

INTERNATIONAL COURT OF JUSTICE

**APPLICATION OF THE INTERNATIONAL CONVENTION ON THE
ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

**GEORGIA
v.
RUSSIAN FEDERATION**

MEMORIAL OF GEORGIA

VOLUME I

2 SEPTEMBER 2009

VOLUME I

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PART A.
INTRODUCTION

CHAPTER I.
INTRODUCTION

Section I. Introduction and Overview of the Case

1.1 On 12 August 2008, Georgia instituted proceedings against the Russian Federation for its actions on the territory of Georgia in violation of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (“CERD” or “1965 Convention”). Georgia’s *Application* is based on Article 22 of the 1965 Convention and “seeks to ensure that the individual rights under CERD of all persons on the territory of Georgia are fully respected and protected”¹.

1.2 By Order dated 2 December 2008, the Court fixed 2 September 2009 as the date for submission of Georgia’s *Memorial*. This *Memorial* and accompanying annexes are submitted in accordance with that Order.

1.3 Since long before August 2008, the Russian Federation has exercised effective control over Georgia’s sovereign territory in Tskhinvali Region/South Ossetia² and Abkhazia through the presence of its military forces and by its control over the *de facto* authorities that it has established and supported to administer those regions. During the entire period of Russia’s control over these regions, and continuing to the date of submission of this *Memorial*, ethnic Georgians in both regions have endured, and continue to endure, widespread and violent forms of ethnic discrimination by and attributable to Russia. As a result of Russia’s discriminatory conduct, more than 200,000 ethnic Georgians have been forcibly and permanently displaced from their homes in Abkhazia in 1992-

¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Application Instituting Proceedings (12 August 2008), para. 1.

² For convenience, this area will be referred to as “South Ossetia” in the *Memorial*.

1994 and again in 2008. Over 30,000 more ethnic Georgians have been forcibly displaced from their places of residence in South Ossetia in 1991-1992 and again in 2008. These ethnic Georgian internally displaced persons (“IDPs”) have been prevented from returning to their homes, in furtherance of creating ethnically “pure” entities in those regions.

1.4 Russia’s conduct constitutes ethnic cleansing on a massive scale. Those few ethnic Georgians who remain in South Ossetia and Abkhazia continue to be subject to discrimination in violation of the 1965 Convention, including killings, beatings, looting and destruction of homes and other property, and denial of fundamental rights of citizenship. These acts occur as part of a publicly-declared effort and policy to force them out of these territories or relinquish their Georgian nationality and citizenship.

1.5 In view of these circumstances, Georgia initiated this case before the Court to ensure that Russia complies with its obligations under the 1965 Convention to protect the right of all persons living in South Ossetia and Abkhazia, including ethnic Georgians, to be free from unlawful discrimination. Georgia also seeks to ensure that all internally displaced ethnic Georgians who have been forced from their villages and homes in these territories are able to return to them expeditiously under conditions of security and dignity, in accordance with the requirements of the 1965 Convention.

1.6 The dispute between the Parties that Georgia has submitted to the Court is strictly limited to factual and legal issues relating to the application and interpretation of the 1965 Convention. It raises fundamental issues concerning obligations to which the international community has attached great importance; namely, the obligation not to engage in, sponsor or support racial discrimination

of any kind. The case requires the Court to examine and establish the facts in relation to discriminatory acts committed by Russia, and to determine the extent to which its legal obligations under the 1965 Convention have been violated.

1.7 Before turning to the contents of this *Memorial* in more detail, four preliminary points are in order.

1.8 *First*, it is necessary to underscore what this case is *not* about. As noted above, the case is concerned exclusively with discriminatory acts that constitute violations of the 1965 Convention. Although the case was initiated in the context of Russia’s unlawful use of force against Georgia in August 2008, and Russia’s widespread violations of international humanitarian and human rights law, Georgia does not ask the Court to make any findings in relation to those issues. This case is concerned exclusively with Russia’s obligations under the 1965 Convention, and in particular its obligations under:

- Article 2(1)(a) “to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation”;
- Article 2(1)(b) “not to sponsor, defend or support racial discrimination by any persons or organizations”;
- Article 2(1)(d) to “prohibit and bring to an end, by all appropriate means... racial discrimination by any persons, group or organization”;
- Article 3 to “prevent, prohibit and eradicate [racial segregation] in territories under their jurisdiction”; and
- Article 5 “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law”.

1.9 *Second*, with respect to factual parts of this *Memorial*, Georgia has been guided by the Court’s jurisprudence on the relative weight and effect of evidentiary sources, in particular as it applies to situations such as those pertaining to Georgia. In the *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court stated that it “will first make its own determination of the facts and then apply the relevant rules of international law to the facts which it has found to have existed”³. The findings of fact necessarily entail an assessment of the evidence, and as the Court has indicated, it has “not only the task of deciding which of those materials must be considered relevant, but also the duty to determine which of them have probative value with regard to the alleged facts”⁴.

1.10 Having regard to the Court’s approach, this *Memorial* relies on evidence drawn from a wide range of sources. It seeks to draw heavily from reports prepared by independent sources, including sources associated with the United Nations and other international organisations of the highest repute, such as the Council of Europe and the Organisation for Security and Cooperation in Europe (“OSCE”). It also draws on eyewitness reports by neutral non-governmental organisations specialized in the protection of human rights and conflict resolution, including Human Rights Watch, Amnesty International and the International Crisis Group. Georgia also relies on official Russian, Abkhaz and South Ossetian sources that provide “evidence acknowledging facts or conduct unfavourable” to Russia⁵. In addition, it relies on first-hand accounts from

³ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Judgment, Merits*, *I.C.J. Reports 2005*, p. 34, para. 57.

⁴ *Ibid.*, p. 34, para. 58.

⁵ *Ibid.*, p. 35, para. 61.

persons with direct experience of violent discrimination, including numerous statements from forcibly displaced persons. The cumulative weight of these highly credible sources establishes a long-standing, consistent, coherent and mutually reinforcing body of material that leaves no doubt as to Russia's responsibility for widespread discrimination against ethnic Georgians.

1.11 A *third* preliminary point concerns the geographic scope of the dispute. The acts for which Russia is responsible have occurred on portions of Georgia's territory over which Russia has exercised effective control since the early 1990s. Its obligations under the 1965 Convention are therefore applicable. This is fully consistent with the approach taken by the Court in *Democratic Republic of the Congo v. Uganda* in which the Court stated:

The Court, having concluded that Uganda was an occupying Power in Ituri at the relevant time, finds that Uganda's responsibility is engaged both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account⁶.

1.12 In the Court's Advisory Opinion in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court similarly held that international human rights instruments governed Israel's conduct in the Occupied Palestinian Territories by virtue of its exercise of effective jurisdiction in those territories⁷. These issues are addressed in Chapter 8.

⁶ *Ibid.*, p. 60, para. 179.

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 193, para. 136.

1.13 The *fourth* and final preliminary point concerns the temporal aspect of Georgia's claims. As set forth in this *Memorial*, Russia's participation and support for ethnic cleansing and other discriminatory acts in South Ossetia and Abkhazia extends back to the early 1990s. Nonetheless, Georgia is seeking relief from the Court only with respect to acts occurring after -- or with continuing effect from -- the date when Georgia itself became a State party to the 1965 Convention, 2 June 1999. The evidence demonstrates that in the decade between 1999 and the submission of this *Memorial*, ethnic Georgians have been subjected to flagrant and large-scale discriminatory acts in both South Ossetia and Abkhazia for which Russia bears responsibility. This includes the plight of over 200,000 persons who were forcibly displaced prior to 1999 in regard to whom Russia's persistent denial of the right of return constitutes a continuing violation of the 1965 Convention to this day.

Section II. Structure of the *Memorial*

1.14 This *Memorial* consists of 11 Chapters presented in five Parts, followed by Georgia's Submissions. **Part A**, which consists of **Chapters 1 and 2**, presents introductory material, including the factual and legal framework necessary to a full understanding of this dispute.

1.15 **Chapter 2** of **Part A** follows immediately after this Introduction and presents the Court with material essential for putting this case in proper historical and legal perspective. Section I describes the emergence of the independent State of Georgia, from its 1918 declaration of independence through the establishment of Soviet rule and the reacquisition of its sovereignty in 1991. This Chapter also sets forth the legal status of both South Ossetia and Abkhazia as an integral part of Georgia's territory, from the Soviet Constitution through

Georgia's independence and admission to the United Nations the following year. Section II provides a brief overview of the 1965 Convention, including its history and main provisions, and demonstrates that the current dispute is squarely and exclusively related to the interpretation and application of the 1965 Convention.

1.16 **Chapter 3** introduces **Part B** and describes Russia's direct participation in the ethnic cleansing of South Ossetia that began in August 2008. As Georgia establishes in that Chapter, neither the ethnic cleansing of Georgians nor Russia's participation therein can seriously be disputed. The facts have been exhaustively reported by numerous impartial observers from the United Nations and other international organisations, including the OSCE, as well as the world's most reputable human rights organisations. The evidence overwhelmingly establishes that Russian military forces participated directly in violent acts of discrimination against ethnic Georgians, including killings, beatings, destruction of homes and property, arbitrary detentions and forced expulsion from South Ossetia to other parts of Georgia.

1.17 Chapter 3 also demonstrates that the 2008 ethnic cleansing of South Ossetia is juridically distinct from and cannot be conflated with the brief armed conflict between the Russian Federation and Georgia, which had already ended by the time the policy of ethnic cleansing proceeded in earnest. Hostilities between the two States in South Ossetia ended on 10 August 2008, by which time all Georgian military forces or security personnel had left the region. The violent expulsion of ethnic Georgians took place thereafter, at a time when no Georgian troops were anywhere within the confines of South Ossetia.

1.18 In **Chapter 4**, Georgia describes the basis upon which it asserts that even without Russia's direct participation in the 2008 ethnic cleansing in South Ossetia, which is well-documented in the previous Chapter, the respondent State is still internationally responsible for those events. By August 2008, Russia's effective control over -- indeed total domination of -- South Ossetia, including its *de facto* governmental institutions and armed forces was long-established. The Chapter provides a detailed account of the history of South Ossetia within Georgia from the dissolution of the former Soviet Union in 1991 until Russia's invasion in 2008, establishing that by the early years of the current decade Russia had established full dominion over South Ossetia so that in 2004, Moscow's hand-picked *de facto* "President", Eduard Kokoity, could acknowledge that "South Ossetia is already Russia, notwithstanding likes and dislikes of anyone"⁸.

1.19 By 2008, Russia had direct command and control over South Ossetian military and paramilitary forces. In 2008, South Ossetia's *de facto* Minister of Defence, Secretary of the Security Council, Minister of Internal Affairs, and Chairman of the Committee of State Security (KGB), among others, were all senior active-duty members of the Russian military or intelligence forces who were seconded to the South Ossetian "government" to direct military and intelligence activities in that territory⁹. As a consequence, the Russian Federation is fully responsible for the acts committed by South Ossetian forces serving under the direct command and control of Russia's own officials.

⁸ "South Ossetia – it is already Russia", *Nezavisymaia Gazeta* (17 September 2004), Memorial of the Republic of Georgia (hereinafter "GM"), Vol. IV, Annex 199.

⁹ See *infra*, Chapter 4, paras. 4.45-4.58.

1.20 **Part C** consists of **Chapters 5 and 6**, which address Russia's discrimination against ethnic Georgians displaced by ethnic cleansing in South Ossetia and Abkhazia by preventing them from exercising their right of return because of their ethnic origin. Chapter 5 details Russia's direct actions as well as its support and implementation of discriminatory policies adopted by the *de facto* regime in South Ossetia to deny the right of return of ethnic Georgian IDPs. Over 10,000 ethnic Georgians were forcibly and permanently displaced from South Ossetia during the ethnically-targeted violence of 1991 and 1992, and in excess of 20,000 were expelled as part of the ethnic cleansing carried out in August 2008 and thereafter. Chapter 5 describes the ongoing efforts of both Russian and South Ossetian authorities to deny all ethnic Georgian IDPs the right to return, including by means of violent discriminatory attacks.

1.21 **Chapter 6** demonstrates Russia's responsibility for denying over 200,000 ethnic Georgian IDPs from Abkhazia the right to return to their homes following their mass-expulsion in the 1990s and the forcible displacement of the ethnic Georgian population of the Kodori Gorge in 2008. This Chapter begins with a brief review of the ethnic cleansing campaigns of 1993-94 and 1998 that gave rise to the continuing displacement of this population. The Chapter then proceeds to a description of the close collaboration between senior Russian officials and Abkhaz *de facto* authorities to ensure that the ethnic demography created by the mass-expulsion of ethnic Georgians became permanent, by denying their right of return through the use of both ethnically-targeted violence and discriminatory legislation, including, for example, citizenship laws that effectively prevent ethnic Georgians from returning by denying them their fundamental civil and political rights.

1.22 **Part D** addresses Russia's ongoing discrimination against ethnic Georgians in violation of the Court's Order on Provisional Measures dated 15 October 2008, and consists of **Chapter 7**. Since October 2008, Russia has increased its political, military and economic control over South Ossetia and Abkhazia and their respective *de facto* authorities. At the same time, violent discrimination against the remaining ethnic Georgians in those areas has continued unabated through killings, beatings, threats, the burning of homes, looting of property and other grave abuses.

1.23 The Chapter also addresses Russia's responsibility for the continued denial of ethnic Georgians' right of return to their homes, even after the Court's Order indicating provisional measures. As a result of Russia's actions, hundreds of thousands of ethnic Georgians remain unable to return. In contrast, nearly all ethnic Ossetians displaced by the events of August 2008 have long since returned to their homes, and the *de facto* authorities in Abkhazia have offered citizenship and residency to thousands of ethnic Abkhaz living abroad who, like their parents and grandparents before them, have never lived in Abkhazia. The final part of Chapter 7 demonstrates Russia's obstruction of access to international humanitarian assistance and human rights monitoring organisations within South Ossetia and Abkhazia, also in violation of the Court's Order on Provisional Measures.

1.24 **Part E** of the *Memorial* addresses the law and applies it to the facts. **Chapter 8** addresses the Court's jurisdiction based on Article 36(1) of the Statute of the Court and Article 22 of the 1965 Convention.

1.25 The Court's jurisdiction is manifest. The current dispute relates to the interpretation and application of the 1965 Convention, and has obviously not

been settled by negotiation or by the procedures expressly provided for in the 1965 Convention. As Chapter 8 shows in detail, the Parties have been negotiating over the subject-matter in dispute without success since the mass-expulsion of ethnic Georgians in the 1990s. All requirements of Article 22 have been satisfied.

1.26 Chapter 8 also addresses the geographic aspects of jurisdiction and demonstrates that the mere fact that the acts in question took place outside the territorial confines of the Russian Federation is no barrier to a finding of international responsibility. The territorial scope of the key provisions of the 1965 Convention is not limited, and Russia exercised effective control over South Ossetia and Abkhazia at all relevant times by virtue of its military presence in those territories and its control over the *de facto* authorities.

1.27 **Chapter 9** sets forth the key provisions of the 1965 Convention and describes Russia's violations of those obligations in the period from 2 June 1999, when Georgia became a party to the Convention, until August 2008 and subsequently. The Chapter begins with a short introduction to the 1965 Convention and the broad definition of racial discrimination at its core. It then examines the substantive obligations in Articles 2, 3 and 5 and the particular basis for attribution that applies to each. The overwhelming evidence presented in Parts B, C and D of the *Memorial* plainly establishes Russia's violations of its obligations not to engage in acts of racial discrimination (Art. 2(1)(a)); not to sponsor racial discrimination by others (Art. 2(1)(b)); to prohibit and end racial discrimination perpetrated by others (Art. 2(1)(d)); to prevent and eradicate racial segregation in territory under its jurisdiction (Art. 3); and to guarantee everyone equality before the law in the enjoyment of human rights (Art. 5).

1.28 **Chapter 10** demonstrates that Russia also bears international responsibility for its failure to comply with the Court's 15 October 2008 Order on Provisional Measures as discussed in Chapter 7. The Court has made clear its view that its provisional measures orders have binding effect, and that failure to comply therewith constitutes an independent source of liability.

1.29 **Chapter 11** sets forth the relief sought by Georgia. It begins with a brief introduction to the principles governing remedies before discussing the appropriateness of each of the specific remedies that Georgia seeks. For the reasons shown, Georgia seeks an order of the Court declaring that Russia has violated its obligations under the 1965 Convention; that it should cease those violations and not repeat them; that it has an obligation to make reparation, as well as restitution in kind; that it must compensate Georgia for its violations of the 1965 Convention; and that it must allow and facilitate the return of IDPs to their homes of origin in South Ossetia and Abkhazia in conditions of security and dignity.

1.30 Finally, this *Memorial* concludes with Georgia's Submissions.

1.31 Also included with Georgia's *Memorial* are four additional volumes of Annexes. The annexed materials are arranged in the following order: (i) United Nations documents, (ii) inter-governmental and multi-lateral organisation documents, (iii) government documents, (iv) non-governmental organisation reports (v) books and academic articles, (vi) news articles, (vii) correspondence and communications, (viii) witness statements, (ix) images and (x) additional documents.

CHAPTER II.

GEOGRAPHICAL, HISTORICAL AND LEGAL BACKGROUND

2.1 This Chapter sets forth the background to the dispute. Section I describes the geographical and historical context. It provides a brief description of Georgia and its history from its first declaration of independence in 1918 through the onset of the conflicts in South Ossetia and Abkhazia in the early 1990s that resulted in the first waves of violent discrimination and forced expulsion of ethnic Georgians from those territories. It is against this historical background that the ethnic cleansing of ethnic Georgians from the 1990s until 2008 (recounted in Chapters 3 and 4 in the case of South Ossetia, and in Chapter 6 in the case of Abkhazia) was carried out, and continues to be carried out, against those few who remain.

2.2 Section II provides a brief overview of the 1965 Convention, including a description of its purposes and key provisions, and shows how Russia's discriminatory conduct falls squarely within the ambit of the 1965 Convention.

Section I. The Geographical and Historical Context

A. GEOGRAPHY

2.3 Georgia has a territory of approximately 69,700 km² and has a population of some 4.4 million people¹⁰. It is located along the Caucasus Mountains on the isthmus between the Black and Caspian Seas. As shown in Figure 2.1, Georgia is bounded to the north and east by Russia, to the south by Turkey, Armenia and Azerbaijan, and to the west by the Black Sea.

¹⁰ Parliament of Georgia, Country Data, *available at* http://www.parliament.ge/index.php?lang_id=ENG&sec_id=327 (last visited 17 August 2009).

