The Use of Force and Self-Defense in the International Law

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Abstract

The paper aims at analyzing the international legal aspects of the use of force; adducing the role and functions of the UN Security Council and the General Assembly in preserving international peace; illustrating impediments resulted from the application of right to veto by the UN Security Council permanent members in the course of decision making process in the Security Council; demonstrating the difference between threat to peace and armed attack, whether the use of force is justified in cases of threats to peace; what are the criteria for the right of defense; defining the criteria of necessity and proportionality of the use of force; whether armed attack from a non-state actor could serve as grounds for exercising a right of self-defense; determining the act of aggression within the scope of international law; based on the legal aspects of the use of force and criteria for it, author explores the Russian aggression against Georgia.

Keywords: collective security, defense, use of force, UN

Introduction

Among the most problematic and critical issues of international law is the legal aspects of the use of force. In the international legal system, It remains imperative to ask – "When is it lawful to use force?".

The decision on the use of force is made only by the United Nations. In some cases, however, the UN Security Council may give authority to international regional organizations to use force.

The issue of the use of force became even more crucial after the war in August of 2008, when Russia conducted an act of aggression against the sovereign state of Georgia, in violation of fundamental principles of the international law.

The international legal system was incapable of preventing the states to use force against each other, due to the lack of effective means to protect and enforce international legal norms.

Legal basis of the use of force in accordance with the united nations charter and decision-making mechanism

Legal basis of the use of force in accordance with the United Nations Charter

When dealing with threats to the peace, breaches of the peace, and acts of aggression the UN Security Council acts under Chapter VII, the Security Council shall determine what measures shall be taken to maintain or restore international peace and security. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations. Should the Security Council consider the aforementioned measures are inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.

In order to contribute to the maintenance of international peace and security all members of the United Nations, make their armed forces, assistance, and facilities, including rights of passage available to the Security Council, on its call and in accordance with a special agreement or agreements, necessary for the purpose of maintaining international peace and security.

As far as it concerns the use of force for self-defense, in every concrete case fundamental criteria has to be met: the use of force for self-defense should not be arbitrary; use of force should be an absolute necessity; the aim of such a defensive force should be to halt or repel an attack (Gray, 2004, pp.98-101); and no other practical alternative should be visible when the use of force deems necessary.

In its decision concerning the Oil Platforms case, the International Court of Justice concluded that international law requires measures taken in self-defense to be necessary to reach the goal; are objective and impregnable and do not leave any option for discretional actions. (Case Concerning Oil Platforms (Islamic Republic of Iran v.the United States of America), 2003).

Taking into consideration the aforesaid, use of force is illegal and contradicts international law if there are no appropriate legal grounds for the use of force or these actions

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are not sanctioned by the United Nations Security Council in accordance with chapter 7 of the UN Charter.

As for definition of the use of force, the exact definition of the use of force supports development of peaceful bilateral relations between states. The internal legal system of the state gradually derailed from monopolizing the use of force and permits the use of force only in cases of self-defense. Contemporary international law on use of force is based on the United Nations Charter. The authors of the Charter wished to ban any use of force but at the same time envisaged few exclusions which are regulated by the Charter. One of the reasons of creation of the UN was to modernize international law in the 20th century. Leaders decided: "To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind". (Charter of the United Nations).

In accordance with article 2, paragraph 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". (Charter of the United Nations). Article 2, paragraph 4 is well drafted in so far as it mentions the threat or use of force, but not war. The term "war" refers to a narrow and technical legal situation, which begins with a declaration of war and ends with a peace treaty. War was generally prohibited before the Second World War, but states found a way to avoid such prohibition. For example, Japan refused to declare war on China and called its military operations in Manchuria (1932-1941) – "an incident" in order to avoid violating the prohibition of waging war. In light of such experiences, the term "use of force" was preferred because it covers all forms of hostilities, both nominal wars and incidents falling short of an official state of war, which ranges from minor border clashes to extensive military operations. Therefore, the prohibition of the use of force is not dependent on how the involved states prefer to define their military conflict. (Värk, 2003, pp.29-30).

The provision stipulates that the members of the United Nations should refrain 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. Does this truly mean that the prohibition is conditional, and force can be used for a wide variety of purposes because it is not aimed against the territorial integrity or political independence of any state? Could this line of reasoning be used to justify humanitarian interventions as well as other "altruistic" uses of force? These clauses were never intended to restrict the scope of prohibition on the use of force, but, on the contrary, they purposed to give more specific guarantees to small states. Therefore, they cannot be interpreted to have a qualifying effect. (Brownlie, 1963, p.268).

