military presences*. There was not an absolute welcome to the NATO action in Kosovo, as well as no condemnation. As UK Secretary of State for Defense determined, “In international law, in exceptional circumstances and to avoid a humanitarian catastrophe, military action can be taken and it is

¹⁹ M.N Shaw, “the international law “ fifth edition, p1035-1039

²⁰ Ibid p.1046;1048

on that legal basis that military action was taken.”²¹ So, it is concluded that in the critical situation the doctrine of humanitarian intervention was invoked and this was not condemned by the UN. In this case, it is really hard to talk about the legal situation here.²²

Magistrate Ivanov, gives a very interesting explanation of human ethics.²³

“There are only two conceptions of human ethics, and they are at opposite poles. One of them is Christian and humane, declares the individual to be sacrosanct, and asserts that the rules of arithmetic are not to be applied to human units. The other starts from the basic principle that a collective aim justifies all means, and not only allows, but demands, that the individual should in every way be subordinated and sacrificed to the community—which may dispose of it as an experimentation rabbit or a sacrificial lamb...In times of need—and politics are chronically in a time of need—the rulers were always able to evoke ‘exceptional circumstances,’ which demanded exceptional measures of defense. Since the existence of nations and classes, they live in a permanent state of mutual self-defense, which forces them eternally to defer to another time the putting into practice of humanism.”²⁴

2.3. Just War and Humanitarian Intervention

While analyzing the concept of humanitarian intervention, we should mention the doctrine of “just war “.Simon Caney –a great scholar who took an important contribution in this field. Based on the analysis of many different views, he theorizing just war principle which is bounded with the concept of humanitarian intervention. He tries to give answers to the questions, which are raised in the case of intervention. He distinguishes two types of injustice

²¹ UKMIL, 70 BYIL, 1999, p. 586. A Foreign Office Minister wrote that, 'a limited use of force was justifiable in support of the purposes laid down by the Security Council but without the Council's express authorization when that was the only means to avert an immediate and overwhelming humanitarian catastrophe: *ibid.*, p. 587 and see also *ibid.*, p. 598.

²² M.N. Shaw, pp.1046, 1047.

²³ Simon Caney, “Justice beyond borders a global political theory”, Published in the United States by Oxford University Press Inc., New York. 2005. p189

²⁴ *Darkness at Noon* (Koestler 1987 [1940]: 128),

which are crossed. First is when political regime is attacked by an external force. In this situation the main question which comes is whether the regime is permitted to wage a war for self-defense. The second situation is when injustices take place in circumstances, in which wrong is done by the existing political regime and the question whether outside forces have right to intervene in order to prevent such wrongs stands.

As Caney mentions neither realists nor pacifists agree on the traditional approach of just war.” The very idea of a ‘just war’ tradition bears this out. There is, for example, no comparable ‘international distributive justice’ tradition.” Just war theory is explained in terms of certain rules of *jus ad bellum* and certain rules of *jus in bello*. Standard accounts of *jus ad bellum* generally maintain that a just war requires the following:

1. There is a just cause;
2. War is authorized by a legitimate authority;
3. Those waging the war have just intentions;
4. The costs incurred by the war are not disproportionate in comparison to the

Wrongs that justify the waging of war (proportionality);

5. War is the last resort
6. The war has a reasonable chance of meeting its objectives; and,
7. Its goal is a fair peace.

A standard of *jus in bello* generally tend to maintain that:

1. The means employed to wage war should not involve disproportionate Casualties (proportionality); and,
2. Intentional attack on non-combatants is wrong (non-combatant immunity)²⁵

As Simon mentions, these is a commonly accepted framework of values of “just war”, though, this doesn’t mean that there is a common understanding of this values. Different thinkers have their own understanding and give their own interpretations to the just war conditions. For example, in regard with “just cause”, most thinkers agree that self-defense is: just cause”, but there is no consensus in discussing whether or not war may be waged in order to punish aggressors.

²⁵ Simon Caney”Justice beyond borders, a global political theory” Published in the United States by Oxford University Press Inc., New York.Pp.191-192

While analyzing the nature of the war and when war may be waged from normative perspective, Caney refers to Michael Walze's accounts. As Caney mentions, in his account *jus ad bellum* Michael Walze offers a "certain statist conception of justice" And modifies the term "legalist paradigm". Here he mentions six principles:

1. These maintain the value of a society of states
2. Affirm the right of states to their own territory and independence
3. Condemn any act of aggression against a state
4. Justify war as a response to aggression
5. Maintains that war is not justified in any other circumstance
6. And sanction the punishment of aggressors.²⁶

States may engage in a pre-emptive strike, because there are a situation in which an aggressor is about to attack and it is justified to engage in warfare to land the first blow. The point here is that this can still be seen as an act of self-defense. It's clear that states that are invaded or attacked do have a right to engage in war to defend their sovereignty against external aggression. Military forces must strive (even at cost to their own safety) not to harm individual civilians

When it is seen that an aggressor is going to attack, states may be involved into the war. This situation may be justified in a manner to land the first blow but even here an act of self-defense is on the ground. In this situation state actions may be justified, because they defend their territories and their sovereignty. Even in a situation where states defend their sovereignty or strive for their own safety ordinary citizens should not be harmed.

Since analyzing the state-centric account of the nature of a just war, Caney then focuses on the second situation, how political regimes may act when an external wrong has been committed and if they are allowed to wage a war. Here he considers Terry Nardin's state-centric theory of international justice.

²⁶ Simon Caney "Justice beyond borders, a global political theory Published in the United States by Oxford University Press Inc., New York.pp.1093

Since discussing general principles of a cosmopolitan theory of just war and the ways in which cosmopolitan principles either vindicate them or call for revision, he concludes the conventional principles listed earlier comprise:

1. There is a just cause;
2. War is authorized by a legitimate body;
3. Those waging the war have just intentions;
4. The costs incurred by the war are not disproportionate in comparison to the Wrongs that justify the waging of war (proportionality);
5. War is the last resort;
6. The war has a reasonable chance of meeting its objectives (Johnson 1999: 28–9).²⁶

Caney also analyze the theory of intervention and tries to answer questions which are always raised in the practice of humanitarian intervention. Some important questions like: “Is state sovereignty inviolable and how morally defensible is Article 2(7) of the United Nations Charter, which affirms the principle of non-intervention? Should we accept the Article 2(4), which proscribes the use of force? May a state or international institution (like the United Nations) intervene in the affairs of another state or international institution? Is there a case for intervention on humanitarian grounds when a political regime is harming its own citizens? Anyway to go back to the point is there a right to intervene and do we have an obligation to intervene? - Give answers of these questions is very important, as frequently there are situations, when wrong is done and the question whether external agencies actions to prevent this wrong are justified by humanitarian law and if it is allowed then in what situations. To answer these questions, Caney refers Bull’s definition, which explains humanitarian intervention as: “an intervention is a coercive action ‘by an outside party or parties, in the sphere of jurisdiction of a sovereign state, or more broadly of an independent political community’.²⁷

²⁷ Simon Caney, “justice beyond borders a global political theory”, political theory Published in the United States by Oxford University Press Inc., New York

Intervention involves use of force. Here different actors such as: states, associations of states, international institutions, and social institutions like churches or even economic enterprises may be involved within the intervention. It is very important to note here that, Firstly; there are organizations like NATO, the United Nations and the European Union which restrict intervening actors to states which is regarded to be not acceptable. Secondly, such kind of restriction should be justified as some believe that intervention is an action against the interests of another state.

Caney defines humanitarian intervention as an intervention which is undertaken in part for humanitarian reasons. Interventions which are undertaken simply in order to increase the intervener's prestige or security interests are therefore not included as humanitarian interventions. The more controversially, on this definition, interventions designed to protect one's own nationals residing in a foreign political regime are also not included as humanitarian interventions.

