

## **The Conflict in Georgia in August 2008**

1.) The result of armed confrontation is always human tragedy. After fighting has ended there is a sad record of killings and other losses, of intense suffering, of dreams and hopes that were shattered, in many cases forever. We do not know of any better way to understand the root causes of the 2008 conflict in Georgia than through the minds of those who took part and those who had suffered. We will come to know that all sides involved in the conflict had their grievances, that their actions had origins in their experience and memory, and that most of those taking part thought that what they did had to be done. In a close look at the peoples' motives we shall understand their aspirations, even when we are not able to accept the means. Understanding the people will lead us to the facts. This Report will try to give a fair and even-handed view of the actions taken by the sides to the conflict, and their reasons as well as their consequences. Many of these will be critically reviewed. Nothing, however, will touch upon our respect for either individual fates or the aspirations of the peoples of the region, large or small. These aspirations were not the decisive causes of the hostilities, as similar problems were peacefully solved elsewhere. It was the way in which these problems were handled and sometimes exploited which paved the way to armed confrontation. On this basis of respect and understanding, it is the purpose of this Report to describe the events that occurred, so that conclusions might be drawn for a safer future of the region and beyond.

2.) On the night of 7 to 8 August 2008, a sustained Georgian artillery attack struck the town of Tskhinvali. Other movements of the Georgian armed forces targeting Tskhinvali and the surrounding areas were under way, and soon the fighting involved Russian, South Ossetian and Abkhaz military units and armed elements. It did not take long, however, before the Georgian advance into South Ossetia was stopped. In a counter-movement, Russian armed forces, covered by air strikes and by elements of its Black Sea fleet, penetrated deep into Georgia, cutting across the country's main east-west road, reaching the port of Poti and stopping short of Georgia's capital city, Tbilisi. The confrontation developed into a combined inter-state and intra-state conflict, opposing Georgian and Russian forces at one level of confrontation as well as South Ossetians together with Abkhaz fighters and the Georgians at another. Such a combination of conflicts going on at different levels is particularly prone to violations of International Humanitarian Law and Human Rights Law. This is indeed what happened, and many of these instances were due to the action of irregular armed groups on the South Ossetian side that would not or could

not be adequately controlled by regular Russian armed forces. Then another theatre of hostility opened on the western flank, where Abkhaz forces supported by Russian forces took the upper Kodori Valley, meeting with little Georgian resistance. After five days of fighting, a ceasefire agreement was negotiated on 12 August 2008 between Russian President Dmitry Medvedev, Georgian President Mikheil Saakashvili and French President Nicolas Sarkozy, the latter acting on behalf of the European Union. An implementation agreement followed on 8 September 2008, again largely due to the persistent efforts of the French President. This successful political action stood in contrast to the failure of the international community, including the UN Security Council, to act swiftly and resolutely enough in order to control the ever-mounting tensions prior the outbreak of armed conflict. Since then, however, with the exception of the establishment of an EU Monitoring Mission (EUMM) and the Geneva talks, almost no progress has been made in the difficult process of establishing peace and stability in the region. The situation remains tense and volatile, and there are many who fear a resumption of hostilities.

3.) The shelling of Tskhinvali by the Georgian armed forces during the night of 7 to 8 August 2008 marked the beginning of the large-scale armed conflict in Georgia, yet it was only the culminating point of a long period of increasing tensions, provocations and incidents. Indeed, the conflict has deep roots in the history of the region, in peoples' national traditions and aspirations as well as in age-old perceptions or rather misperceptions of each other, which were never mended and sometimes exploited. While the region had also known a long tradition of peaceful cohabitation of different nations and creeds, there were among its smaller nations underlying feelings of deprivation and of having been relegated to inferior status. Soviet federalism did not help to overcome latent antagonisms, and the chaotic period that followed the break-up of the Soviet Union further added to a pattern of mutual mistrust and even hostility in the region. The wave of newly-found self-consciousness that followed political changes in Georgia since the end of 2003 clashed with another wave of assertiveness emanating from the Russian Federation, which tried to establish a privileged zone of interest in its "near abroad", where developments and events thought to be detrimental to Russia's interests were not easily accepted. At the same time, the peacekeeping arrangements that were established with the help of the international community were increasingly outrun by new and more threatening developments in the political and military situation. They had been set up in the 1990s after the armed conflicts in Abkhazia and South Ossetia in the wake of Georgian

independence and since then had remained more or less unchanged. Without the adjustments and political support that the international organisations present in the region would have needed, they finally lost their grip and could no longer fulfil their intended functions.

4.) Beyond the human dimension there is, of course, a historical and political background to the armed conflict of August 2008. Georgia is a very old Christian nation, and sees itself as being much older than Russia. Georgian national identity claims historical origins dating as far back as the establishment of an autocephalous Georgian church in the 4th century and the creation of a Georgian alphabet in the 5th century. The decisive historical encounter between the two nations came during the reign of Russian Empress Catherine II, when in 1783 in the town of Georgievsk a treaty was signed between Russia and King Erekle II, who was in control of what is now the eastern part of Georgia, providing for Russian protection against Persian attacks. This paved the way for further steps of Russian domination, both in terms of depth and space, finally leading to the complete integration of Georgia into the Russian Empire from 1881 until 1917. This period by and large coincided with a Georgian national awakening promoted by a patriotically-oriented Georgian intelligentsia which was frequently critical of Russian domination and russification. In Russian views, however, Georgia had been given much-needed protection against ravaging neighbours. The installation of a system of modern administration ranging from road building to an efficient education system was another achievement brought to Georgia by Russia. While Russia was treated by parts of the Georgian historical narrative almost as a threat to the existence of the Georgian nation, and while there were indeed attempts to subdue Georgian cultural heritage, Georgians were to some extent even a privileged nation within the Russian Empire. Finally, there were many in Georgia with an aversion to Russian imperial power and its heavy-handed and backward ways, but at the same time they were attracted by modern civilisation and a European outlook as offered by and through Russia.

