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# 9 War and Secession: A Moral Analysis of the Georgian–Abkhaz Conflict

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## INTRODUCTION

The Soviet Union was highly centralized at the political and partly decentralized at the administrative levels. The Communist Party controlled every level of authority, and the principle of the separation of powers was rejected as a ‘bourgeois ideology’. The Moscow leadership, however, had made serious attempts to accommodate demands for national self-determination.<sup>445</sup> Soviet federalism combined the objective of political control by the Communist leadership with an ethno-territorial form of administrative decentralization. A multi-tiered form of government allowed the major nationalities to exercise a certain degree of self-administration over a particular territory and to be recognized as its ‘titular nation’. This was done according to a hierarchical pattern, whereby nationalities were ranked according to a number of criteria such as population size and geographical location. The political leverage of a national group inside the Communist leadership could also play a role. Union republics had the highest political status, which formally included sovereignty and the right to secession. They were followed by autonomous republics, which had a constitution and certain other characteristics of partial statehood but did not possess sovereignty or the right to secession. Autonomous regions came even lower in the hierarchy.

Soviet federalism was thus based on three contradictory ways of applying constitutional principles. It formally rejected the principle of a ‘horizontal’

<sup>445</sup> On Soviet nationality policies and their consequences for the break-up of the Soviet Union see Robert J. Kaiser, *The Geography of Nationalism in Russia and the USSR* (Princeton, Princeton University Press, 1994) and Valery Tishkov, *Ethnicity, Nationalism and Conflict in and after the Soviet Union* (London, Sage, 1997).

division of power between the legislative, the executive, and the judiciary, but it formally accepted federalism, which is based on the principle of a 'vertical' division of competences and where areas of government are distributed in a multi-tiered fashion. It acknowledged the nationalities' right to self-determination, but had their political status determined autocratically by the Communist leadership. Finally, it regarded sovereignty as being indivisible—a concept reflected in the one-party system—but it constitutionally entrenched the sovereignty of the Union republics, up to and including their right to secession, in parallel with the sovereignty of the Soviet state.<sup>446</sup> All three contradictions reflected particular forms of discrimination: the unequal distribution of powers among the various titular nations and their political units, in a federal system of administrative decentralization, led to inequality among the various nationalities when it came to having their right to self-determination acknowledged at the formal constitutional level, particularly as regards sovereignty and the right to secession.

These contradictions did not lead to open conflict as long as the Communist Party was able to impose its authority as an undisputed arbiter in nationality conflicts. But even then there were numerous attempts by national leaderships to redress these perceived injustices and to upgrade their own political status using official channels. This was the case for instance for the Tatars and the Abkhazians throughout Soviet history. The democratization of the Soviet regime after 1987 led to radical claims and popular mobilization. From 1988 on, the Armenians of Nagorno-Karabakh, an autonomous region of Azerbaijan mainly populated by Armenians, strove in vain to 'correct' the boundaries between Armenia and Azerbaijan and to have their territory included in Armenia. Once the power of the Communist Party began to wane, the lack of legitimacy of the existing distribution of competences led to the dismantling of the Soviet federal system.

The acquisition of independence by all the Union republics did not lead to major confrontations between republics of equal rank. Their integration into the world community and active participation in a number of intergovernmental security organizations—such as the Conference on Security and Cooperation in Europe (CSCE)—facilitated diplomatic solutions to disputed questions of territorial borders, populations and minority rights. The only exception was the escalation of the conflict between Armenia and Azerbaijan over Nagorno-Karabakh. The situation between political units of unequal rank, however, was very different. In this case, the dissolution

<sup>446</sup> The sovereignty of the Soviet state was enshrined in Article 75 ("The sovereignty of the USSR extends throughout its territory") and the sovereignty of the Union republics in Article 76: 'A Union Republic is a sovereign Soviet socialist state that has united with other Soviet Republics in the Union of Soviet Socialist Republics'. *Constitution (Fundamental Law) of the Union of Soviet Socialist Republics* (Moscow, Novosti Press Agency Publishing House, 1977), 59.

process led to numerous secessionist or irredentist claims and—in the cases of the Caucasus and Moldova—to violent conflicts. This is well illustrated by the relations between Georgia and Abkhazia.<sup>447</sup>

In the Soviet federal system Georgia was a Union republic, with a population of about 5.4 million, while at the time of the last census (1989) the Georgian titular nationality represented some 70 per cent of the population. Other nationalities include Armenians, Azeris, Russians, Ossetians, and Abkhazians. Abkhazia was an autonomous republic with a population of 526,061, of which the Abkhaz titular nation accounted for roughly 18 per cent. Other nationalities included Georgians (about 46 per cent—this percentage includes sub-ethnic groups such as Mingrelians and Svans), Armenians, Russians, and Greeks. Relations between the Georgians and Abkhazians were characterized by conflict throughout the whole of the twentieth century. This was particularly the case during the brief period of Georgian independence, 1918–21.

Ethnonational conflicts were repressed by the imposition of the Soviet regime. Abkhazia then became subordinated to the Georgian Union republic. This process of subordination was carried out in a series of constitutional steps during the 1920s. In the 1930s and 1940s, Stalin's policies of terror left no room for the public expression of national discontent. From

<sup>447</sup> On the history of Georgian–Abkhaz relations see Stanislav Lakoba, *Ocherki politicheskoi istorii Abkhazii* (Sukhum, Alashara, 1990), and *Abkhazia: Posle dvukh okkupatsii* (Gagra, Assotsiatsiya 'Intelligentsia Abkhazii', 1994); Darrell Slider, 'Georgia', in Glenn Eldon Curtis (ed.), *Armenia, Azerbaijan and Georgia: Country Studies* (Washington, DC, Library of Congress, 1995), 149–230; Giorgi Zhorzholiani, Solomon Lekishvili, Levan Toidze, and Edisher Khoshtaria-Brosset, *Historic, Political and Legal Aspects of the Conflict in Abkhazia* (Tbilisi, Samshoblo Publishers, 1995); Levan Toidze, *K voprosy o politicheskom statuse Abkhazii. Stranitsy istorii 1921–1931 gg.* (Tbilisi, Izdatelstvo Samshoblo, 1996); Jürgen Gerber, *Georgien: Nationale Opposition und kommunistische Herrschaft seit 1956* (Baden-Baden, Nomos Verlag, 1997); Naira Gelaschwili, *Georgien: Ein Paradies in Trümmern* (Berlin, Aufbau Taschenbuch Verlag, 1993); Svetlana Chervonnaya, *Conflict in the Caucasus: Georgia, Abkhazia and the Russian Shadow* (London, Gothic Image, 1994); Avtandil Menteshashvili, *Istoricheskie predposylki sovremennogo separatizma v Gruzii* (Tbilisi, Tipografiya Tbiliskogo Gosudarstvennogo Universiteta, 1998); Bruno Coppieters, Ghia Nodia, and Yuri Anchabadze (eds.), *Georgians and Abkhazians: The Search for a Peace Settlement* (Cologne, Sonderveröffentlichung des Bundesinstituts für Ostwissenschaftliche und internationale Studien, 1998); Bruno Coppieters, David Darchiashvili, and Natella Akaba, *Federal Practice: Exploring Alternatives for Georgia and Abkhazia* (Brussels, VUB University Press, 2000); Ghia Nodia, 'Trying to Build (Democratic) State Institutions in Independent Georgia', in Gerhard Mangott (ed.), *Brennpunkt Kaukasus: Aufbruch trotz Krieg, Vertreibung und Willkürherrschaft?* (Vienna, Braumüller, 1999), 105–37; Jonathan Cohen (ed.), *A Question of Sovereignty: The Georgia–Abkhazia Peace Process*, Accord: An International Review of Peace Initiatives, 7 (1999); George Hewitt (ed.), *The Abkhazians* (Richmond, Surrey, Curzon, 1999); Edmund Herzig, *The New Caucasus: Armenia, Azerbaijan and Georgia* (London and New York, Pinter, 1999); Giorgi Zhorzholiani, *Istoricheskie i politicheskie korni konflikta v Abkhazii/ Gruzia* (Tbilisi, Metsniereba, 2000); Svante Cornell, *Small Nations and Great Powers: A Study of Ethnopolitical Conflict in the Caucasus* (Richmond, Surrey, Curzon, 2001); Bruno Coppieters, *Federalism and Conflict in the Caucasus* (London, The Royal Institute of International Affairs, 2001).

