

**ASPECTS OF INTERNATIONAL LAW OF THE REPORT OF  
INDEPENDENT INTERNATIONAL FACT-FINDING  
MISSION ON THE CONFLICT IN GEORGIA**

Nearly two years have passed since the tragic events of the Georgian-Russian war in August, 2008. Since then, numerous new developments have revealed the real reasons for this war. From the very beginning, the world has been focused on the aspects of international law of the war. Unfortunately, from the outset Georgia was unable to overcome the extensive Russian information warfare, as the Russian Federation has been spending millions of dollars to conceal the facts behind the Russian intervention into and occupation of Georgia, and has accused Georgia of starting the war.

Unfortunately, the Western press, policymakers, and even some international experts have been deceived by the information on the war waged by the Russian Federation. The Russian version of the story was convenient for some Western policymakers, as the most important role in what had happened was played by some of the leading Western European states by impeding Georgia's active integration into NATO, which helped the Russian Federation to interpret this period as the right moment for intervention into our country.

On December 2, 2008, the Council of the European Union entrusted Ambassador Heidi Tagliavini, a Swiss diplomat well-known in Georgia, to establish an Independent International Fact-Finding Mission on the Conflict in Georgia (*hereinafter – the Fact-Finding Mission*). The Mission was tasked “to investigate the origins and the course of the conflict in Georgia, including with regard to international law, humanitarian law and human rights”.

The Report submitted by Ambassador Heidi Tagliavini to the Council of the European Union on September 30, 2009 (*hereinafter – the Report*), resulted in active discussions on the evaluation of the conflict. Some praised the objectivity of the report; others accused the Mission of incompatibility of the facts and analysis. Well-known Russian expert and former advisor of V. Putin, academic A. Illarionov, has characterized the basic part of the report as “scandalous”, since, according to him, “the report supports aggressor, justifies the intervention and represents quasi-judicial ground, for the conduct of current and possibly future acts of aggression, what unfortunately are not excluded”.<sup>1</sup>

We do not take such a radical approach in evaluating the Report as, in general, the Volume Two of the Report reflects real events. At the same time, we shall acknowledge that the full independence and impartiality of the Mission was questionable to us from the very beginning, as among the 19 members of the Fact-Finding Mission, some still blamed Georgia in August, 2008, before they became members of the Fact-Finding Mission.

It should be noted that despite this, the number of facts investigated on Russian aggression and their terrific character were so extraordinary that the Fact-Finding Mission had no other way out but to bring the facts to light. However, the analysis of some of the facts is absolutely unacceptable.

The Report has led to controversies in Georgia as well. Unfortunately, this situation has been used by politically motivated so-called experts aimed at disorienting the Georgian people via television, journals, and newspapers. These actors not only grossly distort the facts, but they do not even try to question the confusion and mistakes discovered in the Report with regard to International Law. On the

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<sup>1</sup> A. Illarionov, 'The First Impressions: This is A Scandal', *Live Journal*, (09 September, 2009), <<http://aillarionov.livejournal.com/118326.html>>, accessed 19 March, 2010.

contrary, these persons try to use the Report to make their “contribution” in accusing Georgia of committing alleged aggression.

To begin with, some “commentators” claim that “the Mission and its Report possessed and yet still enjoys international law significance (?) sic!; that the Mission was composed of the persons, officially designated by the EU Member States (?) sic!, in other words it is the Report of EU official intergovernmental body (?) sic!. Hence, [it should be concluded, that] *the Report of the Mission is legally binding* (?) sic! (emphasis added), despite of the fact whether it will be accepted by any of the Parties or not”.<sup>2</sup>

As may be noticed, we put a question mark at the end of almost all of the sentences in the paragraph above. This is because the view quoted above in the respective statements represents the payroll of unprecedented illiteracy and lie.

