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# The Abkhazian Conflict:

A Study on Self-determination and International Intervention

## 1. Introduction

The Crimean conflict in 2014 followed in many respects the pattern of Russia's previous interventions in a neighbouring state – e.g., the 2008 Georgian conflict. Yet its similarities with the forgotten Abkhazian conflict in 1992–1993 are not widely acknowledged.

The conflict in Abkhazia broke out in the turbulent aftermath of the collapse of the Soviet Union. In consequence of the *de facto* statehood of Abkhazia,<sup>1</sup> the conflict over the breakaway region was 'frozen' for approximately 15 years and escalated again in 2008. This article addresses questions regarding the right of self-determination, unlawful threat and use of force, territorial integrity, and armed conflict by using the example of the Abkhazian conflict.

The substantial complexity of the related matters, the difficulty in establishing facts, and the associated political quagmire have contributed to the modest list of literature published on the Abkhazian conflict, *a fortiori* in the legal field. It has been regarded as a 'forgotten conflict'.<sup>2</sup> The principal aim of the present study is to determine whether Abkhazia had the right to claim statehood and to examine Russia's actions in support of the Abkhaz separatist forces during the conflict in 1992–1993.

## 2. Abkhazia's secession in comparison with the Crimean case

Georgia and Ukraine declared independence from the Soviet Union in 1991. However, for reason of domestic political power struggles, their state authority was fragmented and territorial integrity challenged. Like many other former Soviet republics,<sup>3</sup> Georgia and Ukraine were torn into domestic rivalry between different factions that represented the population's heterogeneous ethnic composition.<sup>4</sup>

Subsequently to the dissolution of the Soviet Union, three breakaway regions emerged in Georgia, *viz.* Abkhazia in the north-west, South Ossetia in the north, and Adjara in the south-west. The Adjarians'

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<sup>1</sup> D Lynch, *Engaging Eurasia's Separatist States: Unresolved Conflicts and De Facto States* (United States Institute of Peace Press 2004) 13–16.

<sup>2</sup> A Petersen, 'The 1992–1993 Georgia–Abkhazia War: A Forgotten Conflict' [2008] 2 *CRIA* 188.

<sup>3</sup> E.g., the Nagorno-Karabakh conflict in Azerbaijan in 1988–1994, the Transnistria conflict in Moldova in 1990–1992, and the 1992–1997 civil war in Tajikistan.

<sup>4</sup> H Tagliavini (ed.), *Independent International Fact-Finding Mission on the Conflict in Georgia* 1 (2009) 64. Georgia's (often regionally centred) ethnic groups include Armenians, Avars, Azeris, Greeks, Ossetians, Russians, and Abkhazians.

strivings for separatism were effectively curtailed in 2004 pursuant to a political solution according to which Adjara was granted autonomous status under Georgia's central government's effective control.<sup>\*5</sup> The status of Abkhazia and South Ossetia, however, continues to be a source of conflict.<sup>\*6</sup>

In Ukraine, Crimea was granted the status of an autonomous parliamentary republic. Sevastopol, which serves as the base for the Russian Black Sea Fleet, was a separate municipality in Crimea and continues to be, as it was declared a federal city by the Russian Federation under Article 2 of the 2014 Treaty on the Accession of the Republic of Crimea to Russia (with analogous status granted only to Moscow and St Petersburg).<sup>\*7</sup>

## 2.1. The Abkhazians and Crimeans as a 'people'?

The Abkhazians are ethnically, linguistically, and culturally distinct from the Georgians and related to the peoples of the North Caucasus in Russia.<sup>\*8</sup> The Georgians have recognised the Abkhazians as indigenous,<sup>\*9</sup> thus acknowledging their principal right to retain their corresponding autonomous political status.<sup>\*10</sup> By contrast, the majority of Crimea's population – i.e., Russians – are not indigenous. Instead, the Crimean Tatars may be regarded as the indigenous people of Crimea, but, because of the deportation during the Soviet era, they constitute only about one tenth of the current Crimean population.<sup>\*11</sup>

Owing to the absence of a clear definition of a 'people' in international law, the term has been subject to various legal interpretations in the context of self-determination.<sup>\*12</sup> The general meaning of 'minorities'<sup>\*13</sup>, as well as 'communities'<sup>\*14</sup>, may be indicative for interpreting the term 'people'. In this context, the Crimean Russians have no profoundly distinct characteristics. In comparison, the fact that the Abkhazians have their own culture, traditions, and language implies that they may be regarded as a 'people' according to the more liberal view.<sup>\*15</sup> Yet the recognition of Abkhazians as a people is not sufficient for the Abkhazians to enjoy the right to external self-determination,<sup>\*16</sup> since it is subject to additional and more stringent criteria, as examined next.

<sup>5</sup> In 2004, the central government as well as the local people confronted Adjara's authorities. Adjara's autocratic ruler was forced to resign, and Georgia's government re-imposed its control over the province.

<sup>6</sup> See also: A Lott, 'The Tagliavini Report Revisited: Jus ad Bellum and the Legality of the Russian Intervention in Georgia' (2012) 28/74 UJIEL 4–21. DOI: <https://doi.org/10.5334/ujel.aw>.