the Georgian and Abkhaz perspective, this period was the darkest of the twentieth century. The Soviet repression was extremely harsh in Georgia, as it was elsewhere in the Soviet Union, but the Abkhazians had additionally to endure an attempt to obliterate their national culture. Policies of forced Georgianization were imposed by the Soviet regime, which made it difficult from an Abkhaz perspective to differentiate between the injustices imposed by the Soviet and by the Georgian authorities. The Abkhazians escaped, however, sharing the fate of the Chechens and other nations from the Caucasus, who were deported to Central Asia. A fear of forced Georgianization and oppression has since those days fuelled Abkhaz nationalism. After Stalin's death in 1953, the question of political status erupted again. Abkhaz intellectuals and prominent party members drafted numerous appeals to the Moscow leadership, asking to secede from the Georgian republic and either to constitute a Union republic or to be integrated into Russia. The striving of the Abkhaz leadership for equal formal status with the Georgian Union republic had great political significance. They hoped that Abkhazia would then be treated by Moscow just like the other Union republics, as an equal among equals. Abolition of their subordination to Tbilisi would protect them from the Georgianization of their republic. Enhancing the status of the 'titular nation' would consolidate the privileged status of the Abkhaz élite and would also improve the status of all ethnic Abkhazians in education and cultural life.

Georgia's declaration of independence in April 1991 was perceived by the Abkhaz community as a threat. The stated intention of the Georgian leadership to challenge the privileges of the titular nations of the autonomous entities in Georgia were taken very seriously in Abkhazia. These fears were reinforced by the violent conflict that had broken out in the Autonomous Region of South Ossetia. The Ossetian national movement was striving for the unification of their region—situated in the Georgian Republic—with the Autonomous Republic of North Ossetia, which is in the Russian Federation. By contrast, the Georgian national movement claimed that Georgians in South Ossetia were being discriminated against in education and employment, and that the Georgian language was being excluded from the civil service. The movement appealed for the abolition of the autonomous status of South Ossetia, a call which was endorsed by the Georgian parliament on 11 December 1990. The armed conflict was halted only in June 1992. The fear that the Georgian nationalists would also challenge the political privileges of the Abkhaz titular nation in Abkhazia itself was an additional reason for the latter to strive for equal status with the Georgian state.

In 1991, the Abkhaz leadership accepted a proposal of the newly elected Georgian president, Zviad Gamsakhurdia, to distribute the seats in the Abkhaz parliament among the nationalities according to proportions agreed beforehand. According to the rules agreed for the elections of

autumn 1991, the Abkhaz members of parliament would be granted overrepresentation in the legislature, in line with previous Soviet practice. Abkhazia was divided into 65 electoral districts. Each of them was reserved for one of the three national groups: Georgian, Abkhaz, or 'others'. As a result of the elections, the 11 representatives of the other nationalities could choose either to side with the Georgians or the Abkhazians. The Abkhazians could mobilize a small majority of 33 seats, to 31 for the Georgians. This compromise solution failed to resolve the conflict between the two main communities in Abkhazia.

In winter 1991–2, a *coup d'état* against the Georgian president Zviad Gamsakhurdia brought to power a Military Council, which in March 1992 was renamed State Council and brought under the leadership of Eduard Shevardnadze. It abolished the 1978 Georgian Constitution and replaced it by the pre-Soviet Constitution of 1921, where the autonomous status of Abkhazia was only mentioned, not specified in terms defining either its legal status or powers. The autonomous areas were not involved in the decision. As a countermove, the Abkhazians reinstated a draft constitution prepared in 1925, although never adopted, that declared Abkhazia to be a sovereign state. This was approved by the Abkhaz parliament by a very slim majority, and went against the compromise solution reached with the Georgian authorities concerning two-thirds majorities for constitutional changes. The loss of control over Abkhazia was a threat to the Shevardnadze leadership, which also had to confront armed opposition from supporters of the deposed president, Gamsakhurdia. In August 1992, Georgian troops entered Abkhazia, their official purpose being the protection of rail communications along the Black Sea coast. The intervention failed. The Abkhaz units fought back, receiving informal support from Russian military forces stationed in the region and from volunteers from the North Caucasus, particularly Chechnya. The Georgian troops were ousted from Abkhazia in autumn 1993, and this was immediately followed by a rapid exodus of more than 200,000 people, including the vast majority of the Georgian population.

Negotiations on a peace settlement began, with mediation by the UN and with the Russian Federation as a facilitator. Discussions on the political status of Abkhazia were reopened. Unlike the leaders of Chechnya and Nagorno-Karabakh, the Abkhaz leadership did not strive openly for independence. It took a more gradual approach, proposing the establishment of confederal links with Georgia, reflecting an equal right to national self-determination and sovereign status. The Georgian authorities refused to accept such a status, as it would imply recognition of Abkhazia's right of secession. According to the Abkhaz leadership, their refusal to grant a right of return to the whole Georgian population from Abkhazia was the price the Georgian authorities had to pay for their refusal to recognize Abkhazia's sovereignty. The discussions on political status made no progress in the

ensuing years. In 1999, Abkhazia declared its independence. This has not been recognized by any government in the world.

The aim of the present analysis is to explore the accuracy of the justifications given by both sides for their involvement in the 1992–3 war and of their claims concerning the secession of Abkhazia. The questions of war and independence are closely interrelated. The war is generally viewed as a turning-point in the history of Georgian–Abkhaz relations. From the Georgian perspective, their military defeat was the result of Russian support for Abkhaz secessionist forces. The Georgian–Abkhaz conflict and the Abkhaz demand for independence are thus perceived as part of the Georgian struggle for emancipation from Russian imperial rule. From the Abkhaz perspective, the victory of the Abkhaz forces over the invading troops was the culmination of a century-long struggle against Georgian colonization. The Abkhaz authorities have pursued the political negotiations since the war with the firm position that there is no possibility of returning to a *status quo ante*. In their view, their military victory should result in international recognition of Abkhaz sovereignty and independence.

The fact that the questions of war and independence are closely interrelated does not mean that they should not be analysed separately. This chapter defends the thesis that disproving the various Georgian justifications for their war aims does not mean that the Abkhaz claim to independence is justified. In just war theory, the relationship between war and justice is assessed by a highly differentiated set of criteria referring to moral constraints on starting military operations (*jus ad bellum*) and on the military operations themselves (*jus in bello*). In the following, we will explore how these criteria may also be used to determine to what extent unilateral secession is morally justified. In particular, we will apply these criteria both to the analysis of the 1992–3 war and to the question of whether Abkhazia's demand to have its independence recognized is justified. The *jus ad bellum* criteria of just cause, legitimate authority, right intentions, last resort, proportionality, and chance of success will first have to be reinterpreted in order to assess the justification for independence.

Structural affinities between the moral analysis of the use of force and that of unilateral forms of secession make it possible to apply the criteria derived from the just war tradition to cases of secession. First, the two ethical approaches deal with exceptions to general rules. One of the main functions of the state is to protect its citizens by preserving peace at the domestic and international levels. This should preferably be done by peaceful means. The legitimate use of force with the aim of restoring peace or redressing injustice is an exception to this rule. Unilateral forms of secession go against the principle of territorial integrity of states and can likewise only be justified as resulting from the application of clear principles to exceptional

circumstances.<sup>448</sup> Second, the use of force and attempts to secede can be analysed as unilateral acts intended to impose one's own will on a political adversary. In both cases, negotiations are considered inappropriate to prevent or to redress extreme forms of injustice. These structural similarities between acts of war and acts of unilateral secession make it understandable that unilateral acts of secession are generally accompanied by the use of force.