Exceptions to the general prohibition of the use of force exist under the United Nations Charter: individual and collective self-defense; Security Council enforcement actions; use of force on the territory of another state upon request of the latter. Thus, use of force means the use of force in any form. The legality of the use of force is determined by the exceptions in provisions of the United Nations Charter.

The Role of the Security Council

The excuse of self-defense has often been used by aggressors bent on scoring propaganda points. Brutal armed attacks have taken place while the attacking state sanctimoniously assured world public opinion that it was only responding with counter-force to the (mythical) use of force by the other side. If every State were the final arbiter of the legality of its own acts, if every state could cloak an armed attack with the disguise of self-defense, the international legal endeavor to hold force in check would have been an exercise in futility. (Dinstein, 2005, p.111).

According to the chapter 7 of the United Nations Charter the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken to maintain or restore international peace and security.

Threat to the peace is a much broader concept than an armed attack (Greenwood, 2002, Hein Online database). The difference between the two categories relates to the consequences ensuing thereof. Whereas any State or group of States can forcibly respond to an armed attack by invoking the right of individual or collective self-defense, only the Security Council can put in motion measures of collective security that (in the Council's judgment) are called for in the face of a threat to the peace. (Dinstein, 2005, p.286).

The UN Security Council resolution N1540 affirms that proliferation of nuclear, chemical and biological weapons and their means of delivery represent a threat to international peace and security. (Security Council Resolution N1540 on Non-proliferation of Weapons of Mass Destruction, 2004).

In addition, the UN Security Council could perceive the violation of human rights even without the use of force as a threat to peace. (Gill T.D., 1995, p.150). The Security Council is responsible to determine whether threat to the peace is viable.

The UN Security Council is a political body, not a legal one, and its decisions are based on political views rather than on purely legal ones. No important decision can be made without support of the five permanent members (the United States of America, the United Kingdom, France,

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China, and Russian Federation) of the Council, including issues concerning threats to the peace. Consequentially, if one of the permanent members of the council is against reaching an agreement, it could hamper or block the process and make the Council incapable of acting on maintaining peace and security.

Security Council resolutions have a legally binding effect on the members of the United Nations, and they are obliged to follow these resolutions. According to the article 48 of the UN Charter the action required to carry out Security Council decisions for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine. Such decisions shall be carried out directly by the Members of the United Nations and the actions of the appropriate international agencies of which they are members. (Gill T.D.,1995, p.165).

The General Assembly

The impasse reached by the Security Council during the 'Cold War' –due to the frequent exercise of the veto power – became apparent shortly after the entry into force of the Charter. (Dinstein, 2005, p.315). In 1950, the General Assembly adopted a famous resolution – entitled 'Uniting for Peace' – which was supposed to surmount the obstacles standing in the way of concerted international action in the face of aggression:

Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefore. (General Assembly Resolution No. 377 (V)).

If the General Assembly is not in session, an "emergency special session" can be convened within 24 hours, if requested by the vote of any seven members of the Security Council on the, or by request or consent of the majority of its members. (Resolution - "Uniting for Peace", 1950). This resolution does not amend the UN Charter. (Andrassy, 1956, pp.563, 572). It should be noted that the Assembly adopts resolutions that are non-binding in nature and are perceived as recommendations to States. (Stone J.,1954, p.274).

In its advisory opinion of 20th July, 1962, concerning "Certain expenses of the United Nations", the International Court of Justice concluded that the Security Council is exclusively authorized to obligate states with responsibilities deriving from the chapter 7, of the United Nations Charter. (Advisory Opinion on Certain Expenses of the United Nations, 1962).

During the "Cold War" era, the General Assembly tried to "usurp the primary responsibility of the Security Council on quite a number of occasions"; although in recent years it appears to have largely reconciled itself to taking "a secondary or silent role". (White N.D., 1997, p.143). Ultimately it could be concluded that if the UN Security Council fails to fulfill its mandate, no other UN body can substitute it.

The Concept of Self-Defense

The Right of Self-Defense and Criteria

In its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice stated: furthermore, the Court cannot lose sight of the fundamental right of every State to survival, and thus its right to resort to self-defense, in accordance with Article 51 of the Charter, when its survival is at stake. (Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 1996).

