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Enemies Through the Gates: Russian Violations of International Law in the Georgia/Abkhazia Conflict

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**ENEMIES THROUGH THE GATES: RUSSIAN VIOLATIONS OF
INTERNATIONAL LAW IN THE GEORGIA/ABKHAZIA CONFLICT**

*Noelle M. Shanahan Cutts**

*A good neighbor is a fellow who smiles at you over the back fence, but
doesn't climb over it.¹*



Georgia²

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¹ Arthur "Bugs" Baer, in *THE MODERN HANDBOOK OF HUOR*, 345, 345 (Ralph L. Woods ed., 1967).

² http://www.lib.utexas.edu/maps/georgia_republic.html (click on "Georgia (Small Map) 2006 (16K)").

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I. INTRODUCTION

Soviet successor states are ripe for conflict, especially ethnic conflict, as their citizens "struggle over the redistribution of power."³ The 1991 disintegration of the Soviet Union into the Russian Federation and the Soviet successor states resulted in numerous wars and ethnic conflicts, including those in Nagorno-Karabakh, Trans-Dniester, Tajikistan, Chechnya, Abkhazia, and South Ossetia.⁴

After declaring independence from the Soviet Union, the Georgian government sent troops to the ethnically non-Georgian provinces of South Ossetia and Abkhazia "rather than consider[ing] their demand for federalization."⁵ War broke out in both regions. In 1992, South Ossetia declared itself independent from Georgia, intending to join North Ossetia to the Russian Republic.⁶ Ethnic Ossetians in South Ossetia established an "alternative

³ Kim Lane Scheppele, "We Forgot About the Ditches:" *Russian Constitutional Impatience and the Challenge of Terrorism*, 53 *DRAKE L. REV.* 963, 1000 n.185 (2005). Some scholars say that there is "the potential for some 200 inter-ethnic conflicts and other conflicts in the former communist lands." Terry McNeill, *Humanitarian Intervention and Peacekeeping in the Former Soviet Union and Eastern Europe*, 18 *INT'L POL. SCI. REV.* 111 (1997).

⁴ Scheppele, *supra* note 3. Nagorno-Karabakh is a *de facto* independent republic, officially part of the Republic of Azerbaijan. Trans-Dniester is a territory within the internationally recognized boundaries of the Republic of Moldova. Tajikistan is a landlocked country in Central Asia. Chechnya is a Russian republic located in the Northern Caucasus Mountains. Abkhazia and South Ossetia are both *de facto* independent regions of Georgia. Georgia (officially the Republic of Georgia from 1990–5) is situated in the South Caucasus between the Black Sea, Russia, Armenia, Azerbaijan, and Turkey.

⁵ Alexander N. Domrin, *From Fragmentation to Balance: The Shifting Model of Federalism in Post-Soviet Russia*, 15 *TRANSNAT'L LAW & CONTEMP. PROBS.* 515, 519 (2006).

⁶ Tarik Abdel-Monem, Patrick J.D. Kennedy & Ekaterina Apostolova, *R (On the Application of Al Skeini) v. Secretary of Defence: A Look at the United Kingdom's Extraterritorial Obligations in Iraq and Beyond*, 17 *FLA. J. INT'L L.* 345, 352 n.48 (2005).

government” and an alternative presidency in an attempt to break away from Georgia.⁷

The war in Abkhazia, where the ethnic Abkhaz were a minority of the total population, was a result of Russia’s military interference on the side of the Abkhaz, which substantially improved Abkhazia’s bargaining position.⁸ Accordingly, Abkhazia was able to declare *de facto*⁹ independence and set up its own government complete with a President, Parliament, and cabinet.¹⁰ While South Ossetia and Abkhazia are *de facto* independent, no other nation formally recognizes them,¹¹ and the ethnic and political conflicts in those regions still endure after sixteen years.¹² Grudgingly, both remain *de jure* parts of Georgia.

Georgia blames Russia for the continuing Abkhazian conflict. Russia’s political, economic, and military support of the separatist government in Abkhazia prompted the Georgian Parliament’s July 17, 2006 resolution, “calling on the [Georgian] government to ‘start procedures . . . immediately to suspend [Russia’s] so-called peacekeeping operations in Abkhazia’ . . . , claiming that they ‘represent one of the major obstacles on the way to solve these conflicts peacefully.’”¹³ Georgian President Mikhail Saakashvili, a U.S.-educated lawyer, went even further, saying Abkhazia is “under a form of gangster occupation which hopes the international community will lose

⁷ *South Ossetia’s Other President*, ARMENIAN NEWS BY A1+ ARMENIA, Feb. 10, 2007, <http://www.a1plus.am/en/?page=issue&iid=45392>.

⁸ MONICA DUFFY TOFT, *THE GEOGRAPHY OF ETHNIC VIOLENCE: IDENTITY, INTERESTS, AND THE INDIVISIBILITY OF TERRITORY* 88 (2003).

⁹ *De facto* meaning “illegitimate but in effect.” BLACK’S LAW DICTIONARY 448 (8th ed. 2004).

¹⁰ E.K. Adzhindzhal, *Abkhazia’s Liberation and International Law*, OFFICIAL SITE OF THE PRESIDENT OF THE REPUBLIC OF ABKHAZIA, <http://www.abkhaziagov.org/en/Liberty.php> (last visited Oct. 29, 2007).

¹¹ *South Ossetia’s Other President*, *supra* note 7; Bernhard Gwertzman, *Sestanovich: Russia-Georgia Spat “Part of a Much Bigger Confrontation,”* COUNCIL ON FOREIGN REL., Oct. 4, 2006, http://www.cfr.org/publication/11602/sestanovich.html?breadcrumb=%2Fbios%2F3348%2Fbernard_gwertzman%3Fgroupby%3D0%26hide%3D3348%26page%3D1%26id%3D3348%26page%3D6.

¹² While a discussion of whether or not Abkhazia and South Ossetia should, in fact, be recognized as independent nations is beyond the scope of this paper, scholars have suggested the creation of “a federal system, with extensive powers devolved to autonomous regions” saying that inspiration for such an arrangement can be drawn “from the experience of autonomous regions in other countries, such as Cata Ionia in Spain, South Tyrol in Italy, and Greenland in Denmark.” David L. Phillips, Op-Ed., *Power Sharing is the Way Forward for Georgia*, FINANCIAL TIMES, Apr. 16, 2004, at 15, available at http://www.cfr.org/publication/6943/powersharing_is_the_way_forward_for_georgia.html.

¹³ INT’L CRISIS GROUP, *ABKHAZIA: WAYS FORWARD*, EUROPE REPORT N°179 14 (2007), available at http://www.crisisgroup.org/library/documents/europe/caucasus/179_abkhazia___ways_forward.pdf.

interest and reward the results of ethnic cleansing.”¹⁴ He continued: “[t]he painful, but factual truth is that these regions are being annexed to our neighbor to the north—the Russian Federation has actively supported their incorporation.”¹⁵ Georgia believes that Russia supports Abkhaz separatists as part of a larger Russian plan aimed at curtailing Georgian sovereignty.¹⁶ Georgia insists that it is necessary to replace the U.N.-sanctioned Commonwealth of Independent States’ (CIS)¹⁷ peacekeeping force in Abkhazia, comprised almost exclusively of Russian military, with another force that will be more neutral, effective, and results-oriented.¹⁸

In spite of this, there are those who accuse Georgia of shifting the blame to Russia for the continuing Georgia/Abkhazia conflict and the lack of a peaceful resolution. International Crisis Group (Crisis Group), an independent, non-profit, non-governmental organization warns that “Georgians and Abkhaz have been living in parallel realities that are drifting further apart. . . . Unless they make a genuine effort to build on the progress that there has been in a few areas, 2007 will be a dangerous year.”¹⁹ The two views are as polarizing and confounding as the conflict itself. Nevertheless, an examination of the facts makes it clear that Russia has violated international law in the Georgia/Abkhazia conflict.

With the hope of providing an impartial analysis, this paper will address (1) how Russia’s “peacekeeping” and other activities in the Georgia/Abkhazia conflict violate international law; (2) how these actions raise questions about the credibility and efficacy of joint U.N. peacekeeping mis-

¹⁴ Michael Mainville, *Proud Abkhazia Fiercely Resists Pull Into Georgia's Orbit*, S. F. CHRONICLE, Sept. 24, 2006, at A20.

¹⁵ Reuters AlertNet, *Georgia Demands Removal of Russian “Peacekeepers,”* REUTERS, Sept. 22, 2006, <http://www.alertnet.org/thenews/newsdesk/N22174158.htm>. Senator John McCain has expressed concern that RF President Vladimir Putin is “trying to re-establish the Russian empire.” William Mulgrew, *McCain Talk Possible Presidential Bid, More In Philadelphia Visit*, BULLETIN, Dec. 4, 2006, <http://theeveningbulletin.com/>.

¹⁶ Stephen Blank, *Bracing for Conflict: Russia and Georgia in South Ossetia (A EurasiaNet Commentary)*, EURASIANET.ORG, Sept. 26, 2006, <http://www.eurasianet.org/departments/insight/articles/eav092506a.shtml>. Saakashvili cited Moscow’s support for separatists in South Ossetia as part of the same Russian plan aimed at curtailing Georgian sovereignty. *Id.* Notwithstanding this, a discussion of Russia’s involvement in the somewhat analogous South Ossetia conflict is outside the boundaries of my discussion.

¹⁷ At present, the CIS unites Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine. INT’L STAT. COMM. OF THE COMMONWEALTH OF INDEP. STATES, www.cisstat.com/eng/ (last visited Oct. 28, 2007).

¹⁸ *Georgia considers replacing Russian peacekeepers with Ukrainians—Bezhushvili*, INTERFAX, Feb. 13, 2007, http://www.interfax.ru/e/B/politics/28.html?id_issue=11676369.

¹⁹ *The Georgia/Abkhazia Conflict: Ways Forward*, INT’L CRISIS GROUP, Jan. 18, 2007, <http://www.crisisgroup.org/home/index.cfm?id=4619&1=1&m=1>.

sions; and (3) what recourse, legal or otherwise, Georgia may have against Russia.