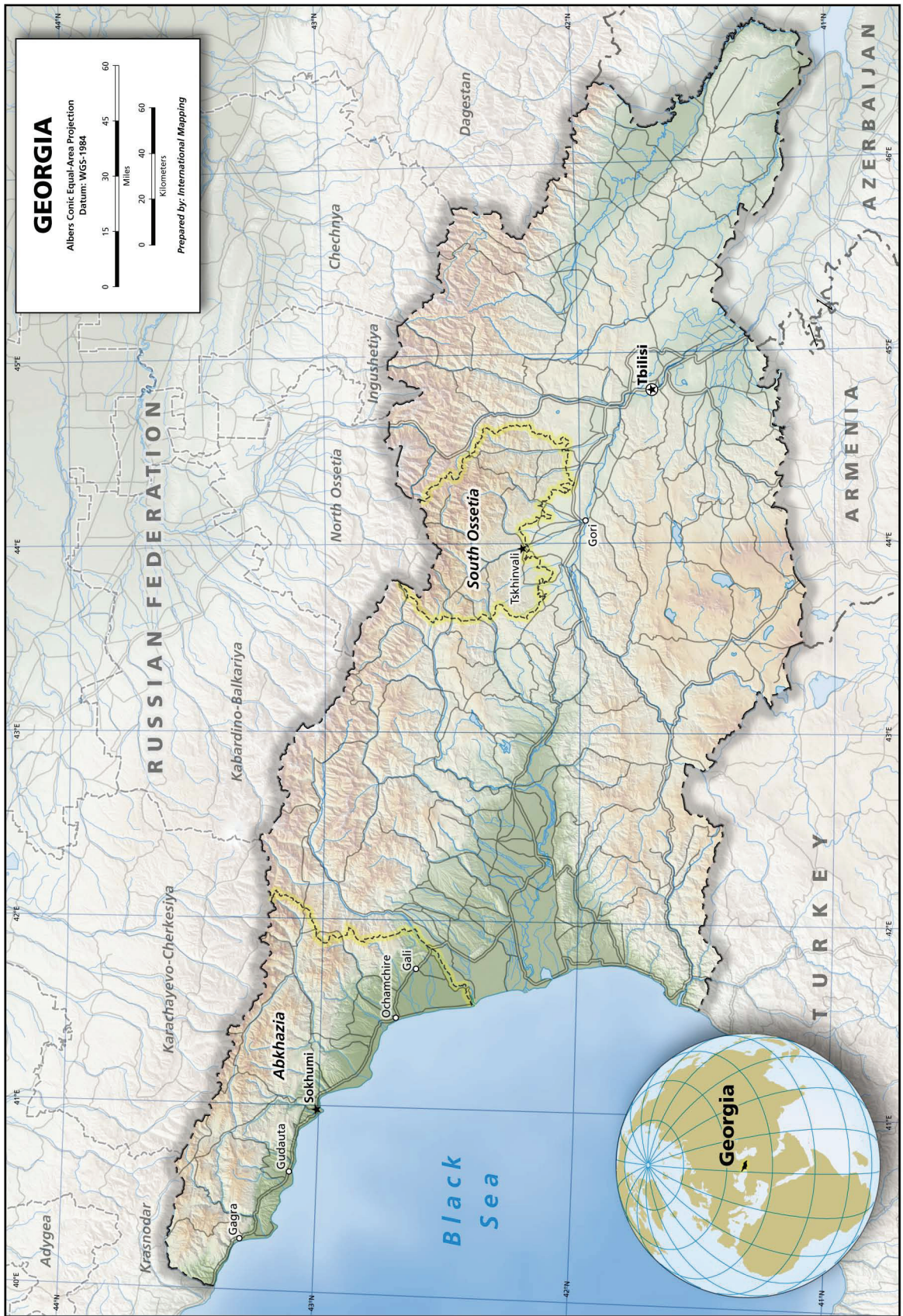
2.4 As shown in the map at Figure 2.1, South Ossetia, formerly an autonomous district within Soviet Georgia, is situated in north-central Georgia. The regional capital, Tskhinvali, is located some 89 kilometres northwest of Georgia's capital, Tbilisi. South Ossetia is bordered to the north by Russia, largely by the Russian Republic of North Ossetia.

2.5 Abkhazia, an autonomous republic under the Constitution of Georgia, is located in the north-west of the country and abuts the Black Sea. The regional capital is Sukhumi, located in central Abkhazia on the coast, which lies at a distance of 343 kilometres from Tbilisi. Abkhazia's northern limits mark the international frontier between Georgia and the Russian Federation.

2.6 South Ossetia and Abkhazia have long possessed diverse populations consisting of Ossetians, Abkhazians and ethnic Georgians, as well as Armenians, Russians, Jews and others. According to the last Soviet Union census conducted in 1989, South Ossetia had a population of just under approximately 100,000, consisting of 66% Ossetians, 29% ethnic Georgians and 4% others¹¹. According to the same census, Abkhazia had a population of approximately 525,100, of whom 45.7% were ethnic Georgians, 17.8% Abkhazians, 14.6% Armenians and 14.2% Russians¹².

¹¹ Letter from Ministry of Economic Development of Georgia, Department of Statistics, to Deputy Head of the Department of Public International Law, Ministry of Justice of Georgia (11 August 2009) (hereinafter "Letter from Ministry of Economic Development of Georgia, Department of Statistics (11 August 2009)"). GM, Vol. V, Annex 318.

¹² *Ibid.* See also Catherine Dale, *The Dynamics and Challenges of Ethnic Cleansing: The Georgia-Abkhazia Case*, Refugee Survey Quarterly, Vol. 16, No. 3 (1997) (hereinafter Dale, *The Dynamics and Challenges of Ethnic Cleansing: The Georgia-Abkhazia Case* (1997)), p. 78. GM, Vol. III, Annex 171.



For illustrative purposes only.

Figure 2.1

B. HISTORY

2.7 By virtue of its location at the intersection of Asia and Europe, and at the crossroads of the Islamic and Eastern Orthodox Christian civilisations, Georgia has a rich history and diverse cultural heritage. Georgian history can be traced back to the earliest Georgian kingdoms of the 6th century B.C.E.

2.8 During the 19th century, a previously independent Georgia was annexed by Tsarist Russia. After the Tsar was deposed in 1917, Georgia declared its renewed independence in May 1918.

1. *The Soviet Era*

2.9 Georgia's independence was short-lived. In February 1921, the Russian Red Army invaded the territory and by 1922 Georgia had been forcibly incorporated into the newly established Union of Soviet Socialist Republics ("USSR"). Between 1922 and 1936, Georgia, Armenia and Azerbaijan were jointly constituted as the Transcaucasian Socialist Federative Soviet Republic ("TSFSR")¹³. In 1936, the TSFSR was dissolved and Georgia was reconstituted as a separate Soviet Socialist Republic ("SSR"), the highest level political subdivision in the Soviet Union¹⁴.

¹³ Svetlana Chervonnaya, *Conflict in the Caucasus* (1994) (hereinafter Chervonnaya, *Conflict in the Caucasus* (1994)), p. 27. GM, Vol. III, Annex 168.

¹⁴ Chervonnaya, *Conflict in the Caucasus* (1994), *op. cit.*, p. 27. GM, Vol. III, Annex 168; Spryos Demetriou, *Politics from the Barrel of a Gun: Small Arms Proliferation and Conflict in the Republic of Georgia (1989-2001)*, Small Arms Survey, Occasional Paper No. 6 (November 2002) (hereinafter Demetriou, *Politics from the Barrel of a Gun* (2002)), p. 3. GM, Vol. III, Annex 172.

2.10 During the Soviet era, both South Ossetia and Abkhazia were recognised as wholly incorporated into Georgia. South Ossetia was an Autonomous District within Georgia for the whole of the Soviet period¹⁵. From 1922 to 1927, Abkhazia was associated by treaty with Georgia and the rest of the TSFSR¹⁶. In 1931, its status was changed to that of an Autonomous Soviet Socialist Republic within the Georgian SSR, a status it maintained until the dissolution of the Soviet Union in 1991¹⁷.

2.11 Due to its long Black Sea coastline (of which the Abkhaz coast makes up roughly two-thirds), and its proximity to Europe and the Middle East, Georgia had special importance during the Soviet period. Throughout the Cold War, Moscow maintained a significant military presence in the Georgian SSR¹⁸. Estimates indicate that at the height of the Cold War approximately 100,000 Soviet troops were stationed in Georgia. With its strategic connection to the Black Sea, Abkhazia hosted a number of important Soviet military installations.

2. *Moscow's Support for Ethnic Separatists*

2.12 In the 1980s, the Georgian independence movement gained momentum¹⁹. Soviet officials viewed the movement with alarm and actively opposed it. The

¹⁵ The Soviet system included a complex hierarchy of “Autonomous Regions”, “Autonomous Oblasts”, “Autonomous Soviet Socialist Republics”, and “Soviet Socialist Republics”. Demetriou, *Politics from the Barrel of a Gun* (2002), *op. cit.*, p. 3.

¹⁶ Catherine Dale, “The Case of Abkhazia (Georgia)”, *Peacekeeping and the Role of Russia in Eurasia* (1996), pp. 121-122. GM, Vol. III, Annex 170.

¹⁷ *Ibid.*, p. 122.

¹⁸ Demetriou, *Politics from the Barrel of a Gun* (2002), *op. cit.*, p. 3. GM, Vol. III, Annex 172.

¹⁹ *Ibid.*, p. 4.

Kremlin's determination to quell the independence movement was evidenced most dramatically in the Soviet army's violent suppression of a pro-independence demonstration in Tbilisi on 9 April 1989, resulting in the deaths of twenty Georgian civilians and the injury of hundreds²⁰.

2.13 At the time the Georgian independence movement was gaining momentum, so too was a push for greater autonomy within Georgia among ethnic Ossetians and Abkhazians who preferred to remain part of the Soviet Union²¹. The substantial ethnic Georgian populations in both regions, who overwhelmingly supported Georgian independence, constituted an obvious obstacle to the realisation of that goal. In Abkhazia, where ethnic Georgians made up nearly half the population and outnumbered ethnic Abkhazians by almost three-to-one, the situation was particularly tense.

2.14 In light of the evident alignment of interests between Moscow and Ossetians and Abkhazians, Soviet officials began supporting the ethnic separatist movements in South Ossetia and Abkhazia, which resisted incorporation into an independent Georgia²². By 1989, Soviet encouragement and backing had given rise to strong separatist movements in both regions. In November 1989, South Ossetian separatists requested that the region be recognised as an "Autonomous

²⁰ Jonathan Aves, "The Rise and Fall of the Georgian Nationalist Movement, 1987-1991", *The Road to Post-Communism – Independent Political Movements in the Soviet Union 1985 – 1991* (1992) (hereinafter Aves, "The Rise and Fall of the Georgian Nationalist Movement" (1992)), pp. 160-161. GM, Vol. III, Annex 166; Chervonnaya, *Conflict in the Caucasus* (1994), *op. cit.*, p. 61. GM, Vol. III, Annex 168.

²¹ See, e.g., Chervonnaya, *Conflict in the Caucasus* (1994), *op. cit.*, pp. 56-58. GM, Vol. III, Annex 168.

²² *Ibid.*, pp. 124-129.

Republic” within the Georgian SSR²³. When the Georgian Supreme Soviet denied this request, violent clashes ensued²⁴. In response, the Soviet Union deployed Interior Ministry troops to South Ossetia in January 1990²⁵.

2.15 On 20 September 1990, South Ossetian separatists unilaterally declared secession from Georgia and established what they called the “South Ossetian Soviet Republic” as a fully sovereign entity within the USSR²⁶. On 9 December 1990, Tskhinvali officials held “parliamentary” elections that were boycotted by the entire ethnic Georgian population of South Ossetia²⁷. As will be discussed in detail in Chapter 4, following this development, violent ethnic conflict resumed in January 1991.

2.16 As in South Ossetia, Soviet officials supported Abkhaz separatism against Georgia. A key figure in the implementation of Moscow’s Abkhazia policies was Vladislav Ardzinba, who later became Abkhazia’s first *de facto* President. Before returning to Abkhazia, Mr. Ardzinba had worked in Moscow for nearly 20 years, many of them under Yevgeny Primakov, later head of Russia’s Foreign Intelligence Service²⁸. In Moscow, Mr. Ardzinba maintained

²³ International Crisis Group, *Georgia: Avoiding War in South Ossetia*, Europe Report No. 159 (26 November 2004) (hereinafter ICG, *Georgia: Avoiding War in South Ossetia* (2004)), p. 3. GM, Vol. III, Annex 160.

²⁴ *Ibid.*

²⁵ Pavel Baev, “Georgia”, *Conflicts in the OSCE Area*, International Peace Research Institute (15 July 2004) (hereinafter Baev, “Georgia” (2004)). GM, Vol. III, Annex 173.

²⁶ ICG, *Georgia: Avoiding War in South Ossetia* (2004), *op. cit.*, p. 3. GM, Vol. III, Annex 160.

²⁷ *Ibid.*

²⁸ Chervonnaya, *Conflict in the Caucasus* (1994), *op. cit.*, p. 208. GM, Vol. III, Annex 168.

close ties with Soviet intelligence circles as well as with the political group “Soyuz”, whose members included prominent Russian nationalists²⁹.

2.17 Soviet officials sponsored several Abkhaz separatist groups, the most notable of which was “*Aidgylara*” (or “Unity”). The very first draft of *Aidgylara*’s platform declared that Abkhazia should become a constituent part of an indivisible Soviet Union³⁰. Moscow’s support for the Abkhaz separatists was noted by a Russian journalist who commented on the sudden appearance in 1990 “as if by magic” of funding for the separatist newspaper, also called *Aidgylara*, printed in Russian and Abkhazian, and headquartered (along with the political group *Aidgylara*) in the Abkhaz Supreme Soviet building³¹. According to the journalist: “The complicity between the Abkhazian separatists and the old communist elite could not have been made clearer”³². *Aidgylara* routinely published “information” to denounce proponents of Georgian independence as “extremist”, “antipopular” and “selfish”³³.

2.18 By the late 1980s, tensions between the Soviet-backed separatists and Georgians were high. Violence broke out on 15 July 1989 when Abkhazians

²⁹ *Ibid.*, pp. 83-84.

³⁰ *Ibid.*, pp. 58-59. See also Aves, “The Rise and Fall of the Georgian Nationalist Movement” (1992), *op. cit.*, p. 160. GM, Vol. III, Annex 166.

³¹ Chervonnaya, *Conflict in the Caucasus* (1994), *op. cit.*, p. 58. GM, Vol. III, Annex 168.

³² *Ibid.* *Aidgylara* regularly published inflammatory stories about Georgian policy, characterizing Georgians as “extremist”, “against the political frame of mind of the Abkhazian population”, “anti-Soviet” and claiming that more than “a hundred thousand people (Georgians) had been resettled on the best lands of land-starved Abkhazia”. *Ibid.*, pp. 59, 78.

³³ *Ibid.*, p. 59 (“The extremist elements, using the great gains of perestroika, glasnost and democracy, in their antipopular and selfish interests are seeking to direct this process into the channel of anti-sovietism, separation, aggressive nationalism and chauvinism”, quoting *Aidgylara*, 1990, N4, p. 2).

protested the efforts of Georgian students to register at the Sukhumi branch of Tbilisi University. The violence quickly spread, and Soviet troops were ordered into Abkhazia two days later³⁴.

2.19 On 25 August 1990, the Supreme Council of the Autonomous Republic of Abkhazia issued a declaration requesting that Moscow grant the region independence from Georgia while remaining within the Soviet Union³⁵. The Georgian Supreme Soviet promptly annulled the declaration³⁶. After a period of relative calm, ethnic conflict erupted anew in August 1992, this time with devastating consequences for the ethnic Georgian population of Abkhazia, over 200,000 of whom were forcibly displaced to other parts of Georgia by the violence directed against them.

3. *Georgia's Resumption of Independence and National Boundaries*

2.20 Despite Moscow's opposition, the Georgian independence movement continued to strengthen as the Soviet Union weakened. On 20 November 1989, the Georgian Supreme Soviet proclaimed that Georgia's incorporation into the Soviet Union in 1921 had occurred by force and was illegitimate and unlawful³⁷.

³⁴ Aves, "The Rise and Fall of the Georgian Nationalist Movement" (1992), *op. cit.*, p. 160. GM, Vol. III, Annex 166.

³⁵ Declaration on the State Sovereignty of Abkhaz Soviet Socialist Republic (25 August 1990). GM, Vol. III, Annex 93.

³⁶ Decree Issued by the Presidium of the Supreme Council of the Georgian SSR on the Decision Taken by the Supreme Council of the Abkhaz ASSR on 25 August 1990 (26 August 1990), *Bulletin of the Supreme Council of the Georgian SSR, 1990*, #8, pp. 15-16. GM, Vol. III, Annex 94.

³⁷ "Clamor in the East; Georgian Legislature Asserts Right to Leave Soviet Union", *New York Times* (20 November 1989). GM, Vol. IV, Annex 185.

Georgia also declared that it had the right to secede from the Soviet Union and to nullify laws and decrees issued by Moscow authorities³⁸.

2.21 In March 1991, Georgia boycotted the USSR-wide referendum on maintaining the Soviet Union³⁹. Instead, on 31 March 1991, it held a referendum on the restoration of Georgia's 1918 Declaration of Independence. The vote was overwhelmingly in favour of independence⁴⁰. On 9 April 1991, Georgia officially declared independence.

2.22 Following the formal dissolution of the Soviet Union in December 1991, Georgia was admitted as a Member State of the United Nations on 6 July 1992 within the same boundaries it had when it was a Soviet Socialist Republic⁴¹. Both South Ossetia and Abkhazia were, as they are to this day, within the internationally recognised boundaries of Georgia.

2.23 These facts form the geographical and historical context in which ethnic cleansing and other forms of ethnic discrimination were carried out against Georgians living in South Ossetia and Abkhazia between 1999 and the present. They have led Georgia to invoke the International Convention on the Elimination of All Forms of Racial Discrimination against the Russian Federation ("1965 Convention").

³⁸ *Ibid.*

³⁹ Human Rights Watch/Helsinki, Human Rights Watch Arms Project, *Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict*, Vol. 7, No. 7 (March 1995), p. 16. GM, Vol. III, Annex 146.

⁴⁰ Baev, "Georgia" (2004), *op. cit.* GM, Vol. III, Annex 173.

⁴¹ *Ibid.*

Section II. The 1965 Convention

2.24 The obligation to eliminate racial discrimination under the 1965 Convention gives effect to one of the fundamental principles of the United Nations Charter. In particular, Article 1(3) of the Charter states that one of the purposes of the United Nations is to achieve international cooperation in “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”⁴².