While combine humanitarianism with the earlier definition of intervention, it follows that humanitarian intervention is defined as:” coercive action ‘by an outside party or parties, in the sphere of jurisdiction of a sovereign state, or more broadly of an independent political community’ which is undertaken, partly or exclusively, to protect the welfare of the members of that political community.”

Is humanitarian intervention justifiable and in particular whether external agencies have an obligation to intervene. considering the cosmopolitan for humanitarian intervention, claims that: all persons have fundamental interests and that political institutions do not have value except insofar as they respect these interests , external agents have duties to protect people's fundamental interests and that this obligation sometimes requires external intervention because the latter is an effective way of protecting such interests.

Continuing the arguments, political institutions have value only to the extent that they respect people's fundamental interests and this, in turn, requires that they protect people's civil, political, and economic rights, where political institutions are not protecting its members' rights, then, they lack moral standing. The egalitarian liberal cosmopolitanism provides an argument for the claim that all persons have a duty to protect human rights.

It stipulates that persons have political human rights (including rights to freedom of belief, religion, worship, association, and communication) and economic human rights (including rights to have their basic needs met and to be accorded equality of Opportunity). Political institutions—are they states or transnational polities like the European Union or global institutions—have worth only in so far as they protect these values. Thus political institutions lack legitimacy when they fail to protect these rights. Furthermore, given that all persons have duties to respect and protect these human rights, it follows that intervention is justified when it could successfully protect these rights. Indeed, it is not just morally permissible: it is a duty.

The stability of international society, especially the unity of the great powers, is more important, indeed far more important, than minority rights and humanitarian protections. International law should not include a legal right to intervene because this would destroy international order.

The value of stability (including\ international stability) is a function of the value of the current arrangements. Arguments invoking the importance of order are thus incomplete and rest on the dubious assumption that intervention engenders instability.

1. Knowledge - to be well informed about another state and its population to make good decisions. The experience of a number of interventions lends support to this argument.

2. Improper motives - national interest rather than the fundamental rights of people abroad.

3. Resistance to intervention - Interventions sometimes flounder simply because they encounter resistance from some of the members of the country which is subject to intervention.

4. Million Considerations a further reason for being skeptical about the success of humanitarian intervention has been suggested by J. S. Mill. Mill argues that external interventions will rarely secure long-term success. 3He argues that a political system will prove viable only if the people are committed to it and, he adds, a people will be committed only if they have fought for it. Thus external agency will not secure long-term stability.

These four claims against humanitarian intervention really have a force. But none of them—either alone or combined with others—shows that intervention will never succeed. Approach which, rather than rejecting intervention outright, bears these weighty factors in mind and analyses the circumstances in which interventions succeed.

While analyzing whether or not' intervention is justified, Caney refers to Mona Fixdal and Dan which make links with the just war tradition consider to those circumstances in which humanitarian intervention is justified.

First is Just cause. This means when a political regime violates human rights, such as rights to a decent standard of living as well as rights against torture, murder, unjust imprisonment or enslavement.

Second is Proportionality. The principle of proportionality includes costs and stipulates that if the benefits exceed the costs then humanitarian intervention is justified.

Third factor is a consideration of less awful measures. This means that Humanitarian intervention would be the last resort and should not be adopted unless other less awful measures for achieving the same result have been given into the consideration. Other principles are Reasonable chance of meeting objectives and legitimate authority.

While discussing about the humanitarian intervention the question who should engage these interventions come. One might argue that interventions are legitimate only if it is authorized by a legitimate body. But Caney's position toward this point is a bit different. He mentions that even if there is some moral basis for intervention, and there is a moral case of intervention, this does not mean that international law should grant a legal right to intervene.

In this chapter we consider the theory of humanitarian intervention and discussing the general practice and problem of this concept. As we have seen, there is not a common position toward this issue. Now, some it's time to move on a concrete case, and consider Russian-Georgian case from humanitarian law perspective. Russia's invasion in Georgian territory was argued by the principle of humanitarian intervention. As Russia declared, the motive of this action from Russian side was to protect its citizens. This paper will consider the legal assessment of this invasion, and discuss whether this action was under the framework of humanitarian intervention.

3.1. Russia and Georgia as a subject of international law

In September 8, 2008, the International Court of Justice began considering a case submitted by the Republic of Georgia against the Russian Federation. Russia is accused in breaching the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and of conducting "violent discriminatory acts" by armed forces in concert with separatist militia and foreign mercenaries."²⁸ The extensive discussion has been given between the parties on three intertwined issues to do with the applicability of human rights law: in time of war, in cases of occupation and extraterritorially.²⁹

This is the first time that Russia or the former Soviet Union, that the country which was in the membership of Soviet Union, has been called before this principal judicial body of the United Nations. The submission of the claim followed the August 8, 2008, invasion by Russian military forces of sovereign Georgian territory, Russia's attempt to change the borders of this independent country, and the strengthening of the Russian military and political presence in the Georgian province of South Ossetia.³⁰

The Geneva Conventions and their Additional Protocols are those core bodies in international humanitarian law that regulates the conduct of armed conflict and seeks to limit on its effects. Convention IV, of August 12, 1949 is relative to the Protection of Civilian Persons in Time of War. According to the article two:

" The present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them ".³¹ So, the hostilities, which took place between

²⁸ Russian federation, legal aspects of war in Georgia .sec source: Press Release, International Court of Justice, Georgia Submits a Request for the Indication of Provisional Measures, Aug. 14, 2008, available at <http://www.icj-cij.org/docket/files/140/14661.pdf> (last visited Sept. 24, 2008)

²⁹ Independent International fact-finding mission on the conflict in Georgia, II volume p313

³⁰ Russian federation, legal aspects of war in Georgia, P.1

³¹ <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

Russia and Georgia in August, 2008 are considered as international armed conflict between two parties and International Humanitarian Law is applicable for Russian and Georgia.

As both territories are recognized internationally as a part of Georgia, the criteria set out in Additional Protocol II (art I) and art 3 of Geneva Conventions are both met.³² The hostilities between Georgia, South Ossetia and Abkhazia are also governed by the International Humanitarian law.

3.2 The legal status of south Ossetia and Abkhazia:

Since the break -up of Soviet Union, the issue of self-determination of South Ossetia and Abkhazia as well as their unilateral secession from Georgia was raised. South Ossetians and Abkhazians consider their right to self-determination as the legal basis for their sovereignty and independence of the territories.

The Principle of self-determination of peoples with the principle of territorial integrity is fundamental principles of international law. They are explicitly acknowledged in the UN Charter. To promote self-determination is one of the purposes of the United Nations, and is also endorsed in common Article 1 of both universal Human Rights Covenants of 1966.³³

Self-determination is understood as “the right of cohesive national groups (‘people) to choose for themselves a form of political organization and their relation to other groups.” Outside the colonial context, self-determination is basically limited to internal Self-determination. A right to external self-determination in form of secession is not accepted in state practice.