Part two briefly explains the historical context of the relationship between the Russian Federation and Georgia. Part three explains the Georgia/Abkhazia conflict and Russian involvement in peacekeeping missions, and addresses the response of the international community including the United Nations. Part four explores the relevant international law. Part five describes how Russian violations of international law in the Georgia/Abkhazia conflict raise questions about the efficacy of U.N. joint peacekeeping missions and why the U.N. should create a framework for engaging in joint peacekeeping missions with Russia. Part six examines Georgia's possibilities for action against Russia.

II. HISTORICAL CONTEXT OF GEORGIA'S RELATIONSHIP WITH RUSSIA

Although the Republic of Georgia is a small nation of approximately five million people,²⁰ its location between the Black Sea, Russia, Armenia, Azerbaijan, and Turkey blesses (or curses) it with strategic importance far beyond its size.²¹ Former Georgian President Eduard Shevardnadze²² often said that Georgia is “the tastiest morsel of the former Soviet Union and the Russians want it back.”²³

During the seventy years of Soviet occupation that began in March 1921 when Georgia became part of the Soviet Union,²⁴ “the Georgians maintained their unique alphabet and their particular interpretation of the Christian orthodox religion.”²⁵ While not the case in many countries, Geor-

²⁰ *United States Central Intelligence Agency—The World Factbook—Georgia*, Sept. 20, 2007, <https://www.cia.gov/cia/publications/factbook/geos/gg.html> (last visited Oct. 07, 2007) [hereinafter CIA].

²¹ U.S. Dep't of State Bureau of European and Eurasian Affairs, *Background Note: Geor.*, Sept. 2005, <http://www.state.gov/r/pa/ei/bgn/5253.htm> [hereinafter Dept. of State]. With a total area of approximately 69,700 sq. kilometers, Georgia is slightly smaller than the state of South Carolina. CIA, *supra* note 20. Russian interests in Georgia include: strategic borders, Black Sea access, land routes, economic interests, and military garrisons. See John Mackinlay & Evgenii Sharov, *Russian Peacekeeping Operations in Georgia*, in REGIONAL PEACEKEEPERS: THE PARADOX OF RUSSIAN PEACEKEEPING, 69–70 (John Mackinlay & Peter Cross eds., 2003).

²² Shevardnadze served as President of Georgia from 1995 until he resigned on Nov. 23, 2003 in response to Georgia's Rose Revolution. Prior to his presidency, he served under Mikhail Gorbachev as the Minister of Foreign Affairs of the Soviet Union from 1985 to 1990. *Shevardnadze, Eduard*, in ENCYCLOPEDIA BRITANNICA (2007) available at <http://search.eb.com/eb/article-9067333>. *Georgia*, in BRITANNICA BOOK OF THE YEAR, 2005 available at <http://search.eb.com/eb/article-9398338>.

²³ Gwertzman, *supra* note 11.

²⁴ Dept. of State, *supra* note 21.

²⁵ Mackinlay & Sharov, *supra* note 21, at 64.

gia considered the Russian occupation “not so much a traumatizing cultural and political subordination as a continuation of an existing relationship of a protectorate state and its imperial master,”²⁶ considering the fact that “[a]s early as 1773, Georgia acceded to the need for protection within the Russian Empire as an annexed state. . . .”²⁷ However, during the occupation, the Soviet Union recognized “unique ethnic communities in Georgia, the South Ossetians [and] the Abkhazians, as ‘titular nations.’”²⁸ Russia’s recognition of these communities foreshadowed the Georgia/South Ossetia and Georgia/Abkhazia ethnic conflicts that continue today.²⁹

Russian interest in the region remained strong during the disintegration of the Soviet Union.³⁰ After the Supreme Council for the Republic of Georgia declared independence in April 1991³¹—and during the ethnic conflicts that followed³²—Russia sought a continued physical presence in Georgia that would allow it to maintain strategic borders,³³ access the Black Sea³⁴ and important land routes,³⁵ pursue economic interests, and leave military garrisons in place.³⁶ Somewhat alarmingly, and allegedly because of these interests, Russian officials have tried to establish the Kosovo conflict³⁷ as a precedent that would motivate the international community to endorse

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 65.

²⁹ *Id.*

³⁰ *Id.* at 68.

³¹ Dept. of State, *supra* note 21.

³² Mackinlay & Sharov, *supra* note 21, at 68.

³³ *Id.* at 69.

³⁴ *Id.* “After [Georgia declared independence in] 1991, Russia’s ability to control its strategic and economic interests in the Black Sea region were greatly diminished through both the geographic reductions in access to the Black Sea and the splitting of the Black Sea fleet. Russia’s presence in Abkhazia and the controlling instruments provided by the Russian garrison significantly increased their access beyond their internationally recognized Black Sea frontage.” *Id.*

³⁵ *Id.* Access to land routes is extremely important; such access enables Russia to move large amounts of military logistics by road and rail. *Id.*

³⁶ *Id.* at 70.

³⁷ Elena Guskova, a Russian academic and an expert on Balkans said it was too early to say what the Russian position on Kosovo might ultimately be. On one hand, Kosovo’s independence would grant the same rights to the people of Abkhazia. On the other hand, Kosovo’s independence could boost separatist movements in Russian republics such as Chechnya. *Kosovo: Possible Russian U.N. Veto of Independence Buys Serbia*, ADNKRONOS INT’L, Sept. 12, 2006, available at http://www.kosovo.net/news/archive/2006/September_13/1.html. Accordingly, Russia has expressed some concern about “Kosovo’s separatist aspirations.” *Report: Serbia Counting on Russian, Chinese Veto to Block Kosovo Independence*, *Official Says*, INT’L HERALD TRIB., Feb. 12, 2007, <http://www.iht.com/articles/ap/2007/02/12/europe/EU-GEN-Serbia-Kosovo.php>.

the breakaway efforts of Abkhazia and South Ossetia, paving the way for a Russian land grab, or at least the creation of smaller nations more willing to “work” with Russia.³⁸

More recently, Russia has viewed the Baku-Tbilisi-Ceyhan oil pipeline (the BTC winds its way through Kazakhstan, Azerbaijan, and Georgia), a major route for delivery of oil from Kazakhstan to Europe,³⁹ as a serious effort by the West to pry Georgia and all of Central Asia from Russia’s sphere of influence.⁴⁰ Even the United States is worried that Russia has allowed its interests to get in the way of a peaceful resolution to the Georgia/Abkhazia conflict. The nonprofit Council on Foreign Relations advised President Bush in a policy paper:

There is nothing legitimate about [Russia] limiting the opportunity of its neighbors [e.g., Georgia] to deepen their integration into the international economy, to choose security allies and partners, or to pursue democratic political transformation.⁴¹

Notably, the United States has strong interests in Georgia as well; therefore, its criticisms of Russia should be viewed accordingly. U.S. President George W. Bush has listed Georgia as an international terrorism target.⁴² In 2002, the U.S. military entered Georgia for limited missions when pro-independence Chechen troops infiltrated the Pankisi Gorge.⁴³ In January 2007, Georgian authorities and the CIA detained a Russian man who tried to sell weapons-grade uranium to undercover agents.⁴⁴ In March 2007, Geor-

³⁸ See Stephen Blank, *Bracing for Conflict: Russia and Georgia in South Ossetia (A EurasiaNet Commentary)*, EURASIANET.ORG, Sept. 26, 2006, <http://www.eurasianet.org/departments/insight/articles/eav092506a.shtml>.

³⁹ See Catherine Dale, *The Case of Abkhazia (Georgia)*, in PEACEKEEPING AND THE ROLE OF RUSS. IN EURASIA 121, 124 (Lena Jonson & Clive Archer eds., 1995).

⁴⁰ M. Ismail Khan, *The Trans-Karakoram Oil Pipeline*, THE NEWS, http://www.thenews.com.pk/daily_detail.asp?id=30039 (last visited Oct. 1, 2007). “According to an assessment by U.S. Department of Energy, Azerbaijan and Kazakhstan alone sit on more than 130 billion barrel oil, three times more than the United State’s own reserves. Being a country where four per cent of the world’s population consumes about one-fourth of global energy output, it is but natural for the U.S. to keep a good calculation of the world’s oil wells. Besides, given the fast rate of resource depletion, and the chronic political uncertainties the Middle East continues to suffer, it is only prudent for the world to look for oil in remote places like the Caspian.” *Id.*

⁴¹ Robert McMahon, *Russia Sanctions Georgia*, COUNCIL ON FOREIGN REL., Oct. 4, 2006, http://www.cfr.org/publication/11566/russian_storm_clouds_over_georgia.html.

⁴² Jaba Devdariani, *Georgia on a Fault Line*, 8 ISICIP-PERSPECTIVE (2002), <http://www.bu.edu/iscip/vol13/Devdariani2.html>.

⁴³ Associated Press, *Green Berets Land in Georgia for 2-Year Training Program*, N.Y. TIMES, May 20, 2002, at A2.

⁴⁴ See *Moscow Lashes Out at Georgia at Uranium Sale Plot Thickens*, N.Y. TIMES, Jan. 27, 2007, at A4.

gia announced that it would raise the number of its soldiers serving with the U.S.-led coalition in Iraq to more than 2,000. Georgia hopes that its willingness to help in Iraq sends a strong message to NATO that it is ready to join the organization. Russia says that allowing Georgia to join NATO would seriously affect Russian security interests,⁴⁵ saying that Georgia's membership in NATO could upset fragile stability in the Caucasus and hurt Russia's interests.⁴⁶ Russia fears that Georgia's NATO membership will create a slippery slope culminating in the entire region's NATO membership.

The United States and Georgia both have something to gain from close relations. Accordingly, Russia and the United States are engaged in a "soft power" duel in Georgia, "from economic and market influence, to democracy support and denial, to aggressive diplomacy—to create a region in their own image."⁴⁷ Nevertheless, Russia's desire to create a region in its own image is no excuse for its violations of international law in the Georgia/Abkhazia conflict.

