

## Twelve Years since the 2008 War - Challenges and Perspectives

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Much has already been written about how COVID-19 has changed the world—though the imperialist policies of the Russian Federation and its self-perceived role as the Third Rome are, so far, firmly resistant to global political tectonics. 75 years have passed since the United Nations was established, yet the fundamental principle of non-use of force, the idea of sovereign equality, and the grand mission of maintaining international peace remain a paper-thin fiction, at least for the Big Five. One example is the repeated violation of Georgia's territorial integrity by the Russian Federation in an attempt to expand its regional influence, in particular, the military occupation of two regions of the country. In the context of Russia's political aims, there are issues on which the Georgian society does not have a uniform position, so it is crucial to analyze the international legal and political aspects of the occupation, to stress the core aspects and consolidate a common vision to solve the challenges.

### **How is Russia an Occupation Force?**

When discussing the occupation of Georgian territories, it is necessary to know why we use a particular term and what specific meaning it holds beyond the colloquial usage. I have written before on the problems surrounding the national disagreement and barriers to reaching a consensus on fundamental issues. One significant exception is a generally shared understanding among Georgians in Tbilisi-administered-territory that the Armed Forces of the Russian Federation are deployed in two regions of Georgia, against the will of the central government. Any other assessment would lead to very dangerous conclusions. In particular, the denial of this fact implies one of three possible assumptions: Abkhazia and the Tskhinvali region should not be considered part of Georgia; the Russian Federation has full legitimacy to

deploy its military forces in these territories; Abkhazia and the Tskhinvali region should not be considered part of Georgia, and the Russian Federation has every right to deploy its military forces in these territories. Official statements of Georgian political parties show that even politicians with strong anti-Western ideology and aspirations, in public, refrain from making specific statements on the fact of Russia's illegitimate deployment of troops on Georgian territory. There are people in Georgia, however, reluctant to call the Russian Federation an occupying power. The common arguments of not irritating Russia, or that labeling Russia an occupier is not pragmatic, espouse the view that Georgia will not gain anything by calling Russia an occupier. Such a position reveals a lack of awareness of international law and politics rather than the anti-statehood thinking of the author of this view. The term *occupying power* is not just part of a politician or political party's particular vocabulary or language of communication, but is a legal term widely established in international humanitarian law—the law of war—that carries very specific rights and obligations. The deployment of bases on the territory of Georgia by the Armed Forces of the Russian Federation and the administration of these regions is an example of military occupation. The fact that the occupation is not carried out under a UN mandate proves that it is not an exercise of the Russian Federation's right to self-defense, along with many other factors that underscore the illegality of the occupation.<sup>1</sup> Also important to understand is that, in international law, an occupation is a temporary event, which inevitably ends with de-occupation. Modern international law prohibits the annexation of territories through occupation. As a result, officially recognizing Russia's status as an occupying force is critically important for Georgia to create the comprehensive legal grounds to prevent the annexation and to allow for the de-occupation of the territories, as well as to define the obligations of the Russian Federation regarding the situation in the occupied territories.

### **Who started the war?**

Historical, legal, and political factors must be taken into account when making assessments about the August war. Given the political context, it is inevitable that 2008 will be a continued subject of discussion, however, it is important to remember that opinions on this issue are not just a product of domestic consumption and may affect Georgia's international obligations and relations in general. The question of who started the war is not a critical issue that would fundamentally change international assessments of the events of 2008 and the foundations of the legal liability of the Russian Federation. Nevertheless, there are several aspects that will help us understand the correct vector motion and sequence of decisions. The 2008 August War between Georgia and Russia has been recognized as an international armed conflict by the [International Court of Justice](#), as well as in a [report by the EU-founded Independent International Fact-Finding Mission on the Conflict in Georgia](#) headed by Heidi Tagliavini, which has led to mixed interpretations of the war. Without disputing the fact that Georgia did not carry out an armed attack on the Russian Federation, the answer to the question will be unequivocal. Analyzing the issue from a historical perspective easily reveals the real start of the conflict, which is much earlier than August 2008, and goes back, in fact, to the period of Georgia's independence. Examining the 2008 August War not in fragments, but as a whole image in context, then the vicissitudes of the start of the war become even more apparent. Discussions on the internal political and military expediency, in military-tactical terms, of the