In addition, the International Court of Justice clarified that the right of self-defense should be exercised in extreme circumstances. (Dinstein, 2005, p.175).

Article 51 of the UN Charter states "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...". (Charter of the United Nations).

Therefore, article 51 of the UN Charter envisages individual as well as collective self-defense and the unimpaired use of this right in case of armed attack. In addition, there are defined criteria that should be abided by when exercising right of self-defense.

In its argument on a case concerning Nicaragua, the International Court of Justice indicated that no particularity is provided for in using the right of self-defense in article 51 of the UN Charter. But according to the International Customary Law, response to armed attack should be proportional and necessary. (Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America), 1986).

The international Court of Justice reaffirmed the need to abide by principles of proportionality and necessity while responding to armed attack in its decision in 2003, in a case concerning Oil Platforms. (Case Concerning Oil

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Platforms (Islamic Republic of Iran v. the United States of America), 2003).

In fact, criteria of proportionality and necessity are supplemented by the third criteria of need for imminence of response. These requirements derive historically from the Caroline case. (Schmitt, 2003, p.55).

A rebellion in colonial Canada in 1837 found active support from American volunteers and private suppliers operating out of the border region in the United States. The steamship Caroline was involved in supplying materials to rebel-occupied Navy Island. British forces from the Canadian side crossed the border into the United States and seized the Caroline. During the assault, two citizens of the United States were shot dead aboard the Caroline and one British officer was arrested for murder. (Meng, 1992, pp.537-538)

The United States protested the attack on the basis that the British had violated its sovereignty. When the Foreign Office replied that the action had been an appropriate exercise of self-defense, Secretary of State, Daniel Webster, argued that for the self-defense to be legitimate, the British had to demonstrate "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation" and the acts could not be "unreasonable or excessive". (Letter from Daniel Webster, Secretary of State of the United States, to Henry S. Fox, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty (Apr.24, 1841), 1857).

The International Court of Justice, in its advisory opinion on a case concerning nuclear weapons, concluded that criteria of proportionality and necessity remains a requirement for any case of the use of force, including the use of force for self-defense, envisaged by article 51 of the UN Charter. (Legality of the Threat or Use of Force of Nuclear Weapons, ICJ, Advisory Opinion, 1997).

In addition, the International Court of Justice, in its decision on Nicaragua v. USA, concluded that, for the means of self-defense, the use of proportional force to repel attack could be established as a rule of the International Customary Law. (Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America), 1986).

The principle of necessity is based on the following circumstances: a) state exercises right of self-defense when attack is initiated by an identified state; b) force is used in response to attack and not in response to any incident or any other action of this nature; c) all other non-forceful options are exhausted.

Thus, if diplomatic, economic, informational, judicial, or other courses of action might deter the threatened action, defensive use of force by the target of the threat would violate article 2(4). (Schmitt, 2003, p.22). In other words, "force should not be considered necessary until peaceful measures have been found wanting or when they clearly would be futile". (Schachter, 1984, p.108).

Proportionality is the fundamental component of the Law on the Use of Force. (Gardam, 1993, p.1). Historically, it is part of the Just War Theory. (Russel, 1975, p.160). The principle of proportionality limits any defensive action to that necessary to defeat an ongoing attack or to deter or pre-empt a future attack.(Schmitt, 2003, p.55).

The third requirement, drawn from Webster's "instant" and "leaving no moment for deliberation" language, is imminence, a criterion relevant only in the case of attacks not yet launched. (Schmitt, 2003, p.93).

Abidance of the criteria of self-defense does not legitimize the use of force, if the use of force is unlawful by other cause. Therefore if armed attack is illegitimate, there is no need to study clauses of proportionality and the necessity of the use of force.

Armed Attack

Since the right of self-defense arises under Article 51 only 'if an armed attack occurs', it is clear that the use of force in self-defense is contingent on demonstrating that an armed attack has taken place. As the International Court of Justice pronounced in 2003, in the Case Concerning Oil Platforms (between Iran and the United States), 'the burden of proof of the facts showing the existence' of an armed attack rests on the State justifying its own use of force as self-defense. (Case Concerning Oil Platforms, 2003).

As it is stated in the conclusion of the International Court of Justice concerning the case of Nicaragua "activities of military units on the other side of the international border" are perceived as an armed attack if they go beyond the scope of a border incident. (Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America), 1986).