III. OVERVIEW OF THE GEORGIA/ABKHAZIA CONFLICT

Abkhazia had the dubious honor of being the "playground of the Soviet elite" before the Soviet Union's collapse in 1991.⁴⁸ Stalin, Khrushchev, and Gorbachev had luxurious summer residences along its Black Sea shores, and Soviet vacationers crowded its beaches, bringing with them their rubles and Soviet influences.⁴⁹ Many locals like to say that when Cuban President Fidel Castro met Khrushchev in Abkhazia, he raved that its beauty matched that of his homeland.⁵⁰ Abkhazia remained an independent Soviet Socialist Republic until 1931, when it became an autonomous republic of the Georgian Soviet Socialist Republic.⁵¹ It remained so during the Cold War. As the Soviet Union began to unravel, tension developed between Georgia and Abkhazia as the Abkhaz people began demanding the restoration of the region's pre-1931 status and a return to what they viewed as the normalcy of autonomy.⁵²

⁴⁵ Paul Taylor, *Georgia Demands Removal of Russian "Peacekeepers,"* REUTERS, Sept. 22, 2006, <http://today.reuters.co.uk/news/CrisesArticle.aspx?storyId=N22174158>.

⁴⁶ Misha Dzhindzhikhashvili, *Provinces Spark War of Words,* ST. PETERSBURG TIMES, Sept. 26, 2006, http://www.sptimes.ru/index.php?action_id=2&story_id=18953.

⁴⁷ McMahan, *supra* note 41.

⁴⁸ Michael Mainville, *Proud Abkhazia Fiercely Resists Pull into Georgia's Orbit,* S. F. CHRONICLE, Sept. 24, 2006, <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2006/09/24/MNGSSLBNK81.DTL&type=politics>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Dept. of State, *Fact Sheet: The Abkhazia Conflict,* July 28, 2005, <http://www.state.gov/p/eur/rls/fs/53745.htm> [hereinafter *Fact Sheet*].

⁵² *Id.*

Abkhazia won *de facto* independence from Georgia in a 1992–1993 war.⁵³ During the war, both Georgia and Abkhazia:

[S]howed reckless disregard for the protection of the civilian population, and [were] responsible for gross violations of international humanitarian law . . . Combatants both deliberately targeted and indiscriminately attacked civilians and civilian structures, killing hundreds of civilians through bombing, shelling and rocket attacks. Combatants deployed and used major weapons in civilian areas, recklessly endangering peaceful residents by situating legitimate military targets close to their homes. They also used weapons like the Grad rocket, although these were notoriously inaccurate. Troops on the ground terrorized the local population through house-to-house searches, and engaged in widespread looting and pillage [sic], stripping civilians of property and food.⁵⁴

Georgia and Abkhazia negotiated several cease-fire agreements; but one or both sides would eventually breach the cease-fire, making it necessary for the sides to negotiate a new agreement.⁵⁵ When the July 1993 cease-fire negotiated between Georgia and Abkhazia broke down, the Russian foreign ministry pressured Georgia and Abkhazia into negotiating another one. Notwithstanding this, “the Russian general staff had decided that the only way to resolve the conflict would be to remove all Georgian military forces from Abkhazia, and the Russian military mounted a surprise attack supporting the Abkhaz forces in taking Sukhumi and other lands.”⁵⁶ At this time, President Shevardnadze “had to accept CIS membership and give permission for Russian forces to be stationed in Georgia.”⁵⁷ It was a compromise that resounds to this day.

Things proceeded swiftly from there. In August 1993, the United Nations established the U.N. Observer Mission in Georgia (UNOMIG) comprised of eighty-eight military observers to monitor compliance with the most recent cease-fire agreement.⁵⁸ On March 24, 1994, the U.N. General Assembly granted observer status to the CIS forces already in the region.⁵⁹

⁵³ Evelyn Leopold, *US, UK Object to Russia's U.N. Proposal on Georgia*, REUTERS, Sept. 30, 2006, <http://today.reuters.co.uk/news/CrisesArticle.aspx?storyId=N30263437>.

⁵⁴ Human Rights Watch, *Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict*, 7 HUM. RTS. WATCH ARMS PROJECT 1, 5 (Mar. 1995), <http://www.hrw.org/reports/pdfs/g/georgia/georgia953.pdf> [hereinafter Human Rights Watch].

⁵⁵ There were three ceasefires: September 3, 1992; July 28, 1993; and May 14, 1994. *Unofficial Background Report, Peace and Sec. Section, Geor.—UNOMIG Background* (2002), available at <http://www.un.org/Depts/DPKO/Missions/unomigB.htm>.

⁵⁶ McNeill, *supra* note 3, at 102.

⁵⁷ *Id.*

⁵⁸ *Id.* at 103; S.C. Res. 858 para. 2, U.N. Doc. S/RES/858 (Aug. 24, 1993). Following the May 1994 ceasefire agreement, the Security Council authorized the increase in UNOMIG's strength to up to 136 military observers. S.C. Res. 937, para. 5, U.N. Doc. S/RES/937 (July

On April 4, 1994, Georgia and Abkhazia signed a *Declaration of Measures for a Political Settlement of the Georgian/Abkhaz Conflict*, and committed themselves to strict observance of a cease-fire and to cooperate to ensure the safe, secure, and dignified return of people who had fled the area.⁶⁰ A demilitarized security zone was created on either side of the Inguri River on May 14, 1994, when both sides signed the *Agreement on a Cease-Fire and Separation of Forces*.⁶¹ The CIS⁶² deployed a 2,000-member peacekeeping force, comprised exclusively of Russian military, to this zone to monitor compliance with the ceasefire agreement.⁶³ The Russian peacekeeper's mandate said:

The function of the [peacekeeping] force of the Commonwealth of Independent States shall be to exert its best efforts to maintain the cease-fire and to see that it is scrupulously observed. Further, its presence should promote the safe return of refugees and displaced persons, especially to the Gali region. It shall supervise the implementation of the Agreement and the Protocol thereto with regard to the security zone and the restricted-weapons zone. In carrying out its mission, the force shall comply with local laws and regulations and shall not impede the functioning of the local civil administration. It shall enjoy freedom of movement in the security zone and the restricted-weapons zone and freedom of communications, and other facilities needed to fulfill its mission.⁶⁴

That the CIS sanctioned this peacekeeping mission gave it the appearance of legitimacy and something other than what it actually was: a purely unilateral Russian action devoid of any real U.N. influence.⁶⁵ Within the CIS, however, there is a huge discrepancy between its stated principles⁶⁶

21, 1994). Approximately nine years later, the Security Council authorized the addition of "a U.N. police component of 20 officers." S.C. Res. 1494, para. 17, U.N. Doc. S/RES/1494 (July 30, 2003).

⁵⁹ McNeill, *supra* note 3, at 103.

⁶⁰ *Fact Sheet*, *supra* note 51. The agreement was signed in Moscow. *Id.*

⁶¹ *Id.* The agreement was signed in Moscow as well. *Id.*

⁶² At present, the CIS unites Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine. INT'L STAT. COMM. OF THE COMMONWEALTH OF INDEP. STATES, *supra* note 17.

⁶³ *See Fact Sheet*, *supra* note 51.

⁶⁴ Agreement on a Ceasefire and Separation of Forces, Geor.-Abkhaz, Apr. 4, 1994, *available at* <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/geo1.pdf>.

⁶⁵ In this and other conflicts, Russia "intervened both openly and covertly in the international affairs of its ex-republics, ostensibly for peacekeeping and humanitarian purposes, and has repeatedly sought international sanction via the U.N., OSCE, and CIS for its actions." McNeill, *supra* note 3, at 97.

⁶⁶ The principles and purposes of the CIS are outlined in Articles I and II of the Charter of the Commonwealth of Independent States. The CIS "is based on the foundations of the

and the activities of Russia, its key member, which has continually flouted almost all of the CIS's principles.⁶⁷ The UNOMIG and CIS forces have parallel mandates, but the forces are independent from one another.⁶⁸

A consensus emerged within Russia about its interests in the CIS space around the same time that the CIS deployed its peacekeeping force; Russia, as a regional superpower, believed it had a "special responsibility" to ensure order in the region.⁶⁹ Russia believed it had a right and responsibility to act as peacekeeper in the "near abroad" because:

(1) Russia as the successor to the former Soviet Union has a special role to play in the region which it traditionally has ruled; (2) the territory of the former Soviet Union is a geostrategic space in which Russia has special interests; (3) Russia has special responsibility for the security and well-being of Russian citizens, ethnic Russians, and Russian-speaking communities throughout the CIS; and (4) Russia as a great power has both regional and global responsibilities.⁷⁰

Inevitably, problems arose as Russia's idea of peacekeeping drastically departed from U.N. peacekeeping norms.⁷¹ Russian "peacekeeping" practice did not meet international standards; unlike the traditional approach of acting as impartial umpire between competing sides, Russian "peacekee-

equality of all of its members. The member states are independent and equal subjects of international law. The Commonwealth serves the further development and strengthening of relations of friendship, good neighborhood, international harmony, trust, mutual understanding and mutually beneficial cooperation between member states. The Commonwealth is not a state and does not hold supranational powers." CIS Charter, sec. I, art.1, Dec. 1991. Furthermore, the CIS's purposes are as follows: "The realization of cooperation in political, economic, environmental, humanitarian, cultural and other spheres; universal and balanced economic and social development of member states under the framework of common economic space, interstate cooperation and integration; ensuring human rights and fundamental liberties in accordance with generally recognized principles and norms of international law and documents of the CSCE; cooperation between member states to ensure international peace and security, the realization of effective measures for the reduction of arms and military expenditures, the elimination of nuclear and other types of weapons of mass destruction, and the achievement of universal and full disarmament; assisting citizens of member states in free interaction, contacts and movement in the Commonwealth; mutual legal assistance and cooperation in other spheres of legal relations; peaceful resolution of disputes and conflicts between states of the Commonwealth." *Id.* at art. 2.

⁶⁷ McNeill, *supra* note 3, at 98. Russia "has flouted almost all of the CIS's principles in its bid to retrieve former economic, military and political hegemony over the former USSR." *Id.*

⁶⁸ *Monthly Forecast, January 2006*, SECURITY COUNCIL REP., Dec. 23, 2005, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SCR_ForecastJan06_Typeset.doc.

⁶⁹ See DOV LYNCH, RUSSIAN PEACEKEEPING STRATEGIES IN THE CIS: THE CASES OF MOLDOVA, GEORGIA AND TAJIKISTAN 9 (2000).

⁷⁰ McNeill, *supra* note 3, at 101.