<sup>7</sup> Agreement between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea to the Russian Federation and on Forming New Constituent Entities within the Russian Federation. Moscow, 18.3.2014, art 2.

<sup>8</sup> B Coppieters, 'The Roots of the Conflict' in J Cohen (ed.), *A Question of Sovereignty: The Georgia–Abkhazia Peace Process* (Accord 1999) 16–17; S E Cornell, *Small Nations and Great Powers: A Study of Ethnopolitical Conflict in the Caucasus* (Routledge 2001) 56. DOI: <https://doi.org/10.4324/9780203988879>.

<sup>9</sup> D Ennals et al. (eds), *Report of a UNPO Mission to Abkhazia, Georgia and the Northern Caucasus* (UNPO 1992) 6.

<sup>10</sup> However, note the different historical narratives and the respective claims of Abkhazia and Georgia over Abkhazia's territory in B Coppieters, 'A Moral Analysis of the Georgian–Abkhaz Conflict' in B Coppieters and R Sakwa (eds), *Contextualizing Secession: Normative Studies in Comparative Perspective* (OUP 2003) 205–206. DOI: <https://doi.org/10.1093/0199258716.001.0001>.

<sup>11</sup> According to the 2001 census, 10.1% of the population of the Autonomous Republic of Crimea indicated Ukrainian as their native language, and 77% specified Russian and 11.4% Crimean-Tatar as their native language. State Statistics Committee of Ukraine. 'About Number and Composition Population of Autonomous Republic of Crimea by All-Ukrainian Population Census' 2001 Data'. <http://2001.ukrcensus.gov.ua/eng/results/general/language/Crimea/> (accessed 7 February 2020).

<sup>12</sup> K Knop, *Diversity and Self-Determination in International Law* (CUP 2002) 52–57. DOI: <https://doi.org/10.1017/cbo9780511494024>.

<sup>13</sup> F Capotorti, 'Minorities' in R Bernhardt (ed.), *Encyclopedia of Public International Law*, Vol. 3 (Elsevier 1997) 412.

<sup>14</sup> *Greco-Bulgarian Communities (Advisory Opinion)* [1930] PCIJ (ser. B) No. 17, para 30.

<sup>15</sup> A Nussberger, 'The War between Russia and Georgia – Consequences and Unresolved Questions' (2009) 1 GoJIL 355; C Ryngaert and C Griffioen, 'The Relevance of the Right to Self-Determination in the Kosovo Matter: In Partial Response to the Agora Papers' (2009) 8 Chinese JIL 577. DOI: <https://doi.org/10.1093/chinesejil/jmp021>.

<sup>16</sup> For the difference between 'external' and 'internal' self-determination generally, see: T Potier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia: A Legal Appraisal* (Kluwer 2001) 34, quoting Michla Pomerance in *Self-Determination in Law and Practice* (Nijhoff 1982) 37; B Simma (ed.), *The Charter of the United Nations: A Commentary* 1 (2nd edn, OUP 2002) 56–57.

## 2.2. The right of external self-determination: *Utī possidetis juris*

Forming part of customary international law,<sup>\*17</sup> the right of self-determination, as granted under Article 1(2) of the United Nations (UN) Charter,<sup>\*18</sup> constitutes an *erga omnes* norm.<sup>\*19</sup> Additionally, in terms of Article 53 of the Vienna Convention on the Law of Treaties<sup>\*20</sup>, it has been deemed by some scholars to possess a *jus cogens* character.<sup>\*21</sup> However, the right of self-determination has been used in practice restrictively, which is mirrored in the principle *uti possidetis juris*.

According to the Badinter Arbitration Committee, 'it is well established that, whatever the circumstances, the right of self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise'.<sup>\*22</sup> Derived from the 19th-century post-colonial Latin American context, the *uti possidetis* rule re-emerged in the 1960s when African successor states were required to accept borders that they inherited from the colonial era.<sup>\*23</sup> The International Court of Justice (ICJ) noted in the *Frontier Dispute* case that the purpose of the rule is to prevent the independence and stability of new states being endangered by fratricidal struggles.<sup>\*24</sup>

The *uti possidetis* principle thus safeguards the balance between the right of self-determination and territorial integrity of a state. It reflects particular significance in regard of the Abkhazian and Crimean breakaway regions.

Georgia restored its independence in 1991 under the principle of state continuity, whereby its statehood is – pursuant to Georgian constitutional law – founded on the independence of the Georgian Democratic Republic in 1918–1921, which was later annexed by the Soviet Union.<sup>\*25</sup> Abkhazia was part of Georgia under the independent 1921 Constitution, according to which the region was granted autonomy in Georgia along with Zaqatala<sup>\*26</sup> and Adjara.<sup>\*27</sup>

Abkhazia unilaterally declared its sovereignty in August 1990,<sup>\*28</sup> thereby proclaiming itself a sovereign union republic within the Soviet Union.<sup>\*29</sup> However, notwithstanding certain claims to the contrary,<sup>\*30</sup> this was not a declaration of independence, nor did the declaratory document alter the state-legal status of the breakaway region in light of Georgia's territorial integrity.<sup>\*31</sup> This also corresponds to the views of Abkhazian historians.<sup>\*32</sup> Therefore, the 1990 declaration of sovereignty should not be regarded as an act

<sup>17</sup> *Western Sahara (Advisory Opinion)*, ICJ Reports 1975 12, para 56.