The use of this particular theoretical framework in the ethics of war and secession is not based on the presupposition that the parties in conflict share its principles when making their decisions. It is quite possible that they do not consider that moral considerations have any role to play in a situation where they consider the survival of their nation to be at stake. But it can be demonstrated that they explicitly invoked all individual *jus ad bellum* principles described below in their legitimization of the use of force or of their position on the secession of Abkhazia.<sup>449</sup>

## WAR AND JUSTICE: THE GEORGIAN PERSPECTIVE

Just war theory requires the individual just war principles to be applied to a war setting as if they were all independent of one another.<sup>450</sup> A war can only be considered just if all the principles are respected or if there are good reasons why some of the principles are overruled. If not, the war has to be characterized as unjust. The distinction between the *jus ad bellum* and *jus in bello* principles means that a war may be considered just in respect of one set of principles but not the other. The moral analysis proceeds serially: all the historical aspects of the military intervention are analysed in turn. The testing of each principle individually means that each time we have to focus on certain historical aspects and leave aside the others for the time being. Such a sequential, contextualizing procedure makes it possible to arrive at an overall judgement on whether or not the war is a just one. As justice and injustice are questions of degree, we also—in order to reach a differentiated historical and moral analysis of the Georgian military intervention in Abkhazia—have to assess to what extent each belligerent had justice on its side.

Redressing or preventing serious injustice constitutes a *just cause*. Was the decision in August 1992 by the Praesidium of the State Council—to send

<sup>448</sup> A distinction has to be made in this context between unilateral and mutually agreed forms of secession. When a legal procedure on secession is mutually agreed by the government and a secessionist party, it is far easier to respect the interests of all parties according to the rules of justice.

<sup>449</sup> In both cases, the Georgian and Abkhaz leaders claimed that they had a just cause to defend, the legitimate authority to act, that they pursued right intentions and that their actions were in accordance with the principles of last resort, proportionality and likelihood of success.

<sup>450</sup> Nick Fotion and Bruno Coppieters, 'Concluding Comments' in Bruno Coppieters and Nick Fotion (eds.), *Moral Constraints on War: Principles and Cases* (Lanham, Md., Lexington Books, 2002), 298–9.

troops to Abkhazia—based on such a cause? The Georgian authorities are convinced that it was. They have justified their military action by the need to restore law and order and to defeat the military forces supporting the overthrown president Zviad Gamsakhurdia.<sup>451</sup> The disruption of the strategic railway lines linking Georgia with Russia and Armenia was seen as sufficient ground for using military force. In their view, the use of force should be considered not as initiating a war, but as a police operation on Georgian territory. When crossing the borders of the Abkhaz Autonomous Republic, Georgian troops claim to have been attacked by Abkhaz military forces. From that moment on, Georgian actions, they claim, took on a defensive character. The Georgian troops advanced deep into Abkhaz territory, occupying the capital Sukhum(i).<sup>452</sup> From their point of view, this military deployment was a legitimate response to the aggression by the Abkhaz side and the latter's attempt to violate the territorial integrity of the Georgian Republic.

The Georgian authorities have thus advanced two different kinds of ‘just causes’ to justify their military intervention. The chronological sequence of the two stages is particularly important here. In the first stage, the military operations, they claim, were not directly linked to the fact that the Abkhazians were striving for secession but to the disruption of law and order on Abkhaz territory, while in the second stage the intervention was purely defensive. It may be questioned whether there is any historical evidence to support such a distinction between a first and second stage in the intervention, which it is claimed were based on distinct just causes for military action.

It is true that the disruption of strategic communication constituted a serious breach of the rule of law. But this does not mean that the sending of troops to Abkhazia could be considered a legitimate step. The breakdown in law and order was a general feature of social order in the whole of Georgia, and not particular to Abkhazia. Some observers even state that there was no problem with the railway service in Abkhazia itself. The disruption would have been entirely confined to the Georgian region of Mingrelia that neighbours Abkhazia.<sup>453</sup> The consequences of military operations in an escalating domestic political conflict are, furthermore, of such gravity—taking into account the number of potential victims and the scope of the potential material destruction in a civil war—that under no circumstances could they have been justified by the disruption of the railway system. This is most probably also the opinion of the Georgian authorities, when they argue that the first stage of the military intervention in Abkhazia should be regarded as

<sup>451</sup> On the Georgian official justification of the military intervention in Abkhazia see Zhorzholiani et al., *Historic, Political and Legal Aspects of the Conflict in Abkhazia*, 36–8.

<sup>452</sup> Georgian authors would generally use the transliteration ‘Sukhumi’ in English texts, whereas Abkhaz scholars would drop the ‘i’ and write ‘Sukhum’. I refer to ‘Sukhum(i)’ in order to avoid choosing between the Georgian and the Abkhaz preferences.

<sup>453</sup> George Hewitt, personal communication 7 Nov. 2001.

a kind of police operation and not as the initiation of a war. In their view, the war started with Abkhaz attacks on Georgian troops. Such an interpretation of historical events, even if we accept it at face value, does not justify the ensuing deployment of Georgian troops in Abkhazia or the occupation of its capital Sukhum(i). Once it was made clear that the Abkhaz leadership considered the military intervention to be an act of war, and was using military force to repel what it viewed as an invasion, the Georgian authorities should have ordered the immediate withdrawal of their forces. Being attacked by Abkhaz forces may have been considered unjust by the Georgian side, but the scale of this injustice did not constitute a sufficient reason—in other words, it was not a just cause—for starting a full-scale war in Abkhazia. It may thus be concluded that the Georgian authorities did not act in accordance with the *just cause principle* when starting the military operations in August 1992.

The second principle that has to be assessed is the *principle of right intentions*. To what extent did the Georgian authorities genuinely intend to pursue what they considered to be a just cause? Central to the testing of the *principle of right intentions* is the historical demonstration that there was in reality a predominant and genuine intention of attaining a just cause. Even in cases where there was no objectively just cause for using force, it remains possible that the intention of winning a struggle that is perceived as just was present, and perhaps even triggered the decision. The previous just cause analysis did not consider the various motives that might have led the Georgian authorities to initiate the military hostilities. Among the various intentions that may have been present we can distinguish between:

1. The intention of securing the railway communications on Abkhaz territory.
2. The intention of weakening the Zviadist forces present in Abkhazia and achieving a conclusive victory in the civil war between the Georgian factions.
3. The intention of crushing Abkhaz nationalism, thereby making any further attempt at secession impossible.
4. The intention of enhancing the legitimacy of the new government through a full-scale war against the Abkhaz community.

In considering the deliberations of the Praesidium of the State Council that preceded the decision to wage war, academic literature supports an interpretation in which all four motives are taken into account. But it would be difficult to determine their order of importance. We also have to bear in mind that the various members of the Praesidium had different motives. The intentions of Eduard Shevardnadze were not necessarily those of Tengiz Kitovani, the leader of the paramilitary National Guard and Minister for Defence in the Presidium of the State Council. It is necessary, however, to

set these distinctions aside for a normative analysis. The principle of right intentions does not concern private individuals but a public authority. We have therefore to consider the Praesidium as a collective actor.