⁷¹ *Id.* at 98.

pers” are inserted to support one side over another⁷² and to “operate without a clear mandate, withdrawal timetable, or rules of engagement.”⁷³ This has led to Russian “peacekeeping” being aptly described as “coercive diplomacy.”⁷⁴

Russian peacekeepers did allow “the safe return of refugees and displaced persons[,]”⁷⁵ and by 1998 tens of thousands of internally displaced persons returned to their former homes, but escalating hostilities that same year culminated in a large-scale Abkhaz sweep operation, where at least 1,500 Georgian homes were reduced to ashes and at least 40,000 Georgians were re-expelled. The U.N. Security Council (Security Council) condemned “the deliberate destruction of houses by Abkhaz forces, with the apparent motive of expelling people from their home areas.”⁷⁶

Thousands died because of the war and it forced at least 300,000 ethnic Georgians from the region.⁷⁷ Throughout the conflict, the Security Council issued resolutions “condemn[ing] any attempts to change the demographic compilation of Abkhazia”⁷⁸ in response to the vast changes in ethnic makeup caused by the conflict. Before the conflict began in 1992, Abkhaz represented around eighteen percent of the population in Abkhazia, and Georgians represented about fifty percent of the population.⁷⁹ Georgia’s permanent representative to the United Nations says that genocide and ethnic cleansing took place during and after the 1992–1993 war with the result that today there are almost no ethnic Georgians left in Abkhazia.⁸⁰

As the ethnic majority after the conflict, the resident Abkhaz set up their own government, complete with a president, parliament, and cabinet.⁸¹ Nevertheless, the Abkhaz victory has been purely Pyrrhic; no country in the

⁷² Lynch, *supra* note 69, at 19–20, 24. For example, Russian support during the Nagorno-Karabakh war remained officially neutral; however, both sides (Armenia and Azerbaijan) accused the Russian military of favoritism. Russia, in fact, provided support to Armenia. *No Military Partnership with Azerbaijan*, N.Y. TIMES, Feb. 5, 1999, at A26.

⁷³ See generally Lynch, *supra* note 69. The Russian military is unfamiliar with peacekeeping and regards it as a form of combat or a “war-fighting tool.” *Id.* at 100–01.

⁷⁴ See *id.* at 25–28.

⁷⁵ Agreement on a Ceasefire and Separation of Forces, *supra* note 64.

⁷⁶ S.C. Res. 1187, para. 4, U.N. Doc. S/RES/1187 (July 30, 1998).

⁷⁷ S.C. Res. 896, U.N. Doc. S/RES/896 (Jan. 31, 1994).

⁷⁸ *Id.* at para. 12.

⁷⁹ Press Conference, Dept. of Pub. Info., Press Conference by Georgia (Jan. 2, 2006), http://www.un.org/News/briefings/docs/2006/060201_Georgia.doc.htm [hereinafter Press Conference].

⁸⁰ *Id.* According to Georgia’s permanent representative to the U.N., “[t]he ethnic cleansing that occurred there had been confirmed by the international community, and reflected in resolutions of the Organization for Security and Cooperation in Europe (OSCE) during the 1990s.” *Id.*

⁸¹ Adzhindzhal, *supra* note 9.

world officially recognizes Abkhazia.⁸² To ameliorate this, Abkhazia has begun to lobby for regional recognition, starting with its closest ally. In October 2006—amid rising tensions between Russia and Georgia—Abkhazian “President” Sergei Bagapash, with the support of the Abkhaz “Parliament,” called on the Russian Federation to recognize Abkhazia’s independence, strengthening its campaign for international recognition.⁸³ In December 2006, Abkhazia held a “national gathering” to “show its determination to gain full independence” from Georgia.⁸⁴ Russia, however, has shown no sign of formally recognizing Abkhazia. It continues to address Abkhazia’s legal status in accordance with the principle of the territorial integrity of Georgia.

Nevertheless, Russia’s actions belie an ulterior motive. While Russia officially supports the territorial integrity of Georgia, what has taken place in Abkhazia is fundamentally different. In fact, it appears that Russia is engaged in a unique form of nation building. Trade in Abkhazia is conducted in Russian rubles and the Abkhazian economy is tied to the Russian economy.⁸⁵ Russia provides Abkhazia with practical support in the form of pensions and railway infrastructure.⁸⁶ Russia has also provided Russian passports to a large number of Abkhazian citizens.⁸⁷ Russian tourists flock to Abkhazia’s Black Sea beaches to the point that in 2005 income from tourism helped double the local budget to \$35 million.⁸⁸ Georgia accuses Russian banks in Abkhazia of money laundering.⁸⁹

⁸² *Russia-Georgia: No Compromise on Army Bases Yet*, RIA NOVOSTI, May 17, 2005, <http://en.rian.ru/world/20050517/40370700.html>.

⁸³ Anzhela Kuchuberia, *Bagapash Calls on Russia to Recognize its Independence*, ITAR-TASS, Oct. 18, 2006. Bagapash said, “the [R]epublic should address the President of Russia and the Federal Assembly of the Russian Federation to recognize independence of the Republic of Abkhazia and establish associated relations between Russia and Abkhazia.” *Id.*; see also The Secretary-General, *Report of the Secretary General on the Situation in Abkhazia, Georgia*, delivered to the Security Council, U.N. Doc. S/2007/15 (Jan. 11, 2007).

⁸⁴ *Abkhazia to Hold ‘National Gathering’ for Independence*, RIA NOVOSTI, June 12, 2006, <http://en.rian.ru/world/20061206/56527550-print.html>.

⁸⁵ Alisa Voznaya, *Looking to Chechnya for Answers: How Abkhazia and Georgia Can Learn from Russian Lessons*, BALKAN ANALYSIS, Aug. 29, 2006, <http://www.balkananalysis.com/2006/08/29/looking-to-chechnya-for-answers-how-abkhazia-and-georgia-can-learn-from-russian-lessons/>.

⁸⁶ *Id.*; Bruno Coppieters, *The Georgian-Abkhaz Conflict*, J. ON ETHNOPOLITICS AND MINORITY ISSUES IN EUROPE, ch. 5, § 2 (2004), available at <http://www.ecmi.de/jemie/download/1-2004Chapter5.pdf>.

⁸⁷ *Id.* Russia was in the process of issuing Russian passports to Abkhazians in 2003. *Id.*

⁸⁸ Mainville, *supra* note 14.

⁸⁹ Press Conference, *supra* note 79; see also Michael Schwartz, *Criminal Gang Controlling Russian Banks is Exposed*, N.Y. TIMES, Oct. 18, 2006, available at http://www.nytimes.com/2006/10/18/world/europe/18russiansumm.html?_r=1&oref=slogin.

Russia claims to act only as an arbitrator between the two factions, yet its territorial interests are exposed through both the amount of assistance its “peacekeepers” gave Abkhazia during the Georgia/Abkhazia conflict and the support it continues to provide to Abkhazia today.⁹⁰ Georgia, meanwhile, attempts to distance itself politically and ideologically from Russia while keeping its piecemeal country intact and independent.

IV. RUSSIA’S VIOLATIONS OF INTERNATIONAL LAW

A. *Peacekeepers Unauthorized to Provide Weapons or to Take Military Action*

Peacekeepers are not authorized to provide military, financial, or logistical support to one side in a conflict,⁹¹ or to take military action against a party to the conflict.⁹² Furthermore, it is a violation of international law to provide training and military support to one side to an internal conflict, especially when that support comes from a peacekeeping force within the country.⁹³

The *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States*, in accordance with the U.N. Charter, provides that:

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.⁹⁴

The Declaration further provides that “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.”⁹⁵ In *Nicaragua v. United States of America*, the International Court of Justice (ICJ) made it clear that the prin-

⁹⁰ Voznaya, *supra* note 85.

⁹¹ *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, 2005 I.C.J. 116, 101 (Dec. 19) [hereinafter *Armed Activities*], available at <http://www.icj-cij.org/docket/files/116/10455.pdf> (last visited Nov. 22, 2007). On December 19, 2006, the International Court of Justice held that Uganda violated Congo’s sovereignty by invading it, occupying territory in Ituri, and providing military, financial, and logistical support to anti-Kabila Congolese rebels within the country between 1998 and 2002. *Id.*

⁹² YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* 307–08 (4th ed. 2005).

⁹³ *Armed Activities*, *supra* note 91, at 56.

⁹⁴ G.A. Res. 2625 at 123, U.N. GAOR, 25 Sess., Supp. No. 28, U.N. Doc. A/8028 (Oct. 24, 1970).

⁹⁵ *Id.*

principle of non-intervention prohibits a State “to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State.”⁹⁶ In *Congo v. Uganda*, the ICJ noted that acts which breach the principle of non-intervention “will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations.”⁹⁷ “These provisions are declaratory of customary international law.”⁹⁸

Russia says it is an independent broker fielding peacekeeping missions and its representatives have publicly said they recognize the territorial integrity of Georgia.⁹⁹ The Georgian Parliament contends, however, that Russia was “directly involved in the initiation of conflicts in Abkhazia . . . in [the] early 90s, first through an intensive delivery of arms to conflicting sides, and later through direct participation of its military personnel serving in Gudauta military base in military actions against Georgia.”¹⁰⁰ In fact, Security Council Resolution 876 “calls on all states to prevent the provision from their territories or by persons under their jurisdiction of all assistance . . . to the Abkhaz side and in particular to prevent the supply of any weapons and munitions.”¹⁰¹ This raises the question of whether any state or other entity was providing weapons to either side.

Human Rights Watch concluded that the “sudden presence of armor, tanks, and heavy artillery among the previously lightly armed Abkhaz in the fighting between October and December 1992 realistically leaves little room for any conclusion except that some parties, within the Russian forces, decided to supply the Abkhaz.”¹⁰² Russia escalated human rights abuses by making “available weapons to groups or individuals known or likely to use them to commit atrocities.”¹⁰³ Russia’s provision of weapons to the Abkhaz was in violation of international law. Furthermore, Russia intervened in armed conflict within Georgia.

The Abkhaz, with the assistance of Russian military vessels and logistics, launched three major assaults on Sukhumi in which there were a number of civilian deaths.¹⁰⁴ Some Russian-trained and Russian-paid fighters defended Abkhaz territory; there were also a variety of freelance fig-

⁹⁶ Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, 108 (June 27, 1986).

⁹⁷ Armed Activities, *supra* note 91, at 56.