For the purpose of clarifying why this so, we consider each of the above-mentioned, propositions, which to our minds are incorrect:

a) Any expert of the field would know that *such reports are not legally binding*. The Fact-Finding Mission was only tasked to investigate the facts, and to classify and present them to the establishing body. The same Illarionov, referring to the Report, notes: “EU commission is a commission of investigators and not of judges. It is fairly stipulated in the introduction to the Report that the Mission is not a tribunal. None of the conclusions in the Report represents a verdict, but may serve as a basis of such a verdict”.<sup>3</sup> Moreover, it is worth mentioning that the EU, having been acquainted with the presented Report, “welcomes the presentation of this Report” and only “takes note of its content”.<sup>4</sup>

b) The Report is said to be legally binding, for the reason of being “the report of EU official intergovernmental body”.<sup>5</sup>

In fact, *Ambassador Heidi Tagliavini herself proves the other thing*— that she was given full independence not only in determining the procedures and working methods of the Mission, but also in deciding upon the composition of the Mission.<sup>6</sup> Any alleged “expert” should know that the Fact-Finding Mission could not be an official intergovernmental body, as the term: “intergovernmental” carries a completely different meaning. This kind of body should be composed of persons appointed by governments or international organizations being established by the same governments, but not of private persons, even if such private persons are ambassadors or ex-ministers. Moreover, the Report, while highlighting its investigatory functions, notes that: “In spite of all the work involved, *this Report cannot claim veracity or completeness in an absolute sense*”<sup>7</sup> (emphasis added).

c) Trying to shelter under the Report for the purpose of proving “criminal acts of Georgia”, critics seem to quote quite objectively the following words: “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

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<sup>2</sup> Newspaper “Republic of Georgia”, December 19, 2009.

<sup>3</sup> A. Illarionov, see note 1.

<sup>4</sup> EU Council, *Presentation of the Report of the Independent International Fact-Finding Mission on the Conflict in Georgia*, Brussels, 2009, 13875/09.

<sup>5</sup> See above, fn 2.

<sup>6</sup> Report of Independent International Fact-Finding Mission on the Conflict in Georgia, [hereinafter - Report], Vol. 1, p.6, para. 3. Also see: Article 1, para. 3, and Article 3, EU Council Decision 2008/901/CFSP of December 2, 2008 concerning an independent international fact-finding mission on the conflict in Georgia in: *Official Journal of the European Union*, 3.12.2008, EN., 323/66.

<sup>7</sup> *Ibid.*, p. 9, para. 9.

Georgia”.<sup>8</sup> However, they stop short from reading the phrase: “[Y]et it was only the culminating point of a long period of increasing tensions, provocations and incidents”.<sup>9</sup> (emphasis added).

The Report underlines that it “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* (emphasis added) 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”.<sup>10</sup>

The Report states that: “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”.<sup>11</sup> In summary, the Mission used the terms: “proportional” and “disproportionate response” to classify the actions of the opposing sides. Even the intervention of the Russian Federation into Georgia was labelled a “disproportionate response”. As for Georgia’s opening fire at Tskhinvali in response to repeated attacks by South Ossetian forces (strong evidence of such attacks can be found in the Report), this was also qualified as “disproportional”.

d) The so-called Georgian experts suggest that: “the use of force by the Georgian Side expressed in using GRAD rockets and cluster bombs in Tskhibvali and the surrounding villages, might be said to amount to *aggression* (emphasis added), in accordance with Article 3(a) of the UN Resolution 3314” Here the words “General Assembly”, are suspiciously missing. Let’s see what this Resolution of the United Nations’ General Assembly provides for:

“Article 1: Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

...

Article 3(a): The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof, [qualify as an act of aggression]”.<sup>12</sup>

Some members of the Fact-Finding Mission sought to present Georgia as an aggressor since it attacked “another state”, which referred to South Ossetia. To this end, Professor Otto Luchterhandt created a status of “a stable de facto regime entities that are not recognized internationally as states but which might fulfil though not all attributes of statehood”. Luckily, the Report has not shared this suggestion. In less than impartial article published in Russia before he was designated an expert of the Fact-Finding Mission, Professor Luchterhandt was propagating the same suggestion.<sup>13</sup>

However, fortunately, the Report referred to South Ossetia as “an entity short of statehood”.<sup>14</sup>

Let us now turn to what Professor Antonio Cassese, the first President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and later the Chairman of the United Nations International

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<sup>8</sup> Ibid., p. 11, para. 3.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid., p. 31, para. 36.