5.) Present-day Georgia considers the three year existence of the Democratic Republic of Georgia from 1918 to 1921, then swiftly and ruthlessly suppressed by Bolshevik forces, as important a reference point for national liberation and modern democratic statehood as was its final emergence out of the dissolution of the Soviet Union with the promulgation of Georgia's Declaration of Independence of 9 April 1991. In both instances Georgian independence emerged out of a severe crisis, and even the downfall, of its powerful

northern neighbour. Independence in 1991 was preceded by tragic events such as the killing of Georgian demonstrators by Soviet troops on 9 April 1989. It came to life after a decade-long history of armed fighting, suppression and the mass terror, which had marked the Stalin era. Indeed there was little which might have induced newly-independent Georgia to follow the patterns of Russian and Soviet years and much of the political class as well as public opinion in Georgia took a sharp pro-Western turn. There was one important legacy from the Soviet era, though: the subdivision of Georgia into three political-territorial entities, including the Autonomous Republic of Abkhazia and the Autonomous Oblast' (district) of South Ossetia. Of course there also remained overall Georgia with its capital city Tbilisi, within its internationally recognised borders coinciding with the former "Soviet Socialist Republic of Georgia", as it stood on 21 December 1991. During the period of transition to post-Soviet sovereignty the country's first President, Zviad Gamsakhurdia, then did a lot in terms of nationalism to alienate the two smaller political-territorial entities of Abkhazia and South Ossetia from the Georgian independence project, proclaiming ethno-centrist slogans such as "Georgia for Georgians". Nationalism and even chauvinism from all sides together with questionable political actions added to the tensions. The fighting that finally broke out between Georgian forces and separatist forces, first in South Ossetia in 1991 - 1992 and then in Abkhazia 1992 - 1994 ended with Georgia losing control of large parts of both territories. There was support from Russia for the insurrectionists, yet it seems that the Russian political elite and power structures were divided on the issue and partly involved, and Moscow remained on uneasy terms with Tbilisi at the same time.

6.) In the internal Georgian turmoil after the country's unsuccessful military engagement in the armed conflicts in Abkhazia and South Ossetia, Zviad Gamsakhurdia's successor, President Eduard Shevardnadze, had to ask Moscow for assistance in October 1993 to suppress another insurrection, this time initiated by Gamsakhurdia supporters in the western province of Samegrelo. Russian troops helped as requested. Eventually this led to a pro-Russian re-orientation of Georgia's foreign policy. In October 1993 Eduard Shevardnadze signed Georgia's accession to the Russian-led Commonwealth of Independent States (CIS) and in the following year Tbilisi joined the Russian-led Collective Security Treaty (CST), too. Four Russian military bases extended their presence on Georgian soil and Russian border troops remained deployed along Georgia's border with Turkey and patrolled the sea shores. In addition, Russian forces undertook

peacekeeping responsibilities both in South Ossetia and later in Abkhazia. An agreement concluded in June 1992 in Sochi between the two leaders Eduard Shevardnadze and Boris Yeltsin established the Joint Peacekeeping Forces (JPKF) for South Ossetia, consisting of one battalion of up to 500 servicemen each of the Russian, Georgian and Ossetian sides, to be commanded by a Russian officer. Peacekeeping in Abkhazia was the subject of another ceasefire agreement concluded in Moscow in May 1994, later to be endorsed by the UN Security Council, which led to the establishment of the CIS Peacekeeping Force (CIS PKF) of up to 3 000 servicemen. Among CIS countries, however, only Russia provided troops. The United Nations Observer Mission in Georgia (UNOMIG) was set up in August 1993. Its responsibilities included supervision of the implementation of the ceasefire agreements for Abkhazia. The UN Secretary-General's Special Representative was entrusted with the task of promoting the Georgian-Abkhaz peace process. An OSCE Mission was set up in December 1993 in the context of the South Ossetian conflict, mandated to assist conflicting parties in reaching a peaceful political settlement. These structures were largely under the influence of Russia; if not more directly, then at least by means of a vetoing position.

7.) At the turn of the millennium it became apparent that the unresolved political status of South Ossetia and Abkhazia had become more difficult to manage and that there was no clear-cut solution in sight. At the same time, geopolitical changes became manifest, among them NATO's eastward enlargement and a new international interest in the Caucasus region, linked to extended security considerations and energy supplies. Under its new President Vladimir Putin, Russia became more stable and also more adamant in imposing its influence upon its "near abroad". There were changes taking place in Georgia, too. Already on the eve of taking his oath of office, President Saakashvili had declared the solution of the conflicts in South Ossetia and Abkhazia a priority of his presidency. In his first year in office in 2004, his success in bringing back under Tbilisi's control without too much difficulty the estranged southern Georgian province of Adjara and improving Georgia's economy may have added further to President Saakashvili's resolve. However, developments on the two sides did not meet. After an initial short period which even showed some promising signs, relations between Russian President Vladimir Putin and the newly elected Georgian President Mikheil Saakashvili soon became tense. The political climate deteriorated rapidly. Military spending in Georgia under President Saakashvili's rule increased quickly from below 1 % of GDP to 8 % of GDP, and there were few who

did not see this as a message. Additionally, the strong pro-Western orientation of Georgia's foreign policy and President Saakashvili's energetic drive for Georgia to become a member of NATO added to Moscow's concerns, even though a first admission request had already been tabled by President Shevardnadze. Finally, Georgia's foreign policy under President Saakashvili sought to find like-minded allies such as Kiev after the Orange Revolution, and to support together with them pro-Western orientation elsewhere in the extended string of countries ranging from the Baltic Sea to the Black and Caspian Seas. As might have been expected, however, all this did not go down well with Russia and its new assertiveness in post-Soviet space.