2.25 The centrality of the principle of non-discrimination was reaffirmed in the 1948 Universal Declaration of Human Rights, Article 2 of which proclaims that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status⁴³.

Article 7 further affirms that:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination⁴⁴.

2.26 This fundamental principle of international law gained even greater prominence during the 1960s in response to increasing awareness of the

⁴² U.N. Charter, Art. 1(3).

⁴³ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948), Art. 2.

⁴⁴ *Ibid.*, Art. 7.

persistence of racial discrimination throughout the world. At its 1961 session, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities proposed that the General Assembly prepare an international convention obligating the parties to prevent, prohibit and eradicate racial, ethnic, national and other forms of hatred⁴⁵. In December 1965, the International Convention on the Elimination of All Forms of Racial Discrimination was opened for signature. It entered into force just over three years later on 4 January 1969. The Soviet Union became a party on 4 February 1969.

2.27 The unusually strong international consensus around the principle of non-discrimination is reflected in the fact that the 1965 Convention was actually the first universal human rights treaty adopted by the United Nations. It was opened for signature a year before the 1966 Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, respectively, and came into force more than a decade before they did. The prohibition of racial discrimination has now become a peremptory norm of general international law⁴⁶.

2.28 The 1965 Convention is divided into three parts. Part I sets forth the definition of “racial discrimination” and the substantive obligations imposed upon States Parties; Part II establishes the Committee on the Elimination of Racial Discrimination (“the CERD Committee”); and Part III contains miscellaneous final provisions, including Article 22, which confers jurisdiction

⁴⁵ U.N. Economic and Social Council, *Report of the 13th session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1961)*, U.N. Doc. E/CN.4/815 (9 February 1961), paras. 176, 185. GM, Vol. II, Annex 1.

⁴⁶ See, e.g., *Barcelona Traction, Light and Power Company Limited, Judgment*, I.C.J. Reports 1970, p. 32, para. 34; United States Restatement (Third) of the Foreign Relations Law, § 702, n. 11 (1986).

on this Court for disputes between the States Parties relating to the interpretation or application of the 1965 Convention.

2.29 Article 1(1) of the 1965 Convention defines racial discrimination in broad terms. It states:

[T]he term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2.30 The text of the 1965 Convention evidences a particular concern with racial discrimination in the construction of the State itself. This concern manifests itself most obviously in the references to “apartheid”⁴⁷, “segregation”, and “separation” in both the preamble and the operative provisions of the Convention. The Preamble, for instance, states that the States Parties are “alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation”. In a similar vein, Article 3 provides: “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

⁴⁷ Apartheid has been defined as the coercive suppression of a racial or ethnic group as such, or their forced ejection as members of their society on grounds of their race or ethnicity. International Convention on the Suppression and Punishment of the Crime of Apartheid, New York 1973, 1015 UNTS 243, in force 18 July 1976, Art. II.

2.31 The system of apartheid as such has thankfully disappeared. The international community faces a modern analogue, however, in the form of “ethnic cleansing” and other forms of discrimination designed to (re)create States as ethnically homogenous entities. As the CERD Committee aptly noted in relation to the situation in Kosovo:

Any attempt to change or to uphold a changed demographic composition of an area against the will of the original inhabitants, by whatever means, is a violation of international human rights and humanitarian law...⁴⁸

2.32 This case concerns exactly such an “attempt to change or to uphold a changed demographic composition of an area against the will of the original inhabitants”. As set forth in the following Chapters, Russia, acting both directly with its own military forces and also through South Ossetian and Abkhazian separatist forces under its control, has engaged in a sustained course of discriminatory conduct designed to do nothing less than remove the ethnic Georgian population to other parts of Georgia and reconstitute South Ossetia and Abkhazia as ethnically “pure” territories aligned with the Russian Federation. On 26 August 2008, the President of the Russian Federation, Dmitri Medvedev, delivered what was intended to be the *coup de grâce* when he announced Russia’s “recognition” of South Ossetia and Abkhazia as “independent States”⁴⁹.

⁴⁸ U.N. General Assembly, *Report of the Committee on the Elimination of Racial Discrimination*, Official Records, Fifty-third Session, Supplement No. 18, U.N. Doc. A/53/18 Supple.18 (10 September 1998), para. 203. GM, Vol. II, Annex 27.

⁴⁹ As of the date of this *Memorial*, Russia has been joined by only one other State – Nicaragua – in recognising Abkhazia and South Ossetia.

2.33 Russia and its agents have pursued their goal through the means that will be discussed in the remaining Chapters of this *Memorial*. Each of these means is itself a violation of the 1965 Convention.

2.34 As indicated in Chapter 1, Georgia's factual presentation is organised thematically. Part B of this *Memorial* (consisting of Chapters 3 and 4) addresses Russia's participation in the ethnic cleansing of ethnic Georgians from South Ossetia in August 2008 and afterwards. Chapter 3 presents the evidence establishing Russia's direct role, via its military forces in South Ossetia, in ethnically-motivated violence against the ethnic Georgian population, which resulted in their massive forced expulsion from the territory to other parts of Georgia. Chapter 4 provides the evidence of Russia's control over the South Ossetian military and paramilitary forces that also participated in the violent ethnic cleansing campaign against the ethnic Georgian population, often with the collaboration of Russian military units, sometimes under their watchful and tolerant protection, and at other times on their own, but always while under the command and control of senior Russian military officers. Chapter 4 shows that the events of August 2008 were the culmination of Russia's creeping annexation of South Ossetia, a process that began in 1991 when then-Soviet troops entered South Ossetia, as described above, and grew steadily over the course of the next 17 years, and particularly after 1999, when Russia increasingly assumed control over the South Ossetian separatist enterprise. As a result, the Respondent State bears full international responsibility for the wholesale and violent cleansing of ethnic Georgians from South Ossetia in 2008.

2.35 There can be no question that targeted ethnic violence and ethnic cleansing constitute impermissible discrimination within the ambit of the 1965 Convention. Indeed, it is difficult to imagine a clearer example. As noted,

unlawful discrimination includes “*any* distinction, exclusion, restriction or preference” based on ethnicity that has the effect of denying human rights and fundamental freedoms. Under Article 5(b), “States Parties undertake... to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law” in their enjoyment of “[t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”.

2.36 Ethnic cleansing violates Article 5(b) of the 1965 Convention and virtually every other one of its substantive obligations. Other specifically prohibited conduct includes the “practice of racial discrimination against persons, groups of persons or institutions” (Art. 2(1)(a)) and “sponsor[ing], defend[ing] or support[ing] racial discrimination by any persons or organizations” (Art. 2(1)(b)). States Parties also have affirmative duties to: “prohibit and bring to an end... racial discrimination by any persons, group or organization” (Art. 2(1)(d)); and “undertake to prevent, prohibit and eradicate all practices of [racial segregation] in territories under their jurisdiction” (Art. 3), among others. The dispute over ethnic cleansing in South Ossetia is self-evidently a dispute over the interpretation or application of the 1965 Convention.

2.37 Part C of this *Memorial* addresses Russia’s discrimination against ethnic Georgian IDPs by means of denying their right to return to their homes in South Ossetia and Abkhazia. As discussed in Chapter 5 (in the case of South Ossetia) and Chapter 6 (in the case of Abkhazia), the aggregate cost of the ethnic conflicts of the last two decades on ethnic Georgians has been staggeringly high. As of the time of submission of this *Memorial*, well over 200,000 ethnic Georgians from South Ossetia and Abkhazia remain displaced. Russia’s continuing actions

have been intended to prevent these IDPs from exercising their right of return to their homes of origin.

2.38 As with ethnic cleansing, there can be no doubt that denial of displaced persons' right to return based on their ethnicity is a violation of the 1965 Convention. Not only does it constitute a breach of each of the general undertakings cited above in paragraph 2.36, it runs directly contrary to the express terms of Article 5, paragraphs (d)(i) and (ii) of which provide that everyone is equally entitled to enjoy the "right to freedom of movement and residence within the border of the State" and "the right to leave any country, including one's own, and to return to one's country".

2.39 In its General Recommendation No. 22, the CERD Committee has expressly stated that IDPs have a right to return to their homes of origin and States have an obligation to ensure the exercise of that right in the territories under their control⁵⁰. Here again, this case presents a dispute over the interpretation and application of the 1965 Convention.

2.40 Part D of the *Memorial* deals with Russia's discrimination against ethnic Georgians following the Court's Order on Provisional Measures dated 15 October 2008. Russia's continued discriminatory conduct in the face of the Court's Order constitutes independent grounds for a finding of international responsibility. Russia's conduct also continues to violate the 1965 Convention. Russia's discriminatory actions since 15 October 2008 have taken the form of continued ethnic violence and forced expulsions against the remaining ethnic

⁵⁰ U.N. Office of the High Commissioner for Human Rights, CERD, *General Recommendation No. 22: Art. 5 and refugees and displaced persons*, Forty-ninth Session, U.N. Doc. A/51/18 (1996), para. 2(a)-(b). GM, Vol. II, Annex 21.

Georgians in South Ossetia and Abkhazia, the persistent obstruction of ethnic Georgians' right of return, and the destruction of Georgian culture and identity by discriminatory legislation and other means, as described in Chapter 7. The ongoing ethnic cleansing and persistent frustration of IDPs' right of return violate the 1965 Convention for the reasons already set out above.

2.41 The destruction of culture and identity is equally impermissible and is prohibited by Articles 2(1)(a), 2(1)(b) and 2(1)(d), among others. It is also prohibited by Article 5. Although Article 5 does not specifically guarantee the equal enjoyment of the right to culture or identity as such, that right is embraced within a number of the other rights that are specifically mentioned, including:

- the right to freedom of thought, conscience and religion (Art. 5(d)(vii));
- the right to freedom of opinion and expression (Art. 5(d)(viii)); and
- the right to equal participation in cultural activities (Art. 5(e)(vi)).

It bears mention too that the list contained in Article 5 is not intended to be exhaustive⁵¹. Russia's destruction of Georgian culture and identity therefore also gives rise to a dispute over the interpretation and application of the 1965 Convention.

2.42 Georgia has sought to engage Russia in meaningful discussions over the subject-matter of this dispute for many years. Negotiations have taken place bilaterally as well as in numerous fora, including: (i) the United Nations Geneva Process, the Coordinating Council for Georgia and Abkhazia, and the Group of Friends of Georgia; (ii) the Joint Control Commission for the Georgian-Ossetian

⁵¹ U.N. Office of the High Commissioner for Human Rights, CERD, *General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms (Art. 5): 15/03/96*, U.N. Doc. A/51/18 (1996), para. 1. GM, Vol. II, Annex 20.

Conflict Settlement; (iii) the Organisation for Security and Cooperation in Europe; and (iv) the Council of the Heads of State of the Commonwealth of Independent States. In negotiations before all these fora, the issue of the return of ethnic Georgian IDPs has featured prominently on the agenda. Yet, after more than 15 years of forced displacement, the IDPs have not been allowed to return.

2.43 In Chapter 8, Georgia recounts the history of these exchanges in detail. For present purposes, a single example will suffice to illustrate the nature and futility of the Parties' dealings. Following the inauguration of Russian President Medvedev in May 2008, Georgian President Mikheil Saakashvili wrote him a letter dated 24 June 2008 in which he (again) raised the problem of the return of IDPs to Abkhazia⁵². President Medvedev's 1 July 2008 response made clear there was no discussion to be had. He wrote:

It is also apparently untimely to put the question of return of refugees in such a categorical manner. Abkhazs perceive this as a threat to their national survival in the current escalated situation and we have to understand them⁵³.

2.44 Georgia's *Application* in this case was filed just over one month later.

⁵² Letter from President Mikheil Saakashvili to President Dmitry Medvedev (24 June 2008). GM, Vol. V, Annex 308.

⁵³ Letter from President Dmitry Medvedev to President Mikheil Saakashvili (1 July 2008). GM, Vol. V, Annex 311.

PART B.

**DISCRIMINATION BY WAY OF ETHNIC CLEANSING
AGAINST GEORGIANS IN SOUTH OSSETIA**

CHAPTER III.

DIRECT PARTICIPATION BY RUSSIA IN ETHNIC CLEANSING

3.1 In this Chapter, Georgia demonstrates Russia's direct involvement in discrimination against ethnic Georgians aimed at expelling them from South Ossetia. The evidence establishes that there was direct participation by Russia, through State organs of the Russian Federation, in violent ethnic cleansing activities against ethnic Georgian residents of South Ossetia. The evidence includes the published reports of international organisations, including specialised agencies of the United Nations, the Organisation for Security and Cooperation in Europe ("OSCE") and the Council of Europe. It also includes on-the-ground reporting by respected international human rights organisations, such as Amnesty International ("AI") and Human Rights Watch ("HRW"). The findings of these independent expert sources are corroborated by: public statements by senior Russian and South Ossetian officials; satellite imagery produced by the United Nations; electronic intercepts of conversations between Russian and separatist military and paramilitary personnel; contemporaneous official documents; eyewitness accounts by independent observers, including respected academics and journalists; and testimony by numerous Georgian victims of Russia's ethnic cleansing activities.

3.2 In Section I, it is shown that Russia's discrimination against ethnic Georgians took the form of ethnic cleansing, which Russia accomplished by burning and looting the ethnic Georgian villages that came under Russian military occupation and threatening to kill the few, mostly elderly and sick, who either would not or could not leave South Ossetia. In Section II, it is shown that these violent and discriminatory abuses were committed directly by Russian forces, based on evidence from a series of representative ethnic Georgian villages in each of the administrative districts of South Ossetia inhabited by ethnic Georgians and in a so-called "buffer zone" proclaimed and occupied by Russia, located in another part of Georgia across the administrative boundary of

South Ossetia. Finally, in Section III, it is shown that Russian troops, often acting in concert with separatist forces, completed the ethnic cleansing by engaging in further discriminatory conduct such as seizing those ethnic Georgians who remained in their villages and imprisoning them in the South Ossetian *de facto* Interior Ministry. The last ethnic Georgians who managed to avoid this fate were eventually deported by Russian troops to Gori, a Georgian city outside South Ossetia that came under Russian occupation.

Section I. Russia’s Ethnic Cleansing of Georgians

A. RUSSIA’S INCITEMENT OF ETHNIC HATRED

3.3 Russia’s discriminatory acts commenced simultaneously with the opening of large-scale hostilities on 7 August 2008⁵⁴, when Russian officials and Russia’s state-controlled media launched a propaganda campaign to incite ethnic hatred of the local ethnic Georgian population⁵⁵. Russia repeatedly claimed that Georgia committed “genocide” by killing 2,000 civilians in Tskhinvali⁵⁶. Its Ambassador to the United Nations compared the situation to the massacres at

⁵⁴ Georgian villages in and around South Ossetia were heavily shelled during the first week of August 2008. In an effort to avoid full-scale war, Georgia declared a unilateral cease-fire on 7 August. Georgia appealed to Russia and the separatists to engage in immediate talks and offered virtually unlimited autonomy and self-administration for South Ossetia. However, Georgia’s overture was ignored, and the only response was intensified shelling and the advance of large numbers of Russian armour into South Ossetia. Massive attacks on Georgian villages in South Ossetia and adjacent districts, combined with the large-scale intervention of Russian military units through the Roki tunnel, compelled Georgia to initiate a defensive operation around midnight on 7 August.

⁵⁵ Brian Whitmore, “Scene At Russia-Georgia Border Hinted at Scripted Affair”, *Radio Free Europe/Radio Liberty* (23 August 2008). GM, Vol. IV, Annex 256.

⁵⁶ For example, *Russia Today*, the pro-Kremlin cable news channel, continuously ran the headline “Ossetia genocide.” Sarah E. Mendelson, “An August War in the Caucasus”, *Center for Strategic and International Studies* (11 August 2008) (hereinafter Mendelson, “An August War in the Caucasus” (2008)). GM, Vol. III, Annex 177.

Srebrenica⁵⁷. The Russian state news agency reported that 70 percent of Tskhinvali's buildings were destroyed or damaged⁵⁸. *Pravda* claimed that "Georgian troops" had captured Ossetian refugees and "locked them in a house and set the house on fire, burning all the people inside alive"⁵⁹. Prime Minister Vladimir Putin himself declared that "in one hour" Georgia "wiped ten Ossetian villages from the face of the earth." He also claimed that Georgia "used tanks to knock down children and the elderly" and "burnt civilians alive"⁶⁰.

⁵⁷ *Ibid.*

⁵⁸ "Attacks Damaged or Destroyed 70% of Buildings -- Tskhinvali Mayor," *RIA: Novosti* (12 August 2008) (hereinafter "Attacks Damaged or Destroyed 70% of Buildings" (2008)).

⁵⁹ "Georgian Troops Burn South Ossetian Refugees Alive," *Pravda* (10 August 2008). GM, Vol. IV, Annex 238.

⁶⁰ "Russia Launches Genocide Probe Over S. Ossetia Events," *RIA: Novosti* (14 August 2008). GM, Vol. IV, Annex 246.

3.4 All of these statements were untrue, as attested by impartial observers⁶¹. Nevertheless, Russia used them to instigate and legitimise the ethnic cleansing that followed. A Human Rights Watch observer in South Ossetia reported that Ossetians in Tskhinvali would “name the figure published by Russian mass media” and “speak about thousands killed and wounded”⁶². These Ossetians cited the reports of “Russian federal TV channels” about “thousands of civilian

⁶¹ Russia later acknowledged that the number of casualties it had previously claimed was vastly inflated. By 21 August 2008, Russian authorities admitted that only 133 civilians had died. Amnesty International, *Civilians in the Line of Fire: The Georgia-Russia Conflict* (November 2008) (hereinafter Amnesty International, *Civilians in the Line of Fire* (2008)), p. 65. GM, Vol. III, Annex 158. (citing “Death Toll in South Ossetia a Tenth of Initial Russian Claims,” *The Australian* (22 August 2008), GM, Vol. IV, Annex 117). Even that number is exaggerated. As AI observed, the “133 civilian deaths reported by the Russian Prosecutor’s Office covers the entirety of the conflict and may well include a number of private individuals who engaged in military activity.” *Ibid.*, p. 27 (emphasis added).

Investigations by HRW found no evidence to substantiate the alleged atrocities, Human Rights Watch, *Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict Over South Ossetia* (January 2009) (hereinafter HRW, *Up in Flames* (2009)), pp. 71-73. GM, Vol. III, Annex 156. Although Russia had claimed that 70 percent of Tskhinvali’s buildings had been damaged, analysis of satellite imagery revealed that figure to have been inflated by 1400 percent. UNOSAT, Village Damage Atlas Kekhvi to Tskhinvali, South Ossetia, Georgia - Imagery Recorded on 19 August 2008 (29 August 2008) (hereinafter UNOSAT, Village Damage Atlas Kekhvi to Tskhinvali, South Ossetia (19 August 2008)). GM, Vol. V, Annex 401. (reporting only 5% of buildings affected by hostilities).