<sup>11</sup> Ibid., p. 22, para. 18.

<sup>12</sup> UNGA Res. 3314 (XXIX), 29<sup>th</sup> Session, (1974), available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement>.

<sup>13</sup> Otto Luchterhandt, ‘International Law Aspects of “Georgian War”’, Russian Bulletin of Human Rights, 26, Human Rights Institute (2008). <http://www.hrights.ru/text/b26/bul26.htm>.

<sup>14</sup> Report, Vol. II, p. 128-129.

Commission of Inquiry on Darfur and a professor at the University of Florence, wrote in his article: *The Wolf that Ate Georgia*:

“Russia has set forth various reasons to justify its armed intervention in Georgia, where the breakaway regions of Abkhazia and South Ossetia are nonetheless under Georgian sovereignty. Russia argues that its invasion was aimed at 1) stopping Georgia’s aggression against South Ossetians; 2) ending ethnic cleansing, genocide, and war crimes committed by Georgia there; 3) protecting Russian nationals; and 4) defending South Ossetians on the basis of the peace-keeping agreement signed by Boris Yeltsin and Eduard Shevardnadze in 1992.

*None of these legal grounds holds water* (emphasis added). By sending its troops to South Ossetia, Georgia no doubt was politically reckless, *but it did not breach any international rule, however nominal its sovereignty may be. Nor do genocide or ethnic cleansing seem to have occurred* (emphasis added); if war crimes were perpetrated, they do not justify a military invasion. Moreover, South Ossetians have Russian nationality only because Russia recently bestowed it on them unilaterally”.<sup>15</sup>

Ronald Allison, Reader at the universally known London School of Economics and Political Science, writes: “Russia has unyieldingly kept to this ‘we were attacked first’ claim and referred to the definition of an act of aggression in UN General Assembly Resolution 3314 of 1974 ... However, Russia’s claim of Georgian ‘aggression’ in general against South Ossetia offers no longer basis for Russia’s offensive of other forms of combat against Georgia, since Russian territory itself was not under attack. [Hence, for filling this ‘gap’, at the meeting with members of the Valdai Club, Sochi, V. Putin announced publicly:] ‘What did you want us to do ... when an aggressor comes into *your territory*, you need to punch him in the face – an aggressor needs to be punished’ (emphasis added)”.<sup>16</sup>

It should be mentioned that the facts obtained by the Fact-Finding Mission do not provide sufficient grounds for blaming Georgia in the aggression. This explains why the term “aggression” is not used in relation to any of the Parties in the Introduction to the Report. However, Volume Two of the Report does consider in a great detail to what extent Georgia’s actions of August 7, 2008 corresponded with the definition of aggression.

While examining and evaluating the actions of the parties to the conflict, a number of controversial issues have arisen in the Report. In particular: Georgia was accused of allegedly attacking peacekeepers, reportedly causing human casualties. If we accept paragraph 17 of Volume One of the Report: “Russia claimed that in the morning of 8 August, 2008, two Russian peacekeepers were killed and five wounded<sup>17</sup> by the Georgian attacks on the peacekeepers’ premises in Tskhinvali. Georgia denied ... [this accusation], arguing that the Georgian troops entering Tskhinvali were fired at from the Russian peacekeepers’ compounds and that they had to return fire”.<sup>18</sup>

It is important to underline that the Report provides as follows: “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”.<sup>19</sup>

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<sup>15</sup> Antonio Cassese “The Wolf that Ate Georgia”, *Guardian*, September 1, 2008. <http://www.project-syndicate.org/commentary/cassese5/English>; accessed: 09 September, 2008.

<sup>16</sup> Ronald Allison, “The Russian case for military intervention in Georgia: international law norms and political calculation”, *European Security*, 18:2, (2009) pp. 176-177.

