

## Chapter 9

# Shades of Grey. Intentions, Motives and Moral Responsibility in the Georgian-Abkhaz Conflict

---

Bruno Coppieters

---

### Introduction

Moral reflections on the Georgian-Abkhaz conflict can focus on five different themes. First, on the legitimization of organized violence and other forceful means applied by both parties to strengthen their political position in the conflict. A reflection on the regulation of violence should focus on the effective use of military force during the armed conflict in 1992-93. The inability of the Abkhaz government to undo ethnic cleansing, and the enforcement of an economic embargo by the Georgian and Russian governments against Abkhazia, would also be covered by moral reflections on the use of force in a political conflict. Economic blockades to break the will of the civilian population and to force their political representatives to compromise or surrender are traditional weapons of war. It is also possible to reflect upon the attempt by the Georgian government to have Russian troops use all the means at their disposal to implement CIS decisions, or to get the international community to enforce some kind of 'Bosnian model'. The escalation of violent conflicts in the Gal(i) region since the beginning of 1998 makes it clear that the cease-fire and the principle of peaceful negotiations, accepted by both sides in 1993, did not rule out the use of force in the conflict. Reflections on the political use of violence would have to cover the entire post-Soviet period.

Second, the overthrow of the democratically elected president Zviad Gamsakhurdia in 1991-92 by the political opposition and by the president's former supporters among paramilitary forces may be interpreted in the framework of the philosophical tradition which established a right to overthrow governments that came to power lawfully but govern with gross injustice.<sup>[1]</sup> This opposition between, on the one hand, a democratically elected president who lost popular legitimacy through his authoritarian and erratic policies, and an "unelected autocrat"<sup>[2]</sup> who promised to re-establish order and democracy, was decisive for the evolution of the war. At first, Shevardnadze could count only on the paramilitary troops of Kitovani and Ioseliani to resist the troops of the ousted president Gamsakhurdia. The 'interethnic' Georgian-Abkhaz conflict is closely intertwined with this 'intraethnic' Georgian-Georgian one. The decision to get Georgian paramilitary troops to occupy the main communication lines in Abkhazia was said to be aimed at stopping Gamsakhurdia's "terrorist" forces and

obtaining the release of Deputy Prime Minister Alexander Kavsadze and other Georgian government officials who had been kidnapped by these forces.<sup>[3]</sup> Getting Georgian troops to re-establish Georgian authority over the territory of Abkhazia was a further objective of this move. It is far from clear how the Presidium of the State Council, constituted by Shevardnadze and his warlords, discussed the relationship between these two objectives. There is also a debate over whether Shevardnadze had doubts about his troops' chances of crushing the Abkhaz proclivity for secession. It is generally assumed that he could not have opposed his paramilitary allies without either resigning or being toppled from power, which would have entailed the risk of either a military dictatorship or the return of Gamsakhurdia's forces to Tbilisi and a new civil war. Russian and North Caucasian support for the Abkhaz troops led to the Georgian defeat in Abkhazia. After the Georgian troops had been expelled from Abkhazia, Russia helped Shevardnadze to crush definitively the military supporters of his rival, Gamsakhurdia. Shevardnadze's defeat in Abkhazia was the necessary condition for gaining the upper hand in this intraethnic conflict. In 1998, three years after the final removal of the paramilitary organizations from power and the implementation of a new democratic constitution, the conditions under which Shevardnadze acceded to power again became an important political issue. An attempt on his life in February 1998 by supporters of the ousted president put the question of 'a national reconciliation' between the two factions in the Georgian civil war at the top of the political agenda. Political stabilization through such a process of reconciliation may facilitate an institutional solution to the various interethnic and interregional conflicts or tensions (with Abkhazians, South Ossetians, Ajarians, Armenians and Azeris).

Third, moral reflections on the Georgian-Abkhaz conflict may focus on the normative meaning, in this conflict, of the right to secession - including the normative dimension of the right to self-determination and the principle of territorial integrity. This issue does not only concern the origins of the war. The long-term possibility of Abkhaz secession is being reckoned with in all negotiations on the federative future of Georgian-Abkhaz relations. The international community's refusal to recognize the Abkhaz government as legitimate or to recognize any border changes achieved by force or unilateral forms of secession, puts the normative question of the right to secession at the forefront of relations between Abkhazia and the world community. This question may continue to be debated even after a peace settlement. There is no reason to believe that confederal or federal institutions will put an end to conflicts of sovereignty or even to secessionist strivings. It may be hoped that debates on this issue in Abkhazia and Georgia will take place in an institutional framework which prevents violent clashes, as is the case in Canada and some Western European countries. The federalization of a common Georgian-Abkhaz state is not necessarily a stepping-stone to secession, but it will not prevent democratic discussions on this issue and it will require ongoing normative reflection on the legitimacy of common institutions.

Fourth, the Georgian and Abkhaz concepts of citizenship and their view of themselves as constituting with 'the other' one single national community (from the Georgian perspective) or two different national communities (from the Abkhaz perspective) requires a moral exploration. The question as to which parts of the population living on a particular territory are included and which are excluded from these concepts of a particular community (the question of who should be regarded as 'guests' or 'foreigners' on Georgian soil or the question of the rights of the Georgian population of Abkhazia to return to their homes) has a clear moral dimension. This moral dimension is also present in the discussion about who should be regarded as a political minority or a political majority according to these community concepts (Georgians as a political majority according to the Georgian concept of a single national community; the Abkhaz as a political majority according to the Abkhaz concept of a national state). The discussions on the content of value-laden concepts such as democracy and federalism are directly related to these discussions on citizenship and nation.<sup>[4]</sup>

Fifth, the possible strategies for dealing with the past injustices committed by both sides. A peace settlement implies the need for policy choices, first of all between criminal prosecution or amnesty for the individual perpetrators of gross injustices, and secondly between the need to remember or to forget past crimes. Strategies in other countries which have experienced similar forms of transition have taken a wide variety of forms.<sup>[5]</sup> The political choices involved are basically moral choices. These questions are at present not at the forefront of the political negotiations, but they will inevitably become more prominent in the future.

All these five themes clearly have to be differentiated. They are inextricably interrelated in empirical reality, but they also refer to different traditions in political philosophy. Each has its own classics in literature. Research on the Georgian-Abkhaz conflict within the framework of these various theoretical traditions would require a lengthy analysis, which is not my intention here. I will restrict my contribution to the question - which I consider more essential than a detailed analysis of any of these issues - of whether a discussion of the moral character of the armed conflict could be fruitful in the context of Georgian-Abkhaz collaboration at an academic level. This question led to a debate when discussing the first draft of this paper with the participants of the conference in June 1997. Some participants (and not only Georgian or Abkhaz ones) had strong doubts about whether such discussions could have positive consequences for a dialogue between the communities in conflict. This lack of consensus concerning the importance of moral debates between Georgians and Abkhaz contrasted with the general consensus that the issue of federalism and federative systems (federative systems including both federations and confederations) would be of the utmost importance for a future peace settlement. I would certainly agree that institutional questions must be the main priority in Abkhaz-Georgian collaboration, as I also argue in the conclusions to this book. But does this mean that a discussion on the moral dimension of the conflict would have merely divisive consequences? There

was a relative consensus at the conference that the issues of pan-Caucasian integration strategies and the historiography of Georgian-Abkhaz relations would be worth discussing. But why this lack of agreement concerning the importance of morals in confidence-building programmes, despite the overt moral character of the conflict? I am convinced that such a rejection is based on a misunderstanding of the place of morals or ethics in political conflicts and scientific disputes. A process of dialogue between Georgians and Abkhaz on an academic level should preferably include all scientific disciplines - including ethics - and all the scientific traditions represented in these disciplines.

In the following, I will first consider a major objection concerning the relevance of a moral analysis of a political conflict, and then two alternative approaches - that can be found among the contributions to this book - to the explicit inclusion of ethics and ethical judgements in an analysis of Georgian-Abkhaz relations. I want to demonstrate that these alternative approaches cannot replace a moral approach, in particular when the question of political responsibility must be analysed. This question has to be addressed as part of a peace settlement, as can be seen from the question of how and to what extent the right of the Georgian population from Abkhazia to return there should be linked to an assessment of their involvement in the war. In this analysis, I will point out the importance of the concepts of 'intentions', 'motives' and 'responsibility' - which are central concepts in political ethics - for an analysis of the Georgian-Abkhaz conflict.

