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# A Criminal From Tbilisi. Aspects of Genocide in South Ossetia from the Standpoint of the International Law

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Recently Russian political leaders – the President and the Prime Minister – have a number of times described the Georgian invasion of South Ossetia as "aggression" and "genocide". Initiating the court prosecution of individuals responsible for crimes against civilians in the region, it is necessary to define with greater precision the meaning of the above legal terms and the legal consequences which can be expected in case the charges are confirmed via a judicial procedure.

**Aggression** It is clear from the political and moral points of view that Saakashvili's regime has launched an aggression against South Ossetia. This fact cannot be disputed. As for legally qualifying the corresponding events, the international law in its current form does leave the Georgian President an escape route. The countries responsible for the worst aggressions in the modern world – the US, Great Britain, and a number of others – continue to impede the adoption of a treaty-based definition of aggression. At present a legal definition of aggression is provided solely by the 1974 Resolution of the UN General Assembly. This definition has not been established in the treaty framework so far – negotiations on the issue in the International Criminal Court continue. As long as the treaty-based definition is not agreed upon, the 1974 Resolution remains in effect, by which the term aggression is applicable only to an offensive launched by a state against another state.

However, Article 1 on the Resolution includes an explanatory note saying that "the term "State" is used without prejudice to questions of recognition or to whether a State is a member of the United Nations". This note could be used to strengthen Russia's position in case Russia recognized South Ossetia as an independent state.

**Genocide** From the political standpoint, the use of the term genocide to describe the Georgian offensive in South Ossetia which included the extermination of civilians, the demolition of schools and hospitals, the destruction of infrastructures, etc is certainly warranted. The legal definition of genocide is a more complicated matter. Western media wrote a lot about genocide during the Yugoslavian crisis, but even the International Criminal Tribunal for the former Yugoslavia recognized only one episode of the war as genocide.

Saying on August 10 that the Georgian side's offensive in South Ossetia had a massive character and targeted the civilian population, and that people were killed, burned alive, run over by tanks, and also that people's throats were cut, Russian president D. Medvedev focused on the numbers and cruelty of the crimes committed by the Georgian army. From the standpoint of the international law, the mass character of crimes and their tendency to specifically target civilians provide evidence of war crimes and violations of the laws and customs of war.

The main problem related to qualifying a crime as genocide is the necessity to prove that the intension underlying it was to eradicate a certain ethnic or religious group. However, even before the intention is proven and regardless of Saakashvili's aim (he keeps talking about restoring Georgia's "territorial integrity"), it is clear that terror and extermination of the population of South Ossetia were the methods used. Moreover, the implementation of the operations, their character and targets show clearly

that killing, terrorizing, and expelling the entire population of South Ossetia were the objectives pursued by the attack. This was not an attack against military targets due to which, as it usually happens during wars, civilians were also victimized. It was an effort to "cleanse" the territory claimed by Georgia from all or most of its population.

It should be noted that according to the 1948 Convention not only murders or severe physical harm, but also the creation of intolerable living conditions for the population count as genocide.

The intention behind the military offensive launched on August 8, 2008 on Saakashvili's order was to get rid of the Ossetian people as the current Georgian regime needs the territory of South Ossetia but not the people residing in it.

The 1948 Convention on genocide does not say that the intention to exterminate a nation or its part has to be linked to racist views of the perpetrator. The point is to establish that there was the aforementioned intention. In the criminal law, the intention is evidenced by the circumstances of every particular case. Saakashvili's course of action not only shows the intention to commit genocide " the Georgian President wished to make the entire population of South Ossetia understand what his intention was in order to urge the people to leave their territory (which is what we currently witness).

Conclusions Qualifying Saakashvili's actions one can definitely conclude (on the basis of the fact that there was an intention to eliminate entirely or partially the population of South Ossetia) that genocide was committed.

The actions of the Georgian leadership correspond entirely to the definitions given in the Statute of the International Criminal Court (see Article 5: Crimes within the jurisdiction of the Court; Article 6: Genocide; Article 7: Crimes against humanity; Article 8: War crimes). Georgia signed the Statute on July 18, 1998 and passed the ratification document on September 5, 2003. Therefore, Saakashvili and his generals are criminals whose crimes are entirely within the jurisdiction of the court.

The Statute of the International Criminal Court applies equally to all individuals regardless of the held official positions such as the head of a state or government (Article 27 of the Statute).

\*\*\* According to Saakashvili's official biography, he is a graduate of the Hague Academy of International Law. This line may impress those who are not specialists in the field. In reality, being the graduate amounts to completing a 3-week-long perfunctory course dealing with particular problems of the international law. Perhaps, due to specific aspects of his background, Saakashvili is sincerely unaware of the punishment to which he can be subjected for what he has done. In any case, former Chairperson of the Parliament of Georgia Nino Burjanadze knows everything perfectly well as an expert in international law who took part in the work of the Russian International Law Association. Though, there is not much she can do for her former ally at the moment " maybe just tell to what term in jail he can be sentenced.

Not relying on Mrs. Burjanadze for the matter, we would like to inform Mr. Saakashvili that the least punishment he is likely to receive for the crimes he has committed is the life sentence (Article 77 of the Statute of the International Criminal Court).

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