We would offer the following interpretation of events: as we have seen above, the disruption of railway communications in Abkhazia constituted a serious threat to the new Georgian authorities (intention 1). In order to secure their own survival, the latter had to crush the supporters of the deposed president Gamsakhurdia and to achieve a decisive victory in the civil war between Georgian factions (intention 2). But the possibility of gaining the upper hand in this intra-communal conflict simultaneously gave them an opportunity to achieve the same thing in the inter-communal conflict with the Abkhaz community. Since their accession to power, the new Georgian authorities had been unable to halt the escalation of the political conflict between the two main communities in Abkhazia. On both sides, the population had begun to arm. Sending Georgian military forces to Abkhazia would provide an opportunity for deciding, once and for all, the question of the possible secession of Abkhazia (intention 3). Gamsakhurdia had been elected in May 1991 by over 86 per cent of the population. This support was largely due to his radical nationalistic discourse. Those who had deposed him by force then had to prove that they were no less 'patriotic' than he was. A war against the Abkhaz nationalist movement would rally support for the new authorities among the Georgian population (intention 4).

According to the official Georgian interpretation of events, the Praesidium of the State Council had 'right intentions' in deciding to send troops to intervene in Abkhazia. The distinction between two stages in the escalation towards war (a police operation in the first stage and a defensive war against 'aggressive separatism' in the second) means that there would also have been two distinct intentions, which would have been predominant at different moments. According to this interpretation, there would have been an objective just cause, and subjectively right intentions, twice over. There is, however, no convincing historical evidence that there actually were two different stages in the escalation, driven by completely distinct intentions. Historical literature does not take this justification seriously.<sup>454</sup> It thus cannot be proven that the Georgian authorities had right intentions.

<sup>454</sup> An alternative historical interpretation of the intentions of the Georgian authorities is to be found in Ghia Nodia, 'The Conflict in Abkhazia: National Projects and Political Circumstances', in Coppieters, Nodia, and Anchabadze, *Georgians and Abkhazians*, 34–6. Nodia's interpretation of events is based on a distinction between the intentions of Shevardnadze and those of the Georgian paramilitary commanders. He regards Shevardnadze's intentions as subjectively right. Nodia's interpretation does not contradict the one presented in this chapter. In testing the right intentions principle I set this distinction aside, analysing the Georgian military policies as those of a collective player. A distinction between the various players in the Praesidium of the State Council is made in testing the *principle of legitimate authority*.

The third principle that has to be tested is the *principle of legitimate authority*. Did the Praesidium of the State Council have the moral authority to wage war? Such a moral authority is to be derived from various factors, such as the way in which the new regime had come to power, the democratic legitimacy of the political leadership, and its commitment to the rule of law and to the common good of the whole population living on its territory. All four of these criteria—that have been invoked by the Georgian authorities themselves when legitimizing their authority—have to be examined.

The overthrow of the elected president Gamsakhurdia was justified by the coup leaders as a revolt against an unjust regime. After the flight of Gamsakhurdia from Tbilisi on 6 January 1992, the coup leaders had invited the previous leader of the Georgian Communist Party and former Soviet Minister for Foreign Affairs, Eduard Shevardnadze, to return to his home country and take the leadership of the new government. Shevardnadze returned from Moscow to Tbilisi in March 1992. They felt that in these circumstances he was the only person who would be able to restore confidence in Georgia's new leadership among domestic and international public opinion. This calculation proved to be correct. Western governments, who had refused to establish diplomatic relations with Georgia as long as the Soviet Union existed and Gamsakhurdia was in power, were quick to give full support to the person they regarded as one of the main architects of the peaceful reordering of Europe. They expected that Shevardnadze would have a moderating effect on Georgian nationalism. Moreover, they were prepared to overlook the fact that Shevardnadze had to ally himself with paramilitary forces, whose involvement in criminal activities was widely known. The international community was convinced that Shevardnadze would bring about stabilization and democratization. In July 1992 Georgia was accepted as a full member of the United Nations. It may be concluded that the new Georgian regime of August 1992 lacked the formal characteristics of a democratic government, and was largely dependent on the support of paramilitary forces which had no democratic legitimacy, but that the personal leadership of Shevardnadze seemed to offer reasonable chances for the democratization of the regime and the re-establishment of the rule of law.<sup>455</sup>

More problematic, however, was the commitment of the new Georgian government to the common good of the whole population living on its territory. During Soviet times, Shevardnadze had been successful in consolidating the political privileges and hegemonic position of the Georgian titular nationality in his multinational country. At that time, however, he was also opposed to the radical nationalism of dissidents under the communist regime, such as Gamsakhurdia. After his return to Tbilisi, Shevardnadze managed to

<sup>455</sup> Democratic elections were held in Georgia on 11 Oct. 1992.

achieve a cease-fire in the conflict with the authorities of South Ossetia. But he remained entirely dependent on radical nationalist forces when starting and waging the war in Abkhazia. This dependence was to undermine the moral authority of his government. It has also been said—by Shevardnadze himself, among others—that by deploying his troops deep into Abkhaz territory and occupying the Abkhaz capital Sukhum(i) Kitovani had exceeded the order to protect only the railway links. Shevardnadze apparently felt obliged to support the war and grant it his formal authority rather than oppose it openly. If he had left the government—so the argument goes—he would have risked the complete disintegration of the Georgian state. Such an interpretation means that it is preferable to have no legitimate state authority than no state authority at all. This choice may be justified. Shevardnadze's choice may have been a responsible one, as it is difficult to estimate what the consequences of his dismissal would have been. Georgian authors critical of Georgian policies towards Abkhazia are divided on the question of which decision Shevardnadze should have taken at that particular moment.<sup>456</sup> But this difficult moral choice also fully confirms the lack of legitimate authority for the Georgian decision to use force.

According to Shevardnadze's account, before the war he informed the Abkhaz leader Vladislav Ardzinba by phone of his intention to deploy Georgian forces along the Abkhaz railways. This would confirm his respect for the vertical distribution of authority between the central and the local governments. But the Abkhaz authorities have strongly denied that Ardzinba would ever have approved of this deployment—and indeed, such approval would have been most surprising. It was quite obvious that an incursion by Georgian military forces into a region where the political conflict between the Abkhaz and Georgian communities had been escalating for years would be perceived by the Abkhaz side as a serious threat. Even if Shevardnadze's account was true, and he was indeed the victim of an Abkhaz 'provocation', as stated by the Georgian authorities, it still would not justify the deployment of Georgian troops throughout the territory of Abkhazia. As stated above, the duty of the Georgian troops would have been to retreat after the initial

<sup>456</sup> Back in August 1992, Naira Gelashvili had already defended the position that Shevardnadze would have to resign in order to avoid taking formal responsibility for launching the civil war in Abkhazia: 'Back in Tbilisi, on 19 August I was called to see Shevardnadze. He was severely shaken by the unexpected disaster. I found it very difficult to tell him what I thought, which was that he should resign, otherwise he would bear formal responsibility for the bloodshed and chaos. If he resigned, the Ministry of Defence and Kitovani would have to bear this responsibility, and that might restrain them. For me it was crucial that he should be spared the burden of being responsible for the deaths of so many people.' Gelaschwili, *Georgien: Ein Paradies in Trümmern*, 163. Ghia Nodia, on the contrary, considers that a decision to resign would at that point have been 'extremely irresponsible'. Nodia, 'The Conflict in Abkhazia', 35. On Nodia's analysis see also my contribution 'Shades of Grey: Intentions, Motives and Moral Responsibility in the Georgian–Abkhaz Conflict', in Coppieters, Nodia, and Anchabadze, *Georgians and Abkhazians*, 143–67.

clashes, instead of engaging in a civil war with the Abkhazians. The term ‘provocation’, moreover, is quite inappropriate to justify the actions of the government of a sovereign state. Explaining and excusing one's behaviour as the result of an irresistible reaction to a ‘provocation’ is commonly done by thugs, but is not to be expected of governments. In order to qualify as a legitimate authority, such a government has to be capable of exercising self-restraint in the use of force. Its inability to do so further demonstrates that the Georgian authorities failed to respect the *principle of legitimate authority*.