8.) While relations between Georgia and Russia were in a period of continued deterioration, marked by incidents as well as by unfriendly and sometimes even bellicose rhetoric, the United States assumed a clear lead among Tbilisi's foreign policy partners. The US gave their determined political support to Georgia and to President Saakashvili personally, culminating in President Bush's famous "beacon of liberty" speech in Tbilisi on 10 May 2005. The US provided generous economic assistance, too. Georgia became one of the most important recipients of US aid on a per capita basis. Most importantly, the US embarked upon an extensive military aid programme for Georgia, both in terms of training and equipment, also providing financial means. The military aid was at first designed to assist Georgia in regaining full control over the Pankisi Valley in the Caucasus where Chechen fighters had allegedly sought refuge, as Russia had claimed. Further US military aid programmes were said to assist Georgian armed forces in preparing for international assignments abroad, such as in Kosovo, in Iraq and in Afghanistan. In the end, the Georgian armed forces had about doubled their strength in terms of manpower compared to the Shevardnadze years, with much better training and equipment than ever before, and much of this newly-acquired military strength was garrisoned on modernised military bases; the most important of them in Senaki facing Abkhazia and the other one near Gori facing South Ossetia. There were reportedly more than a hundred US military advisers in the Georgian armed forces when the conflict erupted in August 2008, and an even larger number of US specialists and advisors are thought to have been active in different branches of the Georgian power structures and administration. Considerable military support in terms of equipment and to some extent also training was equally provided by a number of other countries led by Ukraine, the Czech Republic and Israel, the latter contributing in terms of technology and quality rather than quantity, all of them

adding to the new military strength of Georgia, which was proudly displayed on suitable occasions such as National Day parades.

9.) On the European side, most EU member countries showed little inclination to add further to the military aid provided to Georgia. There was, however, involvement by the EU, or at least some of its larger member countries, in peace efforts such as the Group of Friends of Georgia, in which the United States, Russia, the United Kingdom, France and Germany were set to cooperate politically on the Abkhaz issue (called Friends of the UN Secretary-General from 1997 onward in order to satisfy Abkhaz objections). A number of eastern and northern EU countries established closer ties with Georgia under the leadership of President Saakashvili, in order to assist the country in developing its Atlantic and European orientation. Georgia received economic aid from the EU Commission amounting to over € 400 million in the years from 1992 to 2004, and additionally some EU countries such as Germany gave substantial bilateral economic support of their own. There also was European engagement as relates to the South Ossetian and Abkhaz issues. Since 1997 there had been some EU Commission projects in South Ossetia, and since 2004 an extensive rehabilitation programme financed by the EU got under way in the Georgian-Ossetian and in the Georgian-Abkhaz conflict zones. In April 2001 the EU Commission became an observer, albeit on economic issues alone, in meetings of the Joint Control Commission (JCC), the multilateral body in charge of supervising the implementation of the Sochi Ceasefire Agreement for South Ossetia. A Partnership and Cooperation Agreement between Georgia and the EU was signed in 1996 and entered into force in 1999.

10.) Before its eastern extension soon after the turn of the millennium, the EU further increased its efforts to foster stability in its neighbouring regions to the east, including the South Caucasus with Georgia. An EU Special Representative for the South Caucasus was appointed in 2003, initially mandated to support reform policies and later on also to assist with the settlement of conflicts. One year later, Georgia together with its two South Caucasian neighbours Armenia and Azerbaijan were included in the European Neighbourhood Policy, providing for closer political and economic links with the EU and increased assistance. In summary, over the years there was a gradual increase in European involvement in Georgia, which may be called forthcoming in terms of economic aid, politically friendly on the bilateral side, cooperative but cautious on contentious political issues and, except for some bilateral support from very few EU members, mostly distanced in terms of military support and sensitive security issues. A good case in point was the

European reluctance to take over the Border Monitoring Mission on the Caucasus range facing Russia, after Russia had vetoed the hitherto OSCE engagement in 2004. It may have been that this cautious approach was reflected, too, in the decision of the Bucharest NATO summit of April 2008 to take a positive line on Georgia's request to become a NATO member, but to abstain from steps leading immediately to its admission.

11.) It is true that a number of contentious legal issues resulting from the break-up of the Soviet Union also played their part in setting the stage for the armed conflict that was to follow in August 2008. The issue of self-determination of South Ossetians and Abkhaz as well as their right to unilateral secession from Georgia are two legal issues related to the conflict. Both South Ossetians and Abkhaz consider their right to self-determination as the legal basis for their quest for sovereignty and independence of the respective territories. However, international law does not recognise a right to unilaterally create a new state based on the principle of self-determination outside the colonial context and apartheid. An extraordinary acceptance to secede under extreme conditions such as genocide has so far not found general acceptance. As will be shown later, in the case of the conflict in August 2008 and the ensuing recognition of South Ossetia and Abkhazia, the Mission has found that genocide did not take place. Furthermore, much of international state practice and the explicit views of major powers such as Russia in the Kosovo case stand against it. This applies also to a process of dismemberment of a state, as might be discussed with regard to Georgia after the dissolution of the Soviet Union. According to the overwhelmingly accepted *uti possidetis* principle, only former constituent republics such as Georgia but not territorial sub-units such as South Ossetia or Abkhazia are granted independence in case of dismemberment of a larger entity such as the former Soviet Union. Hence, South Ossetia did not have a right to secede from Georgia, and the same holds true for Abkhazia for much of the same reasons. Recognition of breakaway entities such as Abkhazia and South Ossetia by a third country is consequently contrary to international law in terms of an unlawful interference in the sovereignty and territorial integrity of the affected country, which is Georgia. It runs against Principle I of the Helsinki Final Act which states "the participating States will respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence."



12.) Another legal issue related to the conflict and to relations between Georgia and Russia is the Russian so-called “passportisation” policy, meaning the mass conferral of Russian citizenship and consequently passports to persons living in South Ossetia and Abkhazia, where a vast majority of the population are now carrying such Russian passports. While Russian citizenship had been conferred in individual cases already at an earlier point in time, the new Russian Law on Citizenship which entered into effect in the year 2002 regulated in its articles 13 and 14 admittance to Russian citizenship in a simplified procedure and thus opened broader avenues soon to be exploited by thousands of new applicants from South Ossetia and Abkhazia. One of the essential requirements for other states to be obliged to recognise such conferrals of citizenship under the terms of international law is, however, that there must be an adequate factual connection between the applicant and the receiving country – in this case Russia – and which must not be arbitrary. This could be for example family connections, long-time residence and extended government or military service. In addition, an explicit consent of the home country is required. Georgian law, however, does not recognise dual citizenship. Former Soviet citizenship is not considered sufficient grounds, since this status had already been translated into Georgian citizenship at the time of independence. Given these requirements, only a limited number of such conferrals can be deemed as legally binding under international law. The vast majority of purportedly naturalised persons from South Ossetia and Abkhazia are not Russian nationals in terms of international law. Neither Georgia nor any third country need acknowledge such Russian nationality. Consequently, the persons living in South Ossetia and Abkhazia who had first become Georgian citizens after the dissolution of the Soviet Union continue to remain so irrespective of “passportisation” policies. They were still citizens of Georgia at the time of the armed conflict of August 2008, and in legal terms they remain so to this day unless they had renounced or lost their Georgian nationality in regular ways. The mass conferral of Russian citizenship to Georgian nationals and the provision of passports on a massive scale on Georgian territory, including its breakaway provinces, without the consent of the Georgian Government runs against the principles of good neighbourliness and constitutes an open challenge to Georgian sovereignty and an interference in the internal affairs of Georgia.

