

NORMATIVE DOCTRINAL ANALYSIS OF PEACEKEEPING OPERATIONS IN EUROPE (TRANSNISTRIA, NAGORNO-KARABAKH, GEORGIA, KOSOVO)

Alexandru CAUIA, PhD in law, associate professor (ORCID: 0000-0002-1952-5734)

Naif Jassim ALABDULJABBAR, PhD student (ORCID: 0000-0002-2220-0359)

This article reflects the place and role of the international organizations such as the United Nations and the Organization for Security and Cooperation in Europe in the process of ameliorating the negative effects of hostilities as well as in the process of conflict settlement in Transnistria, Nagorno-Karabakh, Georgia, Kosovo. It also analyzes the normative-legal basis of using the international legal-political instruments for the settlement of conflicts characteristic to the international and regional organizations in Europe.

An important element is the research of the position, mechanisms and legal instruments used by the states involved in the process of mediation or intermediation of the dialogue between the parties affected by the conflict.

Keywords: regional conflicts, peacekeeping missions, peacekeeping operations, UN, OSCE, regional conflicts settlement.

ANALIZA DOCTRINAR-NORMATIVĂ A OPERAȚIUNILOR DE MENȚINERE A PĂCII ÎN EUROPA (TRANSNISTRIA, NAGORNO-KARABAKH, GEORGIA, KOSOVO)

Prezentul articol reflectă locul și rolul organizațiilor internaționale precum Organizația Națiunilor Unite și Organizația pentru Securitate și Cooperare în Europa în procesul de ameliorare a efectelor negative ale ostilităților cât și în procesul de soluționare a conflictelor din Transnistria, Karabahul de Munte, Georgia, Kosovo. De asemenea se analizează baza normativ-legală a utilizării instrumentelor juridico-politice internaționale de soluționare a conflictelor caracteristice organizațiilor internaționale și regionale din Europa.

Un element important îl constituie cercetarea poziției, mecanismelor și instrumentelor juridice utilizate de statele implicate în procesul de mediere sau intermediere a dialogului dintre părțile afectate de conflict.

Cuvinte cheie: conflicte regionale, misiuni de pacificare, operațiuni de menținere a păcii, ONU, OSCE, soluționarea conflictelor regionale..

The most structured typology, in terms of shape and content, that has been implemented also in the ground forces is the one adopted by NATO being the most used at the moment. According to those two documents, the Peace Support Operations (PSOs) “are the multifunctional operations conducted impartially, in support of a UN / OSCE mandate, involving military forces and humanitarian and diplomatic agencies and are intended to ensure for a long-term the political resolution or other conditions specified in the mandate”. The following types of operations fall into this category:

- of Conflict Prevention (Conflict Prevention — CP);
- of Peace Making (Peace Making — PMO);
- of Peacekeeping (Peace Keeping — PKO);
- of Peace Enforcement (Peace Enforcement — PEO);
- of Peace Building (Peace Building — PBO);
- Humanitarian Operations (Humanitarian Operation — HO).¹

The activity of peacekeeping operations is regulated by the series of resolutions adopted by the General Assembly on the basis of the UN Charter. The General Assembly regularly examines the issues related to the peacekeeping operations. By UN Operations we mean the operations undertaken by the competent UN body in accordance with the Charter and conducted under the direction and control of the organization, in two cases:

1. When they are conducted for the purpose of maintaining or restoring the international peace and security.

2. When the Security Council or the General Assembly declared that there is a serious threat to the personnel security participating into the operations. In such case the humanitarian or military operations are carried out.²

As operations, provided for in Chapter VII of the UN Charter, the peacekeeping operations are collective actions that are decided and carried out by the UN bodies. These are operational actions, which pass the groups provided by the Member States and which are under the command of the United Nations General Staff.³

In contrast to the system provided for by the Charter, the peacekeeping operations are not coercive, in other words their mission is only to interpose between the belligerents but without persecuting the aggressor. This mission is strictly defined by the body that creates the peacekeeping operation. In any case, the collapse of the aggressor does not take place, but the recognition of several parties to the conflict.⁴

The concept of peacekeeping operations appears with the Suez crisis of 1956. The Security Council was paralyzed by the double veto of France and the United Kingdom. To justify the new operation formula, unforeseen in Chapters VI and VII, the UN General Secretary Dag Hammarskjöld referred to a chapter “VI bis” or “VI and a half”. The applying such an operation involves the consent of the belligerents. The references made to the title of Chapter VII allow, in the opinion of some authors, to impose the coercive measures in the absence of the parties agreement.⁵

1 M. Mandru, *The world between the cold war and the hot peace*, Bucharest, Expert Publishing, 2000, page 35.

2 Lukashuk I.I. *International law*. Particular part. Moscow Walters Clover, 2005, p. 292–295

3 Balan O., Burian A., Suceveanu N., *International Public Law*, 3rd edition (revised and added), Chisinau: 2009, p. 602. 649 p.

4 Roche C. L. *Basics of public international law and international relations law*, 2nd edition, Paris: Gualino, 2003 p. 113

5 Petit Y. *International peacekeeping law*. L.G.D.J. Paris. 2000, p.7

Characterizing the peacekeeping operations, we also propose a classification of these operations functions:

- military — the monitoring the ceasefire process, the demobilizing the forces, the identifying and destroying the weapons, the demining, reorganizing and re-profiling the armed forces, the borders protection, the examining the complaints on the presence of foreign armed forces, the ensuring the security during the elections and helping to restore the infrastructure;
- police — the visiting the police sectors, the monitoring the police activity, the examining the complaints on human rights violations by the national police, the preparing new police formations; the contributing to the arrest of suspected criminals and the participation in ensuring the electoral process;
- human rights — the monitoring the observance of human rights; the organization of educational programs and the investigation of human rights violations;
- informational — the familiarizing the issues related to the peaceful regulation of the causes of UN involvement and the possibilities from the point of view of the country's future;
- electoral — UN participation can range from a simple participation and verification of elections in a specific country to the organization and conducting the elections by the UN;
- restoring — the UN contributed to the restoring the statehood through short-term or long-term development processes;
- repatriation — UN has organized the return and the placement of hundreds of thousands of refugees;
- administration — the monitoring the actions taken by the authorities in the states where the peacekeeping operations are carried out.