In fact, the few ethnic Ossetian villages that came under Georgian control were well-treated. South Ossetian officials and civilians told AI that their villages suffered only limited destruction during the fighting and were not pillaged or burned. Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 25. GM, Vol. III, Annex 158. Even in Khetagurovo, where heavy fighting occurred, a resident told AI that the “Georgian troops ... didn’t enter the houses and didn’t touch anything.” *Ibid.*, p. 25. HRW independently interviewed 15 residents of Khetagurovo and found that “[n]one ... complained about cruel or degrading treatment by Georgian servicemen.” Human Rights Watch, *Georgia: International Groups Should Send Missions* (18 August 2008), p. 5. GM, Vol. III, Annex 150.

⁶² International Crisis Group, *Russia vs. Georgia: The Fallout*, Europe Report No. 195 (22 August 2008), p. 9. GM, Vol. III, Annex 163. (quoting interview with Tatyana Lokshina, director of Human Rights Watch Moscow office, in *Caucasus Press*, 14 August 2008).

casualties” to “justif[y] the torching and looting of the ethnic Georgian enclave villages”⁶³.

3.5 As shown below, although the active fighting in and around South Ossetia ended quickly, the ethnic cleansing that commenced immediately after the Russian invasion continued for months afterwards until nearly the entire ethnic Georgian population of South Ossetia had been expelled and their homes and villages were looted and destroyed⁶⁴. These ethnically targeted abuses were committed behind Russian lines and often with the direct participation of

⁶³ HRW, *Up in Flames* (2009), *op. cit.*, p. 74. GM, Vol. III, Annex 156.

⁶⁴ On 10 August, Georgia ordered its forces to withdraw and unilaterally ceased-fire. Russia agrees that military activities in almost all of South Ossetia had ended by 10 August and that all hostilities had ceased by 12 August. See *infra* Figure 3.2. After mediation by the European Union, led by French President Nicolas Sarkozy, Russia and Georgia agreed to a six point peace plan, which was signed by Georgia on 15 August and by Russia the following day. Both sides agreed to the following principles: no recourse to use violence between the protagonists; the cessation of hostilities; the granting of access to humanitarian aid; the return of Georgian armed forces to their usual quarters; Russian armed forces to withdraw to the positions held before hostilities began in South Ossetia; Russian peacekeepers to implement additional security measures until an international monitoring mechanism is in place; and the opening of international discussions on the modalities of security and stability of South Ossetia and Abkhazia. “Russia ‘ends Georgia operation,’” *BBC News* (12 August 2008). GM, Vol. IV, Annex 244. However, the Russian military advance into Georgian territory continued and by 19 August it had become clear that Russia did not intend to abide by the Plan’s requirement that it withdraw to positions it held before hostilities began in South Ossetia. On that day, President Medvedev informed President Sarkozy that Russian troops would remain in unilaterally declared “buffer zones” around South Ossetia and Abkhazia. “Russian Troops to Stay in Georgia Buffer Zone,” *Radio Free Europe* (20 August 2008). GM, Vol. IV, Annex 252. Russia later announced that it was establishing 37 military posts in undisputed Georgian territory, 18 in areas adjacent to South Ossetia and 19 in areas adjacent to Abkhazia. These military positions extended 20 kilometres south of the South Ossetia border, and 40 kilometres to the south and southeast of the Abkhazian border. “Russian Forces Setting Up Occupation Zones in Georgia,” *Eurasia Daily Monitor*, Vol. 5, Issue 162 (25 August 2008). GM, Vol. IV, Annex 258. After the intervention and mediation of President Sarkozy, European Commission President Jose Manuel Barroso and European Union Foreign Policy Chief Javier Solana, Russia ultimately withdrew from the buffer zones on 10 October 2008 (though Russian forces remained in the Akhagori District adjacent to South Ossetia.) See e.g., “Russia says troops can stay in Akhagori-Agencies,” *Reuters* (11 October 2008). GM, Vol. IV, Annex 266; Matt Siegel, “Russia, Georgia Disagree Over Troop Pullback,” *Associated Press* (2009). GM, Vol. IV, Annex 280.

Russian military personnel. The majority of the targeted ethnic violence and destruction of property occurred long *after* hostilities had ended and Georgian military forces had withdrawn.

B. OVERVIEW OF THE ETHNIC CLEANSING

3.6 From the moment the Russian army entered Georgia through the Roki tunnel, it engaged in acts of discrimination against the ethnic Georgian population. In particular, Russian troops marked ethnic Georgian villages for destruction and sought to remove all ethnic Georgians from South Ossetia. Russia employed a variety of methods. The most obvious was the use of its military personnel, in conjunction with Ossetian forces, to burn ethnic Georgian homes and entire villages, and threaten the inhabitants with death if they refused to leave. This occurred wherever the Russian army occupied ethnic Georgian villages. Hundreds of ethnic Georgian homes in dozens of villages in South Ossetia and adjacent areas were reduced to ashes. After the homes were burnt and their residents expelled, what little remained was razed with earth-moving equipment⁶⁵.

3.7 Nearly every ethnic Georgian village in South Ossetia that came under Russian occupation was systematically burnt to the ground in this manner,

⁶⁵ When the OSCE's human rights fact-finding mission visited the destroyed ethnic Georgian villages of South Ossetia it saw that "houses had apparently been razed by bulldozers or other heavy tracked equipment". OSCE, Office for Democratic Institutions and Human Rights, *Human Rights in the War-Affected Areas Following the Conflict in Georgia* (27 November 2008) (hereinafter OSCE, *Human Rights in the War-Affected Areas* (2008)), p. 43. GM, Vol. II, Annex 71. See also, e.g., Council of Europe, Parliamentary Assembly, *The situation on the ground in Russia and Georgia in the context of the war between those countries, Memorandum*, Doc. 11720 Addendum II (29 September 2008) (hereinafter Council of Europe, *The situation on the ground in Russia and Georgia, Memorandum* (2008)), para. 20 (stating "entire villages have been bulldozed over and razed"). GM, Vol. II, Annex 56.

starting immediately after the arrival of Russian troops. In contrast, ethnic Ossetian villages, and ethnic Ossetian homes in ethnically mixed villages, were spared. This wave of destruction began in the enclave of ethnic Georgian villages located to the north of Tskhinvali, as Russian military units entered South Ossetia through the Roki tunnel and started their drive southward. During this period, the ethnic Georgian villages of Kemerti, Kekhvi, Dzartsemi, Kurta, Kvemo Achabeti, Zemo Achabeti, Tamarasheni, Sveri and Kheiti were destroyed⁶⁶.

3.8 As the Russian army extended the geographical scope of its occupation of South Ossetia, more ethnic Georgian villages were burned by the advancing Russian army. To the east of Tskhinvali, the following villages were occupied and destroyed by Russian troops, either on their own or in collaboration with South Ossetian forces: Vanati, Satskheneti, Qsuisi, Disevi, Eredvi, Argvitsi, Berula, Beloti, Atsriskhevi, Charebi, Zonkari and Frisi. The same pattern of burning and looting occurred in the ethnic Georgian villages of Avnevi and Nuli, located to the southwest of Tskhinvali.⁶⁷

3.9 When Russian troops entered adjacent districts of Georgia lying to the south of South Ossetia, the destruction followed there as well. Like the ethnic Georgian villages in South Ossetia, upon the arrival of the Russian army, the homes of ethnic Georgians in Georgian territory to the south of South Ossetia were looted and burnt. As AI observed, “the looting and pillaging of ethnic Georgian villages”, which had begun in South Ossetia, started to “progressively extend[] to the adjacent ‘buffer zone’ under effective Russian control in the

⁶⁶ See *infra* Figure 3.1.

⁶⁷ *Ibid.*

weeks that followed”⁶⁸. For example, on 12 August, Human Rights Watch reported that “at least three villages in Gori district [south of South Ossetia’s administrative boundary] -- Koshki, Guguaantkari, Zariantkari” had been “burned”⁶⁹. These were just a few of the villages in undisputed Georgian territory that were destroyed over the following weeks. HRW observed that in the Gori District the following villages were among those that were “particularly hard hit by destruction and pillage”: Koshki, Ergneti, Nikozi, Megvrekisi, Tirdznisi and Tkviavi. Destroyed Georgian villages in Kareli District (also outside South Ossetia) included Dvani, Knolevi, Avlevi and Tseronisi. In all cases, HRW determined that the looting and burning commenced “just after Russian troops began” their occupation. Indeed, HRW observed that “Russian forces maintained a checkpoint just outside these villages”⁷⁰.

3.10 The scale of the destruction is apparent from the following maps. At the top of Figure 3.1 is a map depicting villages in South Ossetia and the area immediately to the south. Ethnic Georgian villages are shown with red circles; ethnic Ossetian villages are shown with blue circles. At the bottom of Figure 3.1 is the same map, with white circles depicting the villages that were destroyed. As the Court will note, nearly every ethnic Georgian village was eliminated.⁷¹ In total, an estimated 138,000 ethnic Georgians were displaced⁷².

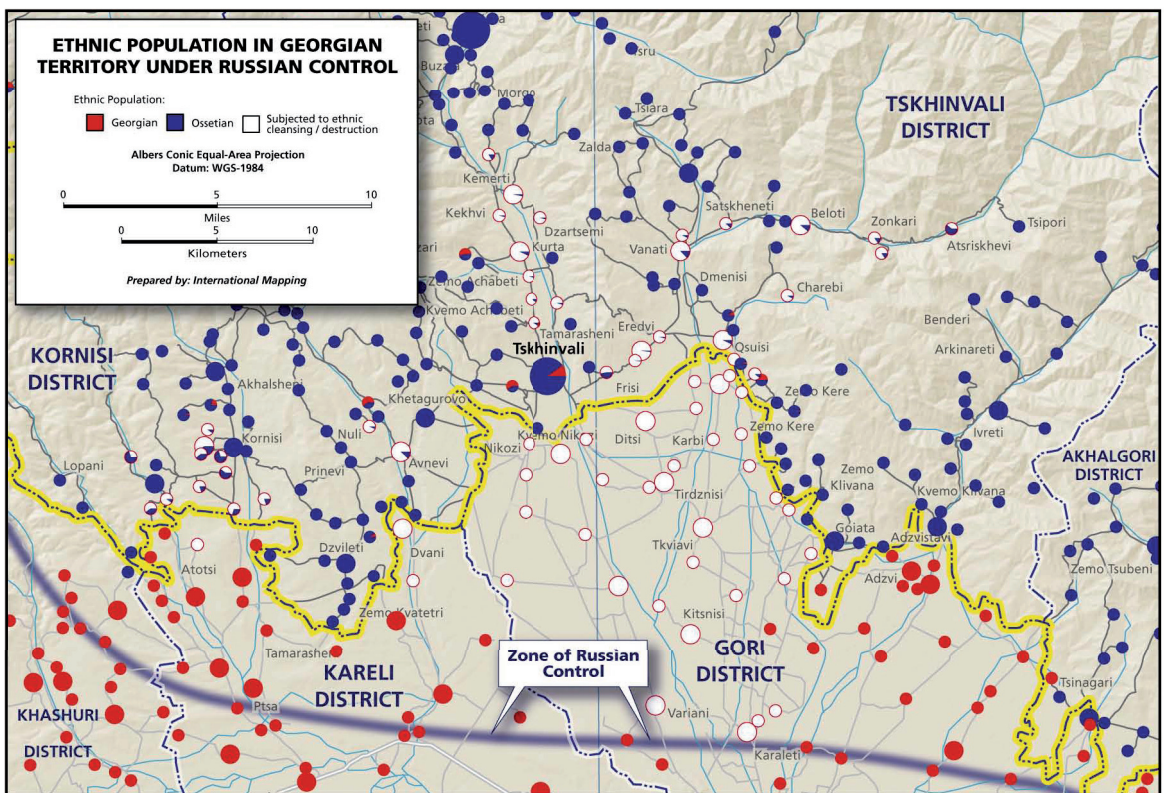
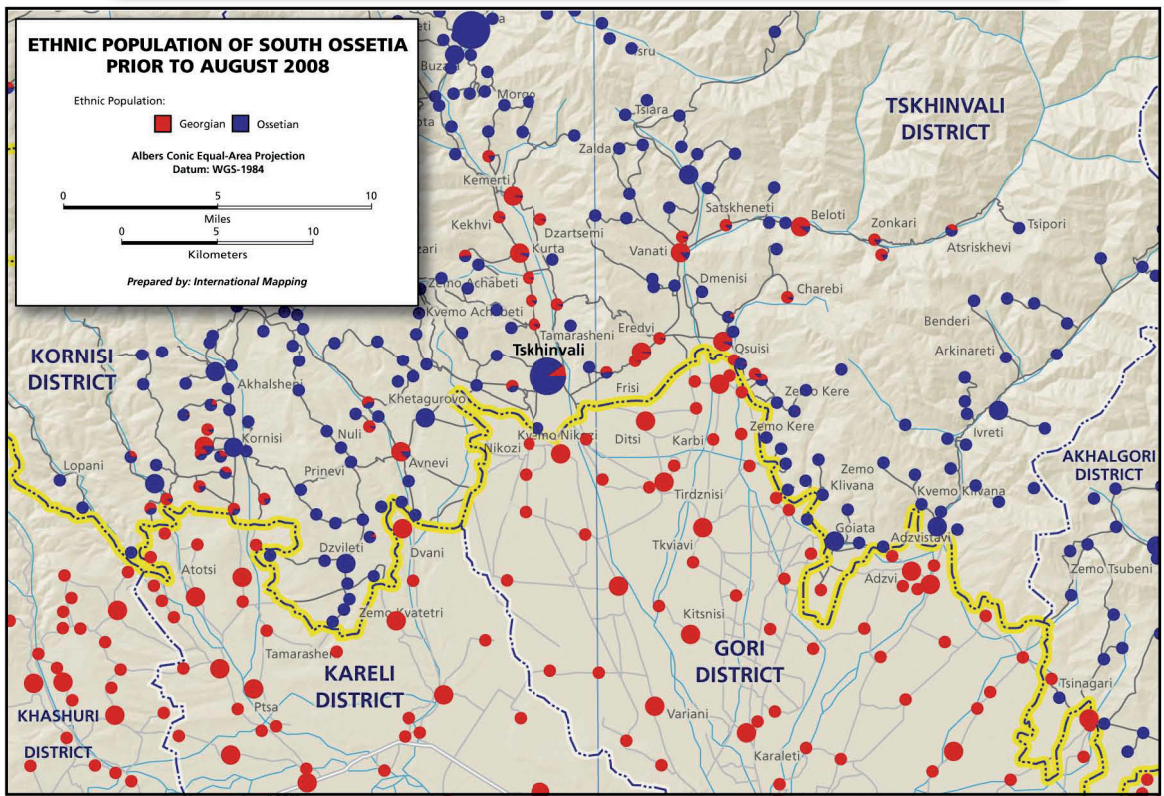
⁶⁸ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 39. GM, Vol. III, Annex 158.

⁶⁹ Human Rights Watch, *Safe Corridor Urgently Needed for Civilians in Gori District* (12 August 2008). GM, Vol. III, Annex 148.

⁷⁰ HRW, *Up in Flames* (2009), *op. cit.*, p. 169. GM, Vol. III, Annex 156.

⁷¹ The white circles on the map depicting villages that have been depopulated are based on information provided by the Civil Registry Agency of the Ministry of Justice of the Government of Georgia. In particular, they are based on information reported by IDPs who are required to

THE ETHNIC CLEANSING OF SOUTH OSSETIA AND ADJACENT AREAS



For illustrative purposes only.

Figure 3.1

3.11 Analysis of satellite imagery by the UN agency UNOSAT demonstrates that these ethnic Georgian villages were destroyed by “intentional burning,” *not* from combat⁷³. Specifically, UNOSAT determined that:

high resolution images of these villages show no impact craters from incoming shelling or rocket fire, or aerial bombardment. The exterior and interior masonry walls of most of the destroyed homes are still standing, but the wood-framed roofs are collapsed, indicating that the buildings were burned⁷⁴.

3.12 Further, the destruction of ethnic Georgian villages and expulsion of ethnic Georgian civilians occurred *after* the end of hostilities. Experts in satellite imagery analysis compared satellite photographs of ethnic Georgian villages in South Ossetia that were taken on 10 August (when hostilities ended) with those taken on 19 August. They determined that the “destruction of houses and property” occurred mainly “*in the aftermath of hostilities and not as a direct result of them*”⁷⁵. Independent analysis by UNOSAT of different satellite images

register and to indicate the villages from which they have been expelled. Where there are a sufficient number of IDPs registering from a particular village and indicating the circumstances of their displacement, that village has been identified with a white circle.

⁷² Amnesty International, *Civilians in the Aftermath of War, the Georgia-Russia Conflict One Year On* (August 2009), p. 9 (citing UNHCR, Displacement Figures and Estimates - August 2008 Conflict updated in May 2009). GM, Vol. III, Annex 159. Of the 138,000, approximately 30,000 remain displaced, the majority of whom formerly lived in South Ossetia but are barred by Russia and the *de facto* authorities from returning. *Ibid.*

⁷³ Human Rights Watch, *Georgia: Satellite Images Show Destruction, Ethnic Attacks* (29 August 2008) (hereinafter HRW, *Georgia: Satellite Images Show Destruction* (2008)), p. 1. GM, Vol. III, Annex 152.

⁷⁴ *Ibid.*, p. 2. The report found that “[o]nly along the main road through Tamarasheni are a number of homes visible with collapsed exterior walls, which may have been caused by tank fire”. This finding is consistent with reports by “[e]thnic Georgian witnesses from Tamarasheni” who “told Human Rights Watch that they had witnessed Russian tanks systematically firing in the homes on August 10”. *Ibid.*, p. 2.

⁷⁵ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 40 (emphasis added). GM, Vol. III, Annex 158.

confirmed that the “widespread” “torching” of villages occurred primarily *after* the cessation of hostilities⁷⁶. Indeed, the UNOSAT satellite photography showed “active fires in the ethnic Georgian villages” on 12, 13, 17, 19 and 22 August, all “well after the active hostilities ended in the area on August 10”⁷⁷. Eye-witness observations confirmed that the torching of ethnic Georgian homes and villages continued long after military action had ended. For example, on 6 September, HRW researchers in Vanati, a village in Gori District, “found that practically all the houses were burned”, including some that were “*still burning*”⁷⁸. An Ad Hoc Committee of the Bureau of the Parliamentary Assembly of the Council of Europe visited the conflict zone in late September and reported that the “destruction of property” was “*continuing unabated*”⁷⁹.