According to the *principle of last resort*, the use of force is morally authorized only on condition that all reasonable steps have been taken to avoid a military confrontation. This condition was not respected either. In 1991 the Gamsakhurdia government had made an attempt to avert confrontation by negotiating a compromise solution on the ethnic make-up of the Abkhaz parliament. The failure of the two communities to share power was largely due to the unwillingness of the Abkhaz authorities either to allow representatives of the Georgian community to participate in the government of the autonomous republic or to respect the agreement that no substantial changes would be introduced into the Abkhaz Constitution without a two-thirds majority in parliament. But the lack of commitment on the Abkhaz side to sharing power with the Georgian community, and their violation of the agreements made, do not mean that no further attempts should have been made by the Georgian authorities to negotiate a compromise.

Before the arrival of the Georgian troops, the Abkhaz parliament had been about to discuss a proposal for the distribution of power between Georgia and Abkhazia according to a confederal framework. Such a proposal would clearly have been unacceptable to the Georgian authorities. It was based on the recognition of Abkhazia's external sovereignty and statehood, and it did not take into account the interests of the non-Abkhaz and particularly of the Georgian population of Abkhazia. It could, however, have been one of the documents to be tabled for discussion. It would then probably have taken time for the negotiations to achieve positive results, but the many hurdles to be overcome do not excuse the Georgian authorities' lack of commitment to the search for a peaceful outcome to the conflict. The Georgian authorities did not take the *principle of last resort* seriously. Their unwillingness to compromise was clearly illustrated by Shevardnadze during the war, when he declared—in an address to the Georgian parliament in November 1992—that the electoral law negotiated by his predecessor, which introduced ethnic quotas into the distribution of parliamentary seats in the Abkhaz legislature, should be seen as a form of ‘de jure apartheid’ and ‘the establishment of an ethno-dictatorship’.<sup>457</sup>

<sup>457</sup> See Chervonnaya, *Conflict in the Caucasus*, 91. See also Coppeters, *Federalism and Conflict in the Caucasus*, 24–5.

According to the *principle of proportionality*, the anticipated cost of fighting a war should not be out of line with the benefits to be expected from the attainment of its just cause. No such benefits were to be expected from a war in Abkhazia. To begin with, the Georgian authorities had no just cause which could justify the high cost of an armed confrontation. Of course, the Georgian authorities could expect that their military presence would expel the Zviadist forces from Abkhazia. But such benefits were far from sufficient to be in line with the *principle of proportionality*. Moreover, comparable benefits at far less cost could have been expected through a request for Russian military support against the Zviadists. The policies of Zviad Gamsakhurdia during his brief term in office had in fact become a heavy burden on the Moscow authorities, who were keen to prevent him returning to power. Of course, the Georgian authorities would have had to make far-reaching compromises, such as accepting the Russian military presence on Georgian territory and participation in the Commonwealth of Independent States, but these compromises would have been far less costly than the consequences to be anticipated from a war against Abkhazia. Better cooperation with Moscow would moreover have opened up the prospect of a more neutral role for Russia in the Georgian–Abkhaz conflict. It is true that compromise solutions of this nature run counter to the basic principles of Georgian nationalism, which aims at emancipation from Russian dominance. But Georgia found itself in such a difficult situation after its defeat in Abkhazia in October 1993 that it was forced to make all the compromises described above in order to secure Russian support against the Zviadist forces, which were threatening the strategically important town of Kutaisi. The danger was averted with Russian help, but Georgia then had to make concessions to Moscow under far less favourable conditions than in 1992. The war could probably have been avoided if it had made those and other compromises earlier.

The last principle to be assessed concerning Georgia's *jus ad bellum* is the *principle of likelihood of success*. This principle, like the previous one, deals with the consequences of initiating a war and has therefore a strong prudential character. Was there a strong probability that the Georgian authorities would be outstripped militarily, so that it would have been more prudent for them to abstain from the use of force? It is indeed morally unjustified to start a war if there is no realistic chance of gaining the upper hand. This possibility was rejected at the time by the Georgian authorities. They were convinced that the overwhelming numerical superiority of the Georgians over the Abkhaz community ruled out any possibility of defeat. This calculation, however, omitted to take into account the lack of military preparedness of the Georgian troops and possible support for the Abkhaz cause from the non-Georgian population of Abkhazia, from the Northern Caucasus

and from the Russian military forces stationed in the region. This lack of understanding of the military and political relationships between the forces meant that the Georgian authorities were no more able to respect the moral *principle of likelihood of success* than any other *jus ad bellum* principle.

During the 1992–3 war, the Georgian side likewise failed to respect the two *jus in bello* principles of *proportionality* and *discrimination*. The *principle of proportionality* has to do with the moral costs and benefits of military operations. Owing to their lack of military preparedness and lack of coordination, the Georgian troops engaged in battles where the costs to both sides in human lives and material destruction were too high.<sup>458</sup> Nor did they respect the *principle of discrimination* and distinguish between combatants and non-combatants, as was shown by a UN assessment mission at the end of the war.<sup>459</sup> The Georgian troops even committed atrocities against the civilian population of their own community.

## WAR AND JUSTICE: THE ABKHAZ PERSPECTIVE

The fact that one of the warring parties did not fight a ‘just war’ does not mean that the war fought by the other party has to be called just. In this case too, every single *jus ad bellum* and *jus in bello* principle has to be applied to the circumstances of the war before an overall judgement can be reached. The defence of a territory and its population against foreign aggression is a classic case of a just cause. But the concept of territory is traditionally understood as the territory of a sovereign state. In the case of the Georgian military intervention, it would be impossible to consider crossing the border into Abkhazia as ‘foreign’ aggression or as a violation of the principle of territorial sovereignty, to the extent that Abkhazia was an autonomous republic which was part of the Georgian republic. The Georgian intervention was, moreover, intervention by the federal authorities in an internal political conflict between the two main national communities in the federated state of Abkhazia on the side of the Georgian community. The Georgian intervention by paramilitary troops could, however, be regarded as a direct threat to the physical survival of the Abkhaz community. In this sense, the ethical *just cause principle* does apply, even though the concept of a political community does not have the same meaning as a sovereign state.

<sup>458</sup> See Dodge Billingsley, ‘Military Aspects of the War: the Turning Point’, in Hewitt, *The Abkhazians*, 147–56.

<sup>459</sup> See the ‘Report of the Secretary-General’s Fact-Finding Mission to Investigate Human Rights Violations in Abkhazia, Republic of Georgia’, UN Document S/26795, 17 Nov. 1993. The report of the mission, which visited the area from 22 to 30 October 1993, lists the following categories of human-rights violations committed by both sides in the conflict: extra-judicial executions; torture and ill-treatment, including rape; violations of property rights including looting and the burning of houses and apartments; forced deportations.

Nor does the fact that the Abkhaz political community was defined in ethnic rather than in civic or territorial terms alter anything in this respect.

The *principle of proportionality* may likewise be considered to have been respected by the Abkhaz side. In the circumstances of a civil war with the Georgian community, the small Abkhaz community had serious reasons for considering its physical survival as being threatened, and this justifies the cost of a military response.

Concerning the *principle of likelihood of success*, both sides were utterly unprepared for war at the organizational level. The Abkhazians were unable to assess before August 1992 the range of external support they would receive from the Russian military and from allied paramilitary forces in the Northern Caucasus.

Far more problematic in this context—and no less important in a moral assessment of the Abkhaz authorities' war policies than the previous three principles—was the application of the *principle of last resort*. Confronted with the Georgian intervention, the Abkhaz side did not have the possibility of entering into political negotiations with Tbilisi. Seen from this perspective, it respected the *principle of last resort*. But in this context it has to be added that the Abkhaz authorities had not previously made any serious attempt to de-escalate the conflict. Quite the reverse: they had unilaterally carried out a series of constitutional reforms, which went against the existing formal constitutional procedures and were made without the political participation of the—large—Georgian community. These Abkhaz policies mirrored the Georgian policies of making unilateral changes at the constitutional level which went against a federal division of power between the centre and the autonomous federated entities, and which were made without political participation by any of the minorities. In the escalation of the conflict from a political to a military one, both parties may therefore be said to have violated the *principle of last resort* to the extent that—with the sole exception of the electoral law of 1991—they made no serious attempt to resolve their political differences through negotiation or compromise. But this does not mean that Georgian and Abkhaz sides shared an equivalent responsibility for starting the August 1992 civil war. A more differentiated analysis is needed in this case. The Georgian leadership bears the full burden of responsibility for the initiation of the hostilities, as it left the Abkhaz leadership with no reasonable choice other than military self-defence.