This analysis will not deal separately with the five broad themes of political philosophy mentioned above, but will refer to all of them. The references to the conflict itself have primarily an illustrative purpose for my demonstration and do not attempt to give definitive answers to the moral questions it raises, and which were mentioned above. As is also the case with contributions from 'outsiders' concerning federative structures to be implemented in Georgia and Abkhazia, such reflections have as their main aim to deliver general ideas and principles and to refer to academic discussions which may be of particular relevance to the Georgian-Abkhaz conflict.

According to Michael Walzer, the most effective moral criticism is that made by those inside a community's moral system. Criticism from the outside is likely to be abstract and rationalist, leading to coercion rather than to dialogue.<sup>[6]</sup> Such criticism of an abstract and coercive discourse on morals is a recurrent theme in the Western philosophical tradition. The ethical tradition is more inclined to refine particular ethical questions than to present readers with ready-made answers. To take the just war doctrine as an example: Robert Phillips has rightly stated that this doctrine should be considered rather as "a series of questions which any moral agent must ask himself when faced with the problem of resorting to force. The doctrine of justified war by itself does not provide adequate moral guidance".<sup>[7]</sup>

## **Moral Disputes and Scientific Rules**

According to one argument against moral discourses in conflict resolution, the question of right or wrong does not belong in the realm of scientific knowledge. Contrary to empirical or analytical research on conflicts, a moral dispute - so the argument goes - cannot be settled according to universally valid methodological rules. Morals are seen as being based on subjective perceptions, which are themselves based on irreducible contradictions between values and value systems. Conflicts between national communities express opposed hierarchies of collective values and it makes little sense for individual observers to settle or even to express personal judgements on such collective disputes, based on their own value systems.

It is true that empirical research cannot decide how the principle of self-determination or the principle of territorial integrity should be applied in a Georgian-Abkhaz peace settlement. Historians can describe the way in which wars for secession have been won or lost. Specialists in international law can describe how the principle of self-determination has been reinterpreted in the process of decolonization, or how the legal concept of sovereignty is being challenged by processes of integration and globalization. The history of the Yugoslav conflict may teach us how Western governments were divided among themselves on the question of recognizing Croatia's right to secession. Political scientists can analyse the consequences of particular institutional strategies which have been adopted in the past. No deductive analysis from generally accepted principles and no analysis based on historical analogies devoid of moral choices can give an empirically-based answer to the question of how the Abkhazian people's right to self-determination should be implemented. This type of analysis could not even answer the question of how the concept of 'people' should be interpreted. Should the pre-war or the post-war population be considered as the holders of such a right?

The argument that moral issues at stake in a conflict are subjective and cannot be treated according to standard empirical practices is true, but such an argument points to the limits of empirical research on conflicts rather than to the limits of moral reflection. Empirical research may discuss the causes of particular conflicts and the consequences of particular strategies, but it has few means at its disposal to help in taking a decision on the variety of political choices human agents may face or, in particular, the moral principles they should follow in conflict situations. Any analysis of the Georgian-Abkhazian conflict that excludes the ethical dimension may be regarded as reductive, precisely because it would exclude the opposing hierarchies of values and value systems that are defended in both communities.

As in any case the overtly moral dimension of the war cannot be neglected, it may be important to address it in positive terms. Moral arguments have been and still are being used in the political argumentation and declarations of all parties involved in the conflict. The weapon of moral critique is one of the panoply of instruments used by both protagonists to mobilize domestic and international support. As both parties argue in moral terms,

a moral analysis of their arguments may seem irreplaceable, especially as there is a lack of moral clarity concerning their political objectives. It is not clear, for instance, what the moral content of the basic principles at stake in the conflict are. With which moral arguments does the Abkhazian government defend the primacy of the right to self-determination over the principle of the territorial integrity of internationally recognized states? Does this right to self-determination challenge the property and political rights of the pre-war Georgian population? What is the meaning of political freedom and equality in this context? Can equality between peoples only be achieved through independent states? Should freedom be identified with the sovereignty of an independent state, which finds its limits only in international law and in freely accepted commitments? Or should political freedom be seen as the freedom of a community to preserve its identity, which can be achieved in a variety of institutional ways? Clarity here is necessary, as common principles have to be found in the negotiations on a common state. The question of whether the principle of shared sovereignty can be accepted as such a common principle for the Georgians and Abkhaz is still an open one. The same lack of clarity concerning the moral content of the principle of territorial integrity is characteristic of the Georgian discourse. From the Abkhaz perspective, the Georgians are exclusively interested in the Abkhaz territory and in the property rights of their own population, without any consideration for Abkhaz rights over their own homeland.

It may be interesting here to draw a parallel with the American Civil War. Allen Buchanan is the author of a classic work on the moral philosophy of the right to secession. His moral reflections are rooted in American political history. Buchanan considers that there was a basic lack of clarity concerning the moral principles that were at stake in the American Civil War. One basic dimension of the tragedy of this civil war was the fact that "on both sides there was a profound moral ambiguity concerning what the war was really being fought for".<sup>[18]</sup> It is popularly believed that the Northern side fought for the abolition of slavery. Buchanan quotes Abraham Lincoln to prove that the emancipation of the slaves was not, however, one of the Northerners' primary objectives in the civil war: "My paramount object in this struggle is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slave I would do it, and if I could save the Union by freeing some and leaving others alone I would also do that".<sup>[19]</sup> According to Buchanan, this lack of moral clarity concerning the issues at stake in the war had long-term consequences for the development of civic rights in the United States. This basic ambiguity surrounding the political conditions under which slavery was abolished in the last century has rendered the civic emancipation of the Black population of America more difficult to this day.

The Georgian and Abkhaz governments are making tremendous propagandistic efforts to defend the principle of territorial integrity and the right to self-determination, while Georgian and Abkhaz scholars are discussing the application of these principles in the context of the Georgian-Abkhaz conflict. In his contribution to this volume, Viacheslav

Chirikba focuses his attention on the right to self-determination while Revaz Gachechiladze examines the principle of territorial integrity. It would be interesting if the moral meaning of these principles could be clarified within the framework of academic collaboration.

The political importance of such a clarification becomes particularly clear when we consider two of the most common accusations levelled against the leadership of the two communities. The Abkhaz government is accused of using the right to self-determination as an ideological façade for defending an ethnocratic dictatorship. According to the principle of territorial integrity, the integration of Abkhazia into the Georgian state would - so runs this critique - democratize Abkhaz state structures and cause the present Abkhaz leadership to lose power.<sup>[10]</sup> The Georgian government, meanwhile, is accused of interpreting the principle of territorial integrity as a means of retaining the possessions of its 'small empire'. Political negotiations will remain difficult as long as those who are responsible for negotiating or mediating use - or even attach any belief to - such accusations. A clarification of the values at stake when debating future state structures may be helpful in dissipating these strong prejudices.

In their contributions to this book, Ghia Nodia and Gia Tarkhan-Mouravi argue that the Georgian attitude towards Western concepts of democracy and human rights is based on an outward conformity, and not (yet) on a deeper cultural accommodation.<sup>[11]</sup> Gia Tarkhan-Mouravi states in his article that although the Georgian and Abkhaz parties appeal to the principles of international law, these have only an instrumental value for them. Moral arguments and the principles of international law do indeed tend to be used 'ad hoc' in political conflicts, and not just by the Georgian and Abkhaz governments. It is generally extremely difficult - including in Western Europe - to determine the borderline between outward conformity and a deeper cultural accommodation of 'universal' principles. In international law, universal claims are made on the basis of universally recognized values, but this recognition takes place through the ratification of treaties and conventions and not necessarily through acceptance by public opinion.<sup>[12]</sup> Nor should the fact that political players are more concerned about material interests than about moral arguments lead one to the conclusion that morals may be neglected in an analysis of the Georgian-Abkhaz conflict. Political players always define their 'material' interests within the framework of a cultural idiom, in which moral principles play a prominent role. The cultural idiom in which the political representatives of a particular community operate is decisive for selecting those interests that are to be considered fundamental.<sup>[13]</sup> The fact that the Georgian government considers 'Western' discourses on democracy, human rights and international law as 'instrumental', as 'useful' in advancing the country's future development, is as such relevant for an assessment of Georgian political culture itself. Such discourses are not considered to be instrumental in all parts of the CIS. I have the impression that the Abkhaz culture is not very different from the Georgian in that respect. Abkhaz archaeologists and historians like to draw attention to the fact that, since colonization by the Greeks and Romans, for long periods in history their

country has been at the inner periphery of Western empires and Western civilization.<sup>[14]</sup> Abkhaz intellectuals feel no less close to European civilization than do Georgian intellectuals. In the contributions to this volume it will be impossible for the reader to find any 'civilizational' clashes between Georgian and Abkhazian views on the nation or on democracy.