3.13 The fact that the ethnic cleansing occurred largely after the cessation of combat is further corroborated by a map submitted by Russia at the oral hearings on Georgia’s request for provisional measures, shown at Figure 3.2, which depicts the areas of military hostilities in South Ossetia and adjacent areas in the rest of Georgia to the south. The Agent of Russia stated that the information contained therein was based on official “logbooks” maintained by the Russian

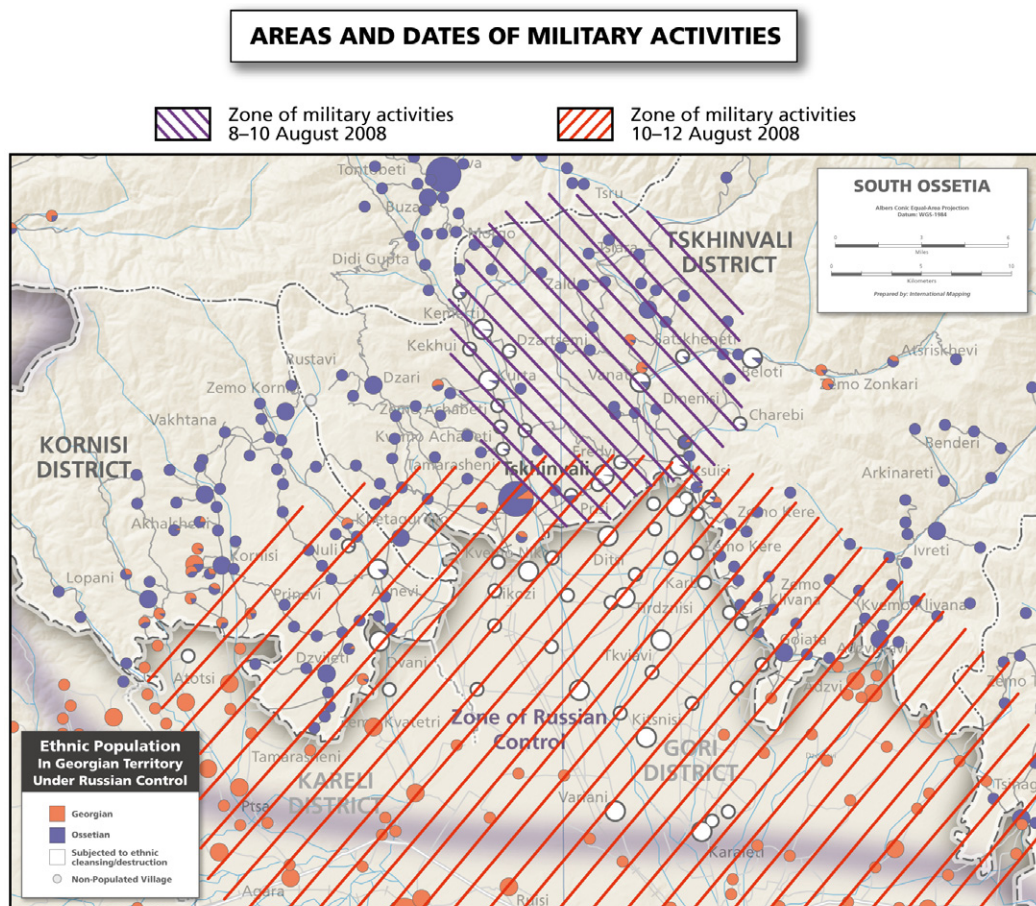
⁷⁶ HRW, *Georgia: Satellite Images Show Destruction* (2008), *op. cit.*, p. 1. GM, Vol. III, Annex 152.

⁷⁷ *Ibid.*

⁷⁸ HRW, *Up in Flames* (2009), *op. cit.*, p. 138. GM, Vol. III, Annex 156.

⁷⁹ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, para. 18 (emphasis added). GM, Vol. II, Annex 56. *See also* International Crisis Group, *Georgia-Russia: Still Insecure and Dangerous*, Europe Briefing No. 53 (22 June 2009), p. 3. GM, Vol. III, Annex 165. (“Only one damaged house was reported in the Georgian ‘buffer zone’ village of Ergneti on 10 August; nine days later, satellite images showed 58 buildings had been destroyed or damaged. A visit by Crisis Group on 14 April 2009 found that around 80 per cent of the village’s approximately 200 homes were heavily damaged or destroyed, indicating many were targeted even after August 2008”) (internal citations omitted).

army⁸⁰. The map depicts the “Zone of military hostilities” for two periods: 8-10 August 2008 and 10-12 August 2008. As the Court will see, the hostilities in most of South Ossetia had ended by 10 August, and the fighting in the rest of Georgia had concluded by 12 August. The Parties are thus in agreement that in no case did military hostilities occur after 12 August, and that it had concluded in almost all of South Ossetia by 10 August. As described in the preceding paragraphs, and as further demonstrated below, much of the looting and burning of ethnic Georgian homes occurred *after* those dates.



For illustrative purposes only.

Figure 3.2

⁸⁰ CR 2008/27 (10 Sept. 2008), p. 40, para. 5 (Kolodkin).

3.14 The fate of Tamarasheni, an ethnic Georgian village in the Kurta Municipality of South Ossetia, typifies the post-hostilities pattern of destruction. Analysis of satellite imagery shows “no damage to the village” on 10 August, the date when fighting in South Ossetia ended. In contrast, an image taken nine days later reveals “extensive destruction, with 152 damaged buildings”⁸¹. Figure 3.3 provides a comparison of satellite images taken on 10 and 19 August.

3.15 Eye-witness accounts corroborate that the burning of Tamarasheni commenced on 10 August, when combat ended, and continued over the following days. On 12 August, HRW researchers witnessed “massive looting” and “recently torched houses” in Tamarasheni⁸². By the time AI visited Tamarasheni at the end of August, the village was “virtually deserted and only a very few buildings were still intact”⁸³. The OSCE fact-finding mission spoke with a resident of Tamarasheni who said that the village “had so many burning houses that it was impossible to count them”⁸⁴. When the OSCE fact-finding mission visited Tamarasheni, it confirmed the village had been completely destroyed⁸⁵. The destruction was carried out by the Russian army. One eyewitness testified that when the “Russian soldiers entered” Tamarasheni, she

⁸¹ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, pp. 40-41. GM, Vol. III, Annex 158.

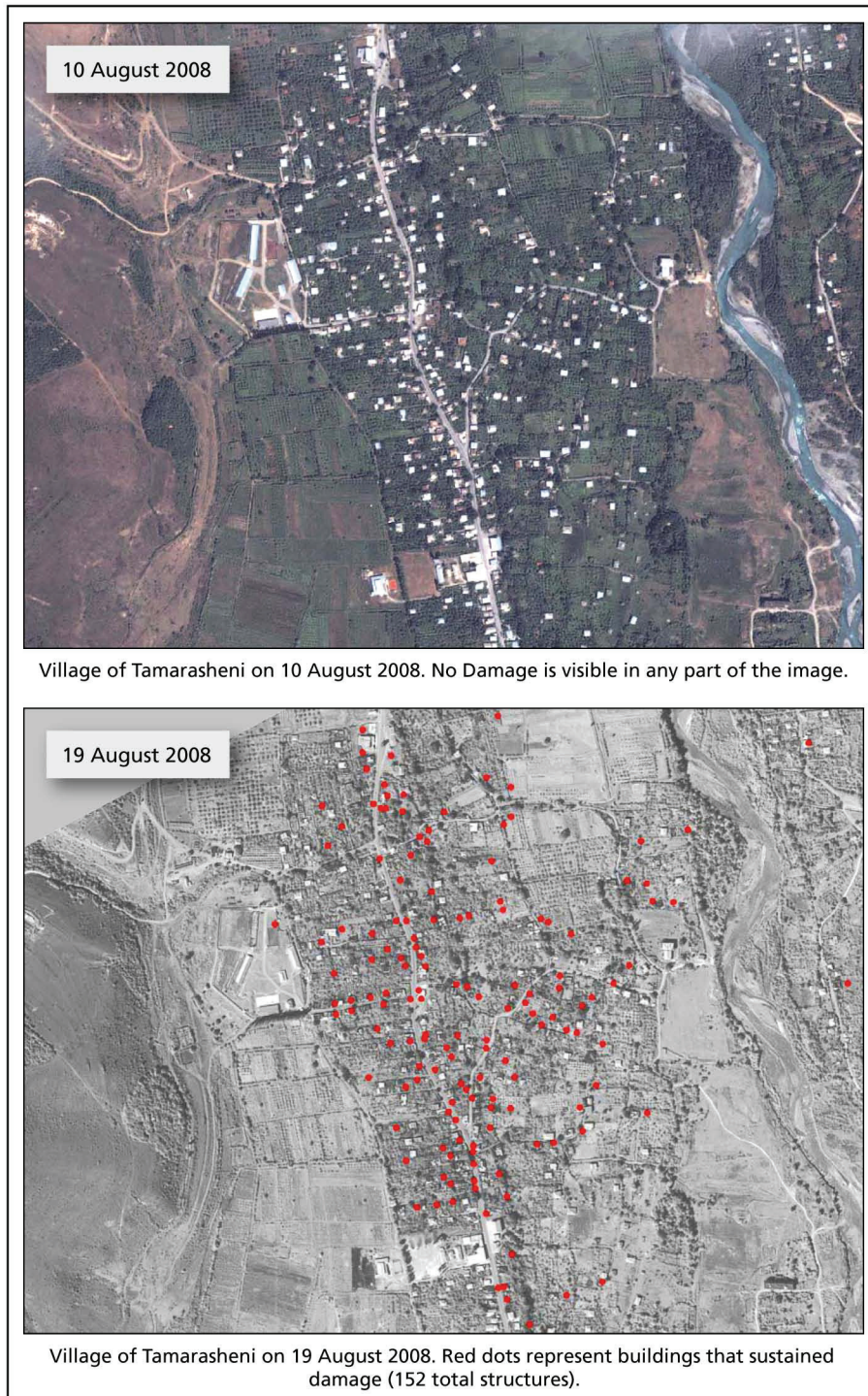
⁸² HRW, *Georgia: Satellite Images Show Destruction* (2008), *op. cit.*, p. 2. GM, Vol. III, Annex 152.

⁸³ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 41. GM, Vol. III, Annex 158.

⁸⁴ OSCE, *Human Rights in the War-Affected* (2008), *op. cit.*, p. 42. GM, Vol. II, Annex 71.

⁸⁵ *Ibid.*, p. 43.

Comparative Damage Assessment, Tamarasheni (10 & 19 August 2008)



For illustrative purposes only.

Figure 3.3

Source: AAAS. GM, Vol. V, Annex 406 (excerpts).

saw how they were “burning houses” and “taking valuables”⁸⁶. There was no mistaking that these were Russian military forces because the “sign of peacekeeping forces -- ‘MC’ (in Russian)” was “on their tanks and uniforms”⁸⁷.

3.16 To finalise and make permanent the destruction of Tamarasheni and other ethnic Georgian villages, Russian forces and allied Ossetian militias razed the ruins with heavy equipment. Photograph 3.1 shows an excavator levelling the remains of ethnic Georgian homes in Tamarasheni⁸⁸.

⁸⁶ Declaration of Tinatin Gagnidze, Protocol of a Victim Testimonial (23 August 2008) (hereinafter Declaration of Tinatin Gagnidze (23 Aug. 2008)), p. 2. GM, Vol. V, Annex 351.

⁸⁷ *Ibid.* For examples of eye-witness accounts of the burning of Tamarasheni, see, e.g., the statements of 69 year-old Tamar Khutinashvili. HRW, *Up in Flames* (2009), *op. cit.*, p. 136. GM, Vol. III, Annex 156. (“They put hay in the house and set it on fire and burned the house. We had to watch it but could not do anything. They did not allow us to take anything from the house, not even our identity documents”) and of 76 year-old Rusudan Chrelidze. *Ibid.* (“I saw that my house was burning. By the time I got there it was almost completely burned. I also saw that my three children’s houses were burning”).

⁸⁸ The *Time Magazine* journalist who took this photograph reported the excavator was being used “to destroy the[] buildings” that “had belonged to ethnic Georgians.” http://www.time.com/time/photogallery/0,29307,1834240_1753663,00.html. A former resident of Tamarasheni testified that the photograph depicts the upper part of the village and was likely taken around 20 August. Second Declaration of David Dzadzamia (7 August 2009). GM, Vol. V, Annex 394.



Photograph 3.1 - Excavator destroying buildings belonging to ethnic Georgians in Tamarasheni (late August 2008). (Yuri Kozyrev)

C. RUSSIA'S ROLE IN THE ETHNIC CLEANSING

1. Russia's Direct Participation

3.17 Russian military personnel were directly involved in ethnically-targeted attacks on Georgian villages in South Ossetia. Numerous independent observers, including expert international organisations and human rights groups, have documented Russia's direct participation in, and responsibility for, violent acts of discrimination, including large-scale ethnic cleansing aimed at expelling ethnic Georgians from South Ossetia⁸⁹. These discriminatory acts occurred

⁸⁹ France's Foreign Minister, Bernard Kouchner, for example, decried the "ethnic cleansing" being perpetrated by "Russian troops" who were "pushing Georgians out" of the Akhagori District. "Kouchner claims ethnic cleansing in Georgia", *Euronews* (27 August 2008). GM, Vol. IV, Annex 260.

largely *after* the end of hostilities and when the Georgian military was no longer in South Ossetia.

3.18 One such organisation that described the anti-Georgian discrimination is the OSCE, which dispatched an investigative team from its High Commissioner on National Minorities and Office for Democratic Institutions and Human Rights to conduct a fact-finding mission. After multiple visits to the area during which it conducted 172 interviews of individuals from 55 different locations, the 16-member OSCE assessment team concluded that “many villages” which had been “inhabited by ethnic Georgians” were “nearly completely destroyed” when they were “pillaged and then set afire”⁹⁰. It determined that no ethnic Georgians were permitted to remain in South Ossetia. Many ethnic Georgians “fled from the advancing Russian and Ossetian forces out of fear for their lives.” Those who remained were “forced out violently or under threat of violence” and their homes, like the homes of those who had fled before them, were “systematically destroyed by arson”⁹¹. The OSCE human rights assessment team further concluded that ethnic Georgian villages behind Russian lines in areas of Georgia south of South Ossetia had also been destroyed. It found that “many ethnic Georgian villages” in Russia’s self-proclaimed “buffer zone” were “systematically looted and burned”⁹². Specifically:

Entire villages were emptied of people as military forces from Russia and South Ossetia advanced into the ‘buffer zone’. Many villagers were forced out under threat or fear of physical violence. There were extensive cases of intimidation, looting and pillage in the ‘buffer zone’, as well as detentions and some reported

⁹⁰ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 7. GM, Vol. II, Annex 71.

⁹¹ *Ibid.*, p. 33.

⁹² *Ibid.*, p. 7.

killings, all of which sparked the exodus of the population. The displaced persons... were overwhelmingly ethnic Georgians...⁹³

3.19 The OSCE fact-finding mission left no doubt as to the participation of the Russian military in these violent acts of ethnic discrimination against ethnic Georgians. According to its report, “[d]isplaced persons from village after village recounted similar experiences of deliberate destruction of their villages” following “the arrival of Russian armed forces”⁹⁴. These abuses had included “direct threats to the population, instructions to leave, looting and house burning”; further, “many villagers reported killings, looting and other grave human rights violations”, including by the “Russian armed forces”⁹⁵. The OSCE fact-finding mission specifically “identified the perpetrators” as including “Russian soldiers”⁹⁶. The OSCE investigative team was equally clear that these discriminatory acts had been perpetrated after the end of hostilities, determining that “[t]hese villages were pillaged and then set afire *following the withdrawal of Georgian forces*”⁹⁷. When the team visited Russia’s so-called “buffer zone”, they “counted approximately 140 destroyed houses that were recently burned, *none of which showed traces of combat activity*”⁹⁸.

⁹³ *Ibid.*, p. 21.

⁹⁴ *Ibid.*, p. 42.

⁹⁵ *Ibid.*, pp. 25-26. The fact that the OSCE noted that on a few occasions Russian soldiers were reported to have acted humanely does not take away from the OSCE’s statement that “many villagers” described “grave human rights violations” by the arriving “Russian armed forces”. *Ibid.*

⁹⁶ *Ibid.*, p. 28.

⁹⁷ *Ibid.*, p. 7 (emphasis added).

⁹⁸ *Ibid.*, p. 27 (emphasis added).

3.20 The same conclusions were reached by the Parliamentary Assembly of the Council of Europe, which conducted its own fact-finding investigation⁹⁹. The investigation commission reported that it found evidence of “systematic acts of ethnic cleansing of Georgian villages in South Ossetia” and that “entire villages have been bulldozed over and razed”¹⁰⁰. Like the OSCE fact-finding mission, the Council of Europe’s investigation commission placed responsibility for these abuses on Russia. In reporting its findings, the commission “stressed that the Russian Federation, under international law, bears full responsibility for any crimes and human rights violations committed on the territories that are under its effective control”¹⁰¹.

3.21 The aftermath of the ethnic cleansing was also observed by a separate Rapporteur of the Parliamentary Assembly of the Council of Europe, Ms. Corien W.A. Jonker, who conducted her own assessment mission in March 2009. Her report described how she “drove through and visited a number of villages previously under the control of the Georgian authorities. These included villages on the road from the North towards Tskhinvali in the Didi Liakhvi Valley, including Kekhvi, Kurta and Tamarasheni. Villages West of Tskhinvali in the Prone Valley, including Avnevi and villages East of Tskhinvali in the Patara Likhvi Valley, including Eredvi and Vanati”¹⁰². According to the Council

⁹⁹ Those carrying out this investigation included the co-rapporteurs of the Monitoring Committee for Russia, the co-rapporteurs of the Monitoring Committee for Georgia, the Chairman of the Political Affairs Committee, and the Chairman of the Committee on Migration, Population and Refugees. Council of Europe, *The situation on the ground in Russia and Georgia, Memorandum* (2008), *op. cit.*, para. 1. GM, Vol. II, Annex 56.

¹⁰⁰ *Ibid.*, para. 10.

¹⁰¹ *Ibid.*, para. 20.

¹⁰² Council of Europe, Parliamentary Assembly, Committee on Migration, Refugees and Population, *Report, The humanitarian consequences of the war between Georgia and Russia: follow-up given to resolution 1648 (2009)*, Doc. 11859 (9 April 2009) (hereinafter, *Report: The*

of Europe's Rapporteur: "*These villages no longer exist. There is only rubble and no sign of any belongings left in the remnants of the houses*"¹⁰³.