<sup>18</sup> Charter of the United Nations, 26 June 1946, 1 UNTS XVI.

<sup>19</sup> *Case Concerning East Timor (Portugal v Australia)*, ICJ Reports 1995 90, para 29.

<sup>20</sup> Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, art 53.

<sup>21</sup> A Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995) 140; B Simma (Note 16) 62; A Nussberger (Note 15) 363; *Opinion no. 2*, Arbitration Commission of the Conference on Yugoslavia, 11 January 1992, reproduced in A Pellet, 'The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples' (1992) 3 EJIL 180. DOI: <https://doi.org/10.1093/oxfordjournals.ejil.a035802>. Cf. J Crawford, 'Book Review of Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal*' (1996) 90 AJIL 332. DOI: <https://doi.org/10.2307/2203697>.

<sup>22</sup> A Pellet (Note 21) 184.

<sup>23</sup> J Mayall, 'Nationalism, Self-Determination, and the Doctrine of Territorial Unity' in M Weller and B Metzger (eds), *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice* (Nijhoff 2008) 9–10. DOI: <https://doi.org/10.1163/ej.9789004164826.i-794.6>.

<sup>24</sup> *Frontier Dispute (Burkina Faso v Republic of Mali)*, ICJ Reports 1986 554, para 20.

<sup>25</sup> E.g., R O'Keefe, 'The Admission to the United Nations of the Ex-Soviet and Ex-Yugoslav States' (2001) 1 BaltYIL 173. DOI: <https://doi.org/10.2139/ssrn.3496677>. The Georgian claim to state continuity has not been recognised in State practice. See L Mälksoo, 'State Identity, Deconstruction and "Functional Splitting": The Case of Illegal Annexations' (2002) 7 Austrian Rev Int'l & Eur L 104–106. DOI: <https://doi.org/10.1163/157365102x00037>.

<sup>26</sup> Zaqatala constitutes a part of modern Azerbaijan.

<sup>27</sup> The Constitution of Georgia, 21 February 1921, art 107.

<sup>28</sup> 'Declaration of the State Sovereignty of the Abkhaz Soviet Socialist Republic, 25 August 1990' in T Diasamidze, *Regional Conflicts in Georgia – the Autonomous Oblast of South Ossetia, the Autonomous SSR of Abkhazia (1989–2006). The Collection of Political-Legal Acts* (Regionalism Research Centre 2006) 27.

<sup>29</sup> A Petersen (Note 2) 193.

<sup>30</sup> A Nussberger (Note 15) 361.

<sup>31</sup> 'Decree issued by the Supreme Council of the Abkhaz SSR on Legal Guarantees of Protection of the Statehood of Abkhazia' in T Diasamidze (Note 28) 29–31; H Tagliavini (Note 4) 73.

<sup>32</sup> R Flawn, 'The Georgian–Abkhaz Conflict: Perception of Its Origins and Prospects for Its Resolution' in S Cummings (ed.), *War & Peace in Post-Soviet Eastern Europe* (Royal Military Academy Sandhurst 2000) 49.

of secession. The critical date, which is necessary for determining the legality of the secession, is in 1999, when, pursuant to a referendum in October,<sup>\*33</sup> the Abkhazians declared independence.<sup>\*34</sup>

The UN and its Security Council have unequivocally supported Georgia's territorial integrity.<sup>\*35</sup> This has been confirmed in numerous UN Security Council resolutions.<sup>\*36</sup> Hence, prior to the August 2008 conflict in South Ossetia, no UN Member State, including Russia,<sup>\*37</sup> recognised Abkhazia as an independent state. The UN Security Council confirmed its support to the territorial integrity of Georgia in Resolution 1808,<sup>\*38</sup> less than four months prior to the outbreak of the international armed conflict between Russia and Georgia in 2008, as a result of which Abkhazia, in effect, claimed statehood.

Russia's unstable stance toward treaty law is mirrored also in the fact that in 1994 Ukraine agreed to send its strategic nuclear weapons arsenal (the third largest in the world) to Russia for dismantling and Russia, correspondingly, reaffirmed its commitment to Ukraine to respect its borders and also recognised that 'border changes can be made only by peaceful means and consensual means' and reaffirmed its 'obligation to refrain from the threat or use of force against the territorial integrity' of Ukraine.<sup>\*39</sup> In 2009, the United States and Russia confirmed 'that the assurances recorded in the Budapest Memoranda will remain in effect'.<sup>\*40</sup> Despite these commitments, Russian forces occupied Crimea in 2014 to facilitate the Crimean secession from Ukraine.