⁹⁸ *Id.*

⁹⁹ McMahon, *supra* note 41.

¹⁰⁰ Parliament of Georgia, *Some Facts of Russian Policy Towards Georgia*, http://www.parliament.ge/index.php?lang_id=GEO&sec_id=63&info_id=13323 (last visited Oct. 29, 2007).

¹⁰¹ S.C. Res. 876, para. 8, U.N. Doc. S/RES/876 (Oct. 19, 1993).

¹⁰² Human Rights Watch, *supra* note 54, at 32.

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.* at 7.

ters, including Cossacks.¹⁰⁵ Nonetheless, Human Rights Watch determined that "Russian government officials . . . sanctioned the sending of Russian fighters to Abkhazia as agents of the Russian Federation."¹⁰⁶ Therefore, Russia intervened in support of an internal opposition within a state. Under *Nicaragua* and *Congo*, Russia's intervention on behalf of the Abkhaz violates international law.

B. *Civilians are Unlawful Targets*

The Geneva Conventions apply to armed conflicts that are international in nature. In *Prosecutor v. Tadic*, the International Criminal Tribunal for the former Yugoslavia held that "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups in a State."¹⁰⁷ Furthermore, an armed conflict within a State's borders is international if "the troops of another State intervene in the conflict and even where some participants in the internal armed conflict act on behalf of this other State."¹⁰⁸

For the purposes of international humanitarian law, a person is a civilian if he or she is not a member of the armed forces.¹⁰⁹ The parties to a conflict have the duty to protect and respect civilians pursuant to customary international law.¹¹⁰ This concept is also codified in Geneva Convention IV, Article 27, paragraph 1.

Furthermore, it is customary international law that "the conduct of any organ of a State . . . be regarded as an act of that State."¹¹¹ War crimes cover even "isolated acts committed by individual soldiers acting without direction or guidance from higher up."¹¹² For example, the ICJ held in *Congo v. Uganda* that the conduct of individual soldiers and officers of the Uganda People's Defence Force (UPDF) was the conduct of a State organ.¹¹³ The court said that by virtue of their military status, the UPDF's

¹⁰⁵ *Id.* at 7.

¹⁰⁶ *Id.* at 52.

¹⁰⁷ *Prosecutor v. Tadic*, Case No. IT-94-I-I, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, para. 70 (Oct. 2, 1995).

¹⁰⁸ WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 59 (2nd ed. 2004).

¹⁰⁹ THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 210 (Dieter Fleck ed., 2003).

¹¹⁰ *See id.* at 502.

¹¹¹ Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 1999 I.C.J. 62, 87 (Apr. 29).

¹¹² Schabas, *supra* note 108, at 55.

¹¹³ Armed Activities, *supra* note 91, para. 213.

conduct was attributable to Uganda.¹¹⁴ The Court did not accept Uganda's argument that those individuals within the UPDF "did not act in the capacity of persons exercising governmental authority in the particular circumstances."¹¹⁵ It is customary international law that a party to an armed conflict shall be responsible for all acts by persons forming part of its armed forces. This is reflected in Article 3 of the Fourth Hague Convention respecting the Laws and Customs of War on Land of 1907¹¹⁶ and in Article 91 of Protocol I additional to the Geneva Conventions of 1949.¹¹⁷

Early Security Council resolutions regarding the Georgia/Abkhazia conflict referred to Russia as a "facilitator of peace." Yet, Russian soldiers "carried out a large number of attacks against Georgian targets, which resulted in civilian casualties."¹¹⁸ Russian planes attacked Sukhumi on February 20, 1993, followed by other air raids.¹¹⁹ While the Russian defense ministry contended that the "Georgians are bombing themselves," the evidence strongly indicates that the attacks were carried out by Russian forces.¹²⁰ In fact, Georgian forces succeeded in downing an SU-27 fighter-bomber that was raiding Sukhumi on March 19, 1993. Upon inspection, a U.N. military observer confirmed that the aircraft was Russian and the pilot was a major in the Russian air force.¹²¹

Because Russia intervened in the conflict and at least some Russians acted on behalf of Abkhazia, the Georgia/Abkhazia conflict is international in nature. Accordingly, the Geneva Conventions apply. Russia should be held responsible for the actions of individual active-duty members of Russia's armed or security forces in Abkhazia. Pursuant to international law, Russia is responsible for its peacekeeping forces' slaughter of Georgian civilians.

Coming to its own defense, Russia professes to play a humanitarian and pacifying role, saying that if Russian peacekeepers were "not present,

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." The Fourth Hague Convention Respecting the Laws and Customs of War on Land ch. 1, art. 3, October 18, 1907, 1 Malloy 2269.

¹¹⁷ "A Party to the conflict . . . shall be responsible for all acts committed by persons forming part of its armed forces." Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 91, June 8, 1977, 1125 U.N.T.S. 45.

¹¹⁸ Human Rights Watch, *supra* note 54, at 6.

¹¹⁹ *Id.* at 37.

¹²⁰ *Id.* at 37–38 (quoting Thomas Goltz, *Letter from Eurasia: The Hidden Russian Hand*, 92 FOREIGN POLICY 107 (1993)).

¹²¹ *Id.* at 38.

the Abkhaz would be doomed.”¹²² Russian Defense Minister Sergei Ivanov contends that the peacekeepers are “the principal restraining force in the region.”¹²³ While it is arguable that peacekeepers are necessary to prevent the Georgians or Abkhaz from committing atrocities, Russian peacekeepers have engaged in the conflict and murdered civilians—hardly the ideal role for facilitators of peace. Protecting the Abkhaz does not give Russian peacekeepers *carte blanche* to launch attacks against Georgian civilians who are not themselves engaged in the conflict. In fact, Russian peacekeepers are meant to prevent the escalation of the conflict and to protect Georgians and Abkhaz alike.¹²⁴

C. *Russia Violated Georgia's Sovereignty*

Pursuant to international law, a state has “sovereignty over its territory.”¹²⁵ The development of a system of sovereign states culminated at the Peace of Westphalia in 1648, and conceptions of a modern sovereign state were introduced into the political realm by the writings of Machiavelli, Luther, Bodin, and Hobbes.¹²⁶ While some scholars doubt whether a stable notion of sovereignty exists, there is a definition of what sovereignty came to mean in early modern Europe, of which most subsequent definitions are a variant: *supreme authority within a territory*.¹²⁷ Black’s Law Dictionary adopts the ‘Westphalian Model’ of sovereignty, defining it as “supreme dominion, authority, or rule.” This model, also recognized by the United Nations in its Charter,¹²⁸ asserts that all sovereigns are equal and exercise power within their own territory.¹²⁹ The U.N. Charter recognizes a sovereign state’s right “to regulate its territory and nationals.” While a nation’s right to sovereignty is not without its limits, sovereignty is of paramount concern in international law.

¹²² INT’L CRISIS GROUP, ABKHAZIA TODAY, EUR. REPORT N°176 7 (2006), http://www.crisisgroup.org/library/documents/europe/caucasus/176_abkhazia_today.pdf.

¹²³ *Id.*

¹²⁴ Recall the April 4, 1994, *Agreement on a Ceasefire and Separation of Forces* which said that the Russian peacekeepers were there in order to maintain the ceasefire. *See Agreement on a Ceasefire and Separation of Forces*, *supra* note 64.

¹²⁵ RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 206 (1987).

¹²⁶ Dan Philpott, *Sovereignty*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/entries/sovereignty/>.

¹²⁷ *Id.*

¹²⁸ *See* U.N. Charter art. 2, para. 4 (“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.”).

¹²⁹ *See* ANTHONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 5 (2005).

In *Congo v. Uganda*, the ICJ held that “the unlawful military intervention by Uganda was of such a magnitude and duration” that it was a grave violation of the U.N. Charter’s prohibition of force.¹³⁰ While Russian peacekeepers intervened in Georgia with the consent of Georgian officials, and were subsequently endorsed by the Security Council as members of a joint peacekeeping mission, the intervention has lasted more than thirteen years. The results of Russian action have been devastating, with Russian peacekeepers responsible for a number of civilian deaths. Accordingly, Russia’s actions constitute an excessive use of force and a violation of Georgia’s right to sovereignty. Furthermore, in *Congo v. Uganda*, the ICJ held:

If a State assumes an obligation in an international agreement to respect the sovereignty and territorial integrity of the other States parties to that agreement . . . and a commitment to co-operate with them in order to fulfill such obligation, this expresses a clear legally binding undertaking that it will not repeat any wrongful acts.¹³¹

Russia *officially* respects the territorial integrity of Georgia; the Security Council, of which Russia is a permanent member, respects the territorial integrity of Georgia. Security Council resolutions are binding on U.N. Member States. Accordingly, Russia is legally obligated to respect the territorial integrity of Georgia. Russia’s disrespect for the territorial integrity of Georgia subsequent to such Security Council resolutions just adds fuel to the fire. Russia’s behavior in this context is little different than a schoolyard bully that believes it, as the regional superpower, may act in any manner it deems desirable, despite international law to the contrary.

D. *Provision of Russian Passports*

The issuance of Russian passports to seventy to ninety percent of Abkhazians (otherwise Georgian citizens) since 2003 gives the impression that Abkhazia is a Russian protectorate.¹³² Georgian officials say that this cannot be viewed as anything but an attempt to annex Abkhazia.¹³³ They also ask two important questions: (1) “can Russia be an unbiased facilitator

¹³⁰ Armed Activities, *supra* note 91, at para. 165.

¹³¹ *Id.* at para. 257.

¹³² *Georgia Update*, EUROPEAN FORUM, Sept. 1, 2005, <http://www.europeanforum.net/coun.try/georgia>; Tom Parfitt, *Georgia Up in Arms Over Olympic Clash*, GUARDIAN UNLIMITED, Aug. 7, 2007, <http://www.guardian.co.uk/russia/article/0,,2143104,00.html>. Abkhazians rushed to acquire Russian passports before citizenship regulations tightened in 2002. *Abkhaz Rush for Russian Passports*, INST. OF WAR AND PEACE REPORTING, June 27, 2002, http://iwpr.net/?p=crs&s=f&o=160553&apc_state=henicrs2002.