3.22 These observations compelled the Rapporteur to conclude:

the systematic destruction of every single house is a clear indication that there has been an intention to ensure that no Georgians have a property to return to in these villages. In the view of your rapporteur, whether this was carried out following instructions by the *de facto* authorities, or whether this was done by individuals with the *de facto* authorities or the Russian Federation armed forces taking no action, makes little or no difference. The end result has been to ensure that no Georgians can return to these villages, *and supports the accusation that these villages have been 'ethnically cleansed' of Georgians*¹⁰⁴.

3.23 The Representative of the UN Secretary-General on the Human Rights of the Internally Displaced, Mr. Walter Kälin, conducted an official fact-finding mission from 1-4 October 2008. He, too, condemned Russia's participation and responsibility for violent ethnic discrimination against Georgians. After visiting the Russian-occupied buffer zone south of South Ossetia, the Representative of the UN Secretary-General concluded that "the continuing lack of effective protection of the population against violence committed by armed elements and widespread looting of property in the buffer zone north of Gori" was "unacceptable and should cease immediately"¹⁰⁵. Mr. Kälin specifically noted

humanitarian consequences of the war between Georgia and Russia: Follow-up given to Resolution 1648 (2009)), para. 27. GM, Vol. II, Annex 62.

¹⁰³ *Ibid.*, para. 28 (emphasis added).

¹⁰⁴ *Ibid.*, para. 29 (emphasis added).

¹⁰⁵ United Nations Press Release, "Georgia: UN Expert on Internally Displaced Persons Says Security is Key to Return" (4 October 2008), p. 1. GM, Vol. II, Annex 50.

that he had “visited villages” -- nearly two months after the end of hostilities -- in the buffer zone where “looting and acts of violence against the remaining populations go on”¹⁰⁶. He described these acts of discrimination: “They burn houses. They terrorize people who are trying to stop them”. These were, he emphasised, “ongoing violations”, and included “ongoing” efforts to “burn houses” and “terrorize people”¹⁰⁷.

3.24 The final report of the UN Secretary-General’s Representative to the UN Human Rights Council emphasised that these abuses had occurred “*in tandem with a failure by Russian forces to respond and carry out their duty to protect, particularly in the northernmost area adjacent to the *de facto* border with the Tskhinvali region/South Ossetia*”¹⁰⁸.

3.25 International human rights organisations independently witnessed the ethnically-targeted violence; they also observed Russia’s direct participation in these abuses. HRW extensively investigated and reported on the situation, long after combat had ended. The HRW investigation team conducted investigatory trips in August, September, October and November 2008. During these investigations, HRW researchers conducted 460 in-depth interviews with both victims and witnesses of ethnically-targeted abuses in South Ossetia. HRW reported that its “observations on the ground and dozens of interviews” led it to

¹⁰⁶ “Special envoy concerned about lack of protection for internally displaced in Georgia”, *United Nations Radio* (6 October 2008) (hereinafter “Special envoy concerned about lack of protection for internally displaced” (2008)). GM, Vol. II, Annex 51.

¹⁰⁷ *Ibid.*

¹⁰⁸ U.N. General Assembly, *Report of the Representative of the Secretary-General on the human rights of Internally Displaced Persons, Walter Kälin, Addendum, Mission to Georgia*, U.N. Doc. A.HRC/10/13/Add.2 (13 February 2009), para. 44 (emphasis added). GM, Vol. II, Annex 53.

conclude there was a coordinated effort “to ethnically cleanse this set of Georgian villages”. Specifically, HRW concluded that:

the destruction of the homes in these villages was deliberate, systematic, and carried out on the basis of the ethnic and imputed political affiliations of the residents of these villages, with the express purpose of forcing those who remained to leave and ensuring that no former residents would return¹⁰⁹.

3.26 HRW’s first-hand observations led it to conclude that “Russian forces played a role in the widespread looting of Georgian homes by Ossetian forces”, finding that “Russian forces facilitated and participated in these war crimes”¹¹⁰. HRW also found that the Ossetian separatist forces often carried out the burning and looting of Georgian villages while Russian armed forces provided “cover” for these activities¹¹¹. HRW’s fact-finding teams described the close coordination of Russian and separatist military forces in carrying out ethnic cleansing activities, observing that:

in many cases the perpetrators belonged to South Ossetian forces operating in close cooperation with Russian forces. The perpetrators often arrived in villages together with or shortly after Russian forces passed through them; the perpetrators sometimes arrived on military vehicles; and the perpetrators seem to have freely passed through checkpoints manned by Russian or South Ossetian forces¹¹².

3.27 On the basis of its extensive fact-finding program, HRW concluded that “Russian forces” were “involved in the looting and destruction, either as passive

¹⁰⁹ HRW, *Up in Flames* (2009), *op. cit.*, p. 10. GM, Vol. III, Annex 156. *See also ibid.*, p. 131.

¹¹⁰ *Ibid.*, p. 8.

¹¹¹ *Ibid.*, p. 9. *See also ibid.*, p. 130.

¹¹² *Ibid.*, p. 128.

bystanders, active participants, or by providing militias with transport into villages”¹¹³ and that “Russian forces, together with Ossetian militias, used or threatened violence against civilians or looted and destroyed civilian property”¹¹⁴.

3.28 Amnesty International came to the same conclusion after conducting four investigatory trips to the region. Researchers from AI visited South Ossetia, North Ossetia and the Georgian cities of Tbilisi and Gori¹¹⁵, and interviewed people who had been wounded and/or displaced by the conflict as well as representatives of other international humanitarian organisations that had monitored events in South Ossetia. They also conducted interviews with government officials, non-governmental organisations, journalists, and health workers, and collected extensive photographic documentation of the damage caused to ethnic Georgian villages. In its final report, AI stated that it had “documented the extensive looting and arson of Georgian-majority villages”¹¹⁶, as well as the threats made to the “elderly and infirm” who had been “ordered” to “leave” in circumstances where “those who resisted these orders” risked being “beaten and/or killed”¹¹⁷.

¹¹³ *Ibid.*, p. 4.

¹¹⁴ *Ibid.*, p. 120.

¹¹⁵ Amnesty International was not granted access to the “buffer zone” around South Ossetia. See Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 44. GM, Vol. III, Annex 158.

¹¹⁶ *Ibid.*, p. 40.

¹¹⁷ *Ibid.*, p. 39.

3.29 AI placed responsibility with Russia for these abuses against ethnic Georgians, emphasising that there were “many reports of Russian forces looking on while South Ossetian forces, militia groups and armed individuals looted and destroyed Georgian villages and threatened and abused the residents remaining there”¹¹⁸. It found that although “Russia” was “responsible for the safety and security in the areas over which they have control”, the “serious abuses that have resulted in extensive destruction of homes and property, beatings and even killings are a clear indication that they have failed to live up to this obligation”¹¹⁹. AI concluded that the “Russian armed forces failed to ensure and protect the human rights of the ethnic Georgian populations” and that the “Russian military forces did not uphold their obligation to maintain law and order and prevent looting by South Ossetian militia groups in areas under their control”¹²⁰.

3.30 The conclusions of these independent fact-finders regarding the direct participation of the Russian military in discrimination against ethnic Georgians in South Ossetia, either through an active role in perpetration of the abuses or a collaborative one in knowingly allowing allied Ossetian forces to “do the dirty work” under their protection, is corroborated by overwhelming evidence, including testimony by eyewitnesses. For example, 73 year-old Ana Datashvili reported that in Tamarasheni, an ethnic Georgian village in South Ossetia, “Russian tanks with Russian soldiers” had “occupied [her] village”¹²¹. She

¹¹⁸ *Ibid.*, p. 32.

¹¹⁹ *Ibid.*, p. 45.

¹²⁰ *Ibid.*, pp. 60-61.

¹²¹ Ana Datashvili, Protocol of a Victim Testimonial (26 August 2008). Observations of Georgia, Interim Measures, Annex 27.

recounted how soldiers “entered my house five times and stole everything, includ[ing] the TV, refrigerator, goods, clothes, and many other small things”¹²². Then, on 14 August 2008, three armed men in military camouflage, including a Russian soldier, entered her house¹²³. She testified that “[t]he Russian soldier started yelling in a loud voice with me but I could not understand what he was saying since I don’t speak Russian”¹²⁴. An Ossetian explained to her that:

the Russian soldier had ordered me to leave the house since they were going to burn it down. I asked them why they were doing this, since we were relatives. I explained that I was half Ossetian and that my mother was Ossetian. Despite my explanation, they told me that I was Georgian and had no place with them. They said that Georgians will never live on this land anymore. The Russian soldier forced me by physical abuse to leave the house. I saw how an Ossetian soldier threw an object resembling a bomb on the first floor of my house, setting the house ablaze¹²⁵.

3.31 The Russian army committed similar abuses in the ethnic Georgian village of Tseronisi. Russian soldiers looted and burned the village and expelled its inhabitants. One witness testified that the village was occupied by “Russian military equipment” and “Russian soldiers” who were “wearing Russian military uniforms”¹²⁶. The “flags of the Russian state” were “on their armor vehicles and ‘Ural’ trucks”¹²⁷. He further testified that “[u]pon entering the village”, the Russian soldiers began “shooting from their machine guns” and “exploding

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ Declaration of Zaur Chighladze, Protocol of a Victim Testimonial (8 September 2008), p. 1. GM, Vol. V, Annex 367.

¹²⁷ *Ibid.*

bombs” to “frighten[.]” the inhabitants to make them “leave the village”¹²⁸. These Russian soldiers, he observed, “were very aggressive against the local population”, “torturing and beating whoever they captured”¹²⁹. The soldiers looted and burnt the village’s houses, including his own¹³⁰. He testified:

When Russian military men came to the village, my wife and I were still staying in the village, since we did not manage to escape. When they came to our yard, we hid under the bed. The soldiers came in -- they shot the walls, broke the windows and went to the second floor. At this time, we sneaked from the house, ran to the garden and hid there. At this time our house was set on fire, which bec[a]me stronger and soon the entire house was burning. Our two-storey house was completely burnt -- all our property was destroyed¹³¹.

3.32 Similar abuses were witnessed by another resident of Tseronisi who testified that, while hiding in the cemetery, she witnessed how the “Russian soldiers” “started looting, taking our belongings, loading on their vehicles and then burning the houses”¹³². She observed how they “looted my house and then burnt it down completely”¹³³. Another witness described how “Russian soldiers entered the village with military equipment, tanks, armored vehicles and ‘Ural’ vehicles”¹³⁴. These soldiers, he testified, “were wearing Russian military

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*, pp. 1-2.

¹³² Declaration of Eliko Arsenadze, Protocol of a Victim Testimonial (6 September 2008), p. 1. GM, Vol. V, Annex 363.

¹³³ *Ibid.*

¹³⁴ Declaration of Ioseb Jamerashvili, Protocol of a Victim Testimonial (22 October 2008), p. 1. GM, Vol. V, Annex 370.

uniforms and speaking Russian”, with “Russian flags raised on their vehicles”¹³⁵. Upon entering the village, the soldiers began “forcing the population to leave the village” by shooting and causing explosions¹³⁶. As a result, the “village was almost emptied”. He further testified that the “Russian soldiers robbed almost all the houses in the village” and “burnt and completely destroyed” many of them¹³⁷. Three of these soldiers entered his house. When he offered them something to drink, they pointed their “guns to me and threatened to kill” him. They then looted and shot up the house and “broke all the windows”¹³⁸.

3.33 Many other Georgian villages experienced similar treatment by the Russian army. In Takhtisdziri, a witness testified that the “Russian ground troops” who “entered the village with their military equipment” pressured the villagers “to leave our homes”¹³⁹. These military forces, he testified, “were constantly looting” and “beating and torturing all Georgians, whoever they captured”¹⁴⁰. Another witness, from the village of Argvitsi, testified that the “Russian army and heavy armored vehicles” entered the village, whereupon the

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ Declaration of Kakhaber Tkemaladze, Protocol of a Victim Testimonial (22 October 2008), p. 1. GM, Vol. V, Annex 371.

¹⁴⁰ *Ibid.*

“Russian soldiers destroyed houses, gates and fences with their heavy armored trucks” and “looted houses and then burned them”¹⁴¹.

3.34 Russian forces also perpetrated abuses, including the burning of ethnic Georgian homes, in the ethnic Georgian village of Meghvrekisi, where a witness testified that he:

watched from the gardens as our houses were robbed. The so-called Russian peacekeepers took everything they could, and what they were not able to take was burned. I have spent whole nights in the gardens, hiding and waiting that they would catch and kill us. They were shouting in Russian to leave the villages or they would kill everybody they could catch...¹⁴²

2. *Russia's Failure to Stop Violent Discrimination by Separatist Forces*

3.35 In addition to directly participating in abuses targeted against ethnic Georgians, Russian troops also knowingly permitted separatist forces to engage in violent discrimination against ethnic Georgians and their property. For example, HRW observed that “Ossetian militias looted, destroyed, and burned homes on a wide scale”, and that “Russian forces were in many instances involved in these actions” as “passive bystanders” or by “providing transportation to militias into villages”¹⁴³. HRW found that Russia “allow[ed] South Ossetian forces, including volunteer militias, to engage in wanton and widescale pillage and burning of Georgian homes and to kill, beat, rape, and

¹⁴¹ Declaration of Gela Turashvili, Protocol of a Victim Testimonial (6 September 2008), p. 2. GM, Vol. V, Annex 366.

¹⁴² Declaration of Iason Nadiradze, Protocol of a Victim Testimonial (26 August 2008), p. 2. GM, Vol. V, Annex 396.

¹⁴³ HRW, *Up in Flames* (2009), *op. cit.*, p. 163. GM, Vol. III, Annex 156.

threaten civilians”¹⁴⁴. According to HRW, “Ossetian militias would in some cases arrive in villages together with Russian forces, and the latter at the very least provided cover for the burning and looting of homes”¹⁴⁵. AI’s eyewitness reporting likewise observed “Russian forces looking on while South Ossetian forces, militia groups and armed individuals looted and destroyed Georgian villages and threatened and abused residents remaining there”¹⁴⁶.

3.36 There is abundant evidence that Russian forces failed to stop the abuse of ethnic Georgians, even when it occurred in front of them. A few specific examples illustrate this. For instance, on 12 August 2008, HRW observers in the ethnic Georgian enclave north of Tskhinvali saw the Russian army occupying villages as they were being burned. They reported that the Ossetian forces who were looting and burning houses were literally “next to Russian tanks and armored personnel carriers”¹⁴⁷. AI reported a similar incident in Marana, where an ethnic Georgian was “warned by Russian soldiers to leave his village before the arrival of South Ossetian paramilitaries, as they could not guarantee his security”¹⁴⁸. Likewise, witnesses to the destruction of Vanati told the OSCE mission that “once Russian tanks arrived in the village, Ossetians began to

¹⁴⁴ *Ibid.*, p. 3.

¹⁴⁵ *Ibid.*, p. 120.

¹⁴⁶ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 32. GM, Vol. III, Annex 158.

¹⁴⁷ HRW, *Up in Flames* (2009), *op. cit.*, p. 132. GM, Vol. III, Annex 156. *See also* Human Rights Watch, *Georgian Villages in South Ossetia Burnt, Looted* (13 August 2008) (hereinafter HRW, *Georgian Villages in South Ossetia Burnt, Looted* (2008)). GM, Vol. III, Annex 147.

¹⁴⁸ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 32. GM, Vol. III, Annex 158.

pillage and the Russians ‘just let them’”¹⁴⁹. The OSCE mission further reported that “Russian troops and tanks stood by while ‘Ossetians’ set fire to most houses in the village”¹⁵⁰.

3.37 This discriminatory conduct occurred after combat had ceased and the Georgian military had withdrawn from South Ossetia. In that regard, for weeks after hostilities ended, the destruction of ethnic Georgian villages proceeded behind Russian lines in Russia’s self-proclaimed “buffer zone”, where thousands of Russian combat troops exercised direct control. As a result of Russia’s refusal to take any action to stop the campaign of burning, looting and physical abuse directed at ethnic Georgians, UNHCR was forced to contend with huge numbers of displaced persons fleeing areas occupied by the Russian army. Thus, on 26 August, over two weeks after hostilities ended, UNHCR reported “new forcible displacement” of ethnic Georgians from the Russian-occupied “buffer zone” in Gori District. They included 400 who had been “forced to flee their villages”¹⁵¹. UNHCR reported that “[t]he newly displaced said that some had been beaten, harassed and robbed, and that three persons had reportedly been killed”¹⁵². They also told UNHCR that they had been forced to flee because of “massive

¹⁴⁹ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 45. GM, Vol. II, Annex 71.

¹⁵⁰ *Ibid.*, p. 42.

¹⁵¹ UNHCR, *Reports of Lawlessness Creating New Forcible Displacement in Georgia* (26 August 2008) (hereinafter UNHCR, *Reports of Lawlessness Creating New Forcible Displacement* (2008)). GM, Vol. II, Annex 46. These new arrivals included many who “had fled fighting in the region earlier this month and had just gone back to their farms and villages over the weekend.” *Ibid.* They also included “elderly people who had remained in their homes throughout the conflict, but had now been forced to flee by armed groups.” *Ibid.*

¹⁵² *Ibid.*

harassment” over the “past two days” and that their attackers’ “brutality” had “increased considerably”¹⁵³.

3.38 Confronted with this situation, UNHCR issued an urgent appeal for the parties to “make their best efforts to contain further outbreaks of lawlessness which could contribute to additional displacement”¹⁵⁴. Since the Russian military occupied the area, and permitted no presence of Georgian security personnel, there can be no doubt that this plea was addressed to Russia. Russia ignored UNHCR’s appeal, however, and ethnic Georgians continued to be driven from their homes. The next day, UNHCR reported that Georgians were now fleeing from areas of Georgia even further removed from South Ossetia¹⁵⁵.

3.39 Russia refused to allow ethnic Georgians to return to their homes in this part of Georgia, let alone in South Ossetia. UNHCR reported “a growing number of persons whose attempts to return to their villages in the Gori region

¹⁵³ UNHCR, Emergency Operation Daily Update, *New Humanitarian Tragedy Unfolding in Gori* (26 August 2008), p. 1. GM, Vol. II, Annex 47. For example, UNHCR reported that “IDPs from the village Megrekisi, which is about 6 kilometers from the South Ossetian boundary, reported that there were only some 80 old people left in the village, as everybody else fled when the conflict broke out two weeks ago. On Sunday and Monday militias repeatedly entered to the village, looted the houses, tried to extort money and harassed the inhabitants, beating some of them up severely. This is why another 65 villagers decided to flee. They walked towards Gori in small groups and spent the night in the open.” *Ibid.*

¹⁵⁴ UNHCR, *Reports of Lawlessness Creating New Forcible Displacement* (2008), *op. cit.* GM, Vol. II, Annex 46.