Machiavelli rightly stated that moral rhetoric is one of the most potent weapons in international politics and that the ability to convey the appearance of virtue is an indispensable part of the statesman's art.<sup>[15]</sup> This generally accepted principle has been applied more easily by the Georgian than by the Abkhaz leadership. In recent years, the Georgian political leadership has had the opportunity to adopt a Western discourse on democracy. Its progressive integration into Western political structures since its recognition as an independent state in 1992 has been accompanied by a parallel schooling in rhetoric. Georgian diplomats and statesmen have far less difficulty than their Abkhaz counterparts in playing with formulas that are pleasing to Western ears. Abkhazia's economic and intellectual isolation since the war - following seventy years of Soviet autarchy - and its lack of trained diplomatic personnel have meant that its present leadership has found it very difficult to gain recognition for its positions among an international audience. Well-founded Abkhaz claims would probably be far better understood and acknowledged in international fora if the basic values they wish to defend were set out more appropriately than they have been up to now (for instance, it is not easy for an outsider who is not familiar with the Soviet concept of federalism to understand why the concept of 'autonomy' is not a positive one for Abkhaz officials). By clarifying the moral values at stake in the different issues discussed at the negotiating table, both sides would be able to go beyond a purely instrumental use of moral rhetoric. An intensified Georgian-Abkhaz dialogue which clarified these basic values and principles would be helpful in moving beyond a position of mere outward conformity to universal democratic principles. A common state undoubtedly calls for more than an instrumental use of mutually agreed principles or institutions.

A Georgian-Abkhaz dialogue on the moral values at stake in the constitution of a federate common state is relevant for moral debates in other countries as well. The choice between a nation's view of itself from an ethnic and civic standpoint, as discussed in the contribution from Ghia Nodia, is a universal problem. It constitutes one of the main topics of discussion between political parties in Germany, France and other European countries when discussing access to citizenship. The right to secession, too, has become a prominent subject of discussion in philosophical studies in recent years. The official Abkhaz position favours not independence but rather - taking into account political realities - national sovereignty within the framework of a federated (preferably confederal) state. The nationalist pro-independence current, however, is strong in Abkhazia. Comparative research between discussions on the moral significance of secession and its alternatives for securing a community's basic values may be very relevant to the Georgian-Abkhaz

dialogue. Historical comparison may be of particular interest too. When reading about the moral debate during the American Civil War, in an article of Philip Abbott I found a list of arguments which Lincoln used against secession. With the exception of point 6, which describes slavery as an evil practice to be expiated, they are all to be found in present-day Georgian anti-secessionist discourse:

1. The perpetuity proposition: Since the union was created in perpetuity, seceding units have no moral or legal identity separate from the existing republic.
2. The democratic privilege proposition: Secession is a violation of majority rule.
3. The infinite secession proposition: Secession will provide precedents for further secession until all effective government ceases.
4. The economic mobility proposition: Secession will severely inhibit economic mobility.
5. The outlaw culture proposition: There is no legitimate cultural claim to secession for those who violate basic human rights.
6. The expiation proposition: Resistance to secession will expiate national guilt for tolerating evil practices.
7. The exceptionalism proposition: Secession is unjustified in cases in which a state is undertaking an extraordinary course in democratic development.
8. The common heritage proposition: Secession will sever an irretrievable and treasured common heritage.[\[16\]](#)

## **The Neutral Observer**

In the discussion about whether moral arguments can have a place in a scientific discussion on the Georgian-Abkhaz war, the position of the scientific observer is an important one. The conviction that scientific analysis should be not only impartial but also morally neutral when dealing with national or ethnic conflicts is widespread. When this ideal of a neutral observer is applied to conflict resolution and negotiation analysis it may, for instance, imply that the observer should start out from the presupposition that all parties involved in a violent conflict are making rational choices regarding the means of promoting their interests and values, and that they have a rational perception of the situational context, even if the conflict situation largely escapes their control. Such presuppositions do not necessitate a particular moral stand on the part of the observer.

The observer could also start out from the contrary presupposition that all parties involved are basing their decisions concerning the use of means on irrational choices, which are contrary to their interests or are based on an erroneous perception of the situational context. In this case too, observers should not feel obliged to take a particular moral stand (even where they would criticize the irrationality of the players). Their observation is independent of the particular values of the players and of their rational or irrational behaviour.

To take a third example: the observer may put forward his or her own practical objectives and turn into a facilitator in the conflict, which does not necessarily compromise a neutral position either. The actual resolution of the conflict with an optimal gain for both sides (a win-win situation) then constitutes the principal basic value at stake, which also confirms the impartial position of the facilitator. Setting aside the moral character of a conflict presupposes that the moral interests of the parties involved are to be treated no differently from their other interests. It is up to the parties themselves to establish a list of priorities in the negotiation process and to start bargaining. It is not relevant in this case if 'moral' interests are considered to be more or less important than 'material' interests. The observer remains completely indifferent to the order of priorities defended by the two sides at the negotiating table. This type of analysis is to be found in the contribution to this volume by Theo Jans.

The observer may also describe moral choices or political attitudes with a moral dimension as empirical observable choices. The ethical analysis is replaced by an empirical description of possible moral choices or of existing attitudes without the observer's actually taking a choice or expressing a moral judgement. Ghia Nodia's contribution is based on such an approach. Unlike the former perspective, this type of analysis highlights the importance of the moral dimension of the conflict. In analysing the Georgian-Abkhaz conflict as a clash of national projects he describes his observations as "an attempt to understand (author's own stress, B.C.) why Georgians and Abkhaz developed the kinds of national projects they did, and why their visions came into conflict." He clearly does not want to take a position in a dispute concerning the normative value of those projects: "In doing this, I will not question the legitimacy of either group."

Nodia's further analysis deals with the dramatic choices facing Shevardnadze when sending troops to Abkhazia. His analysis of the variety of moral choices the Georgian president was confronted with is linked to an analysis of the complexity of the situation which these choices would affect directly. Each possible choice is related to a particular outcome that, according to Nodia, Shevardnadze could reasonably have expected. The choice of legitimizing the actions of paramilitary troops was not without alternatives, but each alternative choice open to him is related to a predictably even more unfavourable outcome. The main alternative - refusing to support the actions of his warlords - would have led to his definitive loss of power. Shevardnadze opted for an armed conflict and remained in power.

Nodia does not use the - far too strong - concept of 'necessity' to describe this choice, and he is right. The concept of 'necessity' ('necessary choice') is indeed of little value in an analysis of political choices which presuppose a certain degree of freedom. As Michael Walzer writes, in a moral discourse the concept of 'necessity' has a retrospective character, and the apparent inevitability of making a particular choice is in any case mediated by a process of political deliberation.<sup>[17]</sup>

It may be argued that such two approaches to the moral dimension of the conflict - to set it aside, as in the contribution of Theo Jans, or to describe moral situations in empirical terms, without passing judgement, as in the contribution of Ghia Nodia - are more productive, in a reflection process by the parties involved in the conflict, than moral debates on just ends or legitimate means. Debates focusing on right and wrong may indeed reinforce enemy images. Leaving aside the moral dimension of the conflict (Jans' choice) would make it possible to focus the analysis on the negotiating or bargaining process in which the parties' fundamental (including moral) interests are dealt with, regardless of the observer's moral opinion of what should be done. In acknowledging the importance of the moral dimension of political choices by describing them in detail without, however, passing judgement on their normative value ("understanding positions without judgement on their legitimacy" as expressed by Nodia), the observer has the advantage of standing at a certain distance from the conflict in order to analyse all its facets.