¹³³ *Georgia's Key Foreign Policy Challenges (CSIS Georgia Forum Notes)*, EMBASSY OF GEORGIA, Dec. 4, 2002, <http://www.georgiaemb.org/DisplayDoc.asp?id=77>; see also INT’L CRISIS GROUP, *supra* note 13, at 5.

in the [Georgia/Abkhazia] conflict if a majority of the residents of [the Abkhazian] side are Russian citizens?" and (2) will there ever be a situation where Russia will justify greater involvement in the Georgia/Abkhazia conflict as necessary to protect its citizens?¹³⁴ While it is the Russian government and not the Russian peacekeepers issuing Russian passports, the Russian government's decision to issue passports to the Abkhaz clearly demonstrates its bias in the conflict.

Abkhaz law allows dual Russian-Abkhaz citizenship but not dual Georgian-Abkhaz citizenship. Black's Law Dictionary describes a passport as "a formal document certifying a person's identity and citizenship so that the person may travel to and from a foreign country." While the issue of an authentic passport (there is a large market for counterfeit.¹³⁵ Russian passport holders are entitled to Russian pensions of about fifty dollars a month¹³⁶ and social security payments—both considerably higher than in Georgia.¹³⁷ In addition, many Abkhaz engage in small-scale smuggling to Russia and find a Russian passport necessary to their business.¹³⁸ Ethnic Georgians living in Abkhazia must obtain Russian passports if they wish to travel abroad, vote, or participate in the political process.¹³⁹ Georgian passport holders are denied Russian visas,¹⁴⁰ and most travelers wishing to enter Russia from Georgia without a Russian passport must do so via a third country.¹⁴¹

Black's Law Dictionary describes a passport as "a formal document certifying a person's identity and citizenship so that the person may travel to and from a foreign country." While the issue of an authentic passport (there is a large market for counterfeit passports) "raises no more than a presumption that the holder is a national of the state of issue, [] the presumption is not easily rebutted."¹⁴² Some scholars posit that a passport is, in fact, evi-

¹³⁴ *Georgia's Key Foreign Policy Challenges*, *supra* note 133.

¹³⁵ Bureau of Democracy, Human Rights, and Labor, *Country Report on Human Rights Practices in Georgia*, U.S. DEP'T OF STATE, March 8, 2006, <http://www.state.gov/g/drl/rls/hrrpt/2005/61649.htm> [hereinafter Bureau of Democracy].

¹³⁶ Daan van der Schriek, *South Ossetia Gets Ultimatum, Rejects Georgian Aid*, EURASIANET, June 23, 2004, <http://www.eurasianet.org/departments/insight/articles/eav062304.shtml>.

¹³⁷ Ahto Lobjakas, *Georgia Walking a Tightrope Toward the West*, RADIO FREE EUROPE/RADIO LIBERTY, Nov. 24, 2006, <http://rferl.org/featuresarticle/2006/11/e709c840-fcb4-4d7f-a69e-52331e23683a.html>.

¹³⁸ *Id.*

¹³⁹ Bureau of Democracy, *supra* note 135; INT'L CRISIS GROUP, ABKHAZIA TODAY, EUROPE REPORT N°176, Sept. 15, 2006, *available at* http://www.crisisgroup.org/library/documents/europe/caucasus/176_abkhazia_today.pdf.

¹⁴⁰ Lobjakas, *supra* note 137.

¹⁴¹ *See* Bureau of Democracy, *supra* note 135.

¹⁴² ANTHONY AUST, HANDBOOK OF INTERNATIONAL LAW 181 (2005).

dence of nationality.¹⁴³ A passport entitles the holder to the protection and assistance of the holder's diplomatic and consular officers abroad.¹⁴⁴ Members of the Russian Duma make frequent statements emphasizing that ethnic Abkhaz with Russian passports are their citizens;¹⁴⁵ as Russian citizens, they are entitled to Russia's protection as stipulated in the Russian Federation Constitution.¹⁴⁶ In July 2006, the Russian Duma passed a resolution authorizing Russian troops to serve anywhere in the defense of Russian citizens—presumably including those who reside permanently in Abkhazia.¹⁴⁷ The chairperson of the State Duma International Affairs Committee said that Russia would use “all means at [Russia's] disposal” to protect Russian passport holders in Abkhazia, including the military in extreme cases.¹⁴⁸ While a country is free to establish its own rules and regulations regarding passports, Russia's claim that it is justified in protecting all Russian passport holders raises serious questions of international law.

Article 2(4) of the U.N. Charter prohibits Members from using force against other nations, subject to two exceptions. First, Members may use force when the Security Council authorizes a Member to use force against another. Second, Members are able to act in self-defense against an armed attack. The Charter states: “[n]othing 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.” Although the text of U.N. Charter Article 51 does not appear to allow the use of force until another nation physically launches its attack, many have argued that Article 51 permits “anticipatory” self-defense in the event of an imminent and overwhelming threat. The Russian officials' rhetoric does not appear to invoke the first exception, as officials have said nothing about asking the Security Council for permission to use force. If Russia asked for the Security Council's permission to use force against Georgia, it would be unlikely to succeed, as the United States would probably exercise its veto power. Accordingly, it appears as if Russian officials are hearkening to the second exception, which allows for self-defense against an imminent armed attack. Concurrently, however, the Russians are redefining what constitutes an armed attack against Russia. By their own words, an armed attack against

¹⁴³ BURDICK H. BRITTIN, *INTERNATIONAL LAW FOR SEAGOING OFFICERS* 183 (4th ed., 1981).

¹⁴⁴ *Id.*

¹⁴⁵ See INT'L CRISIS GROUP, *supra* note 13, at 15.

¹⁴⁶ Konstitutsiia Rossiiskoi Federastii [Konst. RF] [Constitution] art. 61, *translated in* <http://www.constitution.ru/en/10003000-01.htm>. (“The Russian Federation shall guarantee to its citizens protection and patronage abroad.”)

¹⁴⁷ See INT'L CRISIS GROUP, *supra* note 13, at 15.

¹⁴⁸ *Notes from Briefing by Konstantin Kosachev Duma Foreign Affairs Committee Chairman*, OFFICIAL WEBSITE OF THE G8 PRESIDENCY OF THE RUSSIAN FEDERATION IN 2006, July 16, 2006, <http://en.g8russia.ru/news/20060716/1226699.html>.

Abkhazia is re-characterized as an armed attack on Russia. If the Georgian government tries to reassert control over Abkhazia, Russian officials believe that Russia is justified in engaging its military to protect the substantial number of Abkhaz who hold Russian passports. This is not the rhetoric of neutral peacekeepers.

Furthermore, the Russian practice of issuing Russian passports to Abkhaz could create a strange situation for other countries. The European Union has agreed to ease its visa rules for Russians, but not Georgians. Accordingly, Georgians could find it more difficult to visit the European Union than Abkhaz carrying Russian passports.¹⁴⁹ One solution is for the European Union not to recognize Abkhazian's Russian passports "as having the same validity as those Russian passport holders who are resident in the territory of the Russian Federation."¹⁵⁰

E. Withdrawal of Consent

Peacekeeping forces, whether or not they derive their mandate from the Security Council, are usually established and maintained with the consent of all States concerned.¹⁵¹ Generally, the withdrawal of consent by a host State terminates a peacekeeping operation.¹⁵² No particular formalities are required for the withdrawal of consent.¹⁵³ Nevertheless, the United Nations Iraq-Kuwait Observer Mission (UNIKOM) parted from this rule with Resolution 689 (1991) declaring, "[t]he deployment of UNIKOM 'can only be terminated by a decision of the [Security] Council.'"¹⁵⁴

Initially, both Georgia and Abkhazia consented to Russia's involvement as a peacekeeper, although there is an argument that Russia coerced Georgia's consent. When the July 1993 cease-fire negotiated between Georgia, Abkhazia, and Russia broke down, the Russian foreign ministry pressured the sides into negotiating with one another. Regardless of this, "the Russian general staff had decided that the only way to resolve the conflict would be to remove all Georgian military forces from Abkhazia, and the Russian military mounted a surprise attack supporting the Abkhaz forces in taking Sukhumi and other lands."¹⁵⁵ At this time, President Shevardnadze "had to accept CIS membership and give permission for Russian

¹⁴⁹ Lobjakas, *supra* note 137.

¹⁵⁰ *Id.*

¹⁵¹ DINSTEIN, *supra* note 92, at 309.

¹⁵² *Id.* at 308.

¹⁵³ Armed Activities, *supra* note 91, para. 51 (noting, "no particular formalities would have been required for the [Democratic Republic of Congo] to withdraw its consent to the presence of Ugandan troops on its soil.").

¹⁵⁴ DINSTEIN, *supra* note 92, at 308.

¹⁵⁵ McNeill, *supra* note 3, at 102.

forces to be stationed in Georgia.”¹⁵⁶ Georgia consented to the presence of Russian peacekeepers in the March 3, 1994 Declaration on Measures for A Political Settlement of the Georgian/Abkhaz Conflict.¹⁵⁷ The Declaration states, “[t]he parties reaffirm their request for the early development of a peacekeeping operation and for the participation of a *Russian* military contingent in the United Nations peacekeeping force. . . .”¹⁵⁸ Georgia consented to the presence of a Russian force so long as it was engaged in peacekeeping operations. Furthermore, Georgia consented to a “Russian military contingent *in* the United Nations peacekeeping force,” suggesting that Georgia consented to a Russian military contingent that it expected to comply with United Nations peacekeeping norms.¹⁵⁹ Moreover, Georgia acquiesced to a multinational peacekeeping force, and not a force comprised solely of Russian soldiers. Accordingly, Georgia’s consent was not open-ended but was limited by the Declaration.¹⁶⁰

In October 2005, the Georgian Parliament issued a resolution setting deadlines for either corrective measures or termination of Russian “peacekeeping” and “mediating” activities in Abkhazia.¹⁶¹ In July 2006, the Georgian Parliament issued a resolution resolving to “entrust the Government of Georgia with a task to launch necessary procedures to immediately suspend the so-called peacekeeping operations in Abkhazia . . . and to immediately withdraw the armed forces of the Russian Federation from the territory of Georgia.”¹⁶²

¹⁵⁶ McNeill, *supra* note 3, at 102.