13.) The ever-mounting tensions in the conflict zone were approaching the level of open military confrontation. Already in spring 2008, a critical worsening of the situation in the Georgian-Abkhaz conflict zone could be observed. One of the sources of tension was the

intensification of air activities over the zone of conflict, including flights over the ceasefire line both by jet fighters and by unmanned aerial vehicles (UAVs). A number of Georgian UAVs were reportedly shot down by Abkhaz and Russian forces. In April 2008, the Russian-staffed CIS PKF was reinforced by additional troops and in late May 2008, a Russian military railway unit was sent to Abkhazia to rehabilitate the local railway, allegedly for humanitarian purposes, in spite of Georgian protests. The spring events were followed in summer 2008 by bombings of public places on the Abkhaz side of the ceasefire line, as well as roadside explosions on the Georgian side. In the course of summer 2008, the main focus of tension then shifted from the Georgian-Abkhaz to the Georgian-Ossetian conflict zone, triggered by subversive attacks as well as by intensified exchanges of fire between the Georgian and South Ossetian sides, including mortar and heavy artillery fire. In early July the conflict already seemed on the verge of outbreak as diplomatic action intensified at the same time. In mid-July, a yearly US-led military exercise called “Immediate Response” took place at the Vaziani base outside Tbilisi, involving approximately 2 000 troops from Georgia, the United States, Armenia, Azerbaijan and Ukraine. During the period of 15 July – 2 August 2008, Russian troops carried out large-scale training exercises in the North Caucasus Military District, close to the Russian-Georgian border as well as on the Black Sea. In early August, the South Ossetian authorities started to evacuate their civilian population to locations on the territory of the Russian Federation. Indeed, the stage seemed all set for a military conflict.

14.) Open hostilities began with a large-scale Georgian military operation against the town of Tskhinvali and the surrounding areas, launched in the night of 7 to 8 August 2008. Operations started with a massive Georgian artillery attack. At the very outset of the operation the Commander of the Georgian contingent to the Joint Peacekeeping Forces (JPKF), Brigadier General Mamuka Kurashvili, stated that the operation was aimed at restoring the constitutional order in the territory of South Ossetia. Somewhat later the Georgian side refuted Mamuka Kurashvili’s statement as unauthorised and invoked the countering of an alleged Russian invasion as justification of the operation. The official Georgian information provided to the Mission says in this regard that “to protect the sovereignty and territorial integrity of Georgia as well as the security of Georgia’s citizens, at 23.35 on August 7, the President of Georgia issued an order to start a defensive operation with the following objectives:

- Protection of civilians in the Tskhinvali Region/South Ossetia;

- Neutralisation of the firing positions from which fire against civilians, Georgian peacekeeping units and police originated;
- Halting of the movement of regular units of the Russian Federation through the Roki tunnel inside the Tskhinvali Region/South Ossetia”.

15.) The Georgian allegations of a Russian invasion were supported, *inter alia*, by claims of illegal entry into South Ossetia of a large number of Russian troops and armour, prior to the commencement of the Georgian operation. According to Georgian answers to the Mission’s questions, the process of building-up of Russian forces in South Ossetia had started in early July 2008, continued in the course of August and included troops and medical personnel, tents, armoured vehicles, tanks, self-propelled artillery and artillery guns. This process allegedly intensified in the night of 6 to 7 August and in the late evening of 7 August. Georgian allegations of Russian military build-up in South Ossetia prior to 8 August 2008 were denied, however, by the Russian side. According to the Russian information provided to the Mission, the first Russian units entered the territory of South Ossetia, and Russian air force and artillery began their attacks on Georgian targets at 14.30 on 8 August, i.e. immediately after the decision for an intervention was made by the leadership of the Russian Federation.

16.) The Mission is not in a position to consider as sufficiently substantiated the Georgian claim concerning a large-scale Russian military incursion into South Ossetia before 8 August 2008. However, there are a number of reports and publications, including of Russian origin, indicating the provision by the Russian side of training and military equipment to South Ossetian and Abkhaz forces prior to the August 2008 conflict. Additionally there seems to have been an influx of volunteers or mercenaries from the territory of the Russian Federation to South Ossetia through the Roki tunnel and over the Caucasus range in early August, as well as the presence of some Russian forces in South Ossetia, other than the Russian JPKF battalion, prior to 14.30 hours on 8 August 2008. Also it seems that the Russian air force started its operations against Georgian targets, including those outside South Ossetian administrative boundaries, already in the morning of 8 August, i.e. prior to the time given in the Russian official information. The Russian air force reportedly started its attacks in central Georgia (Variani, Gori), gradually extending such activities to other parts of the country, including the Senaki military base, military targets in the port of Poti and the capital of Tbilisi as well as some dual purpose

objects such as the Tbilisi airport radar, railroad tracks and other infrastructure and communication facilities. There are conflicting reports over whether in some instances civilian objects were hit deliberately or in terms of so-called collateral damage. The Mission found no conclusive evidence for either version. In addition to the Russian ground and air forces, the Black Sea fleet also soon engaged in the armed conflict, attacking targets on Georgian territory outside South Ossetia and providing naval cover for land operations.