Various English dictionaries suggest that an attack is an actual action, not merely a threat. Furthermore, we should take into consideration other parts of the United Nations Charter, namely Article 2, paragraph 4. This prohibits both the actual use of force as well as the threat of force, and it is difficult to conceive that the drafter of the United Nations Charter, due to an oversight, simply forgot to add the words "or threatens" to Article 51. (Bothe, 2003, p.229). Whereas exclusion of the word "threat" in article 51 is in compliance with the fundamental principles of the UN – to prevent unilateral use of force. The majority of scholars agree that armed attack is an active attack which already took place, rather than threat of such attack. (Dinstein, 2005, pp.165-169).

The events of September 11, 2001 triggered discussions whether the armed attack referred to in article 51 of the UN Charter included terrorist attacks. Article 51 by itself, does not clarify that armed attack should be executed

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by the state, though this provision remains vague, while paragraph 4, of article 2 of the same Charter allows the use of force in self-defense as an exception, when a state is attacked by another state.

Nevertheless, if an attack was organized by a Non-State Actor on the territory of another state, it is assumed that it carries as grave danger as an armed attack. The UN General Assembly argues in favor of this, in its resolution on the "Definition of Aggression". According to the definition, acts of armed force against another state carried out by armed bands, groups, irregulars or mercenaries are of the same gravity as armed attacks carried out by regular or any other permanent armed force. (Resolution on the Definition of Aggression, 1974).

The international Court of Justice defined this provision as a norm of International Customary Law. However, the UN General Assembly resolutions are not obligatory in their nature. (Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America), 1986). Such a situation can, in legal reasoning, be called a constructive armed attack or a situation equivalent to an armed attack. (Bothe, 2003, p.230). Therefore, armed attack by a Non-State Actor could serve as a basis for self-defense if it is of sufficient gravity and originated from abroad.

The concept of constructive armed attack or a situation equivalent to an armed attack, is not foreign to international legal reasoning. It directs to a rather broader concept of self-defense and indicates that in the current environment, an armed attack could derive not only from states but from Non-State Actors. In that situation the threat came from a non-state group of the kind most would probably call "terrorist" today. (Greenwood, 2003, p.17).

The reaction of the international community to the events of 11th of September 2001, explicitly illustrated the concept that armed attack is not limited to state actors. After the attacks, the UN Security Council, recognized the right for the self-defense and immediately enshrined it in its two resolutions. (Security Council Resolutions about Threats to International Peace and Security caused by terrorist acts, 2001).

UN Security Council resolutions did not clearly identify that terrorist acts are equivalent to armed attacks, but while recognizing the right for self-defense it had to recognize that these acts have served for enacting article 51 of the UN Charter. The same attitude was shared by other international organizations. The North Atlantic Council agreed that this attack was directed from abroad against the United States and should be regarded as an action covered by Article 5 of the Washington Treaty, which states that an armed attack against one or more of the Allies in Europe or North America shall be considered an attack against them all. (North Atlantic Treaty, Washington D.C., 1949).

Based on the aforementioned, it could be concluded that an armed attack can be conducted by another state or non-state actor from within a foreign state. (Dinstein, 2005, p.187).

The Concept of Collective Self-Defense

Collective Self-Defense Treaties

The phrase 'individual or collective self-defense', as used in Article 51 of the Charter of the United Nations is not easily comprehensible. A close examination of the text, in light of the practice of States, shows that more than a simple dichotomy is involved. It seems necessary to distinguish between no less than four categories of self-defense: (i) individual self-defense individually exercised; (ii) individual self-defense collectively exercised; (iii) collective self-defense individually exercised; and (iv) collective self-defense collectively exercised. (Dinstein, 2005, p.252).

The first category envisages individual response from a state when it is attacked by another. The second category describes a situation when the aggressor attacks multiple states simultaneously or successively, and attacked states exercise their right of self-defense. The third category is the situation when in response to aggression, the right of self-defense is exercised by another state individually which was not attacked, in support of an attacked state in order to repel the attack. According to the UN Charter any state could support another, if the latter is the victim of aggression. (Kelsen, 1948, pp.783-792).

In the fourth category, collective self-defense is exercised collectively when two or more states are supporting the attacked state. In its judgment on Nicaragua, the International Court of Justice stated that the right of collective self-defense derives not only from article 51 of the UN Charter, but it is a recognized norm of the International Customary Law. (Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America), 1986).

