

COUNCIL DECISION 2008/901/CFSP**of 2 December 2008****concerning an independent international fact-finding mission on the conflict in Georgia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 13(3) and Article 23(1) thereof,

Whereas:

- (1) On 1 September 2008, the European Council stated that the European Union is ready to commit itself to support every effort to secure a peaceful and lasting solution to the conflicts in Georgia, and that it is ready to support confidence-building measures.
- (2) On 15 September 2008, the Council supported the idea of an independent international inquiry into the conflict in Georgia.
- (3) Ms Heidi TAGLIAVINI should be appointed as head of this fact-finding mission,

HAS DECIDED AS FOLLOWS:

*Article 1***Head of the independent international fact-finding mission and terms of reference**

1. Ms Heidi TAGLIAVINI is hereby appointed head of the independent international fact-finding mission on the conflict in Georgia, hereinafter 'the fact-finding mission', for the period from 2 December 2008 to 31 July 2009.
2. The aim of the fact-finding mission shall be to investigate the origins and the course of the conflict in Georgia, including with regard to international law ⁽¹⁾, humanitarian law and human rights, and the accusations made in that context ⁽²⁾. The geographical scope and time span of the investigation will be sufficiently broad to determine all the possible causes of the conflict. The results of the investigation will be presented to the parties to the conflict, and to the Council, the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations (UN), in the form of a report.
3. The head of the fact-finding mission shall be responsible for the implementation of the fact-finding mission. She shall determine, in complete independence, the procedures and working methods of the fact-finding mission, and the content of the report referred to in paragraph 2.

*Article 2***Financing**

1. The financial reference amount intended to cover the expenditure related to the implementation of the fact-finding

mission shall be EUR 1 600 000 for the period from 2 December 2008 to 31 July 2009.

2. The expenditure financed by the amount stipulated in paragraph 1 shall be eligible as from 2 December 2008.
3. The expenditure shall be managed in accordance with the rules and procedures applicable to the general budget of the European Communities. The management of the expenditure shall be subject to a contract between the head of the fact-finding mission and the Commission.
4. The head of the fact-finding mission shall be accountable to the Commission for all expenditure.

*Article 3***Composition of the fact-finding mission**

The composition of the fact-finding mission shall be decided by the head of mission. It shall comprise recognised experts, in particular lawyers, historians, military staff and human rights experts.

*Article 4***Assessment**

The implementation of this Decision shall be reviewed by the Council before 31 July 2009.

*Article 5***Entry into effect and expiry**

This Decision shall take effect on the day of its adoption.

It shall expire on 31 July 2009.

*Article 6***Publication**

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 2 December 2008.

For the Council
The President
C. LAGARDE

⁽¹⁾ Including the Helsinki Final Act.

⁽²⁾ Including allegations of war crimes.



Source: Fischer Weltatmanach, Fischer Taschenbuch Verlag, Frankfurt am Main, 2009

Introduction

1.) On the night of 7 to 8 August 2008, after an extended period of ever-mounting tensions and incidents, heavy fighting erupted in and around the town of Tskhinvali in South Ossetia. The fighting, which soon extended to other parts of Georgia, lasted for five days. In many places throughout the country it caused serious destruction, reaching levels of utter devastation in a number of towns and villages. Human losses were substantial. At the end, the Georgian side claimed losses of 170 servicemen, 14 policemen and 228 civilians killed and 1 747 persons wounded. The Russian side claimed losses of 67 servicemen killed and 283 wounded. The South Ossetians spoke of 365 persons killed, which probably included both servicemen and civilians. Altogether about 850 persons lost their lives, not to mention those who were wounded, who went missing, or the far more than 100 000 civilians who fled their homes. Around 35 000 still have not been able to return to their homes. The fighting did not end the political conflict nor were any of the issues that lay beneath it resolved. Tensions still continue. The political situation after the end of fighting turned out to be no easier and in some respects even more difficult than before.

2.) In view of the continued uncertainty and lack of stability of the situation, three weeks later, on 1 September 2008, the EU Council pledged its commitment to support every effort to secure a peaceful and lasting solution to the conflict in Georgia. It also declared its readiness to support confidence-building measures. Then on 2 December 2008, the EU Council of Ministers decided to set up an Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG). Its terms of reference would aim to:

“Investigate the origins and the course of the conflict in Georgia, including with regard to international law (footnote: including the Helsinki Final Act), humanitarian law and human rights, and the accusations made in that context (footnote: including allegations of war crimes).”

The Council of Ministers also noted that the geographical scope and time span of the investigation should be sufficiently broad for it to determine all the possible causes of the conflict. The full text of the decision taken by the EU Council of Ministers on 2 December 2008 is included in this Report (p. 3).

3.) IIFFMCG is the first fact-finding mission of its kind in the history of the EU. The Fact-Finding Mission started its work right after the EU Council of Ministers decision of 2 December 2008 with a core team of three members led by Swiss Ambassador Heidi Tagliavini who had been appointed Head of IIFFMCG by the EU Ministers, leaving to her all decision-making on the Mission's procedures and working methods as well as decisions on the selection of its staff. The mandate also stated that the Head of the Fact-Finding Mission should determine the content of the Report in complete independence. It should be mentioned here that there were never any attempts by any side to interfere with this independent mandate. The core team set up its main office in Geneva, where the Geneva Centre for Security Policy generously provided office accommodation, while the Belgian Government also kindly provided office space in Brussels. Another Mission office was opened in Tbilisi.

4.) After employing a small support staff, the Mission contracted some 20 experts for specific written contributions on military, legal, humanitarian and historical issues to be considered under the mandate. Additionally a Senior Advisory Board was set up, in order to review the Mission's work and to provide it with counsel and guidance. It was composed of persons of widely-recognised knowledge and expertise in the field of international relations, in particular conflict management. The Mission had the privilege of welcoming four former Ministers of Foreign Affairs or of Defence to this board, plus a former long-time President of the International Committee of the Red Cross and an equally experienced former United Nations Under-Secretary-General and Head of the Department of Peacekeeping Operations. As will be explained in more detail in the attached Acknowledgements, the Mission is deeply grateful for the advice and the support it has received from both senior advisers and experts (please see Acknowledgements for the complete list).

5.) The Mission's mandate stipulates that the results of its investigations will be presented to the EU Council of Ministers, as well as to the parties involved in the conflict of August 2008 and to the OSCE and the UN in the form of a report. For the purposes of this Report, and in order to proceed from what the sides directly concerned had to say, questionnaires related to the military, legal, humanitarian and political aspects of the events were sent to Moscow, Tbilisi, Sukhumi and Tskhinvali. In addition, the sides were asked to give their comprehensive views and an evaluation of the events. Although not all of the questions were answered, it is fair to say that, overall, the

replies from all sides were substantial and in line with the Mission's expectations. All written replies and other contributions such as official documents, maps and overviews made available by the different sides involved in the conflict are attached, complete and unaltered, to this Report. It goes without saying that apart from the information made available by the sides, there was a wealth of information from public sources, including books, articles, studies and other writings, together with videos and photographs, which served as a further basis for the Report. All of this was carefully studied, checked and counter-checked as needed and wherever possible.

6.) In addition, the Mission's core members and experts repeatedly travelled to Tbilisi, Moscow, Tskhinvali and Sukhumi as well as to sites on the ground where fighting had taken place and/or which were of particular interest from a humanitarian and human rights point of view. Furthermore, important sites such as the Roki tunnel, the Akhagori region and the Kodori Valley were visited. There were field visits for direct talks with those who had personally witnessed the tragic events. The Mission's representatives held dozens of talks and interviews with government officials and diplomats, political as well as military leaders, witnesses and victims, academic writers, independent experts and other specialists familiar with the Caucasus region and the events of summer 2008. All EU governments, together with other interested parties such as the United States, Ukraine, neighbouring countries, NATO, OSCE, the Council of Europe and the International Committee of the Red Cross (ICRC) were contacted and invited to provide whatever material in their possession was pertinent to the conflict. The UN Headquarters in New York, UNHCR and OHCHR were all called upon for information. Detailed discussions took place with representatives of the United States in Washington and of Ukraine in Brussels. Additionally NATO, the OSCE, the Council of Europe and the ICRC were visited at their respective headquarters.

7.) The views of the sides involved in the conflict have been widely divergent from the beginning, and appear to be getting more so as time goes by. Thus the truth seems increasingly difficult to ascertain and verify. Nevertheless the events and developments leading up to this conflict are a matter of historical fact, and this Report will try to explain them while focusing on the difficult relationship between Russia and Georgia and its breakaway region of South Ossetia. The conflict in Abkhazia played a more limited yet still substantial role in the events of early August 2008. It is a welcome asset that a number of respected international institutions and organisations have already investigated the roots

and the causes of the August 2008 conflict, among them the Council of Europe, the British House of Lords, the US Congress, the Parliaments of Georgia and of Ukraine, the UNHCR, ICRC, Human Rights Watch (HRW), International Crisis Group (ICG), Amnesty International (ai) and others. The Mission acknowledges these efforts, and has in many ways been able to draw on the knowledge and experience of their authors. In some instances, persons or institutions made important information and material available to the Mission on their own initiative. Summing up, it should be noted that the Mission has met with an almost un hoped-for high and indeed very welcome degree of cooperation from all the sides directly involved in the conflict, and in many instances from outside actors as well.

8.) The Fact-Finding Mission would like to underline that its use of names, terms and expressions, particularly with regard to the conflict regions, should not be construed as implying any form of recognition or non-recognition by the Mission or as having any other political connotation whatsoever. A special note of caution seems necessary, too, as regards allegations of violations of International Humanitarian Law and Human Rights and also as regards allegations of war crimes and genocide. The European Council directed the Mission to investigate these allegations. At the same time, the Mission only started its work at the end of 2008. Consequently it was necessary to base much of the fact-finding on investigations which had been carried out soon after the conflict by international and regional organisations such as the ODIHR (OSCE), the Council of Europe and the UNHCR as well as by well-known and respected international non-governmental organisations such as Amnesty International, Human Rights Watch, International Crisis Group and others. The Mission also had several meetings with representatives of the International Committee of the Red Cross. Additionally the Mission was able to collect first-hand evidence from witnesses and victims and through personal observation and documents on the spot. In summary, it should be noted that the factual basis thus established may be considered as adequate for the purpose of fact-finding, but not for any other purpose. This includes judicial proceedings such as the cases already pending before International Courts as well as any others.

9.) In spite of all the work involved, this Report cannot claim veracity or completeness in an absolute sense. It incorporates what has been available to the Mission at the time of writing. It may well be that additional information will become available at a later date, because it may not now have been correctly assessed as significant, or because it has

accidentally or even deliberately been withheld by sources. This cannot be excluded, yet to the best of the Mission's knowledge there are no indications at this time that this has been the case with regard to specific items or elements. Other elements could, at least theoretically, have been falsified or misread. There were cases of open contradiction among the sides to the conflict in the assessment of important documents. The Mission had no access to intelligence reports or satellite imagery from intelligence sources. The Mission also had to limit its considerations in terms of time and space. While the starting point has been kept flexible, in the sense that the discussions become more detailed the closer they come to 7 August 2008, the end of the period under review has generally been set at 8 September 2008, when the second agreement on the implementation of the ceasefire reached between Presidents Sarkozy, Medvedev and Saakashvili indicated that the main developments were no longer taking place in the military sphere but, once again, in the realm of politics and diplomacy. In terms of its geographical scope, the report considers regional and non-regional actors only if they were involved in the conflict in some political or military way either during or before the events.

10.) What may be said, however, is that every conceivable effort has been made to collect pertinent items of information and to examine and consider them in a responsible manner for the purpose of this Report. This has been done with the utmost care, and although there can never be total assurance that there are no mistakes or omissions, all efforts were made to keep their number down. The Mission also firmly believes in fairness, impartiality, even-handedness and balance as guiding principles for its work, and in particular for this Report. It is thus not the purpose of the Report to re-open old wounds or to stir up emotions. On the contrary, by presenting the sequence of events on the basis of the information available at the time of its writing, and by discussing the responsibility for them, the Report will provide a firm basis from which to arrive at a sober assessment of the situation as it really is. This is the starting point for all serious and responsible politics, and in that sense the Report will make a contribution to the stable and peaceful environment the South Caucasus needs as a prerequisite for the development of all the countries and nations sharing the region. It is the Mission's hope that all sides in the conflict will understand and accept these principles, even if some of their actions may be reviewed in a critical manner. Only then will the Report be able to improve the prospects for securing a lasting, peaceful solution to the conflict in Georgia, in line with the European Council's commitment of 1 September 2008.