17.) In the course of the armed conflict, subsequently named a “five-day war”, and its immediate aftermath, the Russian side justified their military intervention by their intention to stop an allegedly ongoing genocide of the Ossetian population by the Georgian forces, and also to protect Russian citizens residing in South Ossetia and the Russian contingent of the Joint Peacekeeping Forces deployed in South Ossetia in accordance with the Sochi Agreement of 1992. Russia claimed that in the morning of 8 August 2008 two Russian peacekeepers were killed and five wounded by the Georgian attacks on the peacekeepers’ premises in Tskhinvali. Georgia denied having conducted deliberate attacks against the Russian peacekeepers, arguing that the Georgian troops entering Tskhinvali were fired at from the Russian peacekeepers’ compounds and that they had to return fire. The Mission does not have independent reports which could substantiate or deny the allegations of either side. Albeit, taking into account the existing dangerous conditions on the ground, casualties among the Russian PKF personnel were likely. As far as Russian and South Ossetian accusations of genocide are concerned, they became less frequent in later months as the alleged Georgian intent for genocide could not be proven. The number of casualties among the Ossetian civilian population turned out to be much lower than claimed at the beginning. Russian officials stated initially that about 2 000 civilians had been killed in South Ossetia by the Georgian forces, but later on the number of overall South Ossetian civilian losses of the August 2008 conflict was reduced to 162. On 10 August, the Georgian Government declared a unilateral ceasefire and its intention to withdraw Georgian forces from South Ossetia. This ceasefire, however, was not followed by the opposite side. Finally, by the night of 10 to 11 August, most of the Georgian forces had withdrawn from the territory of South Ossetia. They were followed by Russian troops who entered deeper into Georgian territory by crossing the administrative boundaries of both South Ossetia and Abkhazia and set up military positions in a number of Georgian towns, including Gori, Zugdidi, Senaki and Poti.

During the final phase of military hostilities, Abkhaz units supported by Russian forces attacked the Georgian positions in the upper Kodori Valley and seized this territory, which had been vacated by the Georgian forces and most of the local Georgian population by 12 August 2008.

18.) Russia called its military actions in Georgia a “peace enforcement operation”, while Georgia called it an “aggression”. The international community, including major actors such as the EU, was reluctant to enter into any formal qualifications. There was, however, a general call to stop the fighting. On 12 August, French President Nicolas Sarkozy, in his capacity as Chairman of the European Council, went to Moscow and Tbilisi in a move to stop the military hostilities. A six-point ceasefire plan was agreed upon, providing, *inter alia*, for the immediate cessation of hostilities and withdrawal of forces to the positions occupied prior to the armed conflict. However, the Russian and South Ossetian forces reportedly continued their advances for some days after the August ceasefire was declared and occupied additional territories, including the Akhalkori district which had been under Georgian administration until the August 2008 conflict, even if it is located within the administrative boundaries of South Ossetia as they had been drawn during the Soviet period. Most of the Russian troops withdrew from their positions beyond the administrative boundaries of South Ossetia and Abkhazia after 22 August, some of them only after an implementation agreement was reached on 8 September 2008 in Moscow or even as late as early October 2008. The full compliance by all parties with the above two agreements remains a matter of dispute. It should be noted, however, that with the implementation agreement concluded on 8 September 2008, the theatre of events ceased to be in the military sphere of operations and went back to the realm of political and diplomatic action. This included a fierce discussion of the responsibilities for the conflict, which started even before the guns had fallen completely silent.

19.) There is the question of whether the use of force by Georgia in South Ossetia, beginning with the shelling of Tskhinvali during the night of 7/8 August 2008, was justifiable under international law. It was not. Georgia had acknowledged that the prohibition of the use of force was applicable to its conflict in South Ossetia in specific legally binding international documents, such as the Sochi Agreement of 1992 or the 1996 Memorandum on Measures to Provide Security and Strengthen Mutual Trust between the Sides in the Georgian-South Ossetian Conflict. Even if it were assumed that Georgia was repelling an attack, e.g. in response to South Ossetian attacks against Georgian populated

villages in the region, according to international law, its armed response would have to be both necessary and proportional. It is not possible to accept that the shelling of Tskhinvali during much of the night with GRAD multiple rocket launchers (MRLS) and heavy artillery would satisfy the requirements of having been necessary and proportionate in order to defend those villages. It follows from the illegal character of the Georgian military assault that South Ossetian defensive action in response did conform to international law in terms of legitimate self-defence. However, any operations of South Ossetian forces outside of the purpose of repelling the Georgian armed attack, in particular acts perpetrated against ethnic Georgians inside and outside South Ossetia, must be considered as having violated International Humanitarian Law and in many cases also Human Rights Law. Furthermore, all South Ossetian military actions directed against Georgian armed forces after the ceasefire agreement of 12 August 2008 had come into effect were illegal as well.

20.) At least as far as the initial phase of the conflict is concerned, an additional legal question is whether the Georgian use of force against Russian peacekeeping forces on Georgian territory, i.e. in South Ossetia, might have been justified. Again the answer is in the negative. There was no ongoing armed attack by Russia before the start of the Georgian operation. Georgian claims of a large-scale presence of Russian armed forces in South Ossetia prior to the Georgian offensive on 7/8 August could not be substantiated by the Mission. It could also not be verified that Russia was on the verge of such a major attack, in spite of certain elements and equipment having been made readily available. There is also no evidence to support any claims that Russian peacekeeping units in South Ossetia were in flagrant breach of their obligations under relevant international agreements such as the Sochi Agreement and thus may have forfeited their international legal status. Consequently, the use of force by Georgia against Russian peacekeeping forces in Tskhinvali in the night of 7/8 August 2008 was contrary to international law.

21.) When considering the legality of Russian military force against Georgia, the answer needs to be differentiated. The Russian reaction to the Georgian attack can be divided into two phases: first, the immediate reaction in order to defend Russian peacekeepers, and second, the invasion of Georgia by Russian armed forces reaching far beyond the administrative boundary of South Ossetia. In the first instance, there seems to be little doubt that if the Russian peacekeepers were attacked, Russia had the right to defend them using military means proportionate to the attack. Hence the Russian use of force for defensive purposes during the first phase of the conflict would be legal. On the

second item, it must be ascertained whether the subsequent Russian military campaign deeper into Georgia was necessary and proportionate in terms of defensive action against the initial Georgian attack. Although it should be admitted that it is not easy to decide where the line must be drawn, it seems, however, that much of the Russian military action went far beyond the reasonable limits of defence. This holds true for all kinds of massive and extended military action ranging from the bombing of the upper Kodori Valley to the deployment of armoured units to reach extensive parts of Georgia, to the setting up of military positions in and nearby major Georgian towns as well as to control major highways, and to the deployment of navy units on the Black Sea. All this cannot be regarded as even remotely commensurate with the threat to Russian peacekeepers in South Ossetia. Furthermore, continued destruction which came after the ceasefire agreement was not justifiable by any means. It follows from this that insofar as such extended Russian military action reaching out into Georgia was conducted in violation of international law, Georgian military forces were acting in legitimate self-defence under Article 51 of the UN Charter. In a matter of a very few days, the pattern of legitimate and illegitimate military action had thus turned around between the two main actors Georgia and Russia.