A limited, conditional extraordinary allowance to secede as a last Resort in extreme cases is debated in international legal scholarship. However, most authors opine that such a remedial “right” or allowance does not form part of international law as it stands. The case of

³² Independent international fact-finding mission in the conflict on Georgia p. 302

³³ Independent International Fact-Finding Mission on the conflict in Georgia, September 2009 volume II p 135

Kosovo has not changed the rules. The aspirations of the South Ossetia people to self-determination were fulfilled neither *de facto* nor *de iure*. It should be done in the transitional period, when Georgia became Independent.³⁴

Nevertheless, Abkhazia was not allowed to secede from Georgia under international law, because the right to self-determination does not entail a right to secession. We can say that the status of Abkhazia and South Ossetia under international law is decisive for determining the international rights and obligations of those regions, the question of whether a certain territorial entity is a “state” can be approached in two different ways. Let’s follow up these two ways:

- **First** - it is possible to argue that statehood can be determined on the basis of certain objective criteria. In this case, the recognition by other states would be of only declaratory value.
- **Second** - the reaction of the other international legal subjects can be seen as decisive. What counts then, is the recognition of a territorial entity as “state” by other states. State practice and international legal scholarship espouse predominantly the first approach, assuming that recognition is not constitutive of a state.³⁵

The constitutive theory of statehood defines a state as a person of international law if, and only if, it is recognized as sovereign by other states. It is the opposing point of view to the declarative theory of statehood, which defines statehood in terms of several *de facto* characteristics of a region. The constitutive theory is merely a theoretical construct as it has neither been codified by treaty nor widely recognized in international law.³⁶

³⁴ Independent International Fact-Finding Mission on the conflict in Georgia, September, 2009 volume II ,p.140

³⁵ *Marc Weller - Settling Self-determination Conflicts: Recent Developments*. The European Journal of International Law Vol. 20 no. 1 © EJIL 2009;

³⁶ James Crawford (2005). *The Creation of States in International Law*, Oxford University Press. ISBN 0-19-825402-4. p.15

In a case, when recognition has only a declaratory value, the recognition of an entity as a state by other states can give a certain evidence of its legal status as a state, but this presumption can be refuted on the basis of facts. Such type of *evidence* did not exist for South Ossetia before August 2008. South Ossetia had recognized it before the outbreak of the war, not even for opportunistic reasons. At the same time, South Ossetia itself had not consistently claimed to be a state. There is a little dilemma, on the one hand the South Ossetia authorities have sought to be recognized as a sovereign and independent state, but at the same time also advocated unification with North Ossetia through integration into Russia.

In this case, Integration into Russian Federation this is another issue, it would go against the attainment of independent statehood. Though, despite these circumstances, South Ossetia could have been a “state”, if it had fulfilled the relevant criteria which are already mentioned.

But neither Abkhazia nor South Ossetia could fulfill such an important issue for as for example permanent population. For both regions this aspect is crucially important, because the majority of the people living in these territories have voluntarily acquired Russian nationality. Also, changes due to internally displaced persons and migratory movements. This leads to the changes within the demographic composition of the population. This indicator is higher in Abkhazia than in South Ossetia. Therefore, the commission concludes, that existence of a stable group with a common nationality is doubtful for both regions.

As it is argued, international law does not recognize a unilaterally created new state based on the principle of self-determination outside the colonial context. An exception is extreme conditions of genocide which did not take place in the case of Abkhazia and South Ossetia.

As we've seen, South Ossetia as well as Abkhazia right to secede from Georgia is not permitted from international law perspective. So, Recognition of breakaway entities such as Abkhazia and South Ossetia by a third country is in contradiction to international law in terms

of an unlawful interference in the state sovereignty and territorial integrity of the Georgia. According to the Helsinki Final Act, principle I “the participating States will respect each other’s sovereign equality and Principle I of the individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political ³⁷ So, with recognition of independence of South Ossetia and Abkhazia, Russia brought Georgia’s sovereignty.

3.3 The background of the conflict:

At night 7, heavy fighting erupted near to the town Tskhinvali, in South Ossetia. This fighting which extended to other parts of Georgia lasted for five days. This war caused I serious destruction, reaching levels of utter devastation in a number of towns and villages throughout the country. Human losses were substantial. At the end of this war the Georgian side claimed losses of 170 servicemen, 14 policemen and 228 civilians’ killed and 1 747 persons wounded. The Russian side claimed that there was 67 servicemen killed and 283 wounded. As South Ossetia side claimed 365 persons were killed, which probably included both servicemen and civilians. To sum up totally about 850 persons were deprived of their life and a lot of were wounded and more than 100 000 civilians who fled their homes. Around 35 000 still have not been able to return to their homes. The fighting did not end the political conflict nor were any of the issues that lay beneath it resolved. Tensions still continue. The most strategic part of this fighting is after the end of fighting it turned out that political situation is not easier and in some respects even more difficult than it was before. ³⁸

³⁷ Independent International Fact-Finding Mission on the Conflict in Georgia September 2009, p.17

³⁸ Independent international fact-finding mission on the conflict in Georgia, September 2009, first volume, p.5

The beginning of this conflict is regarded the shelling of Tskhinvali by the Georgian armed forces during the night of 7 to 8 August 2008 but it was only the culminating point of a long period of increasing tensions, provocations and incidents. The Conflict between the nations comes from the history, but on the other hand history tells us that various nations have a good experience of cohabitation. Soviet federalism was itself somehow supporting the antagonism between the nations, which was more implicit before breaking down the soviet Union, but after collapsing the soviet union it raised even more problems for the people and society who live in that region. The political difficulties which took place in Georgia for the end of 2003 clashed the interests of Russian Federation. Meanwhile, the level of interaction of international society was high, also there were signed different agreements, but at the same time the above-mentioned was not very helpful and effective.

3.4. Russian –Georgian Relationship and Russian Peacekeeping Mission

By the help of international Community the peacekeeping arrangements had been set up in the 1990s after the armed conflicts took place in Abkhazia and South Ossetia. But with the new developments in the politics and international arena, these peacekeepers had changed their outrun.

As there were no adjustments and political support that the international organizations present in the region would have needed, they finally lost their grip and could no longer fulfill their intended functions.

Since Soviet Union was desolated, Russia became the unique successor to the Soviet Union and inherited legally former Soviet armed forces. Those military units which located outside of Russian federation were divided to Russia according to bilateral agreements. After this, a great number of military units were transferred under Russia's jurisdiction, remained in their regular locations and were transformed into Russian military bases. At the Territory of Georgia, Russia had four military bases. Which changed conditions, Russian military base was closed in Georgia, in 2007 and troops were removed to Russian territory. But the units which were involved in the peacekeeping operations in Abkhazia and South Ossetia still left on the territory of Georgia.

Georgia has reached its independence in 1991, which was a result of awful events, taking place in 1989, when Russian troops killed peaceful demonstrators on the main avenue of Tbilisi. Taking into consideration the fact that newly established independent country such as Georgia was forced to follow the demands of Russian Federation, Georgian people and political course was changed in favor of Europe and Western countries.

The legal ground was made for separation Georgia into 3 parts: Autonomous Republic of Abkhazia, Autonomous district of South Ossetia and the main part of Georgia with its capital – Tbilisi. For the period of transition from soviet to post-soviet sovereignty, the situation between nations living on the territory of Georgia became more severe. With these terms it helped also high level of nationalism of county's first president Zviad Gamsakhurdia, who somehow pushed away other nations with a famous slogan "Georgia for Georgians". Chauvinism and nationalism, plus vague political decisions have brought a fatal ending for Georgia – losing a significant part of the country's territory.

There were two armed conflicts in 1991-1992 in south Ossetia and in 1992-1994 in Abkhazia. Russia play to scenarios, on the one hand political elite was supporting order in Georgia, but on the other hand and in reality it was supporting insurrectionists. In the internal mass and disorder, after failed and unsuccessful military conflicts, Zviad Gamsakhurdia's successor, Eduard Shevardnadze asked official Moscow for assistance to repress another insurrection, which was this time initiated by Gamsakhurdia's supporters. Russia did his job well. In the end it caused re-orientation of Georgia's foreign policy. In October 1993, Eduard Shevardnadze signed Russian-led Commonwealth of Independent States (CIS) and later official Tbilisi joined the Russian-led Collective Security Treaty (CST), too. It was prolonged existence of Russian Military bases on the territory of Georgia, they were controlling border with turkey and sea shores. Besides the abovementioned, Russia became a guarantor of peace in South Ossetia and in Abkhazia also later.