<sup>17</sup> It is worth mentioning that “unbiased” expert Otto Luchterhandt indicates another figure - 10 Russian peacekeepers who were killed. See: Otto Luchterhandt, ‘International Law Aspects of “Georgian War”’. Russian Bulletin of Human Rights 26, *Human Rights Institute* (2008), <http://www.hrights.ru/text/b26/bul26.htm>.

<sup>18</sup> Report, Vol. I, p. 21, para 17.

<sup>19</sup> Ibid.

According to paragraph 20 of the Report: “[T]he use of force by Georgia against Russian peacekeeping forces in Tskhinvali ... was contrary to international law”.<sup>20</sup>

Deriving from the above, what shall be concluded?

As Ronald Allison notes: “[M]any groups of peacekeepers have been killed in complicated regional conflicts elsewhere, without this resulting in an immediate intervention by tens of thousands of troops of their “mother” country”.<sup>21</sup> Moreover, Volume Two of the Report notes: “[T]he fact of the Georgian attack on the Russian peacekeepers’ basis could not be definitely confirmed by the mission”.<sup>22</sup> The following is read in the next paragraph: “Still, doubts remain whether the Russian peacekeepers were attacked in the first place”.<sup>23</sup>

Let us revert now to what the Report states on the Russian intervention into Georgia: “Russia was involved in the conflict in several ways. First, Russian peacekeepers who were stationed in South Ossetia on the basis of the Sochi Agreement were involved in the fighting in Tskhinvali. Second, Russian regular troops were fighting in South Ossetia, Abkhazia and deeper in Georgian territory. Third, North Caucasian irregulars took part in the fighting. Finally, Russia supported Abkhaz and South Ossetian forces in many ways, especially by training, arming, equipping, financing and supporting them ... Under Art. 2(4) of the UN Charter and the parallel customary law, the military operations of the Russian army ... in the territory of Georgia (including South Ossetia and Abkhazia and elsewhere in Georgia) in August 2008 constituted a violation of the fundamental international legal prohibition of the use of force”.<sup>24</sup>

None of the attempts of the Russian Federation to justify its actions on Georgian soil in legal terms are supported in the Report. These actions *inter alia* include: the use of force as self-defence<sup>25</sup>, necessity and proportionality of the Russian actions<sup>26</sup>, use of force as fulfilment of the peacekeeping mission<sup>27</sup>, intervention on initiative of the South Ossetian authorities<sup>28</sup>, “collective self-defence”<sup>29</sup>, “humanitarian intervention” for the purpose of suppressing Russian citizens and Ossetians’ genocide<sup>30</sup>, use of force as action to rescue and protect nationals abroad<sup>31</sup>.

Any impartial expert would consider the above-mentioned “actions” to be in full violation of the principles promoted by Article 2(4) of the UN Charter, and the provisions of the UN General Assembly Resolution 3314. This means that all these “actions” are of aggressive character, although the Mission has refrained from making any such qualification.

As for Georgia, the Report does not deny the fact that South Ossetian forces shelled ethnic Georgian villages and peacekeepers, sometimes resulting even in death; nor does it deny an influx of “volunteer” irregular forces from the territory of the Russian Federation to South Ossetia through the Roki tunnel, before August 7, 2008. Meanwhile, the Mission tries to deny the wide scale incursion of the Russian regular forces into the territory of Georgia via the same Roki tunnel. Albeit, according to a number of reports and publications, including those of Russian origin, it is a confirmed that “an unauthorized Russian military presence was in fact already present in the conflict zone on 7 August

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<sup>20</sup> Ibid., p. 23, para. 20.

<sup>21</sup> Roy Allison, “The Russian case for military intervention in Georgia: international law norms and political calculation”, *European Security*, 18:2, (2009) p.178.

<sup>22</sup> Report, Vol. II, p. 268.

<sup>23</sup> Ibid., p. 270.

<sup>24</sup> Ibid., p. 263-264.

<sup>25</sup> Ibid., p. 264-269.

<sup>26</sup> Ibid., p. 269-275.