¹⁵⁵ UNHCR reported: “Today the influx of IDPs to Gori continued from the villages situated north of the city next to the border with South Ossetia. A group of 30 individuals arrived in Gori today from the village of Kitsnisi, even further into the Georgian territory than the places of origin of yesterday’s arrivals”. These newly displaced “told UNHCR staff about the same kinds of incidents as yesterday’s arrivals, saying that militias had entered the village, shooting in the air, harassing the inhabitants and looting their property”. UNHCR, Emergency Operation Daily Update, *Situation North of Gori is Deteriorating* (27 August 2008), p. 1. GM, Vol. II, Annex 48.

have failed” because “they were stopped at Russian checkpoints” and “strongly advised not to continue”¹⁵⁶.

3.40 The forced displacement of ethnic Georgians continued. On 28 August, HRW researchers in Gori District documented a “disturbing pattern of violence against civilians, including abductions, looting, and beatings” in Russian-occupied areas¹⁵⁷. One day later, UNHCR reported that new arrivals in Gori had been “forcibly displaced” from villages in the “buffer zone”, and that they “all have stories of intimidation, including beatings”¹⁵⁸.

3.41 Russia’s refusal to stop the abuse of ethnic Georgians continued throughout its occupation of the buffer zone, which ended on 10 October. The Commissioner for Human Rights of the Council of Europe visited the area on 25-27 September, six weeks after the fighting had ended. He reported that “[o]ne of the most serious remaining problems is the issue of ensuring safety for people in all areas affected” by the occupation, and stressed that the northern part of the Russian-occupied “buffer zone” was of “particular concern”¹⁵⁹. Similarly, when the UN Secretary-General’s Representative on the Internally Displaced visited the zone in early October, nearly two months after the end of hostilities,

¹⁵⁶ *Ibid.* The Russian soldiers claimed that the villagers should not continue home because of the prevalent lawlessness. However, as detailed above, it was the policy of the Russian army *not* to impose order, and in fact, Russian forces themselves participated in the abuses.

¹⁵⁷ Human Rights Watch, *EU: Protect Civilians in Gori District* (28 August 2008), p. 1. GM, Vol. III, Annex 151.

¹⁵⁸ UNHCR, *Georgia: Buffer Zone Displaced Registered, Tell of Militia Intimidation* (29 August 2008). GM, Vol. II, Annex 49.

¹⁵⁹ Council of Europe, Commissioner for Human Rights, Thomas Hammarberg, *Special Follow-Up Mission to Georgia Including South Ossetia, Summary of Findings, 25-27 September 2008*, CommDH(2008)33 (21 October 2008), para. 11. GM, Vol. II, Annex 57.

he observed that efforts to “burn houses” and “terrorize people” were “ongoing”¹⁶⁰.

Section II. Representative Villages

3.42 To assist the Court in comprehending the process by which Russia carried out the violent discrimination described above, this section will describe in greater detail the experiences of selected villages from each of the three administrative districts of South Ossetia that contained ethnic Georgian villages - - Kurta Municipality, Eredvi Municipality and Tigva Municipality -- and from the Russian-occupied “buffer zone” to the south of South Ossetia. In each of these areas the homes belonging to ethnic Georgians were systematically destroyed, and the population expelled, while ethnic Ossetian villages and ethnic Ossetian homes in ethnically-mixed villages were spared. These discriminatory acts occurred long after hostilities had ceased and the Georgian army had withdrawn from the area. In each case, Russian military forces were directly involved in the commission of the abuses targeted against ethnic Georgians, and also took no action to prevent separatist forces from committing the discriminatory abuses themselves.

A. KURTA MUNICIPALITY

3.43 As explained in paragraph 4.12 below, following the cessation of hostilities in 1992, Georgia maintained administrative control over Kurta Municipality, a stretch of territory located to the north of Tskhinvali. It contained the following ethnic Georgian villages, which lie along the Didi

¹⁶⁰ “Special envoy concerned about lack of protection for internally displaced” (2008), *op. cit.* GM, Vol. II, Annex 51.

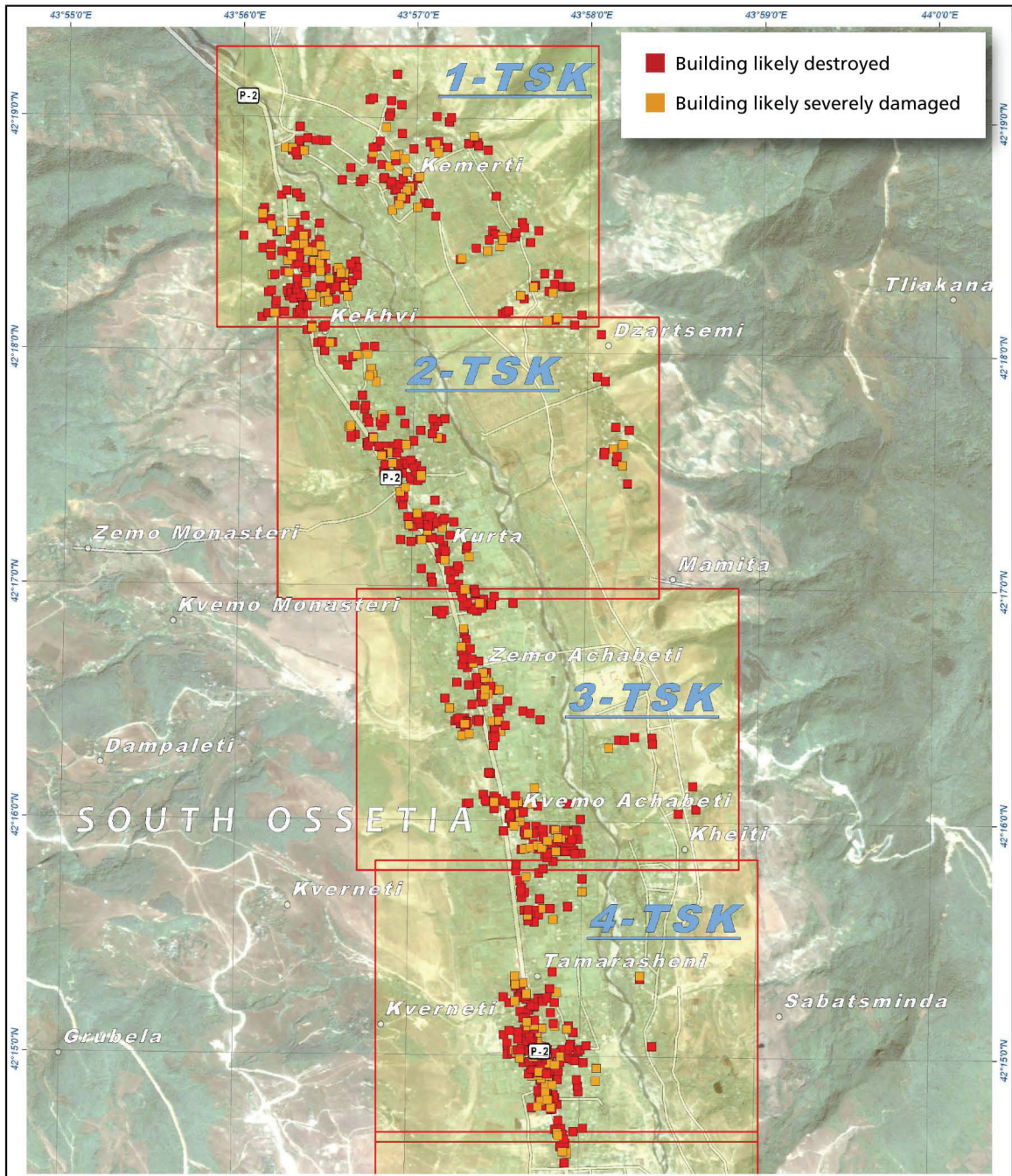
Liakhvi Valley: Sveri, Kemerti, Kekhvi, Dzartsemi, Kurta, Zemo Achabeti, Kvemo Achabeti, Tamarasheni and Kheiti. All of these villages were systematically burnt to the ground following the August 2008 conflict, either in its immediate aftermath or during succeeding months. This is illustrated by the experiences of the villages of Zemo Achabeti, Kvemo Achabeti and Kekhvi, which are detailed below.

3.44 Satellite imagery demonstrates the vast scale of Russia’s campaign of arson perpetrated against these ethnic Georgian villages in Kurta Municipality. Figure 3.4 is a satellite photograph taken on 19 August; it shows that by that date every village in the ethnic Georgian enclave north of Tskhinvali had suffered extensive damage. By that time, at least 627 houses had been burned. Analysis by technical experts with the UN agency UNOSAT determined that 479 of these buildings were completely destroyed while the other 148 had suffered severe damage¹⁶¹. In fact, because significant numbers of ethnic Georgian homes were burnt *after* 19 August, this determination substantially under-reports the scale of the destruction.

3.45 The pace of Russia’s ethnic cleansing campaign accelerated following the cessation of hostilities. On 11 August, that is, the day after military action ended in South Ossetia, and by which time the Russian army was in full control of the territory, the “attacks” against ethnic Georgians and their property “intensified

¹⁶¹ UNOSAT, *Satellite Damage Assessment for Kekhvi Area, South Ossetia, Georgia*, Imagery Recorded on 19 August 2008 (25 August 2008). GM, Vol. V, Annex 400. The UNOSAT analysis categorized buildings as destroyed if the structure had totally collapsed or when it was standing but less than 50% of the roof was still intact. Severely damaged buildings were defined as having visible structural damage to a portion of one wall, or where less than 50% of the roof was damaged. UNOSAT, *Village Damage Summary: Avnevi, South Ossetia, Georgia*, Imagery Recorded on 19 August 2008 (10 October 2008). GM, Vol. V, Annex 407.

Damage Assessment, Kurta Municipality



For illustrative purposes only.

Figure 3.4

Source: UNOSAT. GM, Vol. V, Annex 401 (excerpt).
Original image recorded on 19 August 2008.

and became widespread”¹⁶². The next day, HRW reported that it continued to witness the “burning” of “ethnic Georgian villages”, prompting the organisation to issue an urgent alert that its researchers were seeing “terrifying scenes of destruction in four villages that used to be populated exclusively by ethnic Georgians”¹⁶³. Specifically, HRW reported that “[n]umerous houses” in the villages of Kekhvi, Kvemo Achabeti, Zemo Achabeti and Tamarasheni “had been burnt down over the last day”¹⁶⁴. As demonstrated below, the pace of destruction quickened in the days that followed.

1. Zemo Achabeti and Kvemo Achabeti

3.46 The Russian armed forces entered the villages soon after hostilities began. Ossetian forces, and a substantial Russian contingent, remained while the rest of the army continued their advance¹⁶⁵. It was then that ethnic Georgian homes began to be looted and burned, and the inhabitants grossly abused, with the participation and support of Russian military personnel. For example, Enver Babutsidze, a 62 year-old resident of the village and former Soviet artillery officer, recounted seeing a “detachment from the Russian army coming down my street” with Russian flags on their vehicles. These Russian soldiers were “accompanied by Ossetians wearing black and military green”¹⁶⁶. Mr. Babutsidze witnessed a “very large green Russian tank stopped about 30 meters

¹⁶² HRW, *Up in Flames* (2009), *op. cit.*, p. 130. GM, Vol. III, Annex 156.

¹⁶³ HRW, *Georgian Villages in South Ossetia Burnt, Looted* (2008), *op. cit.*, p. 1. GM, Vol. III, Annex 147.

¹⁶⁴ *Ibid.*

¹⁶⁵ HRW found that the Ossetian armed forces entered Kvemo Achabeti, “following Russian tanks”. HRW, *Up in Flames* (2009), *op. cit.*, p. 133. GM, Vol. III, Annex 156.

¹⁶⁶ Declaration of Enver Babutsidze (31 August 2008), p. 1. GM, Vol. V, Annex 357.

from [his] house” and “soldiers from this tank [broke] into a neighbor’s house while other Russian soldiers remained outside”¹⁶⁷. Then, “the soldiers who had run into the house return[ed] with a stereo and put it into the tank”¹⁶⁸. Mr. Babutsidze testified that “[a]fter the Russian soldiers finished looting the house they set it on fire”¹⁶⁹. He specifically observed that “[t]he Russian soldiers were led by an officer with the rank of senior lieutenant who had three stars on his shoulders” and that “[t]his Russian officer coordinated the soldiers in collecting the stolen items and putting them into the tank”¹⁷⁰. This testimony is corroborated by another witness, who testified to seeing “Russian soldiers” in an “armoured personnel carrier” engaged in looting¹⁷¹.

3.47 Similarly, 84-year-old Ilia Chulukhadze described how he was beaten in the village by “Russian forces, acting alone”¹⁷². He said that “three Russian soldiers burst into [his] house” and began “beating” him “with the butts of their automatics, particularly on the head”¹⁷³. Mr. Chulukhadze described how his “entire head was swollen. One of them hit me on the chest so hard that I fell down and I could hardly stand up again”¹⁷⁴. He eventually lost consciousness¹⁷⁵.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ Declaration of David Dzadzamia (16 July 2009), p. 1. GM, Vol. V, Annex 389.

¹⁷² HRW, *Up in Flames* (2009), *op. cit.*, p. 120. GM, Vol. III, Annex 156.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

Later, Mr. Chulukhadze was beaten by Ossetian soldiers, who looted and burned his house, and seized him as a hostage¹⁷⁶. When they finished looting his home, “they brought petrol, poured it everywhere in the rooms and outside the house, and then put it on fire”. He described how “[t]hey made me watch as my house was fully burned”¹⁷⁷ and “did not even allow me to get some clothes out and change. I was begging them for it, but in vain”¹⁷⁸. Other houses in the village met the same fate. Mr. Chulukhadze described seeing his attackers “torch my neighbors’ houses”¹⁷⁹.

3.48 Many of those who refused to leave the village were killed. For example, one resident testified:

Omar Babutsidze refused to leave our village. He told me that he would be safe because he was going to ‘shake the hands of the Russians and Ossetians’ and that they would not harm him. Later, while fleeing to Gori, I came across a neighbor who told me that Omar had been killed. This neighbor had personally found his body near the gate of his house. He told me that because he didn’t have time to give Omar a proper burial he wrapped his body in a blanket. Omar’s head had been cut off¹⁸⁰.

3.49 Another witness, a 76 year-old woman, explained how, after the perpetrators had “looted everything they liked”, they “brought hay, put it in the

¹⁷⁶ *Ibid.*

¹⁷⁷ HRW, *Georgia: Satellite Images Show Destruction* (2008), *op. cit.*, p. 2. GM, Vol. III, Annex 152.

¹⁷⁸ HRW, *Up in Flames* (2009), *op. cit.*, p. 133. GM, Vol. III, Annex 156.

¹⁷⁹ *Ibid.*

¹⁸⁰ Declaration of Jimsher Babutsidze (30 August 2008). GM, Vol. V, Annex 354.

house and ignited it”. This happened, she said, “in front of my eyes”¹⁸¹. Similarly, an 80 year-old man told HRW that after Russian tanks entered the village, they “were followed by Ossetians who were looting and then burning houses”¹⁸². He described how “[t]hey came several times to my house, taking everything they liked”. After the looting was completed, they “poured petrol and set the house on fire”, and did the same to his “neighbors’ houses”¹⁸³.

3.50 Another witness described how Ossetian soldiers who had entered the village “divide[d] into gangs of 5 or 6 persons” and systematically burned the village house-by-house with what appear to have been flame-throwers:

Each of these gangs had a man with a special weapon that they used to set fire to the houses. These machines were the size of a rucksack and were worn on their backs. The people using them stood in the garden about 2 to 3 meters away from a house. They turned a knob and fire came out of the weapon through a tube. Before the men with the special weapon did this the other members of the group broke into the house and looted it¹⁸⁴.

3.51 HRW witnessed these ethnically targeted human rights violations first-hand on 12 August, that is, two days after the end of hostilities, when it visited Kvemo Achabeti. While in the village, HRW observers themselves witnessed looting by soldiers stealing “household items -- furniture, television sets, heaters, suitcases, carpets, and blankets -- out of houses” and “loading them into their

¹⁸¹ HRW, *Georgia: Satellite Images Show Destruction* (2008), *op. cit.*, p. 2. GM, Vol. III, Annex 152.

¹⁸² HRW, *Up in Flames* (2009), *op. cit.*, p. 134. GM, Vol. III, Annex 156.

¹⁸³ *Ibid.*

¹⁸⁴ Declaration of Jimsher Babutsidze (30 August 2008). GM, Vol. V, Annex 354.

trucks”¹⁸⁵. One of them told HRW: “Of course, they are entitled to take things from Georgians now -- because they lost their own property in Tskhinvali and other places”¹⁸⁶.

3.52 Speaking with HRW researchers, an elderly resident “who was desperately trying to rescue his smoldering house”, described what happened to his still-burning home. He said that:

members of the South Ossetian militia came to his house on August 11, and tried to take away some household items. When he protested, they set the house on fire and left. The man said he had no food or drinking water; his hands were burned and hair was singed – apparently as he was unsuccessfully trying to extinguish the fire – and he appeared to be in a state of shock. He said that there were about five to ten elderly and sick people left in the village, all in a similar desperate condition, and many of the houses were burned¹⁸⁷.

3.53 Russian military forces were on the scene while Ossetian militias carried out these abuses, which as noted above, occurred *after* the end of hostilities. This is evident from the testimony of Ms. Klara Khetaguri. Like many among the historically mixed population of South Ossetia, Ms. Khetaguri is an ethnic Ossetian who married an ethnic Georgian¹⁸⁸. She testified: “My village was occupied by the Russian army and the Ossetian militia for several days. The Ossetians looted and burned the houses in the village, and the Russian army did

¹⁸⁵ HRW, *Georgian Villages in South Ossetia Burnt, Looted* (2008), *op. cit.*, p. 2. GM, Vol. III, Annex 147.

¹⁸⁶ *Ibid.*

¹⁸⁷ HRW, *Georgian Villages in South Ossetia Burnt, Looted* (2008), *op. cit.*, p. 1. GM, Vol. III, Annex 147.

¹⁸⁸ Declaration of Klara Khetaguri. GM, Vol. V, Annex 319.

not try to stop them”¹⁸⁹. Ms. Khetaguri asked a Russian officer “why the Russians were allowing the Ossetian militia to burn down the Georgians’ houses”¹⁹⁰. He responded that “they didn’t have any right to stop the Ossetians”¹⁹¹. She further testified that the Russian military had her identify her home as belonging to an Ossetian:

The Russian soldiers tied pieces of white cloth to the buildings they were staying in. Because I was very afraid that my house would be burned down, the officer told me to tie a white cloth on my house to indicate to the Ossetians that my house, like the buildings where the Russian soldiers were staying, should not be burned. The officer told me that these buildings, including my house, would not be burned as long as the Russians remained in the village¹⁹².