According to article 52 of the UN Charter nothing in the Charter precludes the existence of regional arrangements or agencies for addressing such matters relating to the maintenance of international peace and security, as is appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements, or by such regional agencies, before referring them to the Security Council. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements,

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or by such regional agencies, either on the initiative of the states concerned, or by reference from the Security Council. (Charter of the United Nations).

The word "regional" referred to in article 52 of the Charter, does not only refer to geographic closeness of the states. First and foremost the word "regional" refers to the countries that are united and allied in terms of their joint interests and relationships. (Thomas, 1956, p.178). Each group of states that are in value-based unions pursue joint interests and work together for the maintenance of peace and security. (Kelsen, 1951, p.920). Regional agreements are agreements between two or more states. (Akehurst, 1967, pp.175-177). Agreements on collective defense is an instrument where state parties to the agreement declare that attack on one of them is an attack against all of them, and all members take the responsibility to support each other.

Collective self-defense treaties may be bilateral or multilateral. One example of such a bilateral treaty is the agreement between the USA and South Korea, which was concluded in 1953. (United States-Republic of Korea, Washington Treaty,1953). Multilateral treaties are concluded by more than two states and carry collective responsibility on collective self-defense. (Moore, 1986, pp.104-105). Agreements on collective defense serve as a deterrent to potential threat and support development of political relations and military cooperation between the signatories.

Military Alliances

Military alliances are established based on integration between states; members strive for close cooperation on military and political issues. Alliances support development of shared responsibilities between members. As usual, a cornerstone for military alliances is responsibility to insure the security of each other. The responsibility to support an allied partner if it falls victim to aggression is fulfilled by all members of the alliance. (Beckett, 1950). The main purpose of the North Atlantic Treaty Organization (established on April 4, 1949) is to safeguard the freedom and security of its members through political and military means in accordance with the United Nations Charter. Solidarity and unity in day-to-day work within the alliance enhances cooperation in dealing with core security challenges. As in NATO, military alliance may equally rely on its large and small member states. All members of NATO, regardless of their size, population and economic, political and military development, are equal in the decision-making process. In NATO, little Luxemburg can foster or block any issue with equal success as the large and mighty the United States. (Burkadze Khatuna, 2008, p.8).

The members of military alliance will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the parties is threatened. Members of the alliance, separately and jointly, will maintain and develop their individual and collective capacities by mutual aid.

Legal Analysis of the Russian Aggression Against Georgia

Factual Circumstances – Crisis of Peace Formats and Occupation of Georgian Territories

After restoration of the independence of Georgia and dissolution of the Soviet Union, the successor of the Soviet empire – the Russian Federation – continued to incite armed conflicts on the territories of Georgia, namely, in the Autonomous Republic of Abkhazia and the Former Autonomous District of South Ossetia. Russian authorities constantly supplied the separatists with arms and provided them with financial, military and political support.

Russia, in 1990s, using regular military forces and volunteers committed ethnic cleansing of the Georgian population that was recognized by the final acts of the OSCE summits in Budapest on 5-6 December 1994, in Lisbon on 2-3 December 1996 and in Istanbul on 18-19 November 1999, (Budapest Summit Document 1994, 5-6 December, Conference for Security and Co-operation in Europe; Lisbon Summit Document 1996, 2-3 December, Organization for Security and Co-operation in Europe; Istanbul Summit Document 1999) as well as by the UN General Assembly Resolution (62/249) of 15 May 2008. (Resolution of the UN General Assembly, 2008). Since then, the Russian Federation has constantly used every possible means to provoke intensification of the conflicts through so-called peacekeeping forces.

In 2007-2008, Georgian authorities and the International Community made steps aimed at settling the so-called frozen conflicts and providing a genuine environment for internationalization of the peace process as approved in Resolutions N1781 and N 1752 of UN Security Council. (Resolution of Security Council, October 15, 2007; Resolution of Security Council, April 13, 2007). Russia responded with military aggression.

Despite the peace initiatives of the Georgian authorities on 7 August 2008 Russia manifestly engaged itself into conflict on the territory of Tskhinvali region/South Ossetia and carried out a wide military intervention in the territory of Georgia. Russian regular troops attacked not only Georgian military units but also civilian infrastructure and the peaceful population, resulting in the entire destruction of settlements in the conflict zone. (Resolution of the Parliament of Georgia on the Occupation of the Georgian Territories by the Russian Federation, 2008). In parallel, the Russian armed forces, including its air force, attacked the territory of Upper Abkhazia and occupied it in violation of international agreements and UN Security Council

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resolutions. Bombardments occurred throughout the entire territory of Georgia. (Address of the Parliament of Georgia to the International Community, 2008). Presently, 20% of Georgian territory is occupied.