In June 1992 in Sochi and in 1994 in Moscow, two leaders Eduard Shevardnadze and Boris Yeltsin signed two agreements for establishing the Joint Peacekeeping Forces (JPKF).³⁹ The purpose of this agreement was to stop military hostilities in the region by

³⁹ SZ RF 1994, No. 7, Item 690.

establishing a three-part peacekeeping force which was constituted by Georgian, Russian, and South Ossetian components. Article 2 of the Agreement specified the demilitarization of the conflict zone and provided for the removal of all Russian troops not included in the peacekeeping force from the territory of South Ossetia in order to avoid Russian involvement in the existing conflict. In addition, all South Ossetian self-defense forces were to be disbanded immediately. It was also determined by the agreement, the peacekeepers were not allowed to conduct operations outside of the conflict zone, but they could assist Georgian law enforcement authorities in apprehending unlawful combatants. In October 1994, the newly adopted Statute on the Control Commission added the OSCE Mission in Georgia.⁴⁰ UN also sent their observers and there was a response from international society, but the dominant peacekeeper was Russia.

From the very beginning, Russian individual and paramilitary units were actively involved in the military conflict in Abkhazia. But The formal presence of Russian troops in the zone of the Georgian-Abkhazian conflict was sanctioned by the President of the Russian Federation, who on June 9, 1994, issued a decree, which aimed to implement the decision made by the heads of the Commonwealth of Independent States (CIS) Member States in order to conduct an operation to secure peace in Abkhazia. Despite the fact that there was no any legal requirement for parliamentary approval of participation in peacekeeping operations, the President submitted his decree to the Federation Council for confirmation. This decree was not confirmed, though special parliamentary resolution permitted the formation of the peacekeeping force. In 2003, president Yeltsin extended the term of the peacekeeping force's tour of duty. Since Federation Council expressed its agreement with having the Russian military force remain in Abkhazia until full completion of the peacekeeping operation, upon the request of one of the parties, such as Russia, Georgia, and Abkhazia was involved.⁴¹

⁴⁰ /law library of congress Russian federation , 2008-01474, legal aspects of war in Georgia, pp5,6,

⁴¹ <http://www.loc.gov/law/help/russian-georgia-war.php#f21>

4.1 Arguments of the Georgian Side:

Russians first military intervention in the conflict of Abkhazia and South Ossetia took place in the beginning of 1990s. As Georgian side arguing, the military victory of pro-Abkhaz fighters in the armed conflict with Georgian troops without this interference would not have been possible. But in the early 1990s this Russian involvement had an inconsistent character. Later, the ensuing peace processes in Abkhazia and South Ossetia were in the Russian hands. Russian peacekeeping mission had fifteen years to establish a minimum stability in the region, i.e. to keep larger military operations suspended.⁴²

After the frozen period of the conflict, at the turn of the millennium it became increasingly apparent that the resolution of the conflicts in Abkhazia and South Ossetia was not to be offing. In the first years of the new millennium meaningful geopolitical changes occurred. This was connected with EU enlargement in 2001, which lead to a new policy towards its new neighbors and with the USA new policy since the 9/11. In this period Russia-Georgian relationship became more negative and “enemy image”. There were tensions between Russian and Georgia already in the period of Shevardnadze. The problems was connected with the Georgian demand for a Russian troop withdrawal and the dismantling of military bases on Georgian territory in accordance with commitments made by Russia at the Istanbul OSCE Summit in 1999; Georgian participation in the construction of the Baku-Tbilisi-Ceyhan oil pipeline (BTC); Russian demands for military access to Georgian territory to fight armed Chechen rebels in uncontrolled areas like the Pankisi Gorge; and increased US military support for the modernization of a hitherto paltry Georgian army.⁴³

Bilateral relations between the two neighbor’s states became the most complicated under the leadership of Vladimir Putin and Mikheil Saakashvili. Particularly, after Saakashvili’s claim that one of the key priorities of his policy would be the restoration of Georgia’s territorial integrity. He practiced a policy of where Russia increased its support to Abkhazia and South Ossetia. “Russia was engaged in these conflicts as the main peacekeeper, as facilitator and

⁴² Independent international fact-finding mission on the conflict in Georgia, volume II P6.7

⁴³ Independent international fact-finding mission on the conflict in Georgia, volume II p 7

as a member of the Group of Friends of the UN Secretary-General, but it was demonstrating a clear bias in favor of the “separatist” parties to the conflict. Its policy toward Georgia was perceived in Tbilisi as “not peacekeeping, but keeping in pieces”.⁴⁴

In December 2003, during negotiations, Russia presented demands toward Georgia:

- Renunciation of a unilateral orientation toward the US and NATO;
- Acknowledgement of Russia’s special interest in Abkhazia and South Ossetia, home to Tens of thousands of people who had recently obtained Russian passports;
- Permission for Russian security forces to fight Chechen rebels from Georgian territory,

Georgia blames Russian side in supporting Adjara crisis, which took place in spring 2004. In the spring of 2004, a major crisis in Adjara erupted. The reason of this eruption was central government sought to restore its authority on the region. It threatened to develop into an armed confrontation. However, Saakashvili's ultimatums and mass protests against Abashidze's autocratic rule forced the Adjaran leader to resign in May 2004.⁴⁵

The crisis threatened to develop into military confrontation as both sides mobilized their forces at the internal border. However, Georgia’s post-revolutionary government of President Mikheil Saakashvili managed to avoid bloodshed and with the help of Adjaran opposition reasserted its supremacy. Abashidze left the region in exile in May 2004.

This conflict with South Ossetia became the central problem in relationship between Russia and Georgia and took on international dimensions. Georgia decided to push for international peacekeeping forces in South Ossetia and Abkhazia, in order to end the Russian dominance of the existing format. As Georgian side mentions, this conflict reached its highest point In August 2004 when there was a shelling of Tskhinvali and nearby villages and armed clashes were accelerated. Georgia was in front of the large-scale armed conflict with its former autonomous region.

⁴⁴ Independent international fact-finding mission on the conflict in Georgia ,volume volume II,p9

⁴⁵ Independent international fact-finding mission on the conflict in Georgia ,volume volume p,9

In August war in South Ossetia, 2004 in which Russian troops were involving could be prevented. Georgian security forces stopped their offensive in the conflict zone to get rid of conflict aggravation. But the Georgian side now had a well-grounded reason and fundamental commitment problem when addressing new peace initiatives and autonomy offers to the South Ossetian and the Abkhaz conflict sides that make danger to lose above mentioned territories. This helped Georgian side in reactivated the memory of wars in South Ossetia and Abkhazia in 1991 - 1992 and 1992 – 1994. High psychological barrier of confidence building was raised and this crisis took an additional important step in the further deterioration of bilateral relations between Georgia and Russia.

Under article 2(4) of the UN Charter and the parallel customary law Georgian side claimed that military operations of the Russian federation, which was taken in 2008 on the territory of Georgia constituted a violation of the fundamental international legal prohibition of the use of force. This also includes territories of South Ossetia and Abkhazia.