Ms. Khetaguri followed this instruction and testified that “all the houses in the village except the houses where the Russians were staying and my house” were burnt¹⁹³.

3.54 HRW’s reporting confirms the testimony of Ms. Khetaguri that the Russian army remained in Kvemo Achabeti throughout the period that ethnic Georgian homes were being burned and its residents were being beaten and expelled. As HRW found, the Ossetian soldiers “acted” “under the cover of Russian soldiers with tanks who remained in the village”¹⁹⁴. Indeed, Russian

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ HRW, *Up in Flames* (2009), *op. cit.*, p. 133. GM, Vol. III, Annex 156.

troops in Kvemo Achabeti were photographed by journalists who visited the village on 18 August, over a week after the end of hostilities. For example, Photographs 3.2 and 3.3 show Russian army personnel interspersed among burning buildings.



Photograph 3.2 - Russian soldiers near house set on fire in Kvemo Achabeti
(18 August 2008). (Reuters/Denis Sinyakov)



Photograph 3.3 - Russian soldier walks by house set on fire in Kvemo Achabeti (18 August 2008). (Reuters/Denis Sinyakov)

3.55 Photograph 3.4 shows a Russian military APC next to a burning house. Photograph 3.5 shows an elderly ethnic Georgian couple -- one of whom was unable to walk -- trying to escape from their house that had just been set on fire. This image was taken the same day as the photograph appearing at Figure 3.4 which shows the presence of the Russian army in their village.



Photograph 3.4 - Russian military vehicle, Kvemo Achabeti (19 August 2008). (Reuters/Denis Sinyakov)



Photograph 3.5 - Elderly Georgian couple escapes from a house set on fire in Kvemo Achabeti (19 August 2008). (Reuters/Denis Sinyakov)

3.56 After burning Kvemo Achabeti, the Russian and separatist forces razed what remained. Photograph 3.6, taken on 22 August, 12 days after hostilities ended, shows heavy earth-moving equipment levelling a Georgian home.

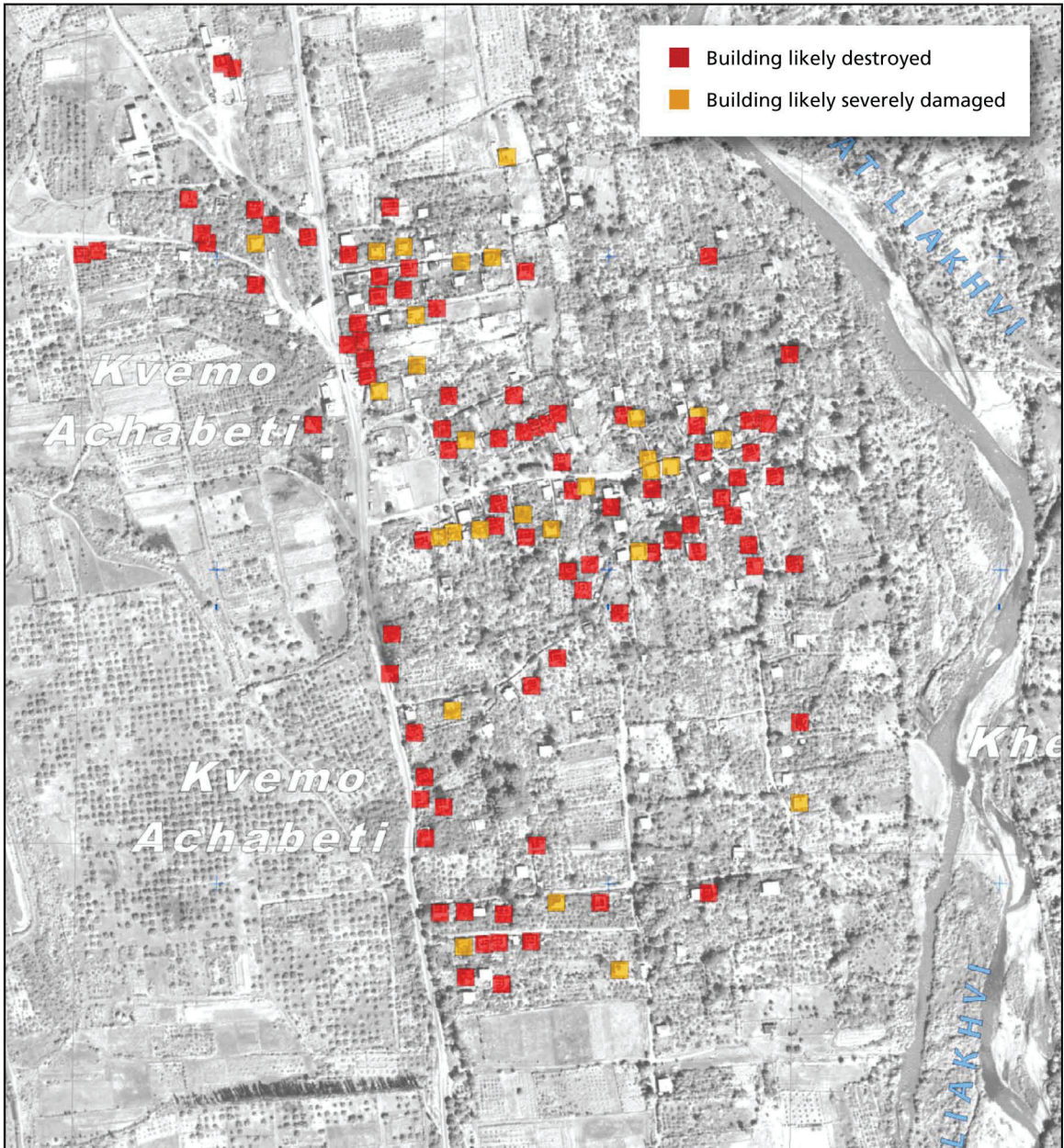


Photograph 3.6 - Excavator tears down a destroyed house in Achabeti
(22 August 2008). (AP Photo/Dmitry Lovetsky)

3.57 The vast scale of the devastation wrought in Kvemo Achabeti is captured in a satellite image from 19 August 2008 (shown at Figure 3.5), that is, one day after Photographs 3.2 and 3.3 were taken and over a week after the end of fighting in South Ossetia. By that time, 121 houses, more than half of the total in Kvemo Achabeti, had been damaged or destroyed¹⁹⁵. Of these, 88 had been

¹⁹⁵ UNOSAT, *Village Damage Atlas Kekhvi to Tskhinvali, South Ossetia* (19 August 2008), *op. cit.* GM, Vol. V, Annex 401.

Damage Assessment, Kvemo Achabeti



For illustrative purposes only.

Figure 3.5

Source: UNOSAT. GM, Vol. V, Annexes 404 and 405 (composite excerpts).
Original images recorded on 19 August 2008.

completely destroyed¹⁹⁶. The purposeful action taken by the perpetrators to identify and destroy houses may be seen in the imagery depicting the locations of the destroyed households. Many were located deep in the community, far from the main roads¹⁹⁷.

3.58 The Georgian households in Zemo Achabeti, immediately to the north of Kvemo Achabeti, were equally decimated. When the UNOSAT satellite imagery was taken on 19 August, houses could still be seen ablaze. Here, as in Kvemo Achabeti, nearly half of all buildings were destroyed or severely damaged¹⁹⁸. Approximately three-quarters of the homes targeted were burnt to the ground, having either totally collapsed or lost most of their roofs¹⁹⁹. This is shown at Figure 3.6.

3.59 The ethnic Georgian residents of Zemo Achabeti and Kvemo Achabeti were forcibly expelled by the Russian army. One resident testified that he saw “a huge column of tanks and Russian military forces arrive”. Several of these Russian soldiers told him they were from Siberia. They warned he would be killed if he did not leave, saying: “If you are Georgian and want to survive, run away from here” because Georgians “would die if [they] didn’t leave”²⁰⁰. Similarly, 60 year-old Tina Nebieridze testified that the Russian and Ossetian soldiers “shot machine guns in the air to frighten us” and “warned us, the

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ Declaration of Jimsher Babutsidze (30 August 2008). GM, Vol. V, Annex 354.

Georgian population, to leave our houses immediately and go away, or else they would chop off our heads”²⁰¹. She described how she “begged” the Russian and Ossetian soldiers “not to burn the houses, but they continued and said they will do this to the whole village, to ensure that Georgians will never come back”²⁰². These soldiers, she recounted, “said they would not touch us if we left Liakhvi gorge forever”²⁰³. Another resident reported he was “warned” to “leave or they would shoot me”²⁰⁴.

2. *Kekhvi*

3.60 The same pattern of discriminatory violence occurred in Kekhvi, another village in Kurta Municipality, again with the direct participation of Russian troops and again long after the fighting had concluded. For example, 85 year-old Liza Gogashvili testified that “Russian and Ossetian troops entered our village and started robbing and burning Georgian houses”. She said that she was “sure they were Russian because they wore Russian uniforms and spoke fluent Russian”. While fleeing, Ms. Gogashvili witnessed two of her neighbours’ houses being burnt²⁰⁵. These acts were done in plain view of the “Russian soldiers” who “watched the Ossetians burning down Georgian homes and did not react”²⁰⁶. The testimony of 61 year-old Zaira Khetagashvili contains a similar

²⁰¹ Tina Nebieridze, Protocol of a Victim Testimonial (21 August 2008). Observations of Georgia, Interim Measures, Annex 38.

²⁰² *Ibid.*

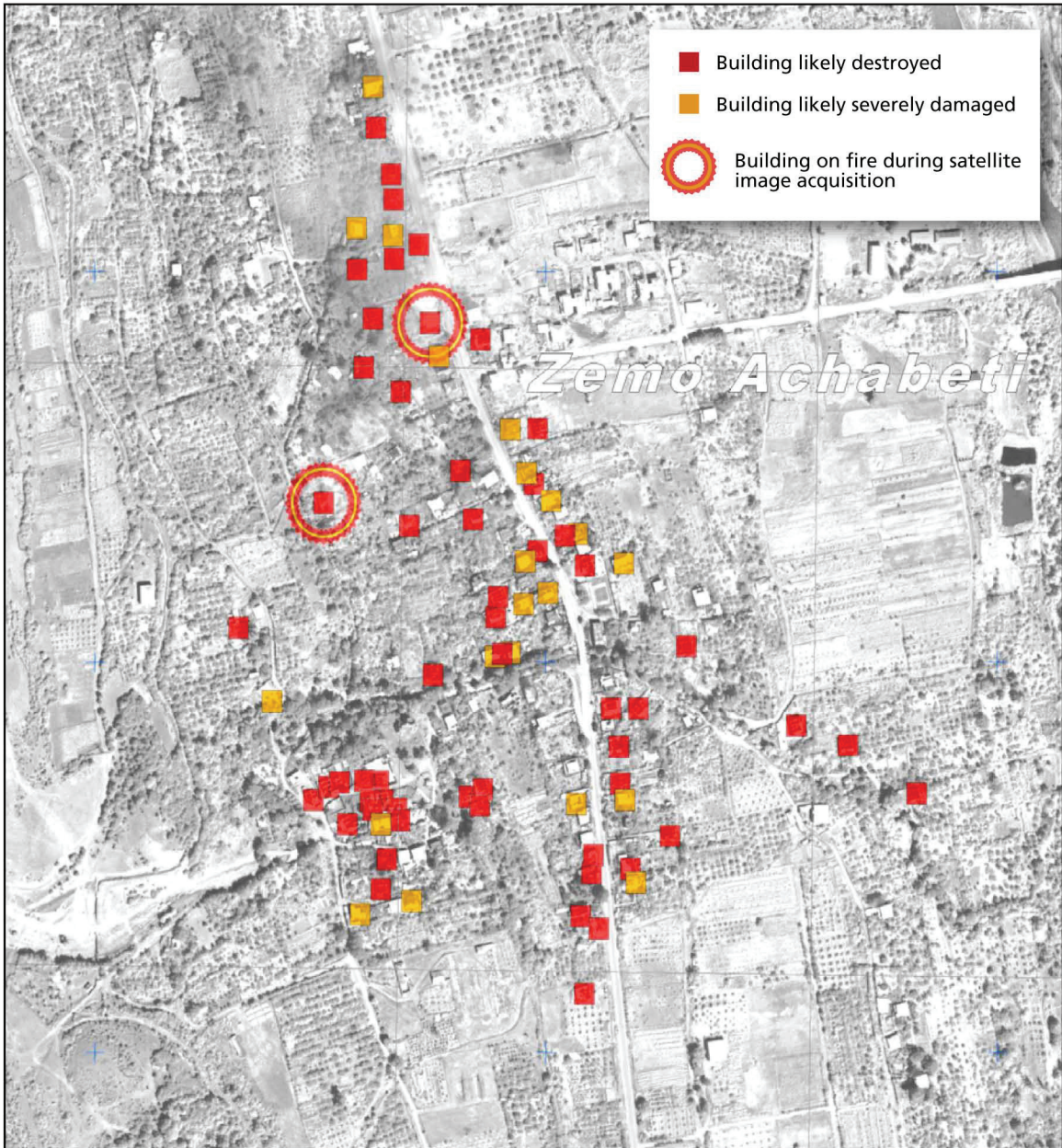
²⁰³ *Ibid.*

²⁰⁴ HRW, *Up in Flames* (2009), *op. cit.*, p. 134. GM, Vol. III, Annex 156.

²⁰⁵ Declaration of Liza Gogashvili, Protocol of a Victim Testimonial (21 August 2008) (hereinafter Declaration of Liza Gogashvili (21 August 2008)). GM, Vol. V, Annex 395.

²⁰⁶ *Ibid.*

Damage Assessment, Zemo Achabeti



For illustrative purposes only.

Figure 3.6

Source: UNOSAT. GM, Vol. V, Annex 404 (excerpt).
Original image recorded on 19 August 2008.

account. She testified that her 90 year-old neighbor “was burned up inside” his house because he “could not escape”²⁰⁷. She further reports how the separatist forces “forced the population out of our houses and shouted to leave this place” and “immediately started searching and robbing our houses and then burnt them”²⁰⁸. They said they would “exterminate the whole Georgian ethnicity and kill everybody”²⁰⁹. Similar events were witnessed by another resident of Kekhvi, who testified that she “personally watched how they burned down the houses of my neighbors, saying that they would root out Georgians from the area so that we would never be able to come back again”²¹⁰. While this was happening, she testified, the “Russian soldiers” present in the village “watched the situation and did not prevent or suppress the raids against the Georgian population”²¹¹.

3.61 One witness testified that when his father-in-law attempted to return to Kekhvi after having been forced to flee earlier, at the “entrance of the village, Russian soldiers met him, beat him with the gun barrel and physically abused

²⁰⁷ Declaration of Zaira Khetagashvili, Protocol of a Victim Testimonial (21 August 2008) (hereinafter Declaration of Zaira Khetagashvili (21 August 2008)). Observations of Georgia, Interim Measures, Annex 32.

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

²¹⁰ Declaration of Makvala Melanashvili, Protocol of a Victim Testimonial (21 August 2008) (hereinafter Declaration of Makvala Melanashvili (21 August 2008)). Observations of Georgia, Interim Measures, Annex 34.

²¹¹ *Ibid.*

him”²¹². The soldiers, he testified, “forced him to leave Kekhvi and told him that no Georgian would ever live there anymore”²¹³.

3.62 These written testimonies are corroborated by eye-witness reporting by HRW researchers who that saw “many houses” had been “set on fire between 6:30 pm and 7:30 pm on August 12,” that is, two days after the end of hostilities in South Ossetia²¹⁴. HRW observed that “[t]he houses were intact” when it “drove by the village at 6:30 p.m.,” but were “on fire when we drove by again one hour later”²¹⁵.

3.63 Another resident, 71 year-old Shermadin Nebieridze, described to HRW how he had escaped to a nearby hill overlooking the village, from where he saw “at least a dozen houses on fire in Kekhvi, including his own”²¹⁶. The OSCE’s human rights fact-finding mission observed the familiar pattern of looting and arson in Kekhvi, again with the participation and support of the Russian army. One witness, for example, said that “[t]he Russians... were protecting the ‘Ossetian’ looters”²¹⁷.

²¹² Declaration of Darejan Bakhtadze. Protocol of a Victim Testimonial (2 September 2008). GM, Vol. V, Annex 361.

²¹³ *Ibid.*

²¹⁴ HRW, *Georgian Villages in South Ossetia Burnt, Looted* (2008), *op. cit.*, p. 1. GM, Vol. III, Annex 147.

²¹⁵ HRW, *Up in Flames* (2009), *op. cit.*, p. 134, n. 367. GM, Vol. III, Annex 156.

²¹⁶ HRW, *Up in Flames* (2009), *op. cit.*, p. 135. GM, Vol. III, Annex 156.

²¹⁷ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 44. GM, Vol. II, Annex 71.

3.64 Satellite imagery of Kekhvi confirms human rights organisation reports and eye-witness accounts of houses being burned, showing that the destruction began soon after the Russian army occupied the area and continued long after all fighting had ended and the Georgian army had withdrawn. By 12 and 13 August, troops were looting and burning houses in and around Kekhvi²¹⁸, and by 19 August, the destruction had become far more extensive. According to satellite imagery, shown at Figure 3.7, by 19 August a total of 153 buildings in Kekhvi had been damaged, 109 of which were likely destroyed, while the remaining 44 were severely damaged²¹⁹. Nearly half of all homes in the village were destroyed²²⁰.

3.65 The active fires seen in the satellite images were recorded in Photograph 3.7, taken by Reuters on 19 August, the same day as the satellite image. The next day, 20 August (10 days after hostilities had concluded in South Ossetia), a senior Ossetian military officer was recorded saying that “Kekhvi is already being razed to the ground”²²¹.

²¹⁸ UNOSAT, *Update 1: Active Fire Locations for Tskhinvali, South Ossetia, Georgia*, Imagery Recorded 7-20 August 2008 (20 August 2008) (hereinafter UNOSAT, *Update 1: Active Fire Locations for Tskhinvali, South Ossetia, Georgia* (7-20 Aug. 2008)). GM, Vol. V, Annex 398.

²¹⁹ UNOSAT, *Satellite Damage Assessment for Kekhvi Area, South Ossetia, Georgia*, Imagery Recorded on 19 August 2008 (25 August 2008). GM, Vol. V, Annex 400.

²²⁰ UNOSAT, *Village Damage Atlas: Kekhvi to Tskhinvali, South Ossetia, Georgia*, Imagery Recorded on 19 August 2008 (29 August 2008). GM, Vol. V, Annex 401.