¹⁵⁷ The Secretary-General, *Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia, Measures for a Political Settlement of the Georgian/Abkhaz Conflict*, Ann., para. 4, delivered to the Security Council and the General Assembly, U.N. Doc. S/1994/253 (Mar. 3, 1994) [hereinafter *Measures for a Political Settlement of Georgian/Abkhaz Conflict*].

¹⁵⁸ *Id.* at para. 4 (emphasis added).

¹⁵⁹ *Measures for a Political Settlement of the Georgian/Abkhaz Conflict*, *supra* note 157, at para. 4 (emphasis added). As mentioned previously, a U.N. peacekeeping force never really arrived; rather the U.N. dispatched a few unarmed observers.

¹⁶⁰ See *Armed Activities*, *supra* note 91, at para. 52 (drawing “attention to the fact that the consent that had been given to Uganda to place its forces in the DRC, and to engage in military operations, was not an open-ended consent” but was limited by agreement).

¹⁶¹ Vladimir Socor, *Georgia on Russian “Peacekeeping:” Enough is Enough*, EURASIA—DAILY MONITOR, Oct. 6, 2005, http://www.jamestown.org/edm/article.php?volume_id=407&issue_id=3483&article_id=2370307. The Georgian Parliament issued a second resolution on February 15, 2006. Jean-Christophe Peuch, *Georgia: Parliament Votes Russian Troops Out of South Ossetia*, RADIO FREE EUROPE/RADIO LIBERTY, Feb. 15, 2006, <http://www.rferl.org/featuresarticle/2006/02/d3bdf92d-c942-4b1a-a4fa-fdd85a849a8.html>.

¹⁶² Res. of the Parliament of Geor. on the Peacekeeping Forces Located on the Territory of Geor., Res. N 3483-rs, (July 18, 2006), available at http://www.parliament.ge/index.php?lang_id=ENG&sec_id=98&info_id=13089.

In November 2006, weekly quadripartite meetings between Georgia, Abkhazia, UNOMIG and the CIS peacekeeping force to discuss issues in the conflict zone were suspended following the resignation of the Georgian Coordinator.¹⁶³ Georgia has not appointed a new Coordinator but rather “expressed its reservations about the effectiveness of the existing quadripartite meeting and [] raised the issue of a possible change in its format.”¹⁶⁴ After years of unresolved or “frozen conflict” with Abkhazia, Georgian President Saakashvili told the U.N. “[i]t is a well settled and universally accepted law that Georgia has the sovereign right to request the removal of [Russian] military forces that impede the peaceful resolution to conflict.”¹⁶⁵ Yet, Russian peacekeepers remain in Georgia despite the Georgian Parliament’s resolutions and Saakashvili’s statements to the United Nations. In light of the fact that there are no formal requirements for the withdrawal of consent pursuant to international law, and there is no U.N. resolution requiring the Security Council’s decision to effect a withdrawal, Georgia can argue that Russian peacekeepers remain there in violation of international law.

V. QUESTIONING THE EFFICACY OF U.N. JOINT PEACEKEEPING MISSIONS

Russia’s violations of international law in the Georgia/Abkhazia conflict raise questions about the efficacy of United Nations joint peacekeeping missions. The United Nations defines peacekeeping as “a way to help countries torn by conflict create conditions for sustainable peace.”¹⁶⁶ After the Cold War, there was “a shift toward the acceptance of collective intervention for humanitarian purposes in internal conflicts.”¹⁶⁷ The U.N. Charter authorizes the Security Council to take collective action to maintain international peace and security by authorizing peacekeeping operations.¹⁶⁸ Article 52(1) states:

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action if such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

¹⁶³ *Report of the Secretary General on the Situation in Abkhazia, Georgia*, *supra* note 83, at para. 26.

¹⁶⁴ *Id.*

¹⁶⁵ Paul Taylor, *Georgia Demands Removal of Russian “Peacekeepers,”* REUTERS, Sept. 22, 2006, <http://today.reuters.co.uk/news/CrisesArticle.aspx?storyId=N22174158>.

¹⁶⁶ *U.N. Peacekeeping—FAQ—Meeting New Challenges*, <http://www.un.org/Depts/dpko/dpko/faq/q1.htm> (last visited Oct. 17, 2007).

¹⁶⁷ Binaifer Nowrojee, *Joining Forces: United Nations and Regional Peacekeeping—Lessons from Liberia*, 8 HARV. HUM. RTS. J. 129, 129 (1995).

¹⁶⁸ U.N. Charter art. 42, available at <http://www.un.org/aboutun/charter/chapter7.htm>.

Whether such regional action requires Security Council approval is the subject of great debate.¹⁶⁹ Article 53(1) states, “[n]o enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.” However, it is arguable that Article 52(1) allows regional interventions not authorized by the Security Council so long as they are consistent with “the Purposes and Principles of the [United Nations].”¹⁷⁰ Nevertheless, the legitimacy of unauthorized interventions is often called into question.¹⁷¹

Where direct U.N. involvement is not considered appropriate or feasible, the Security Council may give its authorization to regional or other international organizations or “coalitions of willing countries” to implement certain peacekeeping or peace enforcement functions. Such cooperative arrangements are desirable in that they allow the United Nations to share the diplomatic and economic burden of peacekeeping with other entities.¹⁷² Regional peacekeeping arrangements, however, are not without their drawbacks.¹⁷³ In 1994, U.N. Secretary-General Boutros Boutros-Gali recognized some of the dangers of regional peacekeeping. He said that regional peacekeeping involves problems of (1) command and coordination, (2) simultaneously fielding successful multiple operations by multiple actors, (3) the changing nature of conflict, and (4) the “new regionalism.”¹⁷⁴ While recognizing the possibility for regional peacekeepers to “enhance the effectiveness” of U.N. peacekeeping capacities, Boutros-Gali warned that regional involvement might also carry with it certain dangers, as “[t]hose close to a problem and well equipped to handle it may also be too close to its living historical associations: in short, regional involvement may raise the old fears of regional hegemony and intervention.”¹⁷⁵ These problems plagued the joint peacekeeping initiative of the U.N. Observer Mission in Liberia

¹⁶⁹ See generally Christine Gray, *A Crisis of Legitimacy for the U.N. Collective Security System?*, 56 INT’L & COMP. L.Q. 157, 157 (2007) (stating that the 2003 U.S. invasion of Iraq has challenged the “legitimacy of [the U.N.] collective security system”).

¹⁷⁰ Nowrojee, *supra* note 167, at 131–32.

¹⁷¹ Thomas M. Franck, *Essays in Honor of Oscar Schachter: Humanitarian and Other Intervention*, 43 COLUM. J. TRANSNAT’L L. 321, 325 (2005). Though interventions not authorized by the Security Council may be forgiven later (e.g., ECOWAS in Sierra Leone and NATO in Kosovo). *Id.*

¹⁷² McNeill, *supra* note 3, at 96.

¹⁷³ U.N. peacekeeping operations in general are not without their drawbacks. For example, there were U.N. peacekeeping forces on the ground in Rwanda when genocide took place. William Schabas, *The Genocide Convention at Fifty*, U.S. INST. OF PEACE (Special Report) 41 (Jan. 7, 1999) <http://www.usip.org/pubs/specialreports/sr990107.html>; see also, *Shamed are the Peacekeepers*, ECONOMIST, Apr. 30, 1994, at 15.

¹⁷⁴ Boutros Boutros-Gali, Op-Ed., *Beleaguered are the Peacekeepers*, N.Y. TIMES, Oct. 30, 1994, at E15.

¹⁷⁵ *Id.*

(UNOMIL) and the Economic Community of West African States (ECOWAS) Cease-fire Monitoring Group (ECOMOG), which began in 1993.¹⁷⁶ These same problems plague the joint peacekeeping initiative of the UNOMIG and CIS, where Russia's involvement in the Georgia/Abkhazia conflict is relatively unchecked by the United Nations and has resulted in numerous violations of international law.

Without an effective framework for joint peacekeeping missions, the United Nations entered into a relationship with Russia whereby Russia was privy to U.N. monies, but also able to focus on its own interests, and arguably, perpetuate and prolong the conflict. As mentioned previously, the UNOMIG and CIS mandates are parallel but independent. Furthermore, Russia has been in the lead on issues related to UNOMIG for the duration of its operation.¹⁷⁷ In fact, Russian peacekeepers violated international law by providing weapons and engaging in military action against Georgia and murdering Georgian civilians. Additionally, Russia engaged in practices, such as the preferential distribution of passports to Abkhaz, in contravention of the expectation that peacekeepers are neutral; these and other Russian actions raise significant questions of international law. Finally, Georgia effectively withdrew its consent to Russian peacekeeping. Nonetheless, the joint peacekeeping endeavor continues, and some members of the Security Council have only recently begun to raise questions about the wisdom of allowing Russia to continue in its peacekeeping role.¹⁷⁸

VI. GEORGIA'S POSSIBLE RECOURSE

Georgia has several options for action against Russia. Georgia can "communicate" with the International Criminal Court (ICC), request that the Security Council refer its case to the ICC, request that the Security Council authorize the creation of an *ad hoc* war crimes tribunal, or create its own national tribunal to try those accused of war crimes, etc. Yet, it is unclear which action, if any, would be successful.

While the ICC may exercise jurisdiction over Russian war crimes,¹⁷⁹ its jurisdiction is limited to events taking place after July 1, 2002.¹⁸⁰ The ICC has jurisdiction over war crimes "in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes."¹⁸¹ The ICC has jurisdiction over crimes that took place

¹⁷⁶ See Nowrojee, *supra* note 167, at 130.

¹⁷⁷ *Monthly Forecast, January 2006, supra* note 68.

¹⁷⁸ *Id.*

¹⁷⁹ See SCHABAS, *supra* note 108, at 56.

¹⁸⁰ *Id.*; see generally, Rome Statute of the Int'l Crim. Ct, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

¹⁸¹ SCHABAS, *supra* note 108, at 56.

within the territory of member States, and where the nationals of Member states commit crimes no matter where the crime is committed.