22.) Could the use of force by Russia then possibly be justified as a “humanitarian intervention”, in order to protect South Ossetian civilians? To begin with, it is a highly controversial issue among legal experts whether there is any justification or not for humanitarian intervention. It might be assumed, however, that humanitarian intervention to prevent human rights violations abroad is allowed only under very limited circumstances, if at all. Among major powers, Russia in particular has consistently and persistently objected to any justification of the NATO Kosovo intervention as a humanitarian intervention. It can therefore not rely on this putative title to justify its own intervention on Georgian territory. And as a directly neighbouring state, Russia has important political and other interests of its own in South Ossetia and the region. In such a constellation, a humanitarian intervention is not recognised at all.

23.) Finally, the Russian Federation invoked the need to protect its own citizens living in South Ossetia. Under Article 61 (2) of the Russian constitution “the Russian Federation guarantees its citizens defence and patronage beyond its boundaries”. It is also true that since 1945, numerous states have led military actions by pointing to the need to protect their own nationals abroad. In many cases the legality of these actions was disputed. There is no customary law allowing such actions. If at all, such actions should be limited in scope

and duration and exclusively focused on rescuing and evacuating nationals. In the case at hand, the action was not solely and exclusively focused on rescuing and evacuating Russian citizens, but largely surpassed this threshold by embarking upon extended military operations over large parts of Georgia. Consequently, it must be concluded that the Russian military action outside South Ossetia was essentially conducted in violation of international law.

24.) Finally the military action that took place in the upper Kodori Valley must come under scrutiny. The Moscow Agreement on a Ceasefire and Separation of Forces of 1994, which had been signed also by the Abkhaz side, stipulated that “The parties shall scrupulously observe the ceasefire on land, at sea and in the air and shall refrain from all military actions against each other”. As the upper Kodori Valley did not belong to the Abkhaz-controlled territory under the provisions of the Moscow Agreement, the attack against it by Abkhaz units supported by Russian forces constituted an illegal use of force as prohibited by the Ceasefire Agreement and Article 2 (4) of the UN Charter and also an armed attack against Georgia in the sense of Article 51 of the UN Charter. The use of force by Georgia in defence of the attack was at the same time justified in terms of legitimate self-defence. The Abkhaz leadership gave, however, four different explanations in an attempt to justify its military operation. Abkhazia claimed that the military operation was launched “to liberate the Kodori Valley” and also that it had to be carried out to abort terrorist attacks against the civilian population. It further claimed the Abkhaz operation was necessary to pre-empt an imminent military operation by Georgia against Abkhazia, and finally Abkhazia deemed itself obliged to open a “second front” in accordance with its Treaty on Friendship and Cooperation with South Ossetia of 19 September 2005. However, none of these explanations can be considered as substantiated in fact or as legally valid. Hence the use of force by Abkhazia was not justified under international law. The same applies for the Russian support of these actions. Concluding the discussion on the use of force in the August 2008 conflict, a final look should be given to the repeated instances of threat of force by one side or the other before the beginning of the August 2008 conflict. It should be noted that Article 2 (4) of the UN Charter as well as the relevant ceasefire agreements require that states and parties to the conflict not only refrain from the use of force but explicitly also from the threat of force. Threats of this nature are equally not in conformity with Article 2 (3) of the Charter, which stipulates the obligation to settle



conflicts peacefully. The threats of force by all sides were consequently illegal and as such, violated international law.

25.) While it is true that political and military events and developments, together with their legal implications under international law, attract the attention of policy-makers, it is also true that most people directly involved in the conflict remember human fates and human suffering first and foremost. The August 2008 armed conflict unfortunately saw many crimes committed in violation of International Humanitarian Law and Human Rights Law. Beyond those acts committed during the five days of hostilities from 7/8 to 12 August, additional acts were perpetrated after the ceasefire came into effect, raising serious concerns about the co-responsibility of those forces in control of the situation, whose duty it was to protect the civilian population. Most of the violations committed during the August 2008 conflict and weeks after the ceasefire were committed in South Ossetia and in the adjacent so-called buffer zone. By contrast, few violations were reported in the upper Kodori Valley and Abkhazia. This exception does not relate, however, to the situation of ethnic Georgians in the Gali district of Abkhazia and the upper Kodori Valley, where their rights as a minority seem to be endangered.

26.) As for the conflict in South Ossetia and adjacent parts of the territory of Georgia, the Mission established that all sides to the conflict - Georgian forces, Russian forces and South Ossetian forces - committed violations of International Humanitarian Law and Human Rights Law. Numerous violations were committed by South Ossetian irregular armed groups, by volunteers or mercenaries or by armed individuals. It is, however, difficult to identify the responsibilities for and the perpetrators of these crimes. The fact that both Georgian and Russian forces in many cases used similar armament further complicates the attribution of certain acts. If it were not for the difficulties of identification and attribution, many of these acts have features which might be described as war crimes.

27.) The Russian and South Ossetian charge of genocide against Georgia was one of the most serious allegations made. There was an urgent need to examine this allegation, due to the grave connotations conjured by the term genocide in public opinion and conscience, and also to its very specific legal definition and to the ensuing serious consequences under international law. After having carefully reviewed the facts in the light of the relevant law, the Mission concludes that to the best of its knowledge allegations of genocide committed by the Georgian side in the context of the August 2008 conflict and its aftermath are

neither founded in law nor substantiated by factual evidence. This finding is mainly based on the fact that international law requires proof of specific intent for the crime of genocide to be constituted. It follows from this, that measures such as educational and public information initiatives should be taken to ensure that unfounded allegations of genocide do not further fuel tensions or encourage acts of revenge. With regard to allegations of ethnic cleansing committed by South Ossetian forces or irregular armed groups, however, the Mission found patterns of forced displacements of ethnic Georgians who had remained in their homes after the onset of hostilities. In addition, there was evidence of systematic looting and destruction of ethnic Georgian villages in South Ossetia. Consequently, several elements suggest the conclusion that ethnic cleansing was indeed practised against ethnic Georgians in South Ossetia both during and after the August 2008 conflict. Even at the time of the writing of this Report, the situation in the Akhagori district at the southeast end of South Ossetia continues to be a matter of concern, as ethnic Georgians are still leaving the region.