4.2. Arguments of the Russian Republic:

According to Russian side, in August, 2008 the aggression was perpetrated by the Saakashvili regime against the people of South Ossetia. This action became an unprecedented event in modern history both in terms of its recklessness and cruelty. As Russian side mentions the term “Russian-Georgian war” is not appropriate in this respect. The attack launched by Georgia against the peaceful population of South Ossetia and the Russian peacekeepers and the result of this attack was a lot of casualties. This attack and statements made by Georgia’s political and military leadership demonstrated aggressive intent of Georgian side.⁴⁶

In this situation, Russia had no other choice but to use the right of self-defense under article 51 of the UN charter. The main goal of such action was to protect its civilians from Georgian aggression. It is also mentioned that there was no accident when Russia attacked

⁴⁶ Independent International fact-finding mission in the conflict of Georgia, p.188

the local population or any civilian facilities. Russian side also claims that it fully complied the agreements which were reached between D. Medvedev and N. Sarkozy on 12 August and 8 September 2008 respectively.⁴⁷

Russia also claimed that Russia brought this issue on the table of the UN and International community as soon as Georgia started the military operation in South Ossetia. In the peacekeeping, Russia co-operating with the international community, implemented its obligations in good faith, and trying to help in reaching peace agreements. Russia demonstrated self-restraint and patience in the face of provocations. Russian federation maintained its position even after Kosovo's unilateral declaration of independence. Russian side imposes the whole responsibilities to Georgian government and mentions that despite Russia's effort to lead negotiations with Saakashvili about the recognition of South Ossetia and Abkhazia independence, Georgian government was failed.⁴⁸

Since Georgia's Constant attempt using brutal military force against the ethnic groups Mr. Saakashvili left them without choice but to seek ways to ensure their security and the right to self-determination as independent nations. In such situation, President Dmitry Medvedev of recognized Opportunity to save the lives of people and prevent further bloodshed in the region of Transcaucasia.⁴⁹

Georgia was accused in Genocide during the conflict and after ceasefire. This accusation was made from Russian federation with a number of political declarations by Russian authorities in the early days of the conflict. These Accusations have been linked to the number of victims given by the Russian authorities at the time, which claimed that 2,000 people had been killed by Georgian troops.⁵⁰

According to the 1948 Genocide Convention, genocide is defined as "any of the following acts w are committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily

⁴⁷ Independent International fact-finding mission in the conflict of Georgia ,p.188

⁴⁸ Independent International fact-finding mission on the conflict in Georgia, volume II p.189

⁴⁹ Independent International fact-finding mission on the conflict in Georgia, volume II p.190

⁵⁰ Independent International fact-finding mission on the conflict in Georgia, volume II p 421

or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”⁵¹

As we have seen, this term means very serious crime in international law. Necessary by measures were undertaken to investigate into alleged genocide. These allegations were made by the special commission of Russian Federation and by the *de facto* South Ossetia authorities. The Public Commission for Investigating War Crimes in South Ossetia, grouped by Russian and South Ossetia public activists was created on 12 August 2008. The aim of this commission was to report and document the case of genocide against South Ossetia’s. The head of the Public Committee declared that “now the world community has got access to photo and video and other documents which prove that Georgian soldiers in South Ossetia were actually committing genocide against its people.” Two NGOs representatives whom the IIFFMCG met in Tskhinvali in March 2009 made the same accusations of genocide. The accusation of genocide was also made by Abkhazian authorities, who claimed, that Georgian government made genocide against ethnic Abkhaz people and before the highest international judicial institutions this needed to be presented.⁵²

According to the Russian Federation, the allegation was based on the first information, which was received during the first hours of the conflict and after it. As far as we can judge, there were indeed reasons to believe that the actions undertaken by the Georgians were aimed at exterminating fully or partially the Ossetian ethnic group as such (large-scale and indiscriminate use of heavy weapons and military equipment by the Georgian side against the civilian population of Ossetia on the night of 7 to 8 August, a proactive ‘anti-Ossetian’ policy conducted by the Georgian government”⁵³

This accusation was neglected by Georgian side, who claimed that such fact did not take place from Georgian side, and unlike SKP even international humanitarian organizations had no possibility to make evidence –gathering and SKP was the sole present fact-finding

⁵¹ Independent International fact-finding mission on the conflict in Georgia, volume II p.424

⁵² Independent International Fact -Finding Mission in the Conflict of Georgia, 421-423.

⁵³ Russia, Responses to Questions Posited by the IIFFMCG (Humanitarian Aspects), p. 1

institution which was presented in the first stage of investigation.⁵⁴ The Human Right Watch also questioned the reliability of the investigation conducted by the Investigative Committee of the Russian Federation Prosecutor’s Office. According to the HRW, A number of inhabitants of those villages were interviewed but said they never heard about such facts. As HRW determined such elements “raise serious concerns about the accuracy and thoroughness of the investigation.”⁵⁵

Since investigated this issue in detail, the independent fact-finding Mission on the conflict in Georgia claimed “that to the best of its knowledge the allegations of genocide in the context of the armed conflict between Russia and Georgia and its aftermath are not founded in law nor substantiated by factual evidence”.⁵⁶

.4.3 the qualification of “passportization” policy

The legal side of this large-scale Russian naturalization of the resident of South Ossetia is one of the key parts of the conflict between Russia and Georgia. As Georgian side claims:” In the Georgian view, the “passportisation” policy is a violation of the “principles of territorial integrity and sovereignty of Georgia, noninterference in internal affairs of sovereign states and the principle of resolving disputes through peaceful means.”⁵⁷ To give appropriate legal qualification of this act is very important as one of the key arguments for Russian side to use force is the protection of its citizens.

⁵⁴ Independent International Fact -Finding Mission in the Conflict of Georgia, p, 423

⁵⁵ Up in Flames – Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia, op. cit., pp. 71-72.

⁵⁶ Independent International Fact-finding Mission on the conflict in Georgia ,volume II, p148

It is not for international law, but for the internal law of each state to determine who is, and who is not, to be considered its national for the purposes of domestic law, the determination of a person's nationality will be made only according to domestic law. But the effects of this act as regards other states occur on the international plane and are therefore to be determined by international law. Thereby the jurisdiction of a state to confer nationality may become limited by rules of international law⁵⁸

International Court of Justice defines nationality, "a legal bond having as its basis a social fact of attachment, a genuine connection of existence and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute a juridical expression of the fact that the individual upon whom it is conferred, either directly by law or as a result of an act of the authorities, is in fact more closely connected with the population of the state conferring nationality than with that of any other state."⁵⁹ The limits on naturalization may differ from the limits on the regulation of the acquisition of an original nationality by birth, because naturalization also affects the interests of the person's former state of nationality, which is not the case with regard to birth.⁶⁰

Second very important issue is the Acquisition of Georgian Nationality by Residents of Abkhazia and South Ossetia.⁶¹ Difficulty or even de facto impossibility to refuse Georgian Nationality is contrary to international law. Giving an individual new nationality requires the consent of the affected individual in international law. In the event of territorial changes and creation of a new state the affected populations automatically acquire the new nationality. it should be mentioned that the residents of Abkhazia and South Ossetia had not refused Georgian citizenship before 24 December 1993. So, they became Georgian citizens for purposes of Georgian and international law. They did not exercise the right to refuse

⁵⁸ Independent International Fact-finding Mission on the conflict in Georgia ,volume II,149

⁵⁹ ICJ, *Nottebohm case (second phase) (Liechtenstein v. Guatemala)*, ICJ Reports 1955, 4 at 23.

⁶⁰ Independent International Fact-finding Mission on the conflict in Georgia ,volume II , p150

⁶¹ Independent International Fact-finding Mission on the conflict in Georgia ,volume II ,150

Georgian citizenship legally and their personal reservations against Georgian citizenship are irrelevant.