### **Intentions, Motives and Responsibility**

These two types of approach cannot be opposed to a moral analysis of the conflict. The empirical approach which leaves aside the moral dimension of the conflict and the empirical approach which refrains from any moral judgement may in fact complement an empirical approach in which such a judgement is made. This does not mean that they can or should be joined in a single analysis. The first two types of analysis enhance our capacity to understand the interests at stake in a conflict and the parties' own view of themselves. A moral judgement - developed in the third approach - goes beyond a theoretical understanding in taking a practical position, but it requires empirical understanding. In his book on just war ethics, Ken Coates pleads for empirical analysis as part of the ethical judgement, as there is a

“need of empirical analysis in difficult moral circumstances. An accurate, complete and impartial account of the physical or pre-moral structure of the act, eschewing euphemistic and tendentious description and focusing clearly and exactly on its total human costs, is a precondition of sound moral judgement.”<sup>[18]</sup>

As stated in the introduction to this chapter, my intention is not to make a detailed moral analysis of one of the various aspects of the Georgian-Abkhaz war but to argue the importance of such an analysis in the framework of Georgian-Abkhaz academic co-operation. In order to

demonstrate this importance, I will apply the distinction between intentions, motives and responsibility to the analysis of what I consider to be the major moral issues in this war: the decision by the Georgian leadership to deploy troops in Abkhazia in August 1992 (the accusation of Georgian "aggression"), the conditions under which the Georgian population fled from their homes and the refusal by the Abkhaz leadership to permit their orderly return in a reasonable time period or to discuss seriously the conditions for their return (the accusation of Abkhaz "ethnic cleansing"). It is important to see how Georgian and Abkhaz scholars themselves analyse the responsibility their governments have been accused of. I will base my analysis on the contribution of Ghia Nodia for the first issue and on that of Viacheslav Chirikba for the second.

An understanding of the dynamics of the Georgian-Abkhaz conflict implies an understanding of the intentions, motives and responsibility of both parties. The differentiation between the two first concepts is particularly important: intentions refer to the 'why' of an action (what is aimed at by the agent), whereas the motives constitute the agent's 'spirit' or state of mind (including interests and emotions).<sup>[19]</sup> To take a concrete example: someone may kill a sick animal out of pity. The intention refers to the aim of the action (= killing) whereas the motives refers to the state of mind in which this action is carried out (= pity). Moral theorists tend to be more attentive to the motives than the intention, which does not mean, however, that the intentions are not relevant. For St Augustine, the real problem in war was not that soldiers sometimes kill intentionally, but that they kill for the wrong motives - that they kill out of hatred and cruelty and not reluctantly, in a spirit of self-defence or in obedience to a higher law.<sup>[20]</sup>

A further distinction has to be made between personal and political motives. Personal motives for the use of force, for instance, would refer amongst other things to the agent's self-interest (as implied in the accusation of looting levelled at the Georgian paramilitary forces or the accusation that the Abkhaz leadership wanted to remain in power at any cost). Political motives may consist of the readiness to use force either as a means to achieve some good in the interest of the wider community (to achieve the right to self-determination, for instance) or as a means that is forced upon the political leader and the nation. States that initiate wars may emphasize one political claim or another.<sup>[21]</sup> In the case of the Georgian-Abkhaz conflict, both parties have invoked the second political claim as their motivation for using force: the Abkhaz authorities have never claimed that they started a war for secession, but rather that the war was forced upon them. The Georgian side has also claimed the right to self-defence (the restoration of order on the entire Georgian territory) as its motive for launching military operations.

### **Nodia's Analysis of Georgian Motives**

An analysis of the intentions and motives of Eduard Shevardnadze (why he performed a certain action and the state of mind he was in when acting this way) is present in the contribution of Ghia Nodia, even if he does not

use or differentiate between these two concepts. He first states that Shevardnadze's individual responsibility is at the same time a political responsibility and should be seen as the result of a broader decision-making process in the Presidium of the State Council. We could add that the premises of the decisions taken by this government were in fact largely supplied and screened by subordinates further down in the hierarchy.<sup>[22]</sup> The role of Georgian political and military forces, acting in name of the State Council but largely outside its direct control, should also be acknowledged. The process of implementing decisions is, like the process of decision-making, a collective process, for which political representatives, however, bear full responsibility. Nodia analyses Shevardnadze's intentions, and in particular the question whether it is true that the leaders of the Georgian troops transgressed Shevardnadze's orders for limited military operations in Abkhazia and started a fully fledged war which he then had to legitimize, as it was later claimed. He also analyses the attitude of the Georgian population. Nodia states that Georgian public opinion supported the war and the war effort, except for the numerous supporters of Gamsakhurdia among the Georgian population from Abkhazia. These supporters did not want to fight, as they were strongly opposed to Shevardnadze's leadership, despite the fact that for them much was at stake.

This analysis, however, remains secondary to the analysis of his motives. Nodia's personal hypothesis is that Shevardnadze's attitude towards the war was highly ambivalent. It even seems that he did not want the war ("there are serious reasons to believe that Shevardnadze did not want the war to start"), but that the general situation at the time, in particular the fear of revenge by Gamsakhurdia's supporters and of a dismantling of the country through Abkhazian secession, gave him a strong motive to use military force. Opposing the warlords would have caused his downfall, with incalculable consequences including the risks of growing anarchy throughout the country. Nodia would have regarded this alternative as a wrong choice ("The only other option would have been resignation - which would have been a noble but extremely irresponsible act at that point").

Nodia does not intend to express any judgement on individual or political responsibility or to go beyond a precise description of motives. He departs from these rules, however, in stating that resignation by Shevardnadze might have been noble for Shevardnadze as an individual refusing any intention of waging a war, but would have been irresponsible for Shevardnadze as a statesman refusing to acknowledge the legitimate political motives for waging a war (in order to save the state). In Nodia's analysis, the war is not justified retrospectively as a kind of police operation - on Abkhaz territory and against Gamsakhurdia's troops - which got out of hand. The uncontrolled actions of the Georgian troops and their numerous violations of the rules of war are not glossed over as inevitable consequences of any war or as being "involuntary" consequences of the decision by political leaders to use force. The fact that Nodia clearly states that at that point choosing any other alternative than war would have been irresponsible on Shevardnadze's part means that he implicitly departs from

an ethics of responsibility in which motives are more important than intentions. This means that in the end it was impossible for Nodia, contrary to what he stated previously, to remain within the bounds of an empirical analysis of moral choices or to avoid judgements on moral responsibility.

This description of Shevardnadze's intentions and motives and of the support he received from the Georgian population in Georgia proper (but not from Gamsakhurdia's supporters among the Georgian population from Abkhazia) is important in a discussion on how to assess responsibility. Nodia states on the one hand that at that particular moment legitimizing and supporting the war was a lesser evil than resignation (a lesser evil than the probable consequences of resignation: the total disintegration of the country through civil and ethnic wars). On the other hand, he describes a whole process of conflicting national projects, without questioning their legitimacy, but making it very clear that there were alternatives to war if the two parties had had a different political attitude in dealing with each other. This means that there is, in my view, a contradiction between the long- and the short-term perspective in Nodia's analysis. Concerning the long-term perspective, he does not formulate a moral judgement but points out better political choices, while concerning the short term perspective he does formulate a moral judgement and points out that there were no better moral choices. In Nodia's view, the long-term perspective is, however, more important and central to his whole argumentation than the short-term perspective, because Shevardnadze as an individual political leader had only limited choices at that particular moment. In my view, it would be quite legitimate to make not only a moral judgement on the particular choice made by Shevardnadze but also to formulate a more general moral judgement on the legitimacy of the policies of both parties, including their national projects and their readiness to use force unrestrainedly.

I personally doubt that in August 1992 Shevardnadze had any moral problems of a prudential nature regarding the use of force for settling the serious political dispute with Abkhazia. He may have doubted the chances of success of military operations against the Abkhaz government, but the statements he has made in support of Russia's military policies towards Chechnya or in favour of an enforcement of a peace settlement in Abkhazia by CIS or other troops (following the Bosnian example) indicate that he generally does not defend a prudential concept of the use of force as a 'last resort' but rather as a means which may be used in parallel with classic diplomatic methods when it seems that military force is more suitable than negotiations for reaching particular political goals. The fact that the military deployment of Georgian troops in Abkhazia could not in any case be considered an act of aggression under international law (as was also the case with Russia's intervention in Chechnya) removed an important barrier to a more restrained use of force and facilitated the initiation of the war.