The critical date for determining the legality of the Crimean secession is 16 March 2014. On that date, following a declaration of independence adopted on 11 March 2014, an independence referendum was held. In a key result of the referendum, Crimea was declared independent, only to join the Russian Federation two days later.<sup>\*41</sup> The referendum was declared illegal by the UN General Assembly by a recorded vote of 100 in favour to 11 against.<sup>\*42</sup> In particular, pursuant to the ICJ's advisory opinion on Kosovo, the illegality attached to the Crimean declaration of independence and the following referendum stemmed from the fact that they were connected with the previous unlawful use of force by Russia.<sup>\*43</sup>

Pursuant to the *uti possidetis* principle, Abkhazia and Crimea did not have the right to claim statehood. The *uti possidetis* principle results in exemption from the right of external self-determination for the sub-regional entities of the former Soviet republics. Thereby, the dissolution of the Soviet Union did not continue beyond federal level, which was composed of Ukraine and Georgia, instead of sub-regional Abkhazia and Crimea.<sup>\*44</sup> The *uti possidetis* principle was thus equally applicable to Abkhazia and Crimea, with the latter granted, analogously to Abkhazia, Autonomous Soviet Socialist Republic status following a referendum on 20 January 1991.

Whether the right of remedial secession provides a legal basis for Abkhazia's and Crimea's statehood is examined next.

<sup>33</sup> B Coppieters 2003 (Note 10) 211.

<sup>34</sup> On the complex and ambiguous process of negotiations on the status of Abkhazia, see H Tagliavini (Note 4) 82–83, 87; S E Cornell (Note 8) 188, 347. Although it has been sometimes argued that Abkhazia declared its independence in July 1992, it has been generally agreed that 'Abkhazia had technically not proclaimed full independence [in 1992] and did not commit *de jure* secession, although the war led to *de facto* secession'. Abkhazia was an autonomous republic in the Soviet Union, although in 1922–1931 it was an independent Soviet republic.

<sup>35</sup> R Muzalevsky, 'The Russian–Georgian War: Implications for the UN and Collective Security' (2009) 4 OAKA 31.

<sup>36</sup> E.g., UN SC Resolution 1781, 15 October 2007, para 1.

<sup>37</sup> E.g., UN SC Provisional Verbatim Record 3295, 18 October 1993, 7–8.

<sup>38</sup> UN SC Resolution 1808, 15 April 2008, para 1.

<sup>39</sup> UN GA Resolution 49/66 and UN SC Resolution 91, 'Trilateral Statement by the Presidents of the Russian Federation, Ukraine and the United States of America issued on 14 January 1994', 27 January 1994.

<sup>40</sup> 'U.S.–Russia Joint Statement on Expiration of the START Treaty' (4 December 2009). <https://2009-2017.state.gov/r/pa/prs/ps/2009/dec/133204.htm> (accessed 6 March 2020).

<sup>41</sup> Договор между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов, 18 March 2014, art 1(1).

<sup>42</sup> UN GA Resolution A/68/L.39, 27 March 2014, 5.

<sup>43</sup> Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, 403, para 81.

<sup>44</sup> One may thus consider that the situation might have been different if Abkhazia's status as an independent Soviet Republic had not been downgraded in 1931, as a result of which it was declared to be part of the Georgian Soviet Socialist Republic.

### 2.3. The right of external self-determination: Remedial secession

The right of remedial secession *per se* is questionable under international law.<sup>\*45</sup> Nonetheless, it has been characterised in the influential *Reference re Secession of Quebec* case as a measure of ‘self-help’ where a ‘people’ is oppressed.<sup>\*46</sup> Some authors have considered it a customary rule.<sup>\*47</sup> It has been noted in legal literature that, for the right of remedial secession to apply, the group invoking the right needs to constitute a ‘people’.<sup>\*48</sup> As analysed above, the Russians who constitute the majority in Crimea have no distinct identity and, hence, may not be regarded as a ‘people’, unlike, potentially, the Abkhazians.

Yet it is unclear whether the Abkhazians represented a clear majority in Abkhazia, which is thought to constitute another criterion for a legitimate remedial secession. The situation in Abkhazia in the 1990s should be analysed from the critical-date standpoint.<sup>\*49</sup> As analysed above, the critical date is 1999 when the declaration of independence was announced.

In 1989, prior to the outbreak of the conflict, the population of the Abkhaz autonomous republic was 525,000. This comprised 45.7% Georgians and only 17.8% Abkhazians, while also Armenians, Greeks, and Russians constituted significant minorities.<sup>\*50</sup> However, this last internationally recognised census is not accurate in its reflection of Abkhazia’s demographic situation in 1999.

The conflict in 1992–1993 resulted in drastic alterations in the composition of Abkhazia’s population, primarily due to the internal displacement of most of the ethnic Georgians whose residence had been in Abkhazia. According to the 2003 census, conducted by Abkhazia’s *de facto* government, the Abkhazians’ representation in the region’s population rose to approximately 44.1%. In Georgian data, on the other hand, the corresponding figure remained close to 20%.<sup>\*51</sup> It is important to determine whether this constituted a clear majority in the breakaway region, which is a precondition for claiming the right to remedial secession.