The Council of Europe clearly noted in its Resolution N1633 (2008) that in August 2008 "the Russian Federation occupied significant parts of Georgian territory. In addition, on March 4, 2009, the "European Commission for Democracy through Law" (also known as the Venice Commission) confirmed that: "the presence of military forces of any other state on the territory of Georgia, without an explicit and voluntary consent expressed by the state of Georgia, shall be deemed illegal military occupation of the Territory of a sovereign country". (Report by the Government of Georgia on the aggression by the Russian Federation against Georgia, 2009).

It is a fact, that Russia is the party to the conflict, and this has been reflected in documents of the Council of Europe, European Union and NATO, all of these documents request to refuse illegitimate recognition of Georgian regions. (Alexidze, 2009, p.117). Consequently, the process of turning Russia from a proclaimed mediator into party to the conflict is irreversible.

Legal Assessment – the Use of Force by the Russian Federation Against Georgia as an Act of Aggression

In contemporary international law legal regulations on the use of force derive from the UN Charter and norms of international customary law. Russia's use of force was not authorized by the United Nations Security Council and cannot qualify as a lawful exercise on the right of self-defense. It is self-evident that Russian Federation forces invaded and occupied Georgian territory in violation of numerous international legal norms.

Russia invaded and occupied Georgia in the absence of an international legal justification of the action. Nor is the Russian invasion justified under the terms of the so-called humanitarian intervention and use of force abroad to protect nationals; in reality, according to international law, this was a typical act of aggression. On the other hand, while talking about protection of nationals abroad, one has to give a legal assessment to the illegal process of the distribution of Russian passports. While acting in the capacity of a peacekeeper, Russia forced inhabitants of the conflict zone to change their citizenship into Russian. Even in theory, Russia did not have the right to interfere in the internal affairs of Georgia and use military force the UN General Assembly resolution on the principles of International Law declares: "states or group of states have a duty not to intervene in matters within the internal or foreign affairs of any state". (Resolution of General Assembly, 1970). Interference in the internal or foreign affairs of any country is considered a violation of international law.

In practice and theory of contemporary international law, in order for military intervention to fall under the description of humanitarian intervention, exact preconditions and criteria must be met (humanitarian intervention – military, economic or other enforcement actions used by international organization(s) against a state committing massive and gross violations of human rights). (Alexidze, L., 2003, p.415). The international community univocally confirmed that Russian aggression does not satisfy any preconditions and criteria in order to be qualified as humanitarian intervention. In the opinion of Levan Alexidze, Professor of International Law, Russia's military intervention against Georgia was markedly "revanchist". (Alexidze L., 2008, p.185).

Professor Alexidze reiterates that since the dissolution of the Soviet Union Russian foreign policy is aimed at maintaining influence over former Soviet republics and preventing their integration into European structures. (Alexidze, L., 2008, p.185). Russia's main goal was not the "protection of own nationals abroad", it intended to conduct a large scale military operation on the territory of Georgia and infringe on the sovereignty of Georgia.

Additionally, Russia can not appeal to the right of protecting its peacekeepers in the Tskhinvali region/South Ossetia, there is no general right to use force in support of or for the protection of national peacekeeping contingents. The status and protection accorded to peacekeepers under international law are valid under international law, as long as the peacekeepers remain neutral; this status is removed and protection is lifted automatically when they participate in the hostilities. The argument in support of the use of force for the protection of peacekeepers is weakened by the fact that Georgia's defense operation started hours after the Russian invasion and no military clash between Georgian forces and peacekeepers had occurred before this. On the contrary, before the large scale Russian invasion, the civilian population and Georgian peacekeepers deployed in Tskhinvali region/South Ossetia, and their checkpoints had been attacked throughout the week before August 7. (Report by the Government of Georgia on the aggression by the Russian Federation against Georgia, 2009, p.105).