<sup>27</sup> Ibid., p. 275-276.

<sup>28</sup> Ibid., p. 276-280.

<sup>29</sup> Ibid., p. 280-283.

<sup>30</sup> See: Ibid., p. 283-284.

<sup>31</sup> Ibid., p. 285-289.

2008 ... [holding] regular exercises in South Ossetia, including one just a week before the August war".<sup>32</sup>

The fact that Georgia launched massive artillery shelling, including the use of cluster bombs – even in response to intensive attacks from the South Ossetian Side – was considered by the Mission a violation of the principle of prohibition of the use of force, enshrined in the UN Charter, by Georgia. It should be noted that Georgia has admitted to those facts, but claimed to act in response to the attack by the Russian regular and irregular (the so-called “Boeviks”) military forces in Tskhinvali and the surrounding regions. To make a comparison, it is worth mentioning that the Mission has condemned Russia’s attempt to deny the use of cluster munitions, while shelling the civilian population.<sup>33</sup>

As for “the Georgian view that Russian soldiers had entered Georgian territory through the Roki tunnel already before the Georgian air and ground offensive started on 7 August 2008 at 11.35 p.m. could not be verified by the Mission”. However, the Mission noted: “*It is not excluded that new evidence might show that Russian soldiers had already entered Georgian territory at that point in time*”.<sup>34</sup> (emphasis added).

Hence, the absence of facts regarding the influx of Russian regular forces into the territory of Georgia, and on launching an attack on Georgia, has turned out to be sufficient grounds for the Mission to not make any qualification thereupon.

The Russian military intervention into Georgia and the occupation of a significant part of the territory of Georgia, including Abkhazia and South Ossetia, have resulted in discussions on the diplomatic, political, and more importantly, the international legal interpretation of the facts. As already mentioned, the majority of Western, and even some Russian, experts fully support the position of Georgia and criticize the aggressive policy of the Russian Federation.

Several eminent statesmen and politicians attribute vital importance to the situation facing Georgia and the necessity to take urgent steps for the purpose of avoiding widespread attack. As Vaclav Havel, Valdas Adamkus, and other well-known political and public figures have announced: “[T]he critical question is to determine which country invaded the other, rather than which soldier shot the first bullet”.<sup>35</sup>

Meanwhile, in Georgia some of the so-called experts focus only on the dubious provisions of the Report. Nevertheless, most important is that the Report contains a long list of aggressive acts, flagrantly violating International Humanitarian Law, committed or supported by the Russian Federation:

- ) Under these circumstances, the Georgian attacks against the Russian peacekeepers’ base would equal an attack on an ordinary Russian base in foreign territory, and were therefore specifically addressed against Russia as a state, but this does not constitute a sufficient condition for self-defence. Moreover, as stated above, the alleged Georgian attack on the Russian peacekeepers’ base could not be definitely confirmed by the mission;<sup>36</sup>
- ) There is no doubt that the Russian peacekeepers, if they had been directly attacked, had the right to immediate response. An immediate military response was necessary and proportionate under

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<sup>32</sup> Ronald Allison, “The Russian case for military intervention in Georgia: international law norms and political calculation”, *European Security*, 18:2, (2009) p. 17, p. 176; See also: Report, Vol. II, p. 221; See also: A. Illarionov, ‘How the War was Prepared’, (June 24-26, 2009).

<sup>33</sup> See: Report, Vol. I, p. 28, para. 29.

<sup>34</sup> Report, Vol. II, p. 254.

<sup>35</sup> Vaclav Havel, Valdas Adamkus, Mart Laar, Vytautas Landsbergis, Otto de Habsbourg, Daniel Cohn Bendit, Timothy Garton Ash, André Glucksmann, Mark Leonard, Bernard-Henri Lévy, Adam Michnik, Josep Ramoneda, ‘Europe must stand up for Georgia’, *Guardian*, (September 22, 2009), <http://www.guardian.co.uk/commentisfree/2009/sep/22/europe-georgia-russia>.