It has been noted that ‘as the risk of creating a large minority in the newly established State must be brought to a minimum, a majority of at least 80% would be required’<sup>\*52</sup> in order to constitute a ‘clear majority’. Although the precise level for a ‘clear majority’ may be debatable, it is clear that, under this criterion, the Abkhazians, who probably accounted for around 30–35% of Abkhazia’s population, did not constitute a clear majority to legitimately claim remedial secession.<sup>\*53</sup>

In addition, by the time of the declaration of independence in 1999, the Georgian government had shown good will in respect of resolving the crisis in the breakaway province,<sup>\*54</sup> and the political process for peaceful settlement of the dispute was still under way.<sup>\*55</sup> After its restoration of independence, Georgia offered Abkhazia the broadest autonomous status within a federal framework, leaving the main governmental functions under the control of the Georgian executive power.<sup>\*56</sup> The Abkhazian authorities, for reason of their preference for a confederative state, did not accept these proposals.<sup>\*57</sup> A model based on a confederative state would have provided the Abkhazians with international recognition of their sovereignty and thus, potentially, the right to secede.<sup>\*58</sup>

<sup>45</sup> T Potier (Note 16) 35–37. Cf. B Simma (Note 16) 58.

<sup>46</sup> *Reference re Secession of Quebec* (1998) 2 S.C.R. 217, para 138.

<sup>47</sup> C Ryngaert and C Griffioen (Note 15) 579.

<sup>48</sup> *Ibid*, 575–576.

<sup>49</sup> The right to remedial secession does not have proactive effect, which means that the events occurring subsequently to the secession do not affect the lawfulness of the act itself.

<sup>50</sup> H Tagliavini (Note 4) 65.

<sup>51</sup> Anonymous, *Abkhazia Today: Europe Report N° 176*, 15 September 2006; International Crisis Group 9.

<sup>52</sup> C Ryngaert and C Griffioen (Note 15) 577.

<sup>53</sup> In contrast, the Kosovo Albanians constitute 90% of Kosovo’s population.

<sup>54</sup> UNPO Mission Report (Note 9) 9.

<sup>55</sup> H Tagliavini (Note 4) 82–83, 87.

<sup>56</sup> G Nodia, ‘Georgian Perspectives’ in J Cohen (Note 8) 23; V Baranovsky, ‘Russia and Its Neighbourhood: Conflict Developments and Settlement Efforts’ in *SIPRI Yearbook 1995: Armaments, Disarmament and International Security* (OUP 1996) 252; G Khutsishvili, ‘The Abkhazia and South Ossetia Cases: Spoilers in a Nearly Collapsed Peace Process’ in E Newman and O Richmond (eds), *Challenges to Peacebuilding: Managing Spoilers during Conflict Resolution* (UNUP 2006) 287.

<sup>57</sup> T Potier (Note 16) 116–118.

<sup>58</sup> H Tagliavini (ed.), *Independent International Fact-Finding Mission on the Conflict in Georgia 1* (2009) 29.

Moreover, the 1999 Security Council Resolution 1255,<sup>\*59</sup> in combination with the Security-Council-backed 'Boden paper',<sup>\*60</sup> which regarded Abkhazia as a sovereign entity within Georgia, essentially promised a breakthrough in the years-long negotiations over Abkhazia's status. Furthermore, there was considerable room for debate on issues such as internal self-determination. Georgia's willingness to establish an Abkhazian autonomous region was demonstrated by the fact that in August 1991 a compromise was reached between the Abkhaz and the Georgians according to which the composition of the Abkhaz Parliament was to be based on ethnic quotas strongly in favour of the Abkhaz.<sup>\*61</sup>

### 3. Russia's intervention in the Abkhazian conflict

The warring parties in the 1992–1993 conflict in Abkhazia, if one leaves aside the participation of mercenaries and the alleged intervention of Russian forces, were represented by Georgian armed forces on one side and Abkhaz separatist forces on the other.

The Abkhaz forces were under the authority of the Abkhazian Defence Ministry.<sup>\*62</sup> They had a command structure and exercise of leadership control.<sup>\*63</sup> These forces were governed by rules, and there were provision of military training<sup>\*64</sup> alongside recruitment of conscripts,<sup>\*65</sup> organised acquisition and provision of weapons and supplies, and established communications infrastructure.<sup>\*66</sup> Additionally, Abkhaz forces gained control over most of the breakaway region's territory prior to the August 2008 Georgian conflict, are in control of the whole province at present, and controlled a varying but significant proportion of the entity's territory throughout the 1992–1993 conflict.<sup>\*67</sup> In light of these circumstances, it may be concluded that the Abkhaz forces were established as organised armed groups in the conflict.<sup>\*68</sup>

It has been estimated by the warring parties' human rights committees that on the Georgian side at least 4,000 individuals were killed in the Abkhazian conflict (both civilians and combatants) and 10,000 were wounded, whereas on the Abkhazian side 4,040 persons died (2,220 combatants, 1,820 civilians) and approximately 8,000 were wounded.<sup>\*69</sup> By contrast, the August 2008 conflict in South Ossetia resulted in approximately 300 fatalities and 500 injuries on the South Ossetian and Russian side and in 364 fatalities and 2,234 injuries on the Georgian side.<sup>\*70</sup> Hence, the fighting in Abkhazia in 1992–1993 was categorised as a major armed conflict under the Uppsala Conflict Data Program's definition, according to which the conflict needs to involve at least 1,000 battle-related deaths in at least one calendar year,<sup>\*71</sup> whereas the Georgian conflict in August 2008 remained at the level of a minor conflict.<sup>\*72</sup>

Furthermore, according to an independent estimate, approximately 300,000 people fled Abkhazia during the conflict in 1992–1993, including almost the entire Georgian population of about 250,000, and the majority of the internally displaced persons have still not had the opportunity to return to their original

<sup>59</sup> UN SC Resolution 1255, 30 July 1999.