In March 2003, Paata Davitaia, the former Minister of Justice in Abkhazia (pro-Georgian), submitted a “communication” to the ICC alleging that the Abkhazian government administered a regime of ethnic cleansing against ethnic Georgians.¹⁸² Because of the great Russian involvement in the conflict, it is likely that Russia and individual Russians were also implicated in the communication. Davitaia, however, communicated with the ICC as an ordinary citizen, not on behalf of the Georgian government. Upon receipt of the communication, the Prosecutor was required to “analyze the information to determine whether there was a basis to launch an investigation.”¹⁸³ The Prosecutor’s office is unable to initiate an investigation unless it concludes that there is a reasonable basis to proceed¹⁸⁴ and it obtains the Pre-Trial Chamber’s authorization. In August 2004, the Prosecutor’s office stated that it had not decided to investigate the alleged crimes committed in Abkhazia and pointed out that the ICC “is a tool of last instance that may act only when states are unwilling or unable to investigate crimes.”¹⁸⁵ The Prosecutor appeared to require exhaustion of domestic remedies. Nevertheless, this refusal does not entirely close the matter; the Prosecutor may initiate an investigation based on the presentation of new facts or information.¹⁸⁶

Georgia, itself a party to the ICC,¹⁸⁷ may consider complaining against Abkhazia and Russia in the ICC. In deciding whether to investigate Georgia’s communication, the Prosecutor’s analysis will be similar to the analysis of Davitaia’s communication. Georgia’s communication may, however, carry greater weight as:

¹⁸² *Abkhazia: The International Criminal Court looks at Georgian “Genocide,”* UNREPRESENTED NATIONS & PEOPLES ORG., July 20, 2004, <http://www.unpo.org/article.php?id=942>.

¹⁸³ The Office of the Prosecutor, Int’l Crim. Ct., *Update on Communications Received by the Office of the Prosecutor of the ICC*, Feb. 10, 2006, http://www.icc-cpi.int/library/organs/otp/OTP_Update_on_Communications_10_February_2006.pdf.

¹⁸⁴ *Id.* at n. 1. In order to institute an investigation, the Prosecutor must evaluate whether a crime within the jurisdiction of the Court has been committed, gravity of the crimes, complementarity with national proceedings, and interests of justice. *See id.*

¹⁸⁵ *ICC: No Decision Yet on Abkhazian War Crimes*, UNITED NATIONS OBSERVER MISSION IN GEORGIA, Aug. 6, 2005, <http://www.unomig.org/media/headlines/?id=1656&y=2004&m=8&d=6>.

¹⁸⁶ Rome Statute, *supra* note 180, at § 4.

¹⁸⁷ *Id.* at p. 160; *see also International Criminal Court: Georgia*, INT’L CRIM. CT., <http://www.icc-cpi.int/asp/statesparties/country&id=94.html> (last visited Oct. 28, 2007) (On July 18, 1998 Georgia became a signatory to and on Sept. 5, 2003, ratified the Rome Statute.).

Where the Prosecutor receives a referral from the State in which a crime has been committed, the Prosecutor has the advantage of knowing that that State has the political will to provide his Office with all the cooperation within the country that it is required to give under the Statute. Because the State, of its own volition, has requested the exercise of the Court's jurisdiction, the Prosecutor can be confident that the national authorities will assist the investigation, will accord the privileges and immunities necessary for the investigation, and will be anxious to provide if possible and appropriate the necessary level of protection to investigators and witnesses.¹⁸⁸

There are reports that Georgia has, in fact, communicated with the ICC. Such a communication would need to include sufficient documentation of Russian war crimes in order for the Prosecutor to pursue a case against Russia. Yet, the Prosecutor's response to such communications is a matter of speculation at this time. The Prosecutor may again require the exhaustion of domestic remedies. Furthermore, Abkhaz officials say that if Georgia has communicated with the ICC, Abkhazia should have the right to communicate with the ICC, a right it would otherwise not have because of its status as an unrecognized state.¹⁸⁹ Accordingly, if Georgia has not communicated with the ICC, it may hesitate to do so if the ICC will investigate Abkhazian claims against Georgians and the Georgian government. Whether or not Georgia has officially communicated with the ICC, the Georgian government should continue to collect information and evidence documenting Abkhazian and Russian crimes.

A third option is for Georgia to request that the Security Council refer the situation to the ICC. This is unlikely to occur as Russia holds one of the five permanent seats on the Security Council and has veto power. Russia is likely to veto a resolution referring the conflict to the ICC because it opens up the possibility that the Russian government, and Russian citizens engaged in the conflict, might be held criminally liable for their actions.

In the alternative, Georgia could request the formation of an *ad hoc* war crimes tribunal. Yet, the formation of an *ad hoc* tribunal requires Security Council authorization. Once again, it is unlikely that the Security Council would authorize the creation of an *ad hoc* tribunal as Russia holds one of the five permanent seats on the Security Council and the attendant veto power. While the Security Council acknowledged complaints that certain

¹⁸⁸ Office of the Prosecutor, *Annex to the "Paper on some policy issues before the Office of the Prosecutor:" Referrals and Communications*, INT' CRIM. CT., http://www.icc-cpi.int/library/organs/otp/policy_annex_final_210404.pdf (last visited Oct. 28, 2007).

¹⁸⁹ *Abkhazia to Seek Hague Probe into Alleged Georgian War Crimes*, RUSS. & FSU GEN. NEWS, Mar. 22, 2006, 2006 WLNR 4896519. Additionally, the "Abkhaz prosecutor's general office has collected materials from the past twelve years that enumerate" Georgian crimes in Abkhazia. *Id.*

hostilities in the Georgia/Abkhazia conflict amounted to ethnic cleansing and genocide and urged the formation of a joint investigation group,¹⁹⁰ the Security Council resolution did not name Russia as an offender. Certainly, Russia would have exercised its veto power to prevent being named in conjunction with accusations of ethnic cleansing and genocide. It is unclear whether a joint investigation group was, in fact, formed. Accordingly, the Security Council should authorize a group to investigate all accusations of ethnic cleansing, including those against Russian peacekeepers and other Russian nationals. It is likely, however, that Russia will veto any such resolution. If that is the case, Georgia can seek a General Assembly resolution calling for the creation of an *ad hoc* war crimes tribunal. Unfortunately, such a resolution would be non-binding and purely symbolic.

A final option is for Georgia to establish its own domestic tribunal in which to try those accused of war crimes. Such a tribunal, however, would likely face a great deal of criticism and create even more problems in Georgia, as Georgia's legal system is notoriously corrupt and inept.¹⁹¹ Moreover, Georgia should not expect much help from the Abkhaz in investigating or prosecuting any suspected war criminals. Accordingly, Georgia has little in the way of meaningful recourse available against Russia's violations of international law.

It appears that resolution of this issue rests with the Russians. Russia should promote justice by conducting investigations into complaints that certain actions of Russian citizens in the Georgia/Abkhazia conflict have amounted to ethnic cleansing and try offenders in Russian courts. While this does not address the issue of the Russian government's violations of international law, it might go a long way in healing the wounds of some of those injured in the Georgia/Abkhazia conflict. This, however, does not seem likely as Russia/Georgia tensions continue as they have for many years.¹⁹²

VII. CONCLUSIONS

While the CIS peacekeeping force in Abkhazia is U.N.-sanctioned, Russian forces have violated international law, which undermines Russia's

¹⁹⁰ UNOMIG Fact Finding Team, Oct. 7, 2005, *United Nations Observer Mission in Georgia*, <http://www.unomig.org/operations/fft/>.

¹⁹¹ DAVID L. PHILLIPS, STABILITY, SECURITY, AND SOVEREIGNTY IN THE REPUBLIC OF GEORGIA 8 (2004), available at <http://www.cfr.org/content/publications/attachments/Georgia.pdf> (explaining how Georgian courts are subject to political manipulation).

¹⁹² See Anne Applebaum, *What's Going on in Abkhazia*, May 5, 2008, www.slate.com/id/2190651/ (Before last weekend, when the Russian press agency ITAR-TASS declared that the government of Georgia was about to invade Abkhazia, nobody had really thought about Abkhazia at all. As a public service to readers who need a break from the U.S. election campaign, this column is therefore devoted to considering the possibility that Abkhazia could become the starting point of a larger war.).

credibility as a peacekeeper in Georgia. Furthermore, the Russian government has engaged in practices such as the preferential distribution of passports to those of Abkhaz ethnicity, which seemingly undermines Russia's alleged position of neutrality. The Georgia/Abkhazia conflict has dragged on for nearly sixteen years, without conditions suitable for the sizeable return of internally displaced persons to their homes or for a peaceful political settlement. While it is possible that Uzbek peacekeepers will replace the Russian peacekeepers,¹⁹³ Russia should commit not to take unilateral measures.

The future of U.N. peacekeeping as a whole appears to lie with regional organizations.¹⁹⁴ While the United Nations values its peacekeeping partnerships with regional organizations (e.g., NATO, the European Union, the African Union, etc.), the partnership created between the United Nations and Russia in response to the Georgia/Abkhazia conflict has been unsuccessful. The lack of success in this and other U.N. joint peacekeeping endeavors raises doubts about the efficacy of the current framework for U.N. joint peacekeeping.

With "the potential for some 200 inter-ethnic conflicts as well as other conflicts in the former communist lands,"¹⁹⁵ the United Nations should develop a framework for joint peacekeeping missions with Russia, as the probability that Russia will engage in U.N. joint peacekeeping in the region is almost certain. The United Nations should begin to work with Russia now to ensure that when a new conflict arises, there is an existing framework allowing the partnership to quickly enter the region and effectively work towards peace. Such a framework or agreement would require Russia to adhere to U.N. peacekeeping norms, provide for Russian accountability to the United Nations, and ensure that future joint peacekeeping operations actually result in peacekeeping as opposed to blatant violations of international law.

¹⁹³ See *Georgia Considers Replacing Russian Peacekeepers with Ukrainians*, RUSS. & CIS MILITARY DAILY, Feb. 13, 2007, available at 2007 ULNR 2995957 (stating that Georgian Foreign Minister Gela Bezhuashvili seeks to place Russian peacekeepers in Georgia with "more neutral, effective and result-oriented" peacekeepers). See generally *Georgia to Replace Russian Peacekeepers—REGNUM Hot Issues*, REGNUM NEWS AGENCY, <http://www.regnum.ru/englishdossier/33.html> (last visited Oct. 29, 2007) (listing all REGNUM News Agency's news stories covering Georgia's replacement of Russian peacekeepers).

¹⁹⁴ See Nowrojee, *supra* note 167, at 130.

¹⁹⁵ McNeill, *supra* note 3, at 111.