<sup>36</sup> *Ibid.*, p. 268.

that condition. Still, doubts remain as to whether the Russian peacekeepers were attacked in the first place;<sup>37</sup>

- J It is more difficult to decide whether the entire military campaign against Georgia was necessary and proportionate;<sup>38</sup>
- J In conclusion, the Russian intervention in Georgia cannot be justified as a rescue operation for Russian nationals in Georgia;<sup>39</sup>
- J For these reasons, the presence of Georgian police or military in the Kodori Valley cannot be considered an armed attack on Abkhazia;<sup>40</sup>
- J The use of force by Abkhazia was not justified under international law and was thus illegal. The same applies to the Russian support for Abkhaz use of force;<sup>41</sup>
- J While the damage caused to hospitals by GRAD rockets or artillery shelling resulted from the use of inaccurate means of warfare, the helicopter fire at the hospital in Gori seems to indicate a deliberate targeting of this protected object. This may amount to a war crime;<sup>42</sup>
- J While the exact number of summary executions has not been established, and some facts remain uncertain, the Mission nevertheless believes that there is credible evidence of cases of summary executions carried out by South Ossetian forces;<sup>43</sup>
- J The Mission believes there are confirmed cases of ill-treatment and torture committed by South Ossetian forces;<sup>44</sup>
- J The Mission believes there are confirmed cases of ill-treatment and torture against detained combatants. Such acts seem to have been committed mainly by South Ossetian forces, in some cases possibly with Russian soldiers present;<sup>45</sup>
- J It seems that there have been numerous cases of illegal detention of civilians, arbitrary arrests, abduction and taking of hostages, mostly committed by South Ossetian forces and other South Ossetian armed groups;<sup>46</sup>
- J During and, in particular, after the conflict, a systematic and widespread campaign of looting took place in South Ossetia and in the buffer zone against mostly ethnic Georgian houses and properties. Ossetian forces, unidentified armed Ossetians, and even Ossetian civilians participated in this campaign, with reports of Russian forces also being involved. The Russian forces failed to prevent these acts and, most importantly, did not stop the looting and pillage after the ceasefire, even in cases where they witnessed it directly. The Abkhaz forces did not embark on such pillage. There are, however, reports of a few instances of looting and destruction;<sup>47</sup>
- J The Russian authorities and the South Ossetian authorities overwhelmingly failed to take measures to maintain law and order and ensure the protection of the civilian population as required under IHL and HRL;<sup>48</sup>
- J There were several reasons for the displacement of approximately 135,000 persons in the context of the August 2008 conflict and its aftermath. While the need to avoid the danger of hostilities and the general climate of insecurity account for most of the displacements, numerous documented cases of violations of IHL and HRL committed in order to force the displacement of ethnic Georgians in South Ossetia lead us to conclude that the prohibition against arbitrary or forced displacement has been violated;<sup>49</sup>

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<sup>37</sup> Ibid., p. 270.

<sup>38</sup> Ibid., p. 271.

<sup>39</sup> Ibid., p. 289.

<sup>40</sup> Ibid., p. 293.

<sup>41</sup> Ibid., p. 294.

<sup>42</sup> Ibid., p. 330.

<sup>43</sup> Ibid., p. 355.

<sup>44</sup> Ibid., p. 359.

<sup>45</sup> Ibid., p. 361.

<sup>46</sup> Ibid., p. 362.

<sup>47</sup> Ibid., p. 365.

<sup>48</sup> Ibid., p. 375.

<sup>49</sup> Ibid., p. 389.

- ) Several elements suggest the conclusion that ethnic cleansing was carried out against ethnic Georgians in South Ossetia both during and after the August 2008 conflict;<sup>50</sup>
- ) The protection of the property rights of IDPs is a longstanding issue, with still unsettled disputes over property rights dating back to the conflicts in the 1990s. In South Ossetia, there has been a serious failure on the part of the authorities and the Russian forces to protect the property rights of IDPs during—and, especially, after—the August 2008 conflict. Furthermore, South Ossetian forces did participate in the looting, destruction, and burning of houses during and after the conflict. Comprehensive reparation programmes should be designed and implemented. They should be seen as a complement to the exercise of the right to return of IDPs, and not a substitute for this right;<sup>51</sup>
- ) Serious concern is expressed about the situation of ethnic Georgians in the Gali District (Abkhazia) and the Akhgori District and the effective protection of their rights. The de facto authorities in Abkhazia and South Ossetia must ensure that the rights of these persons are protected. The issue of the status of Abkhazia and South Ossetia can under no circumstances be allowed to result in the discrimination or the infringement of their rights.<sup>52</sup>
- ) No comments are needed.