The Abkhaz intention to defend their community and to uphold the political status they had acquired during Soviet times was decisive in their decision to repel the Georgian intervention by force. It was linked to their struggle in the just cause of self-defence against aggression, as defined above, and may therefore be considered right. It may be questioned, however, whether no other intentions were present which went beyond the aim

of self-defence and which were not linked to winning a just cause. It may also be asked to what extent such intentions were not more prominent than the cause of self-defence, which would go against the *principle of right intentions*. Three intentions have to be considered in the Abkhaz decision to use force in self-defence:

1. The intention of defending the Abkhaz community against physical threats and loss of political and social rights.
2. The intention of increasing the legitimacy of the Abkhaz authorities among the Abkhaz and other non-Georgian communities in Abkhazia through military mobilization, in line with the vision of the nineteenth-century military historian, Heinrich von Treitschke, that it is war that 'turns a people into a nation'.<sup>460</sup>
3. The intention of achieving sovereign or even independent status through the use of force.

The moral legitimacy of the first intention has been analysed above. This intention was to struggle for a cause which may be considered just. The objective of increasing the legitimacy of a government or achieving sovereign status through war should not, however, be dismissed. The authorities effectively used the popular mobilization for self-defence as a means to these two ends. This would go against the *principle of right intentions* if it could be proven that they were more prominent than the intention of defending the Abkhaz community. Such an accusation has been levelled against them by Shevardnadze, when he condemned the Abkhaz authorities for having waged a war of 'aggressive separatism'. There is, however, no historical evidence to support such a claim. The Abkhaz authorities had a legitimate right to use force in self-defence, and it cannot be proven that this motive was only a secondary one. It is not only possible but also highly probable that all three intentions were present in the discussions on the use of force by the Abkhaz side, but insofar as the first one was prominent in the mobilization of military forces, the *principle of right intentions* may be said to have been respected.

It may be concluded that the Georgian authorities failed to respect any of the just war principles, whereas the Abkhaz authorities largely went against the *principles of last resort* and *legitimate authority*. When confronted by the threat of a military occupation by Georgian paramilitary forces they had no reasonable alternative but to defend their national community by military means. An analysis of the escalation process which led to the war also makes it clear that the Abkhaz authorities failed to take all necessary steps to avoid

<sup>460</sup> Quoted in Susan-Mary Grant, 'Making History: Myth and the Construction of American Nationhood', in George Schöpflin and Geoffrey Hosking (eds.), *Myths and Nationhood* (London, C. Hurst and Co., 1997), 101.

the use of force. The Abkhaz government never developed a policy that went beyond ethnic antagonism to the Georgian population. The other nationalities were at most regarded as allies in the struggle against the Georgian occupier. The Abkhaz national project did not include a view of statehood that would be responsive to the interests of all the inhabitants of Abkhazia. This has direct implications for an assessment of their present claims to sovereignty and independence.

## THE ABKHAZ CLAIM TO INDEPENDENCE

The various just war principles need to be reinterpreted in order to be applied to secessionist conflicts and claims to independence. In this moral context, the *just cause principle* means that unilateral secession is a necessary means to redress or to prevent a grave injustice. This may be the denial of the right to national self-determination through military occupation, colonization, oppression, or exploitation. Respect for the *principle of last resort* means in this context that no alternatives are available, such as minority rights or federalism, or the possibility of achieving independence according to mutually agreed procedures. The application of the *principle of legitimate authority* requires the seceding state to affirm the principle of popular representation, the rule of law, democracy and minority rights. The *principle of right intentions* prescribes in this context that the primary intention of the decision to unilateral secession must be to redress or to prevent a severe injustice. According to the *principle of proportionality*, the total cost of unilateral secession must not be out of line with the benefits to be expected from this measure. Applying the *chance of success principle* makes it necessary to assess to what extent the seceding state can have a reasonable expectation of being internationally recognized.

Various arguments have been put forward by the Abkhaz authorities to strengthen their claim to sovereignty and equal status with Georgia in a confederal framework and (since 1999) their claim to independence.<sup>461</sup> They argue that Abkhazia has three basic characteristics of *de facto* statehood: a reasonably well-defined territory, a permanent population, and a stable government. In their view, the existence of Abkhazia as a state is not at stake in the discussion on recognition. The normative discussion on Abkhazia's statehood should thus be limited to the legal and moral obligation for the international community to recognize the legitimacy of the Abkhaz claims.

<sup>461</sup> The following presentation of Abkhaz and Georgian views is largely based on the presentations made by governmental delegations from Georgia and Abkhazia to the seminar 'State-Legal Aspects of the Settlement of the Georgian-Abkhazian Conflict', a seminar organized by the Venice Commission of the Council of Europe held at Pitsunda, Abkhazia, 12–13 Feb. 2001. I participated in this meeting in the capacity of an expert for the Venice Commission.

In this respect, it can be observed that all the arguments used by the Abkhaz authorities to support their claims are in one way or another linked to one of the traditional just war principles. This does not mean that they are all related to the experience of the war. This is the case, for instance, with various historical arguments in line with the *just cause principle* or the *principle of legitimate authority*. Countering the Georgian claim that Abkhazia was always a part of the Georgian political realm, Abkhaz historians defend the thesis that Abkhazia experienced 1,200 years of statehood.<sup>462</sup> When unified with Georgia under tsarist rule, the region, they claim, was forcibly colonized by Georgians.

Abkhaz historians further dispute the view that Abkhazia failed to establish its independence after the demise of the tsarist empire and before the establishment of Soviet power in the region. They underline the numerous attempts by the Abkhaz national movements to emancipate themselves from Georgia. In addition, Abkhaz historians regard the Soviet federal policies, which subordinated Abkhazia to Georgia, as fundamentally unjust. The fact that these policies had been implemented by Stalin, a Georgian national, in their view confirms that these policies suited Georgian imperial interests. They criticize the international community's interpretation of the Soviet constitution, according to which only Union republics would have had the right to secession. In their view, the attempts to reform the Soviet federal state at the end of the 1980s included a Soviet law 'On the Procedure for the Resolution of Questions Involved in the Withdrawal of a Union Republic from the Union of Soviet Socialist Republics (USSR)', which gave the population of autonomous republics and other autonomous entities the option of 'taking an independent decision on the question of whether to stay in the USSR or the seceding Union republic, and also of posing, independently, the question of its legal status as regards statehood'.<sup>463</sup> According to the Abkhaz interpretation, the unilateral secession of the Georgian republic from the Soviet Union presented Abkhazia with such an option. The people of Abkhazia, they claimed, had opted for sovereignty and the right to secede. The Georgian military intervention in August 1992 was, in their view, an attempt to wipe out these achievements. In this narrative, the arguments concerning the history of Abkhaz independent statehood and the Soviet federal system are in line with the *principle of legitimate authority*, whereas the references to previous injustices such as colonisation and oppression by an imperial power are in line with the *just cause principle*.

<sup>462</sup> Viacheslav Chirikba, 'Georgia and Abkhazia: Proposals for a Constitutional Model', in Coppieters, Darchiashvili, and Akaba, *Federal Practice*, 247.

<sup>463</sup> Article 3 of the USSR law 'O poryadke resheniya voprosov, svyazannykh s vykhodom soyuznoi respubliki iz SSR', published in *Izvestia*, 6 April 1990. The law was signed by Mikhail Gorbachev, President of the USSR, on 3 April 1990.