<sup>60</sup> B Coppeters, 'The Georgian–Abkhaz Conflict' in B Coppeters et al. (eds), *Europeanization and Conflict Resolution: Case Studies from the European Periphery* (AP 2004) 203–211; H Tagliavini (Note 4) 87.

<sup>61</sup> UNPO Mission Report (Note 9) 9.

<sup>62</sup> V Baranovsky, 'Post-Soviet Conflict Heritage and Risks' in *SIPRI Yearbook 1993: Armaments, Disarmament and International Security* (OUP 1994) 100.

<sup>63</sup> International Crisis Group (Note 51) 14.

<sup>64</sup> *Ibid.* Approximately 15,000–25,000 reservists trained around three or four times a year.

<sup>65</sup> V Baranovsky (Note 56) 100.

<sup>66</sup> International Crisis Group (Note 51) 14. An estimated 35% of the region's budget was spent on the military and police.

<sup>67</sup> A Petersen (Note 2) 195–197.

<sup>68</sup> See *Prosecutor v Milošević* (International Criminal Tribunal for the Former Yugoslavia, Decision on Motion for Judgment of Acquittal, Case No. IT-02-54-T, 16 June 2004), 23. *Prosecutor v Boskoski & Tarculovski* (International Criminal Tribunal for the Former Yugoslavia, Judgment, Case No. IT-04-82-T, 10 July 2008), 199–203.

<sup>69</sup> HRW Arms Project & HRW/Helsinki (1995) 7 *Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict* 5; V Baranovsky (Note 56) 100.

<sup>70</sup> Parliamentary Assembly of the Council of Europe, 'The Consequences of War between Georgia and Russia', Resolution 1647, 28 January 2009, 14; H Tagliavini (Note 58) 5; H Tagliavini (Note 4) 223–224.

<sup>71</sup> L Harbom and P Wallensten, 'Appendix 2A: Patterns of Major Armed Conflicts, 1999–2008' in *SIPRI Yearbook 2009: Armaments, Disarmament and International Security* (OUP 2009) 77–78.

<sup>72</sup> E Stepanova, 'Trends in Armed Conflicts: One-sided Violence against Civilians' in *SIPRI Yearbook 2009* (Note 71) 57.

residence in Abkhazia.<sup>\*73</sup> In the 1992–1993 conflict, the most prominent actors in the cease-fire negotiations were the UN Security Council and Russia.<sup>\*74</sup> When these indicative figures are considered in light of the *Milošević* case<sup>\*75</sup> and the *Tadić* case,<sup>\*76</sup> the Abkhazian conflict from 1992–1993 was an armed conflict for the purposes of Common Article 2 of the 1949 Geneva Conventions.

In the ordinary meaning, ‘international armed conflicts’ are conflicts between states, whereas ‘non-international armed conflicts’ are those between states and armed groups within the territory of a state or states.<sup>\*77</sup> International armed conflicts encompass interventions that are generally understood as implying ‘dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things’.<sup>\*78</sup> This necessitates an examination of Russian alleged intervention in the Abkhazian conflict.

At the time of the 1992–1993 conflict in Abkhazia, Russia had an extensive military presence in the breakaway region (e.g., amounting to 2,500 troops in 1994).<sup>\*79</sup> Also, analogously to the Crimean self-proclaimed leaders in 2014, the separatist rulers of Abkhazia engaged in manipulation whereby Russia’s military presence acted against Georgian authorities during the 1992–1993 conflict by, *inter alia*, calling for Russia’s participation in the conflict.<sup>\*80</sup> Correspondingly, Russia repeatedly threatened Georgia in 1992–1993 with military intervention.<sup>\*81</sup> This implies a threat of force, which is deemed to exist in cases of implicit demonstrations of force if accompanied with a military presence that makes the threat credible.<sup>\*82</sup>

Georgia alleged in the *Georgia v Russia* case before the ICJ that Russia extensively supported separatist movements in the Abkhazian conflict.<sup>\*83</sup> Russia purportedly supplied Abkhaz secessionists with tanks and other modern weaponry during the 1992–1993 armed conflict.<sup>\*84</sup> Independent observers also have acknowledged that Russia provided assistance to the Abkhaz separatists in Georgia.<sup>\*85</sup> Whilst third states may provide assistance to the *de jure* and *de facto* legitimate government of a particular state (e.g., the Georgian government), it is not permitted with regard to internal opposition –e.g., Abkhaz forces or secessionists in eastern Ukraine.<sup>\*86</sup>

It has been noted that Russian assistance to the Abkhaz side included the transfer of weapons: T-72 tanks, Grad rocket launchers, over 100,000 landmines, and other heavy equipment.<sup>\*87</sup> Human Rights Watch (HRW) has observed that possible sources for Abkhaz weapons included ‘supplies and support authorized by branches of the Russian army or government in Moscow’<sup>\*88</sup>, and HRW concluded that Russian forces supplied Abkhaz troops with at least some heavy weapons, transport, and fuel<sup>\*89</sup>, though it could

<sup>73</sup> H Tagliavini (Note 4) 79; C Dale, ‘The Dynamics and Challenges of Ethnic Cleansing: The Georgia–Abkhazia case’ (1997) 16 RefSQ 82–86. DOI: <https://doi.org/10.1093/rsq/16.3.77>; T Potier (Note 16) 122.