The main question in this issue is to conclude the conferral of Russian nationality on persons living outside Russia, and without having any other connection to Russia, is *per se* illegal because of the lack of a substantial factual connection.⁶² some years ago, with a strong concern for the preservation of national sovereignty, the Citizens who prevailed international doctrine opined that the necessary factual relationship was not present when the person was not a resident of the naturalizing state, especially when he or she continued to reside in her state of nationality.⁶³ Considering this principle, Russia is not allowed under international law to naturalize persons of Georgian nationality.

While discussing the case “naturalization”, we should mention that Russia and Georgian are parties of The International Convention on the Elimination of All Forms of Racial Discrimination⁶⁴ .this was adopted in 1965 and includes the prohibition of discriminatory naturalizations. According to the Article 1(3) of the CERD “nothing in this Convention may be interpreted as affecting in any way the provisions of states Parties concerning nationality, citizenship, or naturalization, provided that such provisions do not discriminate against any particular nationality.” So, it is clear, that this convention stands against the collective naturalizations.⁶⁵

The reasons for which naturalization and especially collective naturalization is prohibited under international law is that 1) it risks of the affected persons of the nationality they have acquired by birth and 2) Collective naturalizations violates the liberty and dignity of the affected persons and human right to nationality. After accepting new nationality, persons

⁶² Independent International Fact-finding Mission on the conflict in Georgia ,volume IIp160

⁶³ Independent International Fact-finding Mission on the conflict in Georgia ,volume p161

⁶⁴ CERD of 7 March 1966, UN Doc. A/6014 (1966), 660 UNTS 195

⁶⁵“ Independent International Fact-Finding Mission on the Conflict in Georgia p161

this persons have some obligations and in some extreme cases they have to go e to the war for the state.⁶⁶

According to IIFFMTG, giving Russian nationality on a large scale if its resident means to deprive Georgia of its jurisdiction over person and it may become a basis for military intervention. The more individuals that are removed from the Georgian nation, the more plausible are the qualification of these actions as an infringement of Georgian sovereignty, which encompasses jurisdiction over persons.

Analyzing the above mentioned facts, the independent fact-finding mission concluded that The Russian “passportisation” policy interferes with Georgia’s internal affairs as because Georgia does not allow dual citizenship At the same time Georgia cannot be compelled to admit dual citizenship and to revise its legislation, because states are free in that regard.

4.4. Military attack – Georgian arguments

Here, this paper discusses the arguments of Georgian side, which was presented to the INFFMCG. According to the Georgian side, tension in the conflict zone reached it’s culmination in spring, 2008. This was revealed by intensified air activities not only in the conflict zone, but also at the territory of ceasefire region. These flows were done jet fighters and by unmanned aerial vehicles (U A Vs).In April 2008, the Russian-staffed CIS PKF was reinforced by additional troops and in late May 2008, a Russian military railway unit was sent to Abkhazia to rehabilitate the local railway, allegedly for humanitarian purposes, in spite of Georgian protests. The spring events were followed in summer 2008 by bombings of public places on the Abkhaz side of the ceasefire and Georgian sides. In summer 2008, the whole attention was focused to the Georgian-Ossetia conflict zone, as there were attacks and intensified fire between the Georgian and South Ossetia sides.

⁶⁶ Independent International Fact-Finding Mission on the Conflict in Georgia, p162

In early July the conflict already seemed on the verge of outbreak as diplomatic action intensified at the same time. In mid-July, a yearly US-led military exercise called “Immediate Response” took place at the Vaziani base outside Tbilisi, involving approximately 2 000 troops from Georgia, the United States, Armenia, Azerbaijan and Ukraine. During the period of 15 July – 2 August 2008, Russian troops carried out large-scale training exercises in the North Caucasus Military District, close to the Russian-Georgian border as well as on the Black Sea. In early August, the South Ossetian authorities started to evacuate their civilian population to locations on the territory of the Russian Federation. Indeed, the stage seemed all set for a military conflict.

The official Georgian information provided to the Mission says in this regard that “to protect the sovereignty and territorial integrity of Georgia as well as the security of Georgia’s citizens, at 23.35 on August 7, the President of Georgia issued an order to start a defensive operation with the following objectives:

1. Protection of civilians in the Tskhinvali Region/South Ossetia;
2. Neutralization of the firing positions from which fire against civilians, Georgian peacekeeping units and police originated;
3. Halting of the movement of regular units of the Russian Federation through the Roki tunnel inside the Tskhinvali Region/South Ossetia”.

Georgian position was supported by the fact, that Russia entered a large troops and arms before the military operations were launched. As Georgian side claims, Russian forces started to build their forces in South Ossetia early, in July 2008. Also they mobilized medical personnel, tents, tanks, and self-propelled artillery and guns; this mobilization was intensified at night 6 to 7 August, and also at night 7 to 8 August.

Georgian accusations was denied by Russian side, IFFMCG reports, where were a lot of Russian reports and publications, which indicates that Russian side, trained and gave military equipments to South Ossetia and Abkhaz forces before the conflict. Besides, as it seems there have been an influx of volunteers from Russian Federation and who went in

Ossetia through Rekey tunnel in the early August, 2008. As well also a range of Russian forces which at 14.30 hours on 8 August 2008 came through the tunnel. Also, it was found out, by the Commission that Russian air force started its operations outside the South Ossetia Administrative borders already in the morning of 8 August, which is prior to the time given in the Russian official information.

4.5 Russian and international law

According to the arguments which were discussed here, the official motive for Russian military humanitarian intervention in the territory of Georgia was to protect its citizens. This was the key element, by which Russia tried to justify its intervention. We've seen Russia's position, in which he explained the recognition for south Ossetia and Abkhazia to defend citizen lives from Georgian aggression. But in this case the question of possible annexation of these territories in the future may be aroused. The basis for such suppose may be the result of analyzing Russian's activities.

As it appears the use of armed forces by Russia in South Ossetia contradict Russian domestic military legislation. The legislature was not informed about the president's Use of military force abroad, and this operation was not approved by the legislature. Neither any formal legal statement was announced. According to the spokesman of federation council, Resolution No. 219 of July 2006, which allows the president to use armed forces abroad at any time to fight terrorists, is not applicable in this situation as the aim of military operation in South Ossetia was not to fight for international terrorists. "Legal uncertainties related to the violation of peacekeeping operation conditions and the absence of a proper war-related parliamentary resolution raised other legal questions, such as the status of war prisoners, or the use of conscripts in combat operations abroad, which is prohibited by Russian law, and forcing draftees to conclude military service contracts."⁶⁷

⁶⁷ Russian Federation legal aspects of war in Georgia, Law library of congress P4

Adoption of the resolution “On Using Formations of Armed Forces of the Russian Federation and Special Purpose Detachments outside the Territory of the Russian Federation With the Purpose of Preventing International Terrorist Activities” give president right to adopt armed forces abroad.⁶⁸

The only case, when International law may deem the use of force lawful derives from the principle of necessity, even if under other circumstances such actions would be considered illegal. But it should be underlined, that according to the International Court of Justice, in this case, the interested state cannot be the only party which gets decision whether the requirement of necessity was met or not⁶⁹

So, if Russia aims to use this as an argument, he has to prove that the military occupation of the territory of Georgia and South Ossetia was the reasonable, proportionate, and only possible response to damage inflicted on Russia, its citizens, and their property, as it is required under the Convention Respecting the Laws and Customs of War on Land (Hague IV), Oct. 18, 1907.⁷⁰

Russia cannot call its actions as providing military and defense assistance, as before the war, these Separatist territories were recognized by no other states. The only legal justification could be the outdated Soviet doctrine of international law, which recognized the right to use arms in the fight for national liberation and state independence in a case if no other choice was left to the striving people.⁷¹

⁶⁸ SZ RF 2006, No. 29, Item 3144.