In the authoritative definition of Aggression, Resolution 3314 (1974) where the General Assembly enumerated acts that constitute acts of aggression, which include: "The invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporary, resulting from such invasion or attack… bombardment by the armed forces of a state against the territory of another state or the use of any weapons by a state against the territory of another state; the blockade of the ports or coasts of a state by the armed forces of another state". The same resolution in article 5 indicates: "No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression;

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a war of aggression is a crime against international peace. Aggression gives rise to international responsibility." (Resolution on the Definition of Aggression (adopted by the General Assembly), 1974).

The Russian invasion of Georgia in August 2008 falls squarely within this definition and therefore meets the requirements of the crime. Russia violated the sovereignty of Georgia, infringed on its territorial integrity, bombarded Georgian cities and turned Georgia into a "target of occupation". As in article 5 of the General Assembly Resolution on the Definition of Aggression, nothing may serve as justification for aggression.

Irrefutably, the official declaration of Russia, that military intervention into Georgia and bombardment of Georgian cities was imminent and necessary to "rescue" Ossetians, is deficient of any legal base. At same time, Russian actions do not subscribe to the criteria of proportionality and necessity. As it's constituted by the international community, Russia never tried to use means other than military force. In fact, Russia hampered all political negotiations and the force it used was disproportionate and inconsistent. (Statement of the North Atlantic Council at the level of Foreign Ministers, 2008; Report by the Government of Georgia on the aggression by the Russian Federation against Georgia, 2009). Russia targeted all key military and civilian sites, artificially widened the military front and involved territories that had nothing to do with the conflict zones. Russian military actions that started as an operation for protecting nationals abroad turned into a punishment campaign aimed at occupying the entire territory of Georgia.

On June 1, 2010, the Seimas of the Republic of Lithuania passed a resolution on the Situation in Georgia. According to this resolution the Parliament of Lithuania assesses the presence of Russian troops on Georgian territory and the actions of the proxy regimes of Abkhazia and South Ossetia as an illegal occupation of parts of Georgian territory and a gross violation of the norms of international law. (Seimas of the Republic of Lithuania Resolution on the Situation in Georgia, 2010). The Seimas of the Republic of Lithuania is the first national parliament which legally used the term occupation in respect to the conflict regions of Georgia. In addition, the resolution calls on the Lithuanian President and the Government to be guided by the resolution principles in the process of carrying out foreign policy.

Conclusion

Over the years, legal regulation of the use of force has transformed dramatically, starting from the doctrine of "Just War" continuing with the full freedom of the use of force in the XVII-XX centuries, and concluding with the general prohibition of the use of force in the United Nations Charter. However, the UN Charter has accepted the use of force in individual or collective self-defense and has authorized the UN Security Council to make decisions on enforcement actions.

As far as, the definition of self-defense is concerned a few points must be considered. First – any state has the right of self-defense in case of actual attack from another state. Secondly, a state cannot use the right of preventive self-defense to deal with threat that is still probable and likely to occur in the future. The Security Council is to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and states do not have the right to do the same individually or in parallel. Thirdly, article 51 of the UN Charter includes a general provision on armed attack and ignores the subject of an attack, thus prompting to question whether a state can exercise the right of self-defense if threat derives not from another state? The international reaction to the events of September 11, 2001, confirms that the concept of armed attack is not limited to state actions. The right of self-defense can be exercised when threat derives from a Non-State Actor too. But in order to be clear on the definition of self-defense, perhaps this provision should go as follows: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs by another state or Non-State Actor from within a foreign state …" (Burkadze, 2008, pp. 28-29). Despite the fact that the criteria of necessity and proportionality is valid for any case of the use of force, it is not indicated in article 51 of the UN Charter and it is the part of the international customary law. The third criteria for the use of force in self-defense from Webster's formula connotes response to actions that are instant, overwhelming, leave no choice of means, and no moment for deliberation.

The inability of the UN Security Council to insure effective protection of international peace and security increases the importance of the collective self-defense agreements. Bilateral and multilateral treaties on collective defense is an instrument where state parties to the agreement declare that attack on one of them is an attack against all of them, and all members take the responsibility to support each other. As in article 51 of the charter to the right of collective self-defense, as in the individual one, materializes in the case of actual armed attack, and lasts till the Security Council takes appropriate measures.

In conclusion, in cases of gross violations of international law, as in the case of Russian aggression against Georgia in August 2008 up until now, states are obliged to cooperate in order to prevent violations in a lawful manner, do not legitimize realities created due to those violations and facilitate the creation of a common principal position on the unacceptability of forceful actions against states, in particular against small states, that are in breach of international law and principals of justice.

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