Abkhaz scholars would probably dispute Nodia's analysis of Shevardnadze's intentions and would refuse to see his attitude as ambivalent. They would not agree with Nodia's assessment that Shevardnadze would not have been able to stop the war even if he had wanted to, that he may have had understandable motives for preferring to

stay on in power rather than to resign, and that his deeper motivation for saving the Georgian state may to a certain extent offset the evil nature of the act of aggression. But I suppose that there may be a more productive discussion between Nodia and Abkhaz scholars concerning the motives behind Shevardnadze's actions than concerning his intentions. They may perhaps also agree with his general assessment that politics do not generally deal with choices between good and evil, but mostly with the choice of the lesser evil. I would expect there to be even more agreement on his description of the development of the conflict over the long term and its implicit assessment that the use of force was not inevitable if other political choices had been made. This possibility - of having a more fruitful moral discussion between Georgians and Abkhaz on the responsibility of their leaders when it is focused on motives rather than on intentions - is in my view a first reason to prefer such a type of analysis.

An analysis of intentions is not necessarily more speculative than an analysis of motives. In the example given above of killing a bird out of pity it is easier to assess empirically the intention of the deed (killing) than its motive (pity). In the case of the origins of the war, on the contrary, it is easier to assess empirically the motives (including ideological motives and general attitudes of both parties towards the political circumstances and their readiness to use force) than the military and political intentions (the precise objectives of the deployment of Georgian troops in Abkhazia by Shevardnadze). This is the second reason for me to prefer to focus on motives rather than on intentions, in this particular research topic.

The deeper motives of both parties in the Georgian-Abkhaz conflict were not so far removed from one another, despite their total opposition in their intentions. This is the third advantage of such a focus on political motives rather than intentions. Nodia describes the Abkhaz nation's deep fear of extinction as the fundamental motive for the actions taken by the Abkhaz nationalist government in the conflict, as the fear that the Georgian state would disintegrate completely was already described as the inner motive for the actions of Shevardnadze (i.e., as the 'spirit' in which he pursued certain intentions). The Abkhaz leadership considered that the decision by the Georgian Military Council in February 1992 - to restore the 1921 constitution in order to emphasize legal continuity with the independent Georgian republic of 1918-21 - constituted a threat to the political status of Abkhazia. The Abkhaz leadership challenged the Georgian-Abkhaz agreement of 1991 which did not allow constitutional changes without a two-thirds majority - which meant the consent of the Georgian representatives in the Abkhaz parliament - by restoring the 1925 constitution for Abkhazia. According to Nodia, this amounted to a "latent declaration of war on the Georgian community in Abkhazia and on Tbilisi, and significantly strengthened the position of those factions in the Georgian leadership who believed that military methods were best in dealing with Ardzinba." This open challenge to the Georgian community by the nationalist Abkhaz leadership did not directly lead to the war but is an important factor in an explanation of its origins and implicitly attributes co-responsibility for the war to the Abkhaz side. The Abkhaz fear of being

completely outnumbered by the Georgians then made ethnic cleansing understandable as a desperate move to change this situation. By focusing his attention on Georgian and Abkhaz motives, Nodia reveals important similarities which I would characterize as follows: both parties shared a similar exclusive view of the nation in which the rights of other nationalities were not acknowledged, and both were driven by an ideologically framed fear of extinction and by the fear that current political events could lead to total political defeat if they did not follow a confrontational policy involving the use of force and violations of the rules of war. This negative assessment of the attitude of both parties could, in my view, lead to the positive conclusion that it is possible in principle to remove such motives through a political solution which would give sufficient security guarantees to both parties.

### **Chirikba's Analysis of Abkhaz Intentions**

Chirikba's contribution to this volume, on the question of whether or not the Abkhaz government has implemented a policy of ethnic cleansing, is based on a very different way of analysing political responsibility. Chirikba focuses on the intentions and not the motives of the Abkhaz leadership. My personal preference for an analysis which focuses on motives rather than intentions does not mean that intentions are not relevant to an assessment of responsibility. A complete picture of moral actions requires both dimensions - both intentions and motives are empirically and morally relevant concepts. In the following, I will not discuss the alternative approach taken by Chirikba in general, but only the logical consistency and empirical validity of his arguments, even if I would consider an analysis of the Abkhaz motives for ethnic cleansing (fear of a "fifth column", fear of being made into a minority, fear of revenge, etc., in conditions where mistrust impedes the creation of secure political institutions) to be more productive in a moral assessment of 'ethnic cleansing'.

The political importance of the question of ethnic cleansing should not be underestimated. The forcible transfer of population is a war crime according to Article 49 of the Fourth Geneva Convention ("Convention Relative to the Protection of Civilian Persons in Time of War").<sup>[23]</sup> Chirikba states that the Abkhaz government had no policy or even intention of expelling the Georgian population from Abkhazia, but that they fled out of panic and fear of the advancing Abkhaz troops, who encountered no further resistance after they had occupied Sukhum(i). In order to support this statement, he quotes the UN report on the Secretary-General's fact-finding mission to investigate human rights violations in Abkhazia in October 1993, writing that there it is "clearly stated that most Georgians living in the region between the Gumsta and Ingur rivers had tried to flee before the arrival of the Abkhazian forces". He then refers to Revaz Gachechiladze who, as "a more objective Georgian author", in his book *The New Georgia* would have avoided exploiting the controversial term "ethnic cleansing", unlike the Georgian government's "propagandistic use" of this term.

One of the main problems with the discussion on this issue - should the term 'ethnic cleansing' be applied to Abkhaz policies? - is that there are no

historical accounts of the war itself on which Georgian and Abkhaz (or other) scholars would agree. The report of the UN mission which is quoted by Chirikba could be considered a good source. It seems to have checked testimonies as carefully as possible under the circumstances, and it is balanced in accusing both sides of gross human rights violations. But to make a selective use of this document is highly problematic, even in the paragraph from which this quotation is taken. For in fact, in his contribution above Chirikba refers only to the following sentence in the UN document: "After the Abkhazian forces had taken Sukhumi, most Georgians living in the region between the Gumista and Inguri Rivers tried to flee before the arrival of the Abkhazian forces". He then omits to quote the next sentence: 'some others who stayed behind were reportedly killed when the Abkhazians took control of villages and cities in Ochamchira region', despite the fact that this sentence is clearly an integral part of the same statement in the UN report. The fact that the majority of the Georgian Abkhaz population fled before the arrival of Abkhaz troops and that "some" among the minority who stayed behind were reportedly killed by those troops is hardly proof that no ethnic cleansing has taken place!

This report refers also to numerous eye-witness accounts which say that the first Abkhaz units entering the south of Abkhazia did not commit atrocities against Georgians, but warned the population that they were being followed by other units who were "engaged in looting, burning of houses and killing. However, nothing appears to have been done to prevent those units from carrying out such acts." The UN report also clearly states that

“numerous killings of civilians were also committed by Abkhazian forces, both during and after armed confrontations. Many of the allegations concern atrocities committed after the Abkhazians regained control over Gagra in October 1992. The mission received information indicating that several hundred Georgians were killed after Abkhazian forces had entered the city. Despite claims that only combatants with automatic weapons in their hands had been killed, there is evidence that most of the victims were no longer participating in combat, and that many others were civilians who had not actively taken part in the confrontation.”

## **Ethnic Cleansing**

Ethnic cleansing has been defined by Andrew Bell-Fialkov as a "planned, deliberate removal from a certain territory of an undesirable population distinguished by one or more characteristics such as ethnicity, religion, race, class or sexual preferences."<sup>[24]</sup> Research has been done in both communities on the extent to which such a policy was implemented either during the war by the Georgian side or as the war was ending by the Abkhaz side. This research is based on eye-witness accounts and written sources. It may be useful (despite the psychological difficulties inherent in this task) to compare research results. This empirical historical research

should be complemented by a moral analysis. There are indeed a number of moral issues involved in applying the concept of 'ethnic cleansing' to the Georgian-Abkhaz conflict, and these cannot be solved by historical descriptions of facts, but need to be analysed separately. This analysis should not confine itself to the meaning of the term 'ethnic cleansing' in international law. Moral analysis can define its own procedures in this respect.