⁶⁹ Russian Federation legal aspects of war in Georgia, Law library of congress P.8

⁷⁰ Russian Federation legal aspects of war in Georgia, p8 Law library of congress, <http://www.loc.gov/law/help/russian-georgia-war.php#f35>

⁷¹ <http://www.loc.gov/law/help/russian-georgia-war.php#f35>, sec source: Boris Tuzmakhamedov, Ot Politicheskikh Deklaratsii k Pravovym Dovodam [From political declarations to legal arguments], NEZAVISIMAIA GAZETA, No. 186, Sept. 2, 2008, at 3.

Valery Zorkin - The Chairman and Chief Justice of the Constitutional Court of the Russian Federation, explained Russia's invasion in foreign territory by art 61 of Russian Constitution. As Zorkin mentioned, if foreign state violates the recognized norms of international law, then according to the art 14.5 of the Russian Federation should undertake all action authorized by international law in order to defend its citizens.⁷² This position is explained diplomatically but it's is not justified from legal point. Even in this case, such actions are sanctioned by international body, and besides, the Russian citizens were not merely individuals who lived in a foreign country but they were actively engaged in creating their own independent state within the territory of another country⁷³

Issues of citizenship are regulated by laws on citizenship in Georgia, as well as in Russia. The Georgian Law on Citizenship was adopted on March 25, 1993. The Law on Citizenship of the Russian Federation was passed on May 31, 2002. Dual citizenship, which means that an individual who is a citizen of one of these countries can be a citizen of another country, is recognized neither Russian, nor by Georgian law. The procedure of citizenship was very complex and required repeated trips to Russian consular offices or relocating to Russia. This new Citizenship Law of Russia simplified procedure of citizenship acquisition for former citizens of the Soviet Union regardless of their place of residence, if they reside in the former Soviet republics and were not able to acquire citizenship from those republics and remain stateless individuals. In Abkhazia and South Ossetia the application process was simplified even further, and people could apply even without leaving their homes.⁷⁴

while analyzing Russian and international law, as well as the review of how the "peace enforcement operation" was conducted by Russia in Georgia in August 2008, the law library of congress provides us with conclusion, that "no international or domestic legal act can justify the Russian military invasion of the sovereign territory of the Republic of Georgia, or the recognition of the self-proclaimed independence of Georgian separatist regions by the Russian Federation. It appears that these actions were conducted in violation of major

⁷² Russian Federation legal aspects of war in Georgia, Law library of congress p.10

⁷³ Ibid. P.10

⁷⁴ Ibid. P11.

international law principles and Russian national legislation. By siding with the separatists, Russia automatically became a party to the conflict and made it impossible for itself to be an arbiter or a peacekeeper in this conflict, thereby decreasing its role in future negotiations on the status of these provinces. Treaties signed by Russia with separatist provinces cannot be recognized because these territories are not recognized as states, which may make Russian activities aimed at fulfilling Russia's obligations under these treaties illegal. Russia's military deployed in the regions may be recognized as an occupational force and Russia may be forced to withdraw its armed forces from the territory of Georgia".

5.1 Legal estimations of International organizations about Russia's intervention

The Parliamentary Assembly of the Council of Europe monitored the conflict events which took place in August and responded it by adopting resolution 1633 (2008)⁷⁵. Art 1 of this resolution talks about those principles of democracy, human rights and the rule of law, as well as to principles of state sovereignty, the right to territorial integrity and the inviolability of state frontier which are obligatory upon all member states of the Council of Europe.

The resolution mentions that Russia and Georgia joined the Council of Europe, both promised to settle conflicts by peaceful means and in accordance with the principles of international law. The Assembly condemns the outbreak of war which took place between two member states of the Council as human suffering has been caused.

Council also stated that this war was unrespectable for council and steps to reduce tension were not taken. Assembly also summed up peacekeeping format and proved that" it could not fulfill its intended function and that the peacekeepers did not succeed in their mission to protect the lives and property of the people in the conflict area." ⁷⁶

⁷⁵ Resolution 1633 (2008) The consequences of the war between Georgia and Russia

⁷⁶ Resolution 1633 (2008) The consequences of the war between Georgia and Russia ,Art 4

Resolution also mentions that international humanitarian law was brought when the initiation of shelling of Tskhinvali without warning by the Georgian military, on 7 August 2008 was taken and it marked a new level of escalation, namely that of open and fully fledged warfare. At the same time Use of heavy weapons and cluster munitions which created risks for civilians, constituted a disproportionate use of armed force by Georgia in its own territory, and it was a violation of international humanitarian law.

Large-scale naturalizations of Georgian citizens undermine the personal jurisdiction of Georgia, and to that extent affect Georgian sovereignty as well. It has been argued that “by conferring its nationality on the national of another state the naturalizing state purports to deprive the other state of its right of protection.” The state’s right to protect its nationals is indeed a traditional prerogative of sovereignty. It might be argued that under the premise that states are not ends in themselves; the protection offered to their own nationals is rather a duty and not a right of the state. However, the conflict under scrutiny demonstrates that the option to grant protection to their nationals is an important value for the states in conflict. Russia, especially, has attempted to justify its activities, including military activities in Georgia, by relying on its right to protect Russian nationals. Against this background, the deprivation of the right to protection indeed constitutes an infringement of sovereignty.

According to the resolution, Russian counter-attack which included large-scale military actions in central and western Georgia and in Abkhazia, failed to respect the principle of proportionality and international humanitarian law, and constituted a violation of Council of Europe principles as it led to the occupation of a significant part of the territory of Georgia. Council also condemns the attacks on the economic and strategic infrastructure of the country, which was also a direct attack on the sovereignty of Georgia and thus a violation of the Statute of the Council of Europe.

Based in this respect, “the Assembly considers that, from the point of view of international law, the notion of “protecting citizens abroad” is not acceptable and is concerned

by the political implications of such a policy by the Russian authorities for other member states where a substantial number of Russian citizens reside.”⁷⁷

The Assembly condemns the recognition the independence of South Ossetia and Abkhazia by Russia, and considers this as a “violation of international law and Council of Europe statutory principles.” Assembly deplores the fact of recognition of independence by Duma and the Council of the Federation and calls for Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and to fully respect the sovereignty and territorial integrity of Georgia as well as implementation of the European Union-brokered ceasefire agreement.

According to art 13 of the resolution, Assembly expressed its concerned about credible reports of acts of ethnic cleansing which were committed in ethnic Georgian villages in South Ossetia and the “buffer zone” by irregular militia and gangs which the Russian troops failed to stop. It is also underlined that such acts were mostly committed after the signing of the ceasefire agreement on 12 August 2008, and it continue even today.

As we have seen, the council considered condemns of all violations of Humanitarian law which was committed by Georgia and Russia, and mentions that Russia failed to implement its peacekeeping duty on a good face and initiates creation of international peacekeeping forces which would be the guarantee of peace and stability in this region.