<sup>74</sup> H Tagliavini (Note 4) 76–77.

<sup>75</sup> *Prosecutor v Milošević* (Note 68) 26–40.

<sup>76</sup> *Prosecutor v Tadić* (International Criminal Tribunal for the Former Yugoslavia, Jurisdiction, Case No. IT-94-1-AR72, 2 October 1995) 70.

<sup>77</sup> M E O’Connell (ed.), *Final Report on the Meaning of Armed Conflict in International Law* (ILA 2010) 8.

<sup>78</sup> L F L Oppenheim, quoted in A Tanca, *Foreign Armed Intervention in Internal Conflict* (Nijhoff 1993) 17.

<sup>79</sup> V Baranovsky (Note 56) 252.

<sup>80</sup> *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)*, ICJ Reports 2011, 53.

<sup>81</sup> N Stürchler, *The Threat of Force in International Law* (CUP 2007) 305. DOI: <https://doi.org/10.1017/cbo9780511494338>. V Baranovsky (Note 56) 99. S E Cornell (Note 8) 172–173. An analogous statement was made by Russian Defence Minister Grachev in the immediate aftermath of the Abkhaz offensive that had resulted in the capture of Sukhumi in September 1993; M D Toft, *The Geography of Ethnic Violence: Identity, Interests, and the Indivisibility of Territory* (PUP 2003) 103–105. DOI: <https://doi.org/10.1515/9781400835744>.

<sup>82</sup> H Tagliavini (Note 4) 232; N Stürchler (Note 81) 260–261.

<sup>83</sup> *Georgia v Russia* (Note 80) 52–53, 56. See also D Lynch, ‘Separatist States and Post-Soviet Conflicts’ (2002) 78 Int Aff 845. DOI: <https://doi.org/10.1111/1468-2346.00282>; B Simma (Note 16) 120–121.

<sup>84</sup> *Georgia v Russia* (Note 80) 51.

<sup>85</sup> H Tagliavini (Note 58) 13.

<sup>86</sup> R Müllerson, ‘Intervention by Invitation’ in L F Damrosch and D J Scheffer (eds), *Law and Force in the New International Order* (Westview Press 1991) 132–133. DOI: <https://doi.org/10.4324/9780429034244-10>.

<sup>87</sup> S E Cornell (Note 8) 171; C Zürcher, *The Post-Soviet Wars: Rebellion, Ethnic Conflict, and Nationhood in the Caucasus* (NYU Press 2007) 141.

<sup>88</sup> HRW Arms Project & HRW/Helsinki (Note 69) 52–53.

<sup>89</sup> *Ibid.*, 38; N M Shanahan Cutts, ‘Enemies through the Gates: Russian Violations of International Law in the Georgia/Abkhazia Conflict’ (2007–2008) 40 Case W. Res. J. Int’l L 295.

not determine which Russian State organs were involved in this and at what level of command.<sup>\*90</sup> Nevertheless, under the law of state responsibility, the conduct of any state organ is regarded as an act of a state.<sup>\*91</sup> Thus, irrespective of the level of command, the acts of Russian military forces are principally attributable to Russia.<sup>\*92</sup>

Hence, it appears that Russia bore direct responsibility for the conduct of its forces that were rearming Abkhaz secessionist troops. It was noted by the ICJ in the *Nicaragua* case that the provision of arms to separatist forces in another state would not reach the threshold for an armed attack against a state in terms of Article 51 of the UN Charter.<sup>\*93</sup> This has been disputed by many authoritative views.<sup>\*94</sup> In any case, Russia's actions gravely violated Georgia's sovereignty. Under Article 22 of the Articles on State Responsibility and in conformity with ICJ case law, Georgia was entitled to take proportionate countermeasures not involving the use of force under the terms of Article 2(4) of the UN Charter.<sup>\*95</sup>

During the 1992–1993 conflict in Abkhazia, Russia's overall control was reflected in financing and provision of training, logistics, and weapons to the armed groups.<sup>\*96</sup> It is not verified that Russia exercised direct control over the unmarked troops in Abkhazia. Possibly Russia only exercised overall control in respect of the troops that had no fixed distinctive emblem recognisable at a distance, mercenaries, irregulars, and volunteers during the Abkhazian conflict.

Nonetheless, in the first half of 1993, Russia also directly used force against Georgia when it carried out air raids on Sukhumi. Abkhazia's capital, Sukhumi was at that time under effective control of the Georgian government. Yet hostilities continued between the conflicting sides. In February, Georgian forces attacked the former Soviet military laboratory in Novi Esher and raided weapons depots.<sup>\*97</sup> Allegedly, Russian troops were present at the laboratory so had the right to take self-defence measures if attacked.