The provisional body in Cambodia, for example, was mandated to carry out the control of actions in the field of foreign policy, national defense, public security, finance and public information in order to establish and maintain a neutral political atmosphere within the preparing the elections.⁶

Transnistria

In early 1992 while the pressure between a separatist group and the constitutional government of Moldova continued, the Separatist leader Igor Smirnov launched a “harassment campaign” to force the police officers to leave the east of the country.⁷

The illegal separatist forces were augmented in the spring of 1992 with the arrival of the Cossacks and other mercenaries or volunteers from other parts of the

6 Zaemskii V.F. *UN and peacekeeping. Lectures course*. Moscow: International Relations, 2008, pages 19–20.

7 New York City Bar Association's Report "Defrosting an Frozen Conflict: the legal aspects of the separatist crisis in Moldova", p.14.

Soviet Union. According to the data presented in the Report “the Cossacks and other volunteers were remunerated by the state, receiving 3,000 rubles per month”,⁸ which can be considered as direct involvement in the internal affairs of another state.

According to the information presented within the ECHR hearings, on December 3rd, 1991 the 14th Army occupied the cities of Grigoriopol, Dubasari, Slobozia, Tiraspol and Ribnita, all in the Transnistrian region.⁹

Thus, we are in front of an armed occupation, on the conditions that on August 27th, 1991 the Republic of Moldova became a subject of international law. In such conditions, if the constitutional authorities of Republic of Moldova had introduced its forces in the region, there was a danger of an armed conflict with international character. We note that the challenges continued, in particular we refer to those of March 2nd, 1992, the day when the Republic of Moldova becomes a member of the UN.

The numerous challenges, including bloody ones, that took place both to the police and to the civilians, in 1990—1991, should be mentioned here. Subsequently, immediately after the signing on April 1st, 1992 by the President of the Russian Federation of the decree no. 320 based on which the units of the 14th army from the territory of the Republic of Moldova were declared a component part of the Russian Armed Forces under the new name “Operative Group of the Russian Forces (OGRF) in the Transnistrian region of the Republic of Moldova”, the commander of this operative group, on April 02nd, 1992 has submitted to the Moldavian authorities an ultimatum, demanding the withdrawal of the Moldavian forces near the city of Tighina / Bender, while declaring that the OGRF units are ready to “respond” in case of non-fulfillment of the requirements. And, on April 5th, 1992, in the city of Tiraspol, appeared the Vice President of the Russian Federation, who openly advocated “the sovereignty and independence of the Transnistrian people”.

The tensions gradually escalated to a real conflict in the summer of 1992, when the number of victims rose to 1,000. The 14th Army intervened on the part of the illegal paramilitary forces and, largely due to the intervention and position of the 14th Army, the constitutional structures of Moldova failed to take control over the cities of Bender and Dubasari.² Accepting the armistice on July 21st, 1992, the Republic of Moldova signed with the Russian Federation “Agreement on the principles of peaceful settlement of the armed conflict in the Dniester area of the Republic of Moldova”. The negative effects of this conflict were mentioned by various experts, including under the rule of law.¹⁰

The realities of today dictate the necessity of matching the new demands of the peace process. Here are some basic ideas and criteria that the UN Secretariat conducts in its day-to-day work, although they are not embodied in any formal instruction.

8 New York City Bar Association’s Report „*Defrosting an Frozen Conflict: the legal aspects of the separatist crisis in Moldova*”, p.16.

9 European Court of Human Rights. *Ilascu and Others v. Moldova and Russia*, 2004, par. 53.

10 Kovrig Andrei. *Missing persons and their families*. Chisinau. 2009, p.27–55.

1. The PMO must be able to visibly change the lives of the people in the territory of the mission activity from the very first stages of its conducting. The mission leader must have the right to use a small part of the mission funds in “projects that produce short-term effects”, the purpose of which is the real raising of the quality of life, thus contributing to a confidence towards the new mission.
2. “Free and fair” elections should be viewed as part of greater efforts in order to strengthen the governing bodies. The elections must be supported by a broad process of democratization and civil society formation, which includes the effective civil governance and a respect culture for fundamental human rights, in order not to create the impression that the elections were merely a means of confirming the tyranny of the majority and that their results should not be annulled by force after the end of the peace operation.
3. UN civil police observers cannot be considered the peacekeepers if they by their presence only try to avoid certain illegal actions of the local police officers or only register such actions. Today, the objectives that are set before a peacekeeping mission dictate that the civil police must have the goals, such as: reforming, rendering local police services in accordance with the standards of democratic police activity and human rights, in addition the civil police must possess a potential for effective reaction following the sporadic manifestations, as well as a potential for legitimate defense.
4. The human rights component that is part of any PMO is, in fact, a very important one for a process of restoring the effective peace. The UN human rights collaborators can play an important role, for example, in contributing to the achievement of a general national reconciliation program.
5. The disarmament, the demobilization and the reintegration of former combatants is one of the main means contributing to the strengthening of post-conflict stability, including to the minimizing the danger of conflict re-starting. Thanks to this fact, the process of restoring the peace brings the direct contribution to the social security and the right order ensuring. However, the main purpose of disarmament, demobilization and reintegration cannot be achieved if these three elements are not implemented simultaneously.

The demobilized combatants will do their best to return to the path of violence, if they do not find the legal means of existence, in other words, if they are not “re-integrated” into the local economy. At the same time, the reintegrationist element of demobilization and reintegration is financed on a voluntary basis, that’s why the financial means for these purposes often do not even cover the needs. The path to full normalization of life in a society that has gone through a conflict is expressly followed by applying the measures for national reconciliation that must be met by all the participants in the conflict.¹¹

11 Zaemskii V.F. *UN and peacekeeping. Lectures course*. Moscow: International Relations, 2008, pages 169–171.

Despite the fact that the armed forces of the Russian Federation cannot be considered the occupation forces in the strict sense of this term as interpreted by this institute of public international law, certain criteria allow us to note that the presence of the armed forces of the Russian Federation in the territory of the Republic of Moldova has exceeded any legal argument, not talking about the moral side of this issue.