This interpretation of Abkhazia's political history is challenged by Georgian authors. They likewise use historical arguments in line with the *just cause* and *legitimate authority principles*. At no time, they say, had Abkhazia established its statehood independently of the Georgian political realm. Georgian authors deny the existence of Georgian colonization of the Abkhaz region, considering their own presence there as having continued from time immemorial or as the natural result of migratory flows. They do not deny that the Abkhazians have been unjustly treated in modern history, but consider that this has also been the case for the Georgian nation. Such injustices were the doing not of the Georgian, but of the tsarist and Soviet authorities. As they see it, the subordination of Abkhazia to Georgia in the Soviet constitutional set-up was not unjust, as Abkhazia would never have attained independent statehood anyhow, so its lack of sovereignty is in line with history. They further deny the constitutional validity of the Soviet law on secession of April 1990 which gave autonomous entities in Georgia and other Union republics the right to choose their international status independently. This law was intended to deter Union republics from seceding from the Soviet Union, since the exercise of this constitutional right would now threaten to provoke the disintegration of their state.

In these contradictory narratives, history is used to defend particular political objectives. It is difficult to base political choices, such as the recognition of states, on such a type of knowledge. Historical injustices must undoubtedly be taken into account in discussing opposing claims, but the history of nations remains permanently open to contradictory interpretations. It cannot be expected that one single narrative will guide the political act of international recognition. In the event of the disintegration of federations, such as the Soviet Union or Yugoslavia, international recognition has largely been granted on the basis of an interpretation of their constitutions. This was practised out of necessity, irrespective of the historical origin and the moral legitimacy of the Soviet and Yugoslav constitutions. This does not mean that the normative discussion on secession should be entirely subordinated to the factual existence of constitutional rules. In the following, we will analyse both claims from the perspective of political ethics and will apply the various criteria to be found in just war theory to the ethics of secession.

It has been demonstrated above that the Abkhaz and Georgian historical narratives implicitly make use of the principles of *just cause* and *legitimate authority*. It can also be demonstrated that they also use other *jus ad bellum* principles such as *proportionality*, *likelihood of success*, *last resort*, and *right intentions* in framing their historical arguments for or against the right of secession of Abkhazia. These criteria have to be made explicit and redefined for that purpose: the *just cause principle* prescribes in this context that severe

forms of injustice must be prevented. This particularly concerns the risk of a repetition of the Georgian armed incursion into Abkhazia in August 1992. But a unilateral declaration of independence—which, as a unilateral action, creates new forms of conflict and injustice (affecting minorities, the rump state and the international community)—can only be used as solution of last resort. As will be argued below, a federal arrangement is a preferable option. A unilateral declaration of independence may only be considered a just means of attaining a just cause if no reasonable alternative is available. The Abkhaz authorities themselves seemed to agree with this reasoning in the past, by postponing their decision to proclaim independence unilaterally until 1999. They then claimed that their previous proposals for a confederal arrangement had not been taken seriously by the Georgian government and that they were still awaiting a response.<sup>464</sup>

Among the various alternatives, a federal framework has a number of advantages. It would facilitate an accommodation between the competing claims for self-determination of the two main communities in Abkhazia itself. Democratic federations can prevent the type of subordination between the federal centre and the federated units that prevailed in the Soviet Union. A federal order would moreover acknowledge the legitimate need of the international community for a restrictive approach to the question of recognition of sovereign status, in order to preserve its efficiency as the cornerstone of international order. Strong international guarantees for the peaceful coexistence of the Georgian and Abkhaz national communities may furthermore be envisaged in a federal framework. These security guarantees would not be necessarily as far-reaching as those that can be provided by the institution of international sovereignty, but should be sufficient to avoid a repetition of the 1992 intervention. Through a federalization of the foreign competences of the Common State of Georgia and Abkhazia, Sukhum(i) could wield its internal competences in the international arena as a subject of international law. Its limited international personality and treaty-making power, enshrined in the constitution, would, however, have to be recognized by the international community.<sup>465</sup>

Should a federation prove unable to resolve the national conflict between Georgians and Abkhazians, it could still have the advantage of regulating them in a peaceful way. A federation has to be regarded as an open system,

<sup>464</sup> Interview with the Abkhaz Minister for Foreign Affairs Sergei Shamba, 9 Nov. 2000.

<sup>465</sup> See Bruno Coppieters, Tamara Kovziridze and Uwe Leonardy, 'Federalization of Foreign Relations: Discussing Alternatives for the Georgian–Abkhaz Conflict,' published as Working Paper No. 2 from the *Caspian Studies Program's Working Paper Series*, Harvard University, 2003. On the normative preference for federal status see Bruno Coppieters, 'Ethno-Federalism and Civic State-Building Policies: Perspectives on the Georgian–Abkhaz Conflict', in *Regional & Federal Studies*, 11:2 (Summer 2001), 69–93.

open to transformation, where the creation of confederal relations between federated entities, or even full independence, may be a legitimate outcome, provided that procedural rules are designed that are commonly accepted by all parties. A federal arrangement or peace settlement where the option of secession is not a priori excluded, but is regulated according to general rules, increases its democratic legitimacy for all parties involved. The possibility that constitutional procedures on secession may be jointly accepted by those who are striving for secession and by those who are opposing it has been demonstrated by the positive reactions from pro- and anti-secessionist movements alike to the Good Friday Agreement on Northern Ireland, in April 1998,<sup>466</sup> and to the opinion of the Supreme Court of Canada concerning the secession of Quebec, in August 1998.<sup>467</sup>

The above analysis of the events leading to the 1992 war has demonstrated that the Abkhaz authorities did not act according to the *principle of last resort*. Neither before nor after the war did they seriously address questions such as international guarantees, power-sharing or minority rights within a federal framework.<sup>468</sup> It is true that the Georgian authorities likewise remained largely silent on such matters, despite their declared readiness to federalize relations between Georgia and Abkhazia. Their proposals have been confined to a distribution of competences between Georgia and Abkhazia, leaving open the question of to what extent Abkhazians will participate in the exercise of government in Abkhazia itself. Nor do the Georgian proposals deal with such central issues as possible conflicts between federal institutions over their respective areas of competence, or the key question of how military intervention by the federal government in a political conflict between national communities in Abkhazia can be ruled out. The stalemate in the negotiations has led to a situation where each party now provides its own interpretation of the *principle of last resort*. Each points to the unwillingness of the other to compromise in order to advance more radical solutions. Shevardnadze has made repeated appeals for a military enforcement of a peace settlement with the help of Russian or NATO troops. For Tamaz Nadareishvili, the Georgian chairman of the so-called

<sup>466</sup> The Good Friday Agreement recognizes ‘the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland’. The full text of the agreement is to be found on [http://www.irelandstory.com/today/good\\_friday/full\\_text.html](http://www.irelandstory.com/today/good_friday/full_text.html).

<sup>467</sup> According to the opinion of the Supreme Court of Canada of August 1998 there is no right, under international law or under the constitution of Canada, for Quebec to secede unilaterally. A clear majority in Quebec in favour of secession would, however, under certain conditions—such as a referendum on a clear and unambiguous question—create an obligation for the federal government to negotiate the secession of Quebec.

<sup>468</sup> Alternative proposals have been designed by Abkhaz scholars such as Viacheslav Chirikba (see Chirikba, ‘Georgia and Abkhazia: Proposals for a Constitutional Model’, 233–78).

‘Abkhaz parliament-in-exile’, force has to be used against the breakaway state, with or without external support. The Abkhaz leadership has likewise declared that negotiations on political status have been fruitless and that unilateral secession by Abkhazia should now be accepted as a last resort. As neither the Abkhaz nor the Georgian authorities demonstrate a clear willingness to compromise or to develop practical models of conflict settlement, neither of these ‘last resort’ solutions can be considered legitimate.