28.) As regards the provisions of International Humanitarian Law on the conduct of hostilities and the protection of non-combatants, the violations in question mainly concern the ill-treatment of persons, the destruction of property and forced displacement. More specifically the violations include indiscriminate attacks in terms of the type of weaponry used and their targeting, the lack of adequate protection by Russia and Georgia, widespread campaigns of looting and destruction of ethnic Georgian settlements by South Ossetians, as well as ill-treatment, gender-related crime including rape, assault, hostage-taking and arbitrary arrests, together with the failure by Russian forces to prevent and stop violations by South Ossetian forces, armed irregular groups and armed individuals before and after the ceasefire in South Ossetia and the adjacent territories. Adding to the severity of the situation, there was a considerable flow of internally displaced persons (IDPs) and refugees. Reportedly about 135 000 persons fled their homes, most of them from regions in and near South Ossetia. While most persons fled to other parts of Georgia, a significant number also sought refuge in Russia. The majority fled because of the dangers and the insecurity connected to the conflict situation. But also numerous cases of forced displacements in violation of International Humanitarian and Human Rights Law were noted. More than 35 000 IDPs/refugees are not expected to return to their homes in the foreseeable future, owing to the continued insecurity of the situation or to the destruction of their homes and property. It needs to be stressed that both South Ossetia and Abkhazia,

together with Russia, must take appropriate measures to ensure that IDPs/refugees, including those from the conflicts of the early 1990s, are able to return to their homes with no conditions imposed other than those laid down in relevant international standards, and that Georgia must respect the principle of return based on free individual decisions by the displaced persons.

29.) GRAD multiple rocket launching systems and cluster munitions are the two types of weaponry considered particularly dangerous for non-combatants because of their indiscriminate deadly effects. As far as the use of cluster munitions is concerned, Georgia has admitted their use only for specific military purposes, whereas Russia claimed that Georgia used them also against civilian targets. Russia has denied the use of cluster munitions, in spite of several independent reports confirming such use, including a commission of inquiry set up by the Dutch Ministry of Foreign Affairs in order to investigate the death of a Dutch journalist in Gori on 12 August 2008. There are similar contradictions relating to the use of GRAD rockets. Georgia claims that GRAD were only used against strictly military targets such as South Ossetian artillery in one of the Tskhinvali city districts, whereas OSCE observers and other independent sources confirm the massive shelling of other parts of Tskhinvali as well during the night of 7/8 August 2008, both from multiple launch rocket systems and artillery pieces. Reports from Amnesty International and Human Rights Watch also confirm this. This would indicate that during the Georgian offensive on Tskhinvali cluster munitions on whatever scale and GRAD MLRS were both used, amounting to indiscriminate attacks by Georgian forces, owing to the uncontrollable effects of such weaponry and its use in a populated area. There are also some indications and consequently concerns regarding Russian use of cluster munitions in military attacks on Gori and possibly elsewhere.

30.) Could there have been ways to avoid the conflict? It is true that peace efforts had been made over the years and there were even situations in which a peaceful settlement appeared to be less remote than before. Even though these efforts had failed, they still provide lessons for all concerned. The point of departure of all such plans had always been that any kind of settlement would have to be achieved, first of all, through Georgian constitutional reform, allowing for a meaningful degree of autonomy of Abkhazia and South Ossetia within a federal Georgia. In the negotiations on the political status of these two entities, the parties had a choice of variants of federalism. The Georgian Government was in favour of a so-called asymmetrical federalism, in which one constituent state would

enjoy more powers than the other. Under this model, Abkhazia would receive a higher level of autonomy than South Ossetia. However, the Abkhaz and South Ossetian sides had a strong preference – if their first choice for independence should prove to be impossible – for a confederation. Under the confederate model, their sovereignty would be recognised internationally and this in principle, would give them the right to secede, as they saw it. This combination of a weak federal government and sovereign powers for the member states was not appealing to the Georgian authorities. The Georgians were also afraid that, even if secession did not materialise immediately, the constituent states and their interests or even their possible grievances could be used as convenient levers by an outside power for constant intervention into Georgia’s internal affairs.

31.) For a number of years the peace efforts, including those undertaken by the three parties and the international community, had a positive effect on regional peace and stability. There were also periods of Georgian-Abkhaz and Georgian-Ossetian *rapprochement* and the building of trust and mutual ties. Simultaneously with the process of Georgian-Abkhaz and Georgian-Ossetian *détente* and normalisation, another process was also going on: that of the gradual tightening of links between these two territories and the Russian Federation. This second process, more visible after 1999 and accelerated in the spring of 2008, appeared stronger than the first. Described by the Georgians on a number of occasions as the “creeping Russian annexation of Abkhazia and South Ossetia,” this tightening of links may have increased the Georgian frustration at the stalled peace processes and protracted failure to arrive at a comprehensive settlement.

32.) Notwithstanding the real or perceived interests of the third parties, one of weaknesses of the peace processes in South Ossetia and Abkhazia in 1992 - 2006 seemed to be the fact that the Georgian, Abkhaz and South Ossetian sides concentrated heavily on external aspects and players without paying sufficient attention to building mutual trust and promoting reconciliation. In 2006 - 2008 the Georgians did put stronger emphasis on bilateral cooperation and talks with Tskhinvali and Sukhumi, but the way in which they chose to do this – by decreasing Moscow’s political role in the peace negotiations and that of the Russian peacekeepers on the ground – was not appealing to the Abkhaz and Ossetian sides, who regarded the Russian Federation as their main security guarantor. On the other side, the Abkhaz and Ossetian demands in this period for Georgian guarantees of the non-use of force and other unilateral concessions (the withdrawal of the Georgian security forces from the upper Kodori Valley, etc.), as preconditions for any resumption of the

peace process, could hardly be regarded as constructive either, especially in the context of public calls by some Abkhaz leaders for the forcible seizure (“liberation”) of the Georgian-administered upper Kodori Valley.