The concept of ethnic cleansing as a "planned, deliberate removal" should refer not only to the original intentions of those who planned this removal but to all the elements that are included in a "planned" policy. Unintended but predictable consequences have also to be taken into account. This distinction between intended and unintended but predictable consequences is used in war ethics to assess the consequences of armed conflicts for the civilian population, who, according to the 'discrimination principle', are not supposed to be the immediate target of war operations. The discrimination principle forbids military operations targeted against non-combatants, but considers that under certain conditions the evil effects of military operations on non-combatants are tolerable. One of these conditions is that these consequences are merely foreseen or expected as the outcome of a particularly important and legitimate military action, but not directly intended.<sup>[25]</sup> The flight of the Georgian population, for instance, may reasonably be expected or even foreseen as the outcome of major military operations by the Abkhaz against Georgian troops, regardless of whether or not this flight was intended. This distinction between intended and unintended consequences of military acts takes into account, however, the fact that the unintended consequences of military operations are also foreseen, accepted and thus voluntarily caused. Even if the departure of a large proportion of the Georgian civilian population from Abkhazia had not actually been intended by the Abkhaz authorities (which may be doubted<sup>[26]</sup>), it remained foreseen, accepted and thus voluntarily caused as a side-effect of planned military operations against Georgian troops. The distinction between intended and unintended actions does not imply a distinction between acts for which the agents are responsible and those for which they are not - it implies rather a distinction between different kinds of responsibility.<sup>[27]</sup> From the perspective of war ethics, it remains the responsibility of those who have caused the suffering of the civilian population to undo it. According to de Zayas, it makes no sense to speak about the right not to be expelled but at the same time to deny the existence of a right to return.<sup>[28]</sup> This means that the term 'ethnic cleansing' does not apply exclusively to voluntarily intended military policies of removal or to acts of killing inspired by revenge, but also to voluntary military policies which are not directly intended to remove the population but which accept this removal as an expected side-effect of their actions, without any prospect of remedying it at a later stage. In my view, the term 'ethnic cleansing' is appropriate for describing the policies of state authorities to the extent that these authorities, which have voluntarily caused these departures by their military actions (regardless of whether this fleeing of the civilian population was intended or whether it was an unintended side-effect of military operations), are not prepared to take responsibility for

their consequences or to remedy them within a reasonable period of time under appropriate circumstances.

The broader interpretation of the term 'ethnic cleansing' - which would include both intended and unintended forms of the removal of certain categories of an undesirable population from a certain territory, and for which the right to return is not acknowledged or implemented "at the earliest practicable date" (to use a current UN formula<sup>[29]</sup>) - has two main advantages.

First, it is more easily applicable to the empirical analysis of wars, where it is often difficult to distinguish between intended and unintended actions by political authorities, or between forms of removal of an undesirable population which are ordered by political authorities and forms of removal which are beyond their control. This broader definition is probably more appropriate for historical research. It implies that the unintended consequences of the actions taken by the Georgian authorities who initiated the military operations in Abkhazia in August 1992 should be included in an analysis of the "voluntarily caused removals" of certain sections of the population and of the political responsibility for 'ethnic cleansing'. The effects of any war largely escape the control of those who start it. This aspect gives war its apparently 'irrational' character and makes the act of starting a war (or a civil war) a decision of paramount moral importance. This means that it is necessary to assess the responsibility of both sides regarding the moral question of the 'ethnic cleansing' of the Georgian population. Here it should be added that an assessment of shared responsibility for the ethnic cleansing of the Georgian population does not mean that both parties are equally responsible.

A second advantage of including the right to return in a definition of ethnic cleansing is that in assessing political responsibility it takes into account a longer time frame than the relatively brief period in which the civilian population were actually leaving their homes. According to the Memorandum of Understanding of 1 December 1993 between both parties, the return of all the refugees, as well as occupied homes and properties, was envisaged.<sup>[30]</sup> The term 'ethnic cleansing' would hardly have been applied to the Abkhaz policies if they had worked in good faith for an implementation of this decision, as this would have indicated that they had accepted responsibility for the negative effects of their military actions on the civilian population by permitting their return. Besides the inability of the two governments to come to an institutional compromise, it is possible to assess directly the intentions of the Abkhaz authorities after the war: their refusal to initiate a dialogue with the representatives of the Georgian population of Abkhazia, their policy of intimidation towards the Georgian population of the Gal(i) region in March and early April 1995,<sup>[31]</sup> which was brought to a halt under strong international pressure, and the organization of parliamentary elections in 1996 - which aimed at a domestic legitimization of the new state structures, excluding the pre-war Georgian population - are all indications that the Abkhaz government had

no desire to undo the intended or unintended consequences of the war for the civilian population.

Abkhaz commentators often point to the Abkhaz tradition of 'blood revenge' to explain the crimes committed by Abkhazians against the Georgian civilian population. A majority of the Abkhaz fighters had lost relatives or friends - often civilians - during the early stages of the war. According to the Abkhazian tradition, all adult male members of a family are held responsible for the actions of one individual and constitute targets of a retaliatory murder.<sup>[32]</sup> 'Blood revenge' may have been an important motive for individual Abkhaz soldiers in their actions against Georgian civilians during the war. Paula Garb reports

stories of Abkhazian soldiers who, immediately after liberating occupied territory, committed crimes against Georgian families that resembled the crimes that were committed by Georgian troops against their own families. This can happen after any war, but in Abkhazian culture it is perceived through the prism of the rules of blood revenge and therefore condoned, or at least, not condemned, and the perpetrators apparently are not prosecuted.

The breakdown of law and order caused by the war would have reinforced such practices in Abkhaz society.

In my view, in defining the different steps for implementing the right to return, a peace settlement between Georgia and Abkhazia has to take into account such Caucasian rules for warrior cultures - but it cannot be led by such rules, as this would mean that in every cycle of violence crimes against the civilian population of a particular community could be legitimized by crimes perpetrated in a previous cycle. The Geneva Conventions and their rule of discriminating between combatants and non-combatants in the laws on war are founded not on the presupposition that specific cultural concepts of revenge and retaliation should be overlooked in formulating universal laws of war - the lawyers who drafted these conventions were very well aware of the persistence of particular customs of war in each culture - but rather on the idea that universal laws restraining the use of force during violent conflicts constitute the only guarantee that peace between different communities may ever be re-established. The condemnation and prosecution of crimes that are committed following the tradition of 'blood revenge' is a precondition for a peace settlement. It is also a precondition for internal stability and the implementation of law and order. Fear of revenge killings has been said to be the primary factor in preventing a more ruthless crackdown on abductions in Chechnya. On 30 June 1998, Chechnya's Sharia court ruled that blood feud murders were illegal and punishable by the death sentence.<sup>[33]</sup>

The lack of progress in the political negotiations also needs to be assessed in this analysis of ethnic cleansing. The inclusion of the right to return in the International Covenant on Civil and Political Rights poses a particular problem when it has to be applied not to individuals asserting an individual right but directly to large masses of people.<sup>[34]</sup> The criterion of political practicability is generally included in an implementation of this right. The

failure of both governments to find an institutional solution to the question of the political status of Georgians in Abkhazia and of Abkhazia in a common state means that here too there is a problem of shared political responsibility for undoing ethnic cleansing.

In discussing this issue with Abkhazians, and in particular with high-ranking officials in Abkhazia, it has always struck me that many of them do not have a clear concept of the principle of discrimination between combatants and non-combatants, in particular where the right to return is concerned. The existence of this principle is not denied, but the concept of innocent non-combatant is often interpreted as moral or political innocence. According to the discrimination principle in war ethics - a principle which has been adopted in the Geneva Conventions - non-combatants are to be understood as 'not nocentes' (not harming), as not directly or actively engaged in military operations. This concept of innocence should be clearly distinguished from moral innocence.<sup>[35]</sup> Innocence should not be 'descriptive of the agent's interior moral state'. 'Harmless' does not mean 'blameless'.<sup>[36]</sup> Interpreting the term 'non-combatants' in the principle of discrimination in the form of moral or political innocence would render all the citizens of a state that was seen as fighting an unjust war liable to attack and would lead to 'total war', undermining all attempts at discrimination and at establishing laws of war.<sup>[37]</sup> The identification of 'innocent non-combatants' with 'blamelessness' or with 'moral or political innocence' would bring Abkhazia back to the old Stalinist tradition of 'collective guilt'. According to the Fourth Geneva Convention - which sets out the rights of the population after a war - even those who are suspected of activities hostile to the interests of the state have the right to be given a fair trial and to be treated with humanity.<sup>[38]</sup>

The attitude of the Abkhaz government towards the right to return of the Georgian refugees is essential for an evaluation of its capacity to defend universal human rights. As de Zayas puts it, the