In response, however, Russia launched bombings of civilian areas in Sukhumi from the air, which seems to fail to meet the conditions for lawful self-defence: immediacy, proportionality, and necessity.<sup>\*98</sup> The aerial bombings of Sukhumi marked direct Russian military intervention in the Abkhazian armed conflict.<sup>\*99</sup> They were commenced on 20 February 1993, subsequent to the incident in Novi Esher, and lasted at least until early April.<sup>\*100</sup> On 19 March 1993, Georgian forces downed an SU-27 fighter-bomber that was piloted, according to independent UN military observers, by a Russian major.<sup>\*101</sup> Russian Defence Minister P. Grachev claimed that the raids were Russia's response 'in revenge'<sup>\*102</sup> for the confrontation between Georgian and Russian forces in the military laboratory in February 1993.

<sup>90</sup> HRW Arms Project & HRW/Helsinki (Note 69) 18.

<sup>91</sup> ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, UN GA A/56/49 (Vol. I)/Corr.4 and 56/83, 2001, art 4(1).

<sup>92</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, 2001, UN GA A/56/10, 2001, arts 4(1) and 7; *Estate of Jean-Baptiste Caire (France) v United Mexican States*, Arbitral Award of 7 June 1929, 5 *Reports of International Arbitral Awards* 516–534. <http://untreaty.un.org> (accessed 7 February 2020).

<sup>93</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, ICJ Reports 1986 14, para 230; K Oellers-Frahm, 'The International Court of Justice and Article 51 of the UN Charter' in K Dicke et al. (eds), *Weltinnenrecht: Liber amicorum Jost Delbrück* (Duncker&Humblot 2005) 507.

<sup>94</sup> S M Schwebel, *Justice in International Law* (CUP 1994) 142–144; B Simma (Note 16) 801.

<sup>95</sup> See criticism of this precedential concept in S M Schwebel (Note 94) 145. See also T Ruys and S Verhoeven, 'Attacks by Private Actors and the Right of Self-defence' (2005) 10 JCSL 309. DOI: <https://doi.org/10.1093/jcsl/kri016>; N A Shah, 'Self-defence, Anticipatory Self-defence and Pre-emption: International Law Response to Terrorism' (2007) 12 JCSL 108. DOI: <https://doi.org/10.1093/jcsl/krm006>; K Oellers-Frahm (Note 93) 508; *Gabčíkovo-Nagymaros Project (Hungary v Slovakia)* ICJ Reports 1997 7, paras 82, 85; R O'Keefe, 'Proportionality' in J Crawford, A Pellet, and S Olleson, *The Law of International Responsibility* (OUP 2010) 1160, 1165–1166; *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)*, ICJ Reports 1980 3, para 53; *Military and Paramilitary Activities in and against Nicaragua* (Note 93) 248.

<sup>96</sup> See criticism in this regard in S M Schwebel (Note 94) 142–144.

<sup>97</sup> HRW Arms Project & HRW/Helsinki (Note 69) 37; V Baranovsky (Note 56) 100. See also S E Cornell (Note 8) 171.

<sup>98</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, ICJ Reports 1996 226, para 41.

<sup>99</sup> S E Cornell (Note 8) 349. Allegedly, Russia intervened militarily also in the Abkhaz offensive against Sukhumi in late winter 1993. However, not enough evidence has been provided to ground these claims. The Russian Defence Ministry has denied Russia's participation in these hostilities.

<sup>100</sup> *Ibid*, 350. The Russian Defence Ministry admitted that Russia had undertaken air raids in early April.

<sup>101</sup> HRW Arms Project & HRW/Helsinki (Note 69) 53.

<sup>102</sup> *Ibid*, 37.



The extensive bombings resulted in civilian casualties.<sup>\*103</sup> The retaliatory character of the attacks was further manifested in their political motives: Sukhumi as the target of the air raids did not have any connection with Novi Esher, where the initial confrontation had occurred. Therefore, this constituted a retaliatory campaign, which, as such, is not permitted under international law.<sup>\*104</sup> On the basis of this evidence, it follows that the Russian air raids in Abkhazia constituted unlawful use of force against Georgia.

## 4. Conclusion

The Abkhaz people in Georgia, similarly to the Russians who constitute the majority of the population in Crimea, did not have the right to external self-determination or remedial secession. The *de facto* statehood of Abkhazia that resulted from its 1999 declaration of independence violated the sovereignty of Georgia, and no state, including Russia prior to 26 August 2008, recognised Abkhazia's statehood.

It was also established that, primarily because of the organisation of armed groups and the intensity of their fighting, the 1992–1993 conflict in Abkhazia meets the criteria for an armed conflict under Common Article 2 of the 1949 Geneva Conventions.

Russia acted in a demonstrably covert manner in the Abkhazian conflict, which bears resemblances to the annexation of Crimea and the recent conflict in eastern Ukraine. Yet Russia intervened in the conflict directly also, when it carried out air raids against the civilian population and Georgian forces stationed in Sukhumi in 1993. This effectively allows one to categorise the 1992–1993 Abkhazian war as an international armed conflict.

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<sup>103</sup> *Ibid*, 38.

<sup>104</sup> Principle II of the 1975 Helsinki Final Act; *Corfu Channel Case (United Kingdom v Albania)*, ICJ Reports 1949 4, para 35; *Case Concerning Oil Platforms (Iran v United States of America)*, ICJ Reports 2003 161, para 78.