Under international humanitarian law, peacekeepers still remain indifferent and don't take part in fighting, so they are behaved as resident who enjoy safety from attack. While peacekeepers are needed resort to use of force, such force must be firmly incomplete to actions that are very important for self-protection or to cover any civilian objects that they have a permission to defend. Forced exercised in this way must be firmly balanced for the purpose. Attacks, aimed against mediators, who don't take part in hostility, would be grave violation of international humanitarian law and a war crime.⁷⁸

⁷⁷ Resolution 1633 (2008) The consequences of the war between Georgia and Russia; Ibid. Art 6

⁷⁸ Resolution 1633 (2008) The consequences of the war between Georgia and Russia; Ibid. art 29

International humanitarian law on occupation applies to Russia as it has effective control over Georgian territory also South Ossetia or Abkhazia without permission of the Georgian government. Russia also assumed the role of an occupying power in the Kareli and Gori until it left from these areas on October 10, 2008 because Russian attendance avoided the Georgian authorities' full and free exercise of sovereignty in this county.⁷⁹

According to Human Rights Watch Georgians left their homes in South Ossetia and now are not able to go back to their homes. . International law supplies different safeties to persons moved from their homes, including the right to return. People who escaped to their homes cause of war are enabled to return to their home, a right known as the "right to return."⁸⁰

Numerous declarations of the UN General Assembly and of the Security Council as well as several international peace agreements also recognize the authority to go back to one's home areas or property.⁸¹

Russia failed overwhelmingly in its duty as an occupying power to ensure, as far as possible, public order and safety in areas under its effective control in South Ossetia. This allowed South Ossetia forces to engage in wanton and wide scale pillage and burning of Georgian homes and to kill, beat, rape, and threaten civilians. Roadblocks set up by Russian forces on August 13 effectively stopped the looting and torching campaign by Ossetian forces, but the roadblocks were inexplicably removed after just a week.

The course of three missions to South Ossetia in August, September, and November 2008, Human Rights Watch meet more than 150 witnesses and survivors of the attacks on the ethnic Ossetian villages and Tskhinvali, Human Rights Watch's exploration finished that

⁷⁹ Resolution 1633 (2008) The consequences of the war between Georgia and Russia; Ibid.art 29

⁸⁰ ICRC, Customary International Humanitarian Law, rule 132: "Displaced persons have a right to voluntary return in Safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist. This is a rule of customary international law in both international and non-international conflicts."

⁸¹ human rights watch , "up in flames", humanitarian law violations and civilian victims in the conflict over South Ossetia, p38

Georgian forces discharged violations of the laws of war at some stage in their attack on South Ossetia.⁸²

The studies, made by Human Rights watch concluded during the shooting of Tskhinvali and bordering villages and the land unpleasant that followed, Georgian forces recurrently failed to stand by the obligation to distinguish between military targets that can be legally attacked, and civilians, who may not be aimed for attack. This was complicated by Georgia's collapse to take all possible measures to evade or minimize civilian victim. While we found no proof that Georgian forces required to deliberately aim civilians, Human Rights Watch research finishes that Georgian forces demonstrated ignore for the defense of civilians during the shooting campaign, causing large-scale damage to civilian objects and property casualties.⁸³

5.2 The principles of humanitarian intervention

The International Commission on Intervention and State Sovereignty was established by the government of Canada in September 2000 In order to wrestle the whole range of questions which are connecting with the right of humanitarian intervention.⁸⁴The commission's report "responsibility to protect" has been agreed by the twelve commissioners. ICISS states the special conditions under which Military Humanitarian intervention could be justified. Considering the principles stated by the commission, the paper aims to discuss whether Russian federation satisfied these criteria.

1) **The just threshold** - this principle includes losing a large scale of life or large scale "ethnic cleansing", expressed in by killing, forced expulsion, acts of terror or rape. As it

⁸² Human Rights Watch, "up in the flames", humanitarian law violations and civilian victims in the conflict over South Ossetia p38

⁸³ Human rights Watch, "up in the flames, humanitarian law violations and civilian victims in the conflict over South Ossetia" p38

⁸⁴ "responsibility to protect", report of the International Commission on Intervention and state sovereignty, ICISS, December 2001

was discussed according to international observers which were investigated the details of the conflict, no such measures were taken from Georgian side.

2) **The precautionary principles-** this includes principles, such as Right intention, last resort, proportionality and Means and reasonable prospect.

Right intention is a core principle, which determines that intervening state must have a right reason for military intervention and this should be human suffering. This criterion is better fulfilled when there are cases of multilateral operations. Russia could not presented persuasive arguments that there was a necessity of military intervention, neither was it multilateral operation, nor authorized by the legitimate body. Neither the criteria of last resort were fulfilled by the Russia. Before the military intervention not all peaceful resolutions of the crisis settlement were explored.

Proportional means: as it was argued in the reports of Independent International Fact – Finding Mission in the Conflict on Georgia and Human Rights Watch, as well as the Assembly of the council, the principle of proportionality was failed as loss was higher than the reason of the intervention.

Reasonable prospects: this principle states that there must be a reasonable chance of success in order to avert the suffering of human beings that would justify the intervention. Neither this principle was fulfilled by Russia, as there were no exemptions of success.

3) Right authority- In this principle commission mentions that those, who take military intervention, should formally request the authorization of the Security Council, as there is not more appropriate body to authorize the military intervention that Security Council of the UN. Neither from the Security Council, nor from other international organizations gave authorization to the Russian military action.

4) Operation principles -This principle considers that operations will be held under the principle of proportionality and would be in compliance with international humanitarian law. There must be a maximum possible coordination with humanitarian organizations. Russia was the sole foreign actor in this military intervention and actions taken from Russian

Federation was done under the abolition of International law. As it is clear, none of the principles which are stated by the Commission for military intervention was fulfilled from Russian federation

6. CONCLUSION

The aim of this paper was to explain the concept of humanitarian intervention by examining Georgian-Russian conflict. There have been discussed the arguments of Scholars of both sides, who were supporters and opponents of the justification of military intervention. There are many different factors in the world that influence the justification of humanitarian intervention. After considering the views of different scholar, it was concluded that the greatest challenge which stands for this concept is to make a line between human rights and state sovereignty.

After the presentation of general positions of scholars, the problem was analyzed from the view of international humanitarian law. Analyzing the interaction of article 2 and 51 of the UN charter, an impartial answer about the third state involvement in the conflict of self-determination was received. As Shaw defined, "the use of force to suppress self-determination is now clearly unacceptable, as is help by third parties given to that end."⁸⁵

While discussing the theory of just war and humanitarian intervention, several core principles were revealed in order to make justification of humanitarian intervention. These were just cause, right intention, and reasonable chance of meeting objectives, last resort and authorization by a legitimate body.

After analyzing the general arguments and concept of the military humanitarian intervention, it was concluded that hostilities which took place in August, 2008 is considered as a subject of international law and would be given legal assessments

⁸⁵ Malcolm N. Shaw & David "international law" fifth edition p 1038

In order to make comparative analyzes, there was discussed the arguments of Georgian and Russian sides. It was considered by the international organizations (observers of the conflict) that Georgia started military operation on the territory of South Ossetia. These actions were taken after large-scale provocations from the republic of Russia. Thought this does not justify Russia's military intervention on Georgian territory. There were many questionable circumstances which were discussed in this paper.

The aim of this paper was not to find out the winner or loser, neither to blame the parts of the conflict. The research question was whether Russians invasion in Sovereign Georgian territory is in compliance with international law.

After the discussing problem, it was concluded that Russia failed to implement peacekeeper duties and brought international humanitarian law by invading sovereign territory of Georgia. Throughout analyzing reports given by Independent International Fact-Finding Mission, assembly of the Council, Human Right Watch and Amnesty International was concluded that article 51 was not appropriate in this conflict. There was no genocide from Georgia; also, there was no need to defend citizens from Russia. The "passportization" after which residents of South Ossetia and Abkhazia got Russian citizenship was not legal.

While discussing the main principles of the International Commission on intervention and state Sovereignty, it was considered that there was no fulfillment of these principles from Russian side.

So, Russia's invasion on Georgian tertiary for humanitarian reason is not in compliance with international law. This breakup of the international humanitarian law still continues, as Russian military forces still stay in the territory of Georgia.

Examining the concept of humanitarian intervention on Russian-Georgian case, one may conclude that the military humanitarian intervention is more political then legal tool.

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