“inalienable human right to life and the right to liberty must be understood in a concrete time-and-place sense. Indeed, one lives and one enjoys liberty sometime and somewhere, and this somewhere is usually the land where one was born, where one married and had children, (...) it should be remembered that a human being is not an object that governments can arbitrarily move across a map. The transplantation of peoples deeply rooted in the land and social milieu of one country brings with it not only physical discomfort and economic loss but also moral and psychological shock which may permanently ruin the lives of persons who are unable to adjust to a new and perhaps inhospitable environment.”<sup>[39]</sup>

It should be added in this context that the Georgian government has defended the discrimination principle only to a limited extent insofar as the civilian population from Abkhazia is concerned. The UN document quoted above refers to the many gross human rights violations perpetrated by Georgian troops during the 1992-93 war. The embargo against Abkhazia

did not affect the transport of medical or other basic supplies to that region, which received assistance estimated at almost US \$17.5 million in 1997 and a suspected substantially higher amount in 1998. This represents more per capita international humanitarian aid than Georgia received, but the lack of economic development and of sufficient resources to fund basic social services (such as education) has hit the civilian population hard. It is to be hoped that the creation of a Co-ordinating Council in November 1997 and the implementation of a policy of economic co-operation will put an end to this policy of hurting the civilian population in order to induce its representatives to compromise. The creation of this Co-ordinating Council has been said to mark a turning-point in the negotiations. This may be true from the perspective of the discrimination principle, if it proves possible to set up co-operation aimed at the welfare of the civilian population irrespective of any power struggle.

### **Dealing with the Past I: Individual Responsibility**

A peace settlement between the Georgian and Abkhaz communities will have to find a political solution to the problem of how to deal with individual responsibility for war crimes. One possible option is to consider that only a society which has fully come to terms with its past through prosecuting the perpetrators of gross human rights violations can satisfy the sense of justice of the victims and their relatives, and give the population sufficient security guarantees that nothing like this will ever happen again. If perpetrators of human rights violations know that they will be protected after committing a crime, future perpetrators may feel secure in committing the same crimes or obeying authorities who give them orders to do so. Criminal prosecution would also be helpful in preventing some victims or their relatives from resorting to private forms of vindictive justice in the tradition of 'blood revenge'. Prosecution performs a moral educational function which can last for several generations. Such a long-term perspective is important in the case of ethnic conflicts, as gross human rights violations (such as ethnic cleansing) are often legitimized by victimizations and atrocities from earlier times. In cultures that have been affected by severe ethnic conflicts, there are long-term cycles of victimization in which the perpetration of aggression is ensured by a former victimization and in which every community feels itself to be a victim.<sup>[40]</sup> It may be argued that such prosecutions can reignite ethnic conflicts, even if they are initiated under conditions of a fair trial attended by international observers. The manifold experiences in this field in recent decades show that there are no clear-cut solutions. It is part of the negotiation process to find a political solution which appeals to the sense of justice of both communities.

The major problem in such negotiations is undoubtedly the question of political responsibility for war crimes and other gross human rights violations. There is a real dilemma involved in this political choice: from a political point of view, there is no point in negotiating if both parties are not willing to construct a common framework in which both elites would find their place. From a moral and political point of view, however, there

is a risk that a negotiated settlement may leave those politically responsible for major crimes untouched and that the population will therefore not regard the peace settlement as fair. A lack of legitimacy in political agreements may cause an already frail construct to collapse altogether.

It is far from clear how the two governments want to settle this question, although the political leaders of both communities recognize the importance of finding a solution to the issue. An analysis of experiences of a negotiated settlement in other countries may be helpful in this respect. It is possible to distinguish four political strategies for dealing with the past: (1) criminal prosecution of the individual perpetrators and those politically responsible; (2) lustration or disqualification of those politically responsible for crimes, including the loss of political and civil rights; (3) granting of an unconditional amnesty; (4) a truth commission which investigates past events in their full complexity and officially acknowledges the injustices committed, without, however, prosecuting and punishing ('amnesty without amnesia').<sup>[41]</sup> It is possible that the Georgians and Abkhaz may opt for a fifth strategy, if they think that constituting a common state through a peace settlement may entail setting up a different legal system for Abkhazia than for Georgia, but the knowledge of the problems and consequences of the previous strategies should not be simply dismissed.

Academic co-operation between researchers from Georgia and Abkhazia could focus on the way individual responsibility has been assessed in other countries and on the formal rules and procedures which should be followed in the Georgian-Abkhaz case. The fact that most of those involved on both sides recognize that crimes have been committed on both sides, and that only formal procedures can deal with these crimes, is in my opinion a good sign for such co-operation.

One of the most interesting experiences in this respect is probably the Truth and Reconciliation Commission in South Africa.<sup>[42]</sup> This belongs to the fourth strategy described above. Those who conceived this commission started out from two presuppositions. First, past tensions, if left unresolved, could lead to new conflicts in the future. Second, it would be difficult to punish the perpetrators without touching those who had given the orders. Given the negotiated character of the transition from white to majority rule it would have been impossible to try and punish all those responsible. The commission, which included both blacks and whites, first had to find out the truth concerning the horrors perpetrated under the apartheid regime, then it had to compensate victims and finally - and this was to be the most controversial aspect in the eyes of the public - it had to pardon the perpetrators in order to achieve national reconciliation. This approach to past injustices makes it possible for the injustices to be clearly and officially acknowledged and for the perpetrators - even those at the highest level in the state hierarchy - to be confronted with their deeds and victims. Critical self-reflection is laid down as a precondition for reconciliation.

## **Dealing with the Past II: Responsibility of States**

Murdering, raping, looting and other acts which the Georgian and Abkhaz troops have been accused of, and which contravene the laws, rights and duties of war as codified in the Geneva Conventions, engage the political responsibility of the Georgian and Abkhaz authorities. The lack of governmental control over the actions of Georgian or Abkhaz troops is an important factor in assessing individual responsibility, but it does not alter the responsibility of the two states. The burning of the Abkhaz historical archives in Sukhum(i), for instance, is a crime which involves the responsibility of the Georgian state and for which reparation is due.

Post-war German leaders did not refuse to take up the heavy burden of recognizing their state's responsibility for the consequences of the crimes that were committed under the nazi regime in the name of the German Reich. This did not at all imply personal responsibility on the part of German leaders or their personal implication in the nazi crimes. West Germany took this position immediately after the war, and the communist regime in the GDR considered the option of paying compensation to Israel at the end of the 1980s, shortly before its fall (despite the fact that Erich Honecker and other communist leaders were victims of nazi repression). The West German Chancellor Willy Brandt who had himself participated in the resistance to the nazi regime, always defended an unambiguous position with respect to the responsibility of the German state. This attitude was crucially important for the reconciliation between Germany and Poland in the 1970s and has facilitated the acceptance of the German state by international public opinion as 'another Germany'. Japan, on the contrary, has always had the greatest difficulty in acknowledging full responsibility for the deeds of its army in occupied territory, and this remains a major stumbling-block in its relations with China and Korea. Turkish-Armenian relations have up to now been bedevilled by the question of the responsibility of the Turkish state for the genocide of Armenians at the beginning of this century. France has only very recently (after the death of President Mitterand) reconsidered whether the responsibility of the French state was involved in the actions of the collaborationist Vichy regime in deporting Jews from France. During a visit to Africa in 1998, Bill Clinton apologized for America's role in the slave trade. After the Labour victory in the recent British elections, prime minister Tony Blair expressed regret to the Irish for the potato famine, but the lack of an apology for the Amritsar massacre still sours Britain's relations with India.<sup>[43]</sup>

The question of how a government should deal with the state's responsibility is a normative one, which can only be decided at the domestic level. In the case of Germany and Britain, it seems to have been based on a conscious decision to facilitate reconciliation after past conflicts. Japan refused for a long time, and hesitantly started to take similar steps only some years ago. Whether Georgia is prepared to recognize its responsibility remains an open question. In recent years, the Georgian side has appealed for the establishment of an international criminal tribunal to deal with so-called 'hard core' crimes, such as genocide, that pose a threat to the international community,<sup>[44]</sup> but this was

done in order to increase international pressure on the Abkhaz government. The Georgian delegation at the Geneva negotiations of 15-18 November 1994 did, however, acknowledge partial responsibility for the war (but not for starting it) in a memorandum issued at the end of the negotiations. According to this memorandum,

“errors on the part of the military leadership of the Republic of Georgia gave the separatists an opportunity to unleash an armed conflict involving thousands of mercenary soldiers from the Northern Caucasus and other parts of Russia and the most advanced military equipment. A proper evaluation of the war has yet to be made, but already the question of responsibility is on the agenda in Georgia. Unfortunately, similar steps are not being taken by the Abkhaz side.”<sup>[45]</sup>

Eduard Shevardnadze has also stated that his predecessor, Gamsakhurdia, made serious errors in his policies towards South Ossetia. Similar self-criticism of his own policies towards Abkhazia is probably more difficult to express, especially in the present circumstances. It is certainly extremely difficult for Georgians to acknowledge their own responsibility before the Abkhaz government attempts to make amends for ethnic cleansing, but mutual steps in this direction, within the framework of peace negotiations, should not be ruled out. They could also be part of a confidence-building programme. There have been proposals to have a common Georgian-Abkhaz programme at NGO level to reconstruct the historical archives of Sukhum(i) by providing photocopies from Georgian archives and other practical support.