Examples given — The Report of the American Bar Association in 2005 and the Ilascu case examined by the ECHR allow us to find that Russia is directly involved in this conflict, a fact confirmed by the Ceasefire Agreement signed by the Republic of Moldova and the Russian Federation on July 21st, 1992. In turn, the ensuring the security of the administrative border with the “Transnistrian” region can take place by introducing the effective control posts, but which, in their turn, requires additional argumentation, including from the point of view of international law, whether it is under Occupation regime, either controlled by the insurgents.

Under such conditions, the revision of the provisions of the Agreement may also be argued by the doctrine of *rebus sic stantibus*, which argues that the unilateral refusal of a treaty may occur as a result of the essential changes in the conditions. The state of affairs during 22 years, including the effects of presence of the armed forces of the Russian Federation and the critical situation in Ukraine, especially with the armed intervention of the Russian Federation on the territory of this state (thus two states involved in the settlement process of the “Transnistrian conflict” is *de facto* in war condition), makes the doctrine in question quite current.¹²

Nagorno–Karabakh

The present stage of the Nagorno–Karabakh problem has its origins since the last years of the existence of the USSR and has become a conflict as a result of use of force by Azerbaijan in response to the Nagorno–Karabakh people’s right execution to self-determination. The Nagorno–Karabakh conflict is different from the other conflicts that arose in the territory of the former Soviet Union, because from a legal point of view, the Karabakh clan had impeccably exercised their right to self-determination until the collapse of the Soviet Union.

The Karabakh conflict was the bloodiest conflict in the post-Soviet space — with tens of thousands dead, hundreds of thousands of refugees and a great destruction. The military phase of the conflict ended in May 1994 with an unlimited armistice in time.

Three out of five countries are permanent members of the UN Security Council — Russia, USA and France — are intermediaries in the process of negotiating the Nagorno–Karabakh issue.¹³

12 Gamurari V. *The status of peacekeeping forces in international law: The case of Republic of Moldova*. Study within the project “Strengthening the human rights compliance in the Transnistrian region of the Republic of Moldova”. Chisinau, 2016. P.40 (from 41 dep.)

13 Kotcharian Chavarche. *Why is the Nagorno–Karabakh conflict still not settled? // Crisis prevention and peace promotion (volume III). The determinants of conflicts and new forms of prevention / Ed. J.–P. Vettovaglia. Bruylant, 2013. P. 569–593*

The Nagorno–Karabakh conflict is one of the unsolved conflicts between the two states in the South Caucasus region. This conflict is the result of the Armenian–Azerbaijani conflict of the end of the 20th century and the beginning of the 21st century. Both states — Armenia and Azerbaijan — using historical facts, are trying to justify their right to Nagorno–Karabakh.

Azerbaijani and Armenian historians have made nationalist demands based on historical and religious memory, and both sides, using historical facts, are trying to justify the claims relating the region.¹⁴

The first attempt to settle the Nagorno–Karabakh conflict in 1991 was then made by the Russian President B. Eltin and the President of Kazakhstan N. Nazarbayev.

The proposed conditions were: the ceasefire, the new elections, the return of refugees and the creation of a state in Nagorno–Karabakh. In August 1992, N. Nazarbayev made another attempt. But this attempt was unsuccessful, as the Armenian side accused Nazarbayev for supporting the territorial integrity and pleaded for the preservation of borders.¹⁵

Following the first attempts of negotiations related to the Nagorno–Karabakh conflict, the international organizations also paid special attention to it. Since 1992, when the post–Soviet states joined the OSCE, a mediation process was initiated to settle the conflict within the CSCE (under the name “Minsk Group”).

At a meeting of the CSCE Council of Ministers on March 24th, 1992, in Helsinki, it was decided to convene a conference on Nagorno–Karabakh in Minsk, under the auspices of CSCE, as a permanent forum for peaceful settlement of the crisis based on concrete principles, commitments and provisions.¹⁶

The first negotiations took place in Rome on May 31st, 1992 and consisted of several stages, and until then, on May 8th, 1992, the Armenian armed forces occupied Shusha, captured the entire Nagorno–Karabakh and deported 50 thousand people from the Azerbaijani population.

The negotiations in Rome were not successful, because the Armenian side, in violation of the Helsinki agreement of 1992, submitted a request requesting the participation in the negotiations process equally with other states participating in the Minsk Conference of the Armenian representatives from Nagorno–Karabakh.

At the same time, the Armenian side did not agree with the new variations of proposals, which, of course, caused discontent on the part of Azerbaijan. As a result, the “package approach” did not fulfill its task.¹⁷

14 Guney O. *Nagorno–Karabakh Problem: Claim, Counterclaims and impasse*. International Strategic Research Organization. Cilt 1. 2006. No 1. 118–137.

15 Ismailzade F. *The OSCE Minsk Group and the Failure of Negotiations in the Nagorno–Karabakh Conflict*. Caspian Brief. 2002.No 23. April. P. 93

16 Mammadov Ilgar Mahat, MusaevTofik Fuad. *The Armenian–Azerbaijani conflict: history, law, mediation*. 2nd ed. Tula: Grif and Co., 2007. P. 115.

17 Ismailzade F. *The OSCE Minsk Group and the Failure of Negotiations in the Nagorno–Karabakh Conflict*. Caspian Brief. 2002. No 23. April. P. 95

In November 1998, an approach called the “Common State” was presented. Based on this, Nagorno–Karabakh should become a state and a territorial entity in the form of a republic and to form a common state with Azerbaijan within its internationally recognized borders.

Azerbaijan immediately opposed this proposal because it feared that this approach would violate its sovereignty and territorial integrity. The concept of a common state is the last proposal of the Minsk group co–presidents and then the solution of the Nagorno–Karabakh issue has been blocked.¹⁸

Following the elections in Azerbaijan and Armenia, starting with 2004, in the “Prague process” at four meetings of the foreign ministers of these two countries all the mechanisms for a future solution have been systematically developed.¹⁹

Moreover, despite the optimistic atmosphere of the negotiations, the separatists organized a referendum for the adoption of their own Constitution on December 10th, 2006. It is stated in the text of the Constitution that Nagorno–Karabakh is an independent, sovereign, democratic, secular and lawful state.