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<sup>1</sup> For more information- Saba Pipia, *The International Law of Belligerent Occupation*, Levan Aleksidze's Series of International Law Publications, World of Lawyers, 2020.

use of force by the Georgian central government in August 2008 are perfectly legitimate, but not in the context of the immediate instigation of the outbreak of war. It is necessary to analyze what steps could have been taken to reduce the damage, or what actions could have prevented a Russian military attack. In fact, no conclusion can emerge from this discussion that would alleviate the crimes committed by the Russian Federation against Georgia, shake the foundations of international responsibility for it, or question Russia's status as an occupying power.

### **Non-Recognition – An Option or the Only Way?**

The policy of non-recognition of the independence of the occupied territories of Georgia has developed quite actively since the 90s. The UN Security Council, the General Assembly and the Human Rights Council have adopted a number of resolutions that strengthen Georgia's territorial integrity. These resolutions repeatedly mention support for Georgia's sovereignty, while there is no document of international importance that considers Abkhazia and South Ossetia as independent states. The policy of non-recognition has a very specific practical purpose: to prevent the annexation of the regions by the Russian Federation, to strengthen the international legal basis for qualifying Russia as an occupier, and to rule out all prospects of recognizing Abkhazia and South Ossetia as independent states. In this regard, the Ministry of Foreign Affairs of Georgia has done a commendable job under all the governments that have led the country since 2008. Georgia's international friends and strategic partners have also made significant contributions to the success of the policy of non-recognition, which has led to the vast majority of countries continuing to recognize Georgia within its internationally defined borders.

One of the key goals of the non-recognition policy is to strengthen Georgia's position in international courts. It is important that Georgia be able to effectively defend its position in the ongoing inter-state dispute against Russia in the European Court of Human Rights. It is also essential that the International Criminal Court effectively investigate international crimes committed against Georgian citizens during the 2008 armed conflict and bring the perpetrators to justice. It is time for Georgia to start thinking about resuming the dispute in the International Court of Justice, the legal perspective of which gained new impetus after the decision on the case of Ukraine v Russia. The purpose of all the above is not to irritate Russia, but to prevent the annexation of Georgian territories and to systematically work to create all legal mechanisms necessary to protect the country's sovereignty.

The sole path out of the current stalemate is the position taken by the current government of Georgia that pledges only a peaceful settlement of the conflicts. Continued work to advance the policy of non-recognition of the occupied territories of Georgia is a necessary but not sufficient condition of the conflicts' solution. Bridges of cooperation between ethnic Abkhaz and Georgians, and Ossetians and Georgians, have been broken, and the wounds left by the conflict have not yet healed. Along with the existing formats of negotiations, it is necessary to think about a new form of direct dialogue, which will create the necessary framework for coexistence in a unified state. Due to the different demographic structures and political situations in Abkhazia and South Ossetia, it is necessary to consider the specifics of each region in the negotiation formats. In order to change the status quo in terms of restoring territorial integrity, the central government and Georgian society must establish what steps the country is ready to take. It will require bold offers to the people living in the occupied territories and

taking fundamental steps to restore mutual trust, which, of course, will not be easy. However, if actively creating positive dynamics in the relationship is the goal, there is no peaceful way other than open conversation, reconciliation, and compromise. A concern is periodically raised that direct negotiations could jeopardize the policy of non-recognition and, consequently, the sovereignty of the country, however, as mentioned above, these two processes, in fact, complement each other and must be conducted in parallel to establish, on the one hand, the legal basis necessary for the effective protection of Georgia's territorial integrity and to limit Russia as much as possible, and, on the other hand, to create the necessary environment for peaceful coexistence in one state. This is the way to create better perspectives for the unification of Georgia and to take the country out of the closed circle in which it has been running for more than a year.

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