The present contribution has avoided dealing with the - albeit considerable - moral responsibility of the international community in the conflict.<sup>[46]</sup> I will merely conclude here with the remark that the attitude of the Western and Russian governments is not always very helpful in supporting Georgia and Abkhazia's efforts to come to terms with their past. UN Security Council resolutions and discussions refer exclusively to the responsibility of the Abkhaz government for the deadlock in the negotiations and for the inability of the Georgian refugees to return to their homes. As may be clear from the contributions to this volume, and contrary to the practice of the UN Security Council, responsibility for the war and the lack of progress in negotiations should not be unilaterally assigned.

**1.** The second sort of unjust government that may rightly be overthrown is one which has seized power unlawfully and which has not been legitimized afterwards by time or the lack of alternatives. cf. Terry Nardin, "Introduction" to Terry Nardin (ed.), *The Ethics of War and Peace. Religious and Secular Perspectives*, Princeton/New Jersey, Princeton University Press, 1996, p. 31.

**2.** Carolyn McGiffert Ekedahl and Melvin A. Goodman, *The Wars of Eduard Shevardnadze*, London, Hurst & Company, 1997, p. xxii.

**3.** *Ibid.*, p. 265.

4. In the literature, federalism is considered a normative or value concept defining the way in which sovereignty is shared between central government and the federal units, whereas a federation is a descriptive concept which refers to a concrete state structure based on federalist principles.
5. See Luc Huyse, "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past", in: Albert J. Jongman (ed.), *Contemporary Genocides: Causes, Cases, Consequences*, Leiden, PLOOM, 1996, pp. 187-214.
6. Nardin, "Introduction", *op.cit.*, p. 17.
7. Robert Phillips, *War and Justice*, Norman, University of Oklahoma Press, 1984, p. 15.
8. Allen Buchanan, *Secession. The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, Boulder-San Francisco-Oxford, Westview Press, 1991, p. x.
9. *Ibid.*, p. 1.
10. Such an argument is to be found in Paul B. Henze, "Abkhazia Diary 1997", in: Mehmet Tütüncü (ed.), *Caucasus: War and Peace*, Haarlem, 1998, pp. 90-107.
11. On this distinction, see Basam Tibi, "War and Peace in Islam", in: Nardin (ed.), *op.cit.*, p. 140.
12. James Turner Johnson, *Just War Tradition and the Restraint of War*, Princeton, Princeton University Press, 1981, p. 23.
13. Roger Brubaker, *Citizenship and Nationhood*, Cambridge/ Mass, Harvard University Press, 1990
14. Interviews by the author with Abkhaz archaeologists and historians in Sukhum(i) in August 1997.
15. A.J. Coates, *The Ethics of War*, Manchester and New York, Manchester University Press, 1997, p. 21.
16. Philip Abbott, "The Lincoln Propositions and the Spirit of Secession", in: Percy Lehning (ed.), *Theories of Secession*, London and New York, Routledge, 1998, p. 187.
17. Michael Walzer, *Just and Unjust Wars*, New York, Basic Books, 1992, p. 8.
18. Coates, *op.cit.*, p. 243.
19. Terry Nardin, "The Comparative Ethics of War and Peace", in: Nardin (ed.), *op.cit.*, 1966, p. 256.
20. David R. Mapel, "Realism and the Ethics of War and Peace", in: Nardin (ed.), *op.cit.*, pp. 63-64.

**21.** Robert W. Tucker, *The Just War: A Study in Contemporary American Doctrine*, Baltimore, 1960, p. 1.

**22.** Sanford Levinson, "Responsibility for Crimes of War", in: Marshall Cohen, Thomas Nagel and Thomas Scanlon, *War and Moral Responsibility*, Princeton - New Jersey, Princeton University Press, 1974, p. 104.

**23.** Jean-Marie Henckaerts, *Mass Expulsion in Modern International Law and Practice*, The Hague/Boston/ London, Martinus Nijhoff Publishers, 1995, p. 164.

**24.** Andrew Bell-Fialkov, *Ethnic Cleansing*, London, Macmillan, 1996, pp. 3-4.

**25.** Robert Holmes, "Can War be Morally Justified?", in: Jean Bethke Elshtain (ed.), *Just War Theory*, New York University Press, New York, 1992, p. 200. For a discussion on this issue see Coates, *op.cit.*, pp. 239-264.

**26.** The difficulty in finding empirical evidence of the intentions of a government can be seen in Robert Paul Churchill's analysis of genocide. He states that it is often difficult to find conclusive evidence of the intention of genocide but that such evidence can be deduced from the consequences of an act: "Conclusive evidence of a premeditated and planned state policy is too stringent as a standard, especially since governments can lie about their intentions and obstruct efforts to uncover them. For this reason, it is necessary to impute or infer intent from consequences. Thus, genocide occurs when the foreseeable, predictable, and cumulative results of a course of action are the extermination of an outgroup and when a state either produces this outcome or acquiesces in bringing it about by consistently refusing or failing to protect victims, often in contravention of its own legal code." Robert Paul Churchill, "Genocide", in: Donald A. Wells (ed.), *An Encyclopedia of War and Ethics*, Greenwood Press, Westport/Connecticut - London, Routledge, 1996, p. 167. It is thus possible to consider war crimes committed by subordinates as being part of the intentions of the authorities if these authorities had been informed about them but had not taken legal action. The failure of a government to protect victims is implied in the broader definition of ethnic cleansing given above.

**27.** *Ibid.*, p. 245.

**28.** On the following, see Henckaerts, *op.cit.* p. 183ff.

**29.** *Ibid.*, p. 185.

**30.** See *The United Nations and the Situation in Georgia*, Reference Paper April 1995, United Nations, Department of Public Information.

**31.** Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia, Security Council Document S/1995/342/1 May 1995, p. 6.

**32.** See Paula Garb, "The Return of Refugees Viewed through the Prism of Blood Revenge", in: *The Anthology of East Europe Review*, vol. 13, no. 2, Autumn 1995, which may be read on the Internet: [www.socsci.uci.edu/socsci/personnel/garb/garb.html](http://www.socsci.uci.edu/socsci/personnel/garb/garb.html)

33. RFE/RL NEWSLINE vol. 2, no. 125, Part I, 1 July 1998.
34. On the following, see Henckaerts, *op.cit.*, pp. 183ff.
35. John Finnis, "The Ethics of War and Peace in the Catholic Natural Law Tradition", in: Nardin (ed.), *op.cit.*, p. 27; Jeff McMahan, "Realism, Morality, and War", in: *ibid.*, p. 88.
36. Coates, *op.cit.*, p. 235.
37. *Ibid.*, p. 234.
38. See Henckaerts, *op.cit.*, pp. 140ff.
39. Quoted in: *ibid.*, p. 186.
40. On the following, see Ronald D. Crelinsten, "Prosecuting Gross Human Rights Violations from the Perspective of the Victim", in: Jongman (ed.) *op.cit.*, pp. 175-185.
41. On these four strategies, see Huyse, *op.cit.*, pp. 187-214.
42. On the following, see *The Economist*, 1 November, 1997.
43. *The Independent*, 24 May 1998.
44. United Nations Security Council, 3535th Meeting , 12 May 1995, UN Document S/PV.3535.
45. UN Document S/1994/1333 (23 November 1994).
46. On this issue see my contribution "Georgia in Europe: The Idea of a Periphery in International Relations" in: Bruno Coppieters, Dmitri Trenin and Alexei Zverev, *Commonwealth and Independence in Post-Soviet Eurasia*, London, Frank Cass, 1998, pp. 44-68.