The Russian–Georgian conflict from 2008 affected the adjacent conflict areas in the South Caucasus. In September 2008, the President D. Medvedev announced that the Caucasus region for Russia — is an area of major interest.²⁰

This position can be systematically observed and ascertained in everything called the political discourse on the segment of strategic interest of the Russian Federation in this area even at the end of the second decade of the 21st century.

The Nagorno–Karabakh conflict still holds a significant place in the foreign policy of Armenia, Azerbaijan and regional powers such as Russia and Turkey. In this conflict, the UN and the OSCE have repeatedly demonstrated their willingness to settle the crisis. But despite all the attempts, unfortunately, the conflict between Azerbaijan and Armenia continues.

Thus, both peoples in their subconscious associate the Karabakh land with their history and culture. The second obstacle is the non–constructive position of the states and international organizations outside the South Caucasus region.

One participant in conflict settlement is the Council of Europe. The Committee of Ministers of the Council of Europe of March 1992 stated that the process of overcoming the Nagorno–Karabakh crisis should be based on the rule of law, democracy, human rights, observance of guarantees of the minorities rights and observance of inviolability of all borders that can only be changed peacefully and by mutual agreement.²¹

18 B. Oflaz. *The Role of International Organizations for Solving the Problem of Nagorno–Karabakh*. 191.

19 OSCE *Twelfth meeting of the Council of Ministers*. Sofia, December 6–7th, 2004. Statement on the Nagorno–Karabakh Conflict. OSCE website: http://www.osce.org/documents/mcs/2005/02/4307_ru.pdf

20 B. Oflaz. *The Role of International Organizations for Solving the Problem of Nagorno–Karabakh*. 192.

21 Mammadov Ilgar Mahat, MusaevTofik Fuad. *The Armenian–Azerbaijani conflict: history, law, mediation*. 2nd ed. Tula: Grif and Co, 2007. p. 106.

In order to settle the conflict, perhaps the biggest contribution was made by the OSCE or, more properly, the “Minsk Group”, which has long been involved in solving the conflict and the important principles have been established such as: maintaining the territorial integrity of Armenia and Azerbaijan, the legal statute of Nagorno–Karabakh and the ensuring the security of Nagorno–Karabakh and its entire population. Although we accept the importance of the presented principles it is nevertheless worth noting the inadequacy of the actions to implement these principles. The “Minsk Group” tried to solve the problem on the basis of international law, but at the same time it was unable to take into account the specific requirements of both peoples.²²

Regarding the individual attempts of the world powers they have not even produced positive results. As with other conflicts in the world, all parties tried to promote their positions.

The mediators have defended their interests or tried to maintain their position on the international arena. In this respect, the mediating countries are, among other things, under pressure from each other and must constantly coordinate their interests with the partners in the negotiation process, instead of undertaking solutions already developed or accepted in the case of other similar international conflicts.²³

This fierce conflict has a strong influence not only on the foreign policy of Armenia and Azerbaijan, but also on the foreign policy of Russia and Turkey.

The conflict is based on the mutually exclusive claims of both countries regarding Nagorno–Karabakh. The acute situation in Nagorno–Karabakh forced the mediators such as the UN and the OSCE to take part in it. The attempts of the conflict settlement have somewhat diminished the severity of the conflict, but they have not been able to fully settle it. Moreover, during the negotiation processes, it became clear that the domestic political situation in Azerbaijan and Armenia plays an active role in the conflict settlement. Nagorno–Karabakh for societies in both countries has already become a part of daily life, provoking strong emotional feelings of both Armenians and Azerbaijanis. Due to the mutually exclusive positions of the parties and the strong general emotional tension, the conflict settlement negotiations have reached a deadlock. It should be noted that the intermediary states and the international organizations are insecure in Nagorno–Karabakh issue because of their conflicting interests presence.²⁴

Georgia

In accordance with the Sochi agreement of 1992, the joint peacekeeping forces operated in South Ossetia.²⁵ The peacekeepers, while remaining neutral and not

22 B. Oflaz. *The Role of International Organizations for Solving the Problem of Nagorno-Karabakh*. 192–194.

23 Tranca O. *What Causes Ethnic Conflict Diffusion? A Study of Conflicts in Azerbaijan and Macedonia*, *Journal of Peace*. Conflict & Development Issue 12. Laval University. Canada. May 2008.

24 B. Oflaz. *The Role of International Organizations for Solving the Problem of Nagorno-Karabakh*. 195

25 Agreement on the principles for the settlement of the Georgian–Ossetian conflict. Sochi, June 24th, 1992

participating in hostilities, are considered civilians and must be protected from attacks.²⁶ In some cases, it may be necessary to resort to force, but this should be strictly limited to self-defense interests or the protection of civilian objects, which they are required to protect in accordance with their mandate. The force used in such cases must strictly comply with these objectives.

The attacks on peacekeepers who do not participate in hostilities represent a serious violation of international humanitarian law and a war crime. If the peacekeepers cease to maintain the neutrality, helping, for example, the armed forces of either party or they open hostile fire, they lose their status as protected persons and may serve as the target of a legitimate attack. However, such an attack must be carried out in compliance with the requirements of humanitarian law regarding the war means and methods and the treatment of enemy combatants. The peacekeepers who use their status to carry out the attacks act treacherously, which is a serious violation of humanitarian law.

In the period 1993–2009 the United Nations and the Organization for Security and Cooperation in Europe had an active presence in the region which also includes the monitoring of human rights compliance.

During 2006–2011, a special representative of the European Union was in charge on the investigation of security incidents in the South Caucasus area. His mandate also included the active involvement in the conflict settlement process. At the end of 2008 and the beginning of 2009 the Russian Federation managed to suspend the activity of the OSCE Mission in Georgia and the Observation Mission in Georgia. In February 2011 the European Union terminated the mandate of its special representative in this area.

All, the UN, the OSCE and the European Union continue to send high-level delegations to the region for monitoring the situation, but none have officially extended their mandate on the monitoring segment of human rights observance. Thus we can find a consistent gap in this field.

Since 1993, when it was established the UN mission of monitoring and plenary involvement in the process of political settlement of the Georgian–Abkhazian conflict, the United Nations was the main international mediator. The function of the mission was to monitor the cases of breach of the ceasefire agreement and to report to the UN General Secretary.²⁷

Since 1994 the mandate of the mission also included the monitoring of compliance with the ceasefire agreement that was signed in Moscow in the same year, based on which the collective peacekeeping forces of the Commonwealth of Independent States were deployed in the area.

Every half year, the United Nations Security Council analyzes the General Secretary's report on the situation in Abkhazia and extends the mission's mandate for the

26 ICRC, *Customary International Humanitarian Law*, rule 33.

27 UNSC Resolution 858 (1993) of August 24th, 1993, S/RES/858 (1993).

next six months. The report included a description of the negotiation process as well as the situation in the area. The mission was terminated in 2009 after the Russian Federation made use of veto right on the proposal to extend the mission's mandate.

In 1996, a structure was created within UNOMIG to monitor the human rights compliance in Sukhumi consisting of OSCE employees and the Office of the United Nations High Commissioner for Human Rights.²⁸

The mandate also included the protection functions, including the collection of information from victims and witnesses and the collection of individual complaints regarding the procedural violations, impunity, maltreatment of prisoners, forced disappearances, violations of property rights, etc. The department also dealt with technical assistance and the information of beneficiaries on their rights.²⁹

The establishing of a branch of this representative office in Gali to work with the returning Georgian residents has always been blocked by the Abkhazian side, despite the repeated calls of the Security Council.³⁰ In 2003, to the UNOMIG component, a civilian police component was added³¹, designed to assist the local law enforcement bodies in the fight against crime. Although it was planned to place the civilian police forces on both the Abkhazian and Georgian sides, the Abkhazian authorities did not consent to direct them to the Gali district.³²

However, after the forced departure of UNOMIG from Abkhazia, this region remains without sufficient monitoring and public reflection on the human rights situation.³³

The securing the right of return has been and remains a key element of all efforts to settle the conflict. The General Assembly adopted a series of resolutions recognizing the right of all displaced persons to return to Abkhazia.³⁴

The Office of the United Nations High Commissioner for Refugees, which maintains a presence in the region, is the leading international organization that facilitates the

28 UNSC Resolution 1077(1996) October 22nd, 1996 , S/RES/1077 (1996)

29 Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin — Addendum, Mission to Georgia. December 21–24, 2005, E/CN.4/2006/71/Add.7, March 24, 2006, para. 24.

30 UN Security Council Resolutions 1615(2005) DD July 29th, 2005, S/RES/1615 (2005); 1582(2005) DD January 28th, 2005, S/RES/1582 (2005); 1554(2004) DD July 29th, 2004 S/RES/1554 (2004); 1524(2004) DD January 30th, 2004, S/RES/1524 (2004); 1494(2003) DD July 30th, 2003, S/RES/1494 (2003).

31 UN Security Council Resolution 1494(2003) DD July 30th, 2003, S/RES/1494 (2003).

32 Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin — Addendum, Mission to Georgia. December 21–24, 2005, E/CN.4/2006/71/Add.7, March 24th, 2006, para. 25.

33 Council of Europe / Commissioner for Human Rights, Report on Human Rights Issues Following the August 2008 Armed Conflict in Georgia, CommDH(2010)40, October 7th, 2010, http://www.coe.int/t/commissioner/WCD/visitreportsbycountry_en.asp#, sec. 2.6.

34 UNGA Resolution 64/296 of September 7th, 2010 on the situation of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region / South Ossetia, Georgia”, A /RES/64/296.

return of displaced persons to Abkhazia. UNHCR operates on both sides and has offices in Zugdidi and Gali. Its activities include the restoring the housing and infrastructure, the providing the shelter for displaced persons, the schools repairing, the supporting the employment programs and the assisting other humanitarian organizations.³⁵

Any changes to the Moscow and Sochi agreements that govern the peacekeeping in Abkhazia and South Ossetia and correspondingly the conducting the new peacekeeping mission would require a UN Security Council resolution. Georgia officially left the CIS led by Moscow, questioning the presence of any Russian peacekeeping force in Georgia, under the auspices of the CIS. A UN Security Council resolution may empower a traditional UN mission or may mandate another organization, such as the EU or the OSCE. In order to answer the question which organization is most appropriate for the implementation of this mission and what should be the format of the mission, it must start with the preparing for immediate actions. However, there are many more objective obstacles. The Russia's dominance in the dividing territories, from a military, political and economic point of view, is so great that it would be very difficult to convince Moscow to accept any kind of control over its actions. In order to implement the peacekeeping mission the Russia's full agreement is needed. Moscow believes that with its operations in Georgia the certain important strategic interests are ensured, including the protection of its citizens rights, the resistance to NATO expansion, demanding for itself a suitable place among the great powers. The Western states have an effect they could use if Russia demonstrated too much intransigence.³⁶

By 2006, the European Union has become the largest donor of financing projects in order to improve the living conditions of people affected by the conflict and to create the conditions for the return of displaced persons.³⁷ From political point of view, a notable event was the appointment in July 2003 of the EU Special Representative for the South Caucasus, whose mandate included "facilitation of conflicts settlement and ... facilitation of implementation of such settlement in close cooperation with the UN and the OSCE."³⁸

After the Russian-Georgian war in August 2008, Brussels appointed Pierre Morel, a separate representative for crisis managing in Georgia. The commission of Peter Semneby ended in February 2011.

35 UN High Commissioner for Refugees, "UNHCR Hopes to Improve Conditions For Returnees to Abkhazia in 2009," October 22nd, 2008, <http://www.unhcr.org/print/48ff51084.html>; European Union / Delegation to Georgia, "Overview of EC Assistance to People Affected by the Conflict in Georgia," December 2010, http://ec.europa.eu/delegations/georgia/documents/projects/overview_post_conflict_ec_assistance_dec2010_en.pdf, p. 4.

36 Russia vs. Georgia: consequences. Report No. 195 Europe, August 22nd, 2008, p. 5. <https://www.refworld.org.ru/pdfid/545cb9474.pdf>

37 Delegation of the European Union to Georgia, "*Conflict Resolution — Support to Conflict-Afflicted Persons*," http://ec.europa.eu/delegations/georgia/projects/overview/conflict_resolution/index_en.htm.

38 Article 3 (d), Council Joint Action 2006/121/CFSP [OJ L 49, 21.2.2006, p.15].

Following the Russian–Georgian War of August 2008, the EU Observation Mission (EUMM) was conducted in Georgia, consisting of over 200 unarmed civilian observers, asked to monitor the compliance with the peace agreements reached through EU mediation.

The main task of the EUMM is to prevent a new armed conflict and to promote the safety of residents in border areas. The mandate of the mission extends throughout Georgia up to the internationally recognized borders, but neither the authorities in Abkhazia nor South Ossetia allow to the observers to enter their territory. At the same time, the EUMM participates in regular meetings of the parties' representatives in Gali, as part of a common mechanism for prevention and response to incidents.

The EU Delegation in Georgia has been working in Tbilisi since 1995 and has implemented a number of programs in the Gali district. As part of its mandate, this delegation supports the humanitarian, economic and civilian projects implemented by a number of international and local organizations in Georgia, as well as in South Ossetia and Abkhazia. The European Commission's financial assistance, which is provided under the "European Neighborhood" policy, includes 4 million euro to support the restoration of housing and infrastructure and other projects for the development of communal housing and services in Gali and western Georgia, which are implemented by UNHCR, the UN Development Program and several non-governmental organizations.³⁹

The EU believes that a new resolution is needed to ensure the legitimacy of the larger role that the EU intends to play — including perhaps the conducting the ESDP mission. Russia states, however, that such a resolution is not advisable and in fact exerts pressure on the EU and the USA to negotiate in exchange for a item on the territorial integrity of certain concessions on the participation of international peace packages or the mechanism of monitoring.

The OSCE Mission in Georgia was launched in 1992 with a broad mandate that included the issues of democratization. It did not participate directly in the settlement of the Georgia–Abkhazia conflict, but played a prominent role in the negotiation process in South Ossetia. It has already been mentioned above that the OSCE participated in the works of the Human Rights Office of Sukhumi within UNOMIG, as well as in the evaluation mission in Gali district in November 2000.⁴⁰

The peace agreement signed on August 15th–16th, 2008 is extremely short: "(1). Do not use force. (2) Permanently stop all military operations. (3) Free access to humanitarian aid. (4) The armed forces of Georgia return to their places of permanent displacement. (5) The armed forces of the Russian Federation are brought on the line preceding the outbreak of hostilities before the creation of international

39 European Union / Delegation to Georgia, "Overview of EC Assistance to People Affected by the Conflict in Georgia" December 2010, http://ec.europa.eu/delegations/georgia/documents/projects/overview_post_conflict_ec_assistance_dec2010_en.pdf, pp. 4–5.

40 UNOMIG, *Report of the Joint Assessment Mission to the Gali District*, November 20–24, 2000, p. 4

mechanisms, the Russian peacekeeping forces take additional security measures. (6) An international discussion begins on the issues related to the future status of South Ossetia and Abkhazia and on how to ensure their long-term security.”

In his letter sent on August 16th, the President Sarkozy clarifies that the fifth paragraph means that such “security measures” can only be applied in an area of several kilometers deep from the administrative border between South Ossetia and the rest of Georgia, so that any major urban center, including Gori not be affected; he requested actions to ensure the freedom of movement on all Georgia highways and railways; he stated that “these additional security measures” will consist of Russian peacekeepers patrolling “at the levels established by the existing agreements and the remaining Russian forces will withdraw to their positions by August 7th”; and he concluded that all these measures are temporary pending to the establishing an international mechanism as soon as possible, the characteristics of which are already discussed in the OSCE, the EU and, in particular in the UN.⁴¹

In December 2008, Russia blocked the mandate extension of the OSCE’s mission, referring to the changing the realities on the spot, but the OSCE continues to participate in the Geneva discussions on security and stability in the Caucasus and the common mechanism for preventing and responding to incidents in Abkhazia.

In February 2010, the OSCE High Commissioner for National Minorities Knut Vollebaek visited Gali, Sukhumi and Tbilisi. He personally raised the issue of pressure on the Georgian population from Abkhazia to the Abkhaz authorities and said that the closure of the Abkhazia border has created unreasonable obstacles for those wishing to maintain the relationship with their relatives from Georgia and to receive medical assistance there.⁴²

In 2009 — 2010 Georgia was visited four times by EC Commissioner for Human Rights Thomas Hammarberg. In a report published in October 2010, he requested the compliance with the right of displaced persons to return (including support), to protect the population from war explosive remnants (mine guards), to improve the security situation in high-voltage areas and to refuse the holding and imprisonment for border crossing, as well as to ensure the free access for all organizations to the international organizations and human rights observers. The Commissioner also criticized the forced termination of the OSCE mission in Georgia and UNOMIG.⁴³ The Commissioner also addressed the issues with which those who have returned to Gali district faced with in a previous report in 2009. Then it was about security,

41 Russia vs. Georgia: consequences. Report No. 195 Europe, August 22nd, 2008, p. 5. <https://www.refworld.org.ru/pdfid/545cb9474.pdf>

42 “OSCE Commissioner on Georgians in Gali,” Civil Georgia, April 14, 2009, <http://www.civil.ge/eng/article.php?id=20730>; Organization for Security and Co-Operation in Europe, Annual Report 2009, <http://www.osce.org/secretariat/67759>, p. 80.

43 Council of Europe / Commissioner for Human Rights, Report on Human Rights Issues Following the August 2008 Armed Conflict in Georgia (2010), CommDH(2010)40, October 7th, 2010, http://www.coe.int/t/commissioner/WCD/visitreportsbycountry_en.asp#.

freedom of movement, passports, restriction of teaching in Georgian language, as well as the need to maintain an international presence in the region.⁴⁴

In April 2010, a report of the European Commission for Combating Racism and Intolerance was published, expressing the concern about the limited teaching of Georgian language in schools of Gali district.⁴⁵

The official position of Georgia at that time is reflected in the letter of the permanent representative of this state to the UN. “In an attempt to support de jure the recognition of Georgia’s territorial integrity violation, Russia unilaterally has blocked the OSCE Mission in Georgia and vetoed the Security Council, ending the UNOMIG’s 16-year presence. Acting in this way, Russia isolated itself on the international arena and, at the same time, was not in a position to undermine Georgia’s sovereignty, to ensure the complication of its territorial integrity, or to obtain the support for its aggression and military occupation.”⁴⁶

In October 2008, shortly after the Russian–Georgian war in August, the Georgian parliament adopted the Law on the Occupied Territories, which introduced the restrictions on travel with Abkhazia and South Ossetia and on economic activity in these regions. In particular, the third-country nationals have permission only to enter from Georgia and the economic activities are prohibited, “if such activity, in accordance with Georgian law, requires obtaining an appropriate license or permission, authorization or registration or approval.”²³⁴ ⁴⁷ In reality, these norms are largely symbolic, as Tbilisi does not control the Abkhazian border on the Russian side.

A number of aspects of this law have been criticized by the Venice Commission of the Council of Europe, including the incrimination of illegal entry and unauthorized economic activity.⁴⁸ Local and international NGOs wishing to work in Abkhazia must obtain Tbilisi’s prior consent. This applies equally to the international organizations such as the United Nations Development Program.

Local and international organizations are concerned about the possibility of state

44 Council of Europe / Commissioner for Human Rights, Report on Human Rights Issues Following the August 2008 Armed Conflict (2009), CommDH(2009)22, May 15, 2009, <http://www.unhcr.org/refworld/docid/4a0d1e6f2.html>.

45 Council of Europe / European Commission on Racism and Intolerance, ECRI Report on Georgia, CRI(2010)17, April 28th, 2010, <http://www.cpt.coe.int/documents/geo/2009-38-inf-eng.pdf>, p. 32.

46 <https://undocs.org/pdf?symbol=ru/A/63/953>

47 Law of Georgia “On Occupied Territories” of October 23rd, 2008, article 6. Entry into Abkhazia is considered permitted only from Zugdidi side. In special cases a special permission may be issued to enter the occupied territories, if the specified serves the state interests of Georgia, to peaceful conflict settlement, to de-occupation or to humanitarian purposes (Article 4). Cit. by: <http://www.travelgeorgia.ru/147>.

48 European Commission For Democracy Through Law (Venice Commission), “Opinion On the Law on Occupied Territories of Georgia”, Adopted by the Venice Commission at its 78th Plenary Session, Venice March 13–14, 2009, <http://www.venice.coe.int/docs/2009/CDL-AD%282009%29015-e.pdf>.

interference in their activities in Abkhazia and South Ossetia. 240⁴⁹ Up to the present Tbilisi has granted the permission to all organizations and agencies requesting it, but the Georgian authorities still have the theoretical capacity to use legal reasons in order to restrict the activity of international organizations in the conflict regions, but this cannot cause concern.

The main responsibility for punishing those responsible for the most serious international crimes and the solving the broader problems of community reconciliation lies with both Moscow and Tbilisi, in particular to stop the new spiral of hatred that may divide the future generations of Georgians, Ossetians, Abkhazians and Russians. But the International Criminal Court (ICC) can also play a useful role. Georgia is a State party to the Statute of the Roman Court and provides the ICC the competence to investigate and prosecute the perpetrators of genocide, war crimes and crimes against the humanity committed by citizens of Georgia or other countries in Georgia. The Russia is not a party to the statute, but its citizens can be prosecuted for crimes committed in Georgia. The ICC Prosecutor's Office has already confirmed that "it is studying in detail all the information about the situation in Georgia, starting with the outbreak of violence in South Ossetia in early August" and especially is studying "the information attesting the acts of violence against the civilians".⁵⁰

After Russia, the independence of Abkhazia was recognized by Nicaragua, Venezuela and Nauru. From the point of view of international law, Abkhazia remains an unrecognized state. In any case, since they effectively control the territory of Abkhazia, the current Abkhazian authorities are responsible for ensuring the human rights guarantees over it. As Georgia's obligations under international human rights treaties continue to apply to Abkhazia and the Abkhazian authorities are obliged to ensure their compliance.

An essential source of international law on internally displaced persons is the UN Guidance on internal movement, based on existing international human rights and humanitarian law, which clarifies the rights of internally displaced persons. Without being strictly legally binding, they reflect the established international customs and international standards in the field of human rights and humanitarian law, and are therefore universal.⁵¹ Georgia, at least in part, relies on these when drafting the national legislation on internally displaced persons.

The right of persons forced to leave their houses due to the war, to return to their place of residence or to "voluntary repatriation" is guaranteed by a number of

49 Giorgi Margiani, "New Regulatory Legislation: A Threat to Peace-building in Georgia", November 30, 2010, <http://humanrightshouse.org/Articles/15513.html>

50 Russia vs. Georgia: consequences. Report No. 195 Europe, August 22nd, 2008, p. 38. <https://www.refworld.org.ru/pdfid/545cb9474.pdf>

51 "Handbook for Applying the Guiding Principles on Internal Displacement", The Brookings Institution, Project on Internal Displacement, 1999, at http://www.reliefweb.int/ocha_ol/pub/IDPprinciples.PDF

international treaties.⁵² As a special representative of the UN General Secretary for the rights of internally displaced persons, in 2005, the Abkhazian authorities are responsible not only for ensuring the physical security of the persons who returned, but also for ensuring the civil, political, economic, social and cultural rights of those who decided to return to their place of residence, permanent residence.⁵³

Internally displaced persons enjoy the same rights as the rest of the population.⁵⁴

The main duty and responsibility for ensuring these rights and freedoms rests with the national authorities⁵⁵, however, the UN Guidelines also applies to non-state actors who effectively control a certain territory, as regards to the rights of internally displaced persons and those in reserve.⁵⁶ These authorities must de facto respect the rights of internally displaced persons in their control area, and the respective compliance “does not affect the legal status of any affected authority, groups or persons”.

In connection with the situation in Abkhazia, this means that the Abkhazian authorities are responsible for ensuring the rights of those returning to the areas they effectively control. The Special Representative of the UN General Secretary notes that this fact “should not be limited to the ensuring the survival and physical security of internally displaced persons, but must be applied to all relevant guarantees, including civil and political rights, as well as economic, social and cultural rights, recognized by the international human rights law and humanitarian law”⁵⁷

Kosovo

Initially, the Security Council authorized the General Secretary in its resolution 1244 of June 10th, 1999, to establish an international civilian presence in Kosovo — the United Nations Interim Administration Mission in Kosovo (UNMIK) — in order to establish a provisional administration for Kosovo that the people of Kosovo will be able to enjoy substantial autonomy. Her task was unprecedented in complexity and breadth; the Council has empowered UNMIK with respect to the territory and

52 Article 13 (2) of the Universal Declaration of Human Rights, Article 12 (4) of the International Covenant on Civil and Political Rights, Article 5 (d) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination.

53 Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin — Addendum, Mission to Georgia. December 21–24, 2005, E/CN.4/2006/71/Add.7, March 24, 2006, para. 5.

54 Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin — Addendum, Mission to Georgia. December 21–24, 2005, E/CN.4/2006/71/Add.7, March 24, 2006, para. 4.

55 Guidelines on internal displacement of people, principle 3

56 Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin — Addendum, Mission to Georgia. December 21–24, 2005, E/CN.4/2006/71/Add.7, March 24, 2006, para. 4.

57 Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin — Addendum, Mission to Georgia. December 21–24, 2005, E/CN.4/2006/71/Add.7, March 24, 2006, para. 5.

population of Kosovo, including all legislative and executive powers and the administration of the judiciary system.

Subsequently, after the Kosovo authorities declared the independence and the new constitution entered into force on June 15th, 2008, the mission's tasks were significantly adjusted to focus on promoting the security, stability and human rights compliance in Kosovo.⁵⁸

In accordance with its strategic framework, the mission contributes to the ensuring the conditions for a peaceful and normal life for all Kosovo residents and to the advancing the regional stability in the Western Balkans.

The Special Representative provides an approach coordinated by the international civilian presence operating under Security Council resolution 1244 (1999), including the Organization for Security and Cooperation in Europe (OSCE), which maintains the pillar status of UNMIK for institutions establishing.

The Special Representative also ensures the coordination with the Head of the European Union Rule of Law Mission in Kosovo (EULEX), which has operational responsibility in the law state field. EULEX is implemented on the basis of Security Council resolution 1244⁵⁹ (1999) and operates under the general authority of the United Nations. The mission is headquartered in Pristina and is supported by field offices in Mitrovicë / Mitrovica and Pejë / Peć.

In addition, the UN Office in Belgrade has an important political and diplomatic role and is connected with the political leadership of Serbia.

Kosovo declared the independence on February 17th, 2008 and has been recognized by over 100 UN member states. UNMIK continues to implement its mandate in a status neutral manner and operates on the basis of Security Council resolution 1244 (1999).⁶⁰

On June 8th, 2018, the Council decided to reorient the mandate of the EU's mission of support the rule of law, EULEX Kosovo. The mission, established 10 years ago, had two operational objectives: on the one hand, a monitoring, guidance and counseling objective, providing support for the functioning of the institutions that enforce the rule of law in Kosovo and for the dialogue between Belgrade and Pristina and, on the other hand, an executive objective, supporting the achievement of constitutional and civil justice, as well as prosecuting and judging a selection of criminal cases.

Starting with June 14th, 2018, the mission will focus on:

- monitoring a selection of cases and processes in the criminal and civil justice institutions in Kosovo
- monitoring, guiding and advising the Correctional Service of Kosovo
- continuation of operational support for the implementation of the agreements on the EU-facilitated dialogue in order to normalize the relations between Serbia and Kosovo.

58 <https://peacekeeping.un.org/ru/mission/unmik>

59 RESOLUTION 1244 (1999) Adopted by the Security Council at its 4011th meeting, on 10 June 1999 S/RES/1244 (1999)

60 <https://unmik.unmissions.org/mandate>

The mission will maintain certain limited executive responsibilities in the field of witness protection and support of specialized court sections and specialized prosecutor's offices, as well as the responsibility to ensure the maintenance and promotion of security as a secondary factor of security assurance.

The decision of the Council provides that the revised mandate will end on June 14th, 2020. For the operations of the mission in Kosovo and the specialized judiciary sections and the specialized prosecutor's office, this decision also allocates a combined budget of EUR 169.8 million for a period of two years (June 15th, 2018 — June 14th, 2020).

The budget provides EUR 83.6 million to cover the expenses of the EULEX Kosovo mission with the implementation of its mandate in Kosovo. The amount of EUR 86.2 million will be destined for the specialized judiciary sections and specialized prosecutor's office.

The EULEX Kosovo mission was launched in 2008. The mission headquarters are located in Prishtinë / Pristina, Kosovo. Alexandra Papadopoulou is the head of this mission from July 20th, 2016. On June 5th, 2018, the Political and Security Committee extended its mandate until June 14th, 2019.⁶¹

In February 2020, the self-proclaimed authorities of the Republic of Kosovo interrupted any communication with the UN mission (UNMIK) to regulate the situation in the province said on Wednesday the Kosovo's Prime Minister Ramush Haradinaj. Haradinaj came with this announcement after UN General Secretary Antonio Guterres mentioned in a report that the biggest problem in relations between Belgrade and Pristina are the 100% customs tariffs on Serbian goods introduced in November last year by the government of Kosovo. According to Prime Minister of Kosovo, the officials in Pristina have interrupted the relations with the UN mission in the region, because such provided "wrong information to the UN".⁶²

61 <https://www.consilium.europa.eu/ro/press/press-releases/2018/06/08/eulex-kosovo-new-role-for-the-eu-rule-of-law-mission/#>

62 <https://ro.sputnik.md/International/20190206/24553849/Kosovo-i-a-nterupt-relaiile-cu-misiunea-ONU-din-provincie.html>