In concluding, we would like to refer to the Tagliavini Report and the well-known book by Ronald D. Asmus to make a meaningful assessment of Russian aggressive “deeds” and policy pursuit by the International Community of States.

Ronald D. Asmus makes the following assessment: “This war was also aimed not only against Georgia but against the West more generally. Georgia was the physical target, but we were in the political crosshairs, too. Tbilisi became the whipping boy for Russian complaints and resentments that had been building for years against the United States, NATO, and those countries Moscow saw as giving encouragement to Georgia. That was clear in everything from how the war was treated in the Russian media, to the way Russian officers described their mission during the brief occupation period, to the graffiti left behind by departing Russian troops. Those resentments started with the United States and NATO but they did not end there. Russian soldiers took pleasure in destroying EU flags as much as they did any symbol of U.S. or NATO presence. Russia’s propaganda effort not only blamed the war on the Georgians but directly implicated the United States as having fostered and created this conflict”.<sup>53</sup>

Asmus continues: “Many in the West have tried to step back and pretend that the Russian-Georgian war was a local conflict that they were not party to. But there is little doubt that in Russian eyes this war marked a new Russian policy of rollback and containment – an effort to roll back Western influence and to contain any future expansion of Western institutions to Russia’s borders. Moscow was announcing that the days of what it was as retreat were over. This was its way of saying to the West collectively that Georgia was in its backyard and we should stay out. It was meant to send a signal that Russia was literally willing to fight back to prevent further Western encroachment on its borders, above all through NATO enlargement. In that sense, this was the first post –Cold War East –West military conflict”.<sup>54</sup>

Despite the fact that the international community of states, particularly the Council of Europe and the European Union, constantly urge Russia to withdraw the recognition of the so-called “independence” of the break-away regions of Georgia, this has not happened. The illegality of Russia’s attitude towards the territorial integrity of Georgia is also underlined by the Report. However, during the entire post-war period, the Russian Federation has been strengthening its military presence in Abkhazia and so-called South Ossetia and “justifying” this by the so-called “agreements”, “concluded with independent states”, not allowing any international organization or its observers to enter these areas. The entire world is

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<sup>50</sup> Ibid., p. 394.

<sup>51</sup> Ibid., p. 405.

<sup>52</sup> Ibid., p. 416.

<sup>53</sup> R.D. Asmus, *A Little War that Shook the World* (Palgrave Macmillan ed. 2010) 217-18.

<sup>54</sup> Ibid., p. 218.



witnessing grave violations of human rights in those areas, but is not able to monitor the situation on the ground.

How long shall the international community tolerate this cynical attitude to the fundamentals of the contemporary international legal order? In this context, we agree with the Report's conclusion that: "There is a need for more timely and more determined efforts to control an emerging crisis situation, and in such situations a more sustained engagement is needed from the international community and especially the UN Security Council, as well as by important regional and non-regional actors.

It has also emerged that the set of stabilizing arrangements and institutions, such as the Joint Peacekeeping Forces (JPKF), the Joint Control Commission (JCC) and the OSCE presence in the case of South Ossetia, as well the Commonwealth of Independent States Peacekeeping Force (CIS PKF) and UNOMIG for the Abkhaz conflict, which had been established with the assistance of the international community following the armed conflicts in Abkhazia and South Ossetia during the early 1990s, were increasingly overtaken by new and more threatening developments both in the political and military fields".<sup>55</sup>

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<sup>55</sup> Report, Vol. I, p. 33-34, para. 2-3.