The claim by the Abkhaz authorities that they have the *legitimate authority* to take the step of declaring unilateral secession is seriously flawed. Their implementation of the principle of national self-determination is restricted to Abkhazia's ‘titular nation’. The Russian and Armenian nationalities are seen only as passive supporters of the Abkhaz leadership. There is no blueprint for the inclusion of the large Georgian population in the future of Abkhazia. In addition, the perception that their presence is primarily a result of colonization makes inclusive nation-building policy even more difficult. The Abkhaz authorities have the greatest difficulty in bringing their policies into line with international human rights standards. The return of the refugee population is seen as a serious threat to the political privileges of the Abkhaz titular nation, and only a minority—primarily the inhabitants of the Gali region—have been allowed go back to their homes. The lack of prospects for the return of refugees led to the condemnation of the ethnic cleansing by the Abkhaz authorities in the final documents of summits of the Organization for Security and Cooperation in Europe (OSCE).<sup>469</sup> There have been some attempts to foster the Mingrelian identity of the Georgian population of the Gali region; for example, a newspaper in the Mingrelian language was published in the summer of 1995 with the support of the Abkhaz authorities.<sup>470</sup> Such attempts to take a more inclusive view of Abkhaz citizenship by strengthening the cultural identity of the local population have not, however, been pursued with great determination, and they have failed to arouse political allegiance to the Abkhaz authorities among the Mingrelians.

According to the Abkhaz constitution, the source of sovereignty is located in the population living on Abkhaz territory.<sup>471</sup> As far as the notion of popular sovereignty is concerned, no distinction is made here between ethnic groups. Despite this constitutional provision, however, in October 1999 the Abkhaz authorities organized a referendum on independence that failed to

<sup>469</sup> The final declarations of the OSCE summits in December 1994 (Budapest), December 1996 (Lisbon) and November 1999 (Istanbul) are to be found on the OSCE website <http://www.osce.org/>

<sup>470</sup> See George Hewitt, ‘Abkhazia, Georgia and the Circassians (NW Caucasus)’, *Central Asian Survey*, 18:4 (1999), 477.

<sup>471</sup> The text of the Abkhaz constitution can be found on <http://www.abkhazia.org/>

take into account the part of the population of Abkhazia that had to flee as a result of the war. Moreover, the discussions preceding the referendum left no room for pluralism or open debate. It may be concluded that the principles of popular representation, of the rule of law, of democracy and minority rights have not been respected in Abkhazia's unilateral declaration of independence.

The lack of prospects for the integration of national minorities is also central to the testing of the *principle of proportionality*. According to the Abkhaz authorities, international recognition of Abkhaz independence would increase the possibilities for the Georgian refugees to return. They consider that a massive return of refugees would at present constitute a threat, but that recognition would in principle give sufficient security guarantees to Abkhazia to permit such a return. This argument, too, is seriously flawed. It is unclear how participation by the large Georgian population in political life in Abkhazia would be facilitated by independence. The problem of power-sharing remains no less acute in a sovereign state than in a federated one. Thus, where the problem of the coexistence of the various communities is concerned, no substantial benefits are to be expected from secession for any of them.

The Georgian authorities deny that the Abkhaz authorities have right intentions in pursuing the cause of secession. They argue that there is no valid reason to strive for secession from a state that has granted so many rights and privileges to the Abkhaz nation. The 'real' intentions of the Abkhaz, they claim, lie rather in an attempt to revive the Soviet state and to serve Russian imperial interests. According to other interpretations of Abkhaz policies, secession reflects the interests of the local *nomenklatura*. Such views—which are widespread in the Georgian media—are only partly correct. The Abkhaz authorities have indeed built their policies of secession on the idea that Russia has the will and the capacity to reinforce the Abkhaz position in the conflict, even if it does not support the option of independence. Contrary to the Georgian view of Russia's imperial role—that is, that its foreign policies are based on the principle of 'divide and rule'—the Abkhaz authorities expect their northern neighbour to play a stabilizing role. They try to convince the Moscow authorities that sovereignty would be a prerequisite for such stabilization. International sovereignty could either find an expression in independence or in the status of an associated state with the Russian Federation.

The interests of the Abkhaz leadership would in many respects be better served by independence than by federated status for their state. Independence gives access to a large number of resources that cannot be accessible to the same extent to non-sovereign entities. As members of international economic organizations, they may obtain easier access to grants

and loans than federated states. They would also have exclusive access to international security organizations, which are barred to non-sovereign entities.

The nationalist view of emancipation from foreign oppression has been decisive in the mass mobilization of the Abkhaz community. Support for independence in the referendum of October 1999 has largely been a question of loyalty to the national community and to the authorities. For those who supported the decision, the primary intention was to consolidate the just cause of self-defence. The absence of public debate and democratic procedures rendered it impossible for voters to assess the viability of alternative options. But the *principle of right intentions* was respected to the extent that this principle assesses not the rightness of the Abkhaz cause but the rightness of the—subjective—Abkhaz intentions.

A further condition for unilateral secession to be considered legitimate is that it should have a reasonable chance of succeeding (*the likelihood of success principle*). This possibility has to be regarded as very slim. The international community—including the Russian Federation—has no interest in creating a precedent for other secessionist movements. The decision not to pursue negotiations on the federalization of Abkhazia and Georgia also has dramatic economic and social consequences for the Abkhaz population. Investment is hardly possible in an insecure environment. International development agencies are unable to provide reconstruction funds as long as such support may be interpreted as a form of recognition for Abkhazia's independence.

## CONCLUSIONS

The present paper has defended the thesis that rejecting the various Georgian justifications for their war aims does not mean that the Abkhaz claim to independence is justified. Independent status is not a necessary consequence of the application of the *just cause principle* to the Georgian–Abkhaz ethnonational conflict. Federalization could—according to the *principle of last resort*—redress and prevent the various types of injustice suffered in the past. Unilateral secession has been justified in Abkhazia as the exercise of the right to national self-determination by a relatively small part of the population, which goes against the *principle of legitimate authority*. The unilateral declaration of secession has made it even more difficult to acknowledge the right to return of the Georgian population of Abkhazia. Its political and social costs far outweigh its benefits, which goes against the *proportionality principle*. There is no reasonable chance that the international community will recognize Abkhazia's unilateral declaration of independence, which means that the *principle of likelihood of success* is not

respected either. The decision, however, is in line with the *principle of right intentions* to the extent that this principle refers exclusively to subjective intentions.

A legitimate outcome to this ethnonational conflict does not depend on the Abkhaz side alone. It has been argued in this chapter that the Georgian authorities carry by far a greater share of responsibility for the launching of military intervention in 1992. Their refusal to acknowledge their responsibility casts a heavy shadow over the political negotiations. They have further failed to produce a blueprint for a federal state which would provide for shared rule by all nationalities in Abkhazia. The refusal of the Abkhaz authorities to start negotiations on the political status of Abkhazia within the framework of a common state, however, makes it impossible to judge to what extent the Georgian authorities are ready to explore alternatives to war and secession, and to base the future governance of their common state on the principles of shared rule and federalism.

The consequences of these policies may be fateful for Georgia and Abkhazia.<sup>472</sup> A new war is not excluded. The government of Shevardnadze has been largely delegitimized since the second half of the 1990s by the scale of its economic mismanagement and corruption and the lack of prospects for an end to the Abkhaz conflict. The Abkhaz leadership has likewise lost much of its popularity since the end of the war. The lack of economic prospects is forcing large numbers of young people to emigrate from Abkhazia. Georgia's failure to consolidate its statehood and the depopulation of Abkhazia may be the most obvious consequences of the general lack of adequate moral principles in dealing with the question of secession and the use of force, the lack of creative imagination in designing institutional solutions, and the lack of political will in making radical compromises.

<sup>472</sup> On the following see Bruno Coppieters, 'Tempting the Fates. Abkhazia and Georgia play a Dangerous Waiting Game', *Armenian International Magazine*, March 2001, 68–9.