33.) As a power with traditionally strong links to the region and understandably enough, important political, economic and security interests there, Russia was given the role of facilitator in the Georgian-Abkhaz and the Georgian-Ossetian negotiation processes, and that of a provider of peacekeeping forces. This formula, while seemingly in line with the rules of Realpolitik, seriously affected the existing political equilibrium in the region. It meant in practice that these two conflicts could be settled not alone, when the sole interests of the Georgians, the Abkhaz and the Ossetians were duly reconciled, but that the interests of Russia had to be satisfied as well. At moments of increased tensions in the area Moscow had made it clear, particularly since 2006, that it would not stand idle in the event of Georgian military action against South Ossetia or Abkhazia. In the view of many Georgians, the Russian policy, especially from 2004 onwards - including the formalising of links with the breakaway territories, the granting of Russian passports to their populations, and declarations about using the Kosovo precedent as a basis for the recognition of South Ossetia and Abkhazia – was more concerned with the protection of its own interests than with the assumption of its responsibility as an honest broker. The Russian peacekeepers were also regarded as being largely a protective ring behind which secessionist entities were developing their institutions. In a situation of worsening Russian-Georgian relations, it became more and more difficult to find an acceptable compromise balancing the above triangle of actors and interests. The vastly superior political and military weight of Russia toppled the balance of what might have been possible otherwise, if at all, in terms of arrangements between Tbilisi and its two breakaway provinces.

34.) On the Georgian side, the establishment by Georgia of alternative South Ossetian and Abkhaz administrations in the breakaway regions in 2006 was regarded by many as the most controversial move by Tbilisi in the conflict resolution process. It may have been motivated by several considerations. One of them may have been related to the ongoing controversies over Kosovo, and Moscow’s warnings that it would recognise Abkhazia and South Ossetia if Kosovo’s independence was recognised by Western powers. For considerable parts of the territories of South Ossetia and Abkhazia to be under the formal control of pro-Georgian administrations may, therefore, have been regarded by the Georgian leadership as a preventive measure, aimed at making Russian recognition of the

two separatist provinces more difficult and therefore less feasible. Another consideration may have been to bring into place attractive examples of alternative administrations receiving generous support from Tbilisi.

35.) The international context in which events were unfolding was further complicated by decisions on Kosovo's independence, and also following the Bucharest NATO summit of April 2008, with its promise of Georgia's future NATO membership, but without any immediate steps for admission. The decision by the Russian Federation to withdraw the 1996 CIS restrictions on Abkhazia (March 2008) and to authorise direct relations with the Abkhaz and South Ossetian sides in a number of fields (April 2008), added another dimension to an already complex situation in the area. The lack of timely and sufficiently determined action by the international community, and to some degree the non-innovative approach to the peace process adopted by international organisations, contributed to the unfolding crisis. Thus a series of mistakes, misperceptions and missed opportunities on all sides accumulated up to a point where the danger of an explosion of violence became real. Unlike events which had taken place in the early 1990s, what was about to happen in August 2008 was no longer a localised conflict in a remote part of the world but a short, bitter armed confrontation between Russia and Georgia, fought on the battlefield but also on live television, and fraught with major international implications.

36.) This Report shows that any explanation of the origins of the conflict cannot focus solely on the artillery attack on Tskhinvali in the night of 7/8 August and on what then developed into the questionable Georgian offensive in South Ossetia and the Russian military action. The evaluation also has to cover the run-up to the war during the years before and the mounting tensions in the months and weeks immediately preceding the outbreak of hostilities. It must also take into account years of provocations, mutual accusations, military and political threats and acts of violence both inside and outside the conflict zone. It has to consider, too, the impact of a great power's coercive politics and diplomacy against a small and insubordinate neighbour, together with the small neighbour's penchant for overplaying its hand and acting in the heat of the moment without careful consideration of the final outcome, not to mention its fear that it might permanently lose important parts of its territory through creeping annexation. We also notice with regret an erosion of the respect of established principles of international law such as territorial integrity, and at the same time an increased willingness on all sides to accept the use of force as a means to reach one's political goals and to act unilaterally

instead of seeking a negotiated solution, as difficult and cumbersome as such a negotiation process might be. And finally, we see the long trail of human suffering and misery in the wake of armed action. Where lies the responsibility for all that has happened? Overall, the conflict is rooted in a profusion of causes comprising different layers in time and actions combined. While it is possible to identify the authorship of some important events and decisions marking its course, there is no way to assign overall responsibility for the conflict to one side alone. They have all failed, and it should be their responsibility to make good for it.

37.) Finally, it must be noted that there are no winners in this conflict. Everyone has lost, if not in terms of life and property alone, at least in the field of hopes and prospects for the future. Apart from the immediate losses on the ground, the political situation is more difficult than before. This is true not only of relations between Tbilisi on one side and Sukhumi as well as Tskhinvali on the other, where the conflict of August 2008 has not settled any of the contentious issues. The situation in the conflict region continues to remain tense. Any incident may spark off grave consequences. Relations between Georgia and Russia have come to an all-time low. In addition to all individual human tragedy and on top of the substantial regional outfall of the conflict, the international community is among the losers, too. The political culture of cooperativeness that had developed in Europe since the 1970s, and which was enshrined by CSCE/OSCE landmark documents from the Helsinki Final Act (1975) to the Istanbul Charter for European Security (1999), as well as the relevant documents adopted in the framework of the Council of Europe, has suffered. The threat and use of force have now returned to European politics. Established principles of international law such as respect for sovereignty and territorial integrity of states were ignored. Violations of International Humanitarian and Human Rights Law such as ethnic cleansing have resurfaced as elements of political reality. Falling back from civilised standards of political interaction in Europe is a consequence. Moreover, relations between Western powers and Russia have suffered. A rift has opened and it now requires cooperation from all to keep it from widening, considering that the conflict in Georgia is marked by even greater direct involvement of major powers than is the case with most other unresolved conflicts. As human suffering and political instability continue, the conflicts in Georgia urgently call for efforts to end them in a negotiated and peaceful manner, finally bringing peace to a region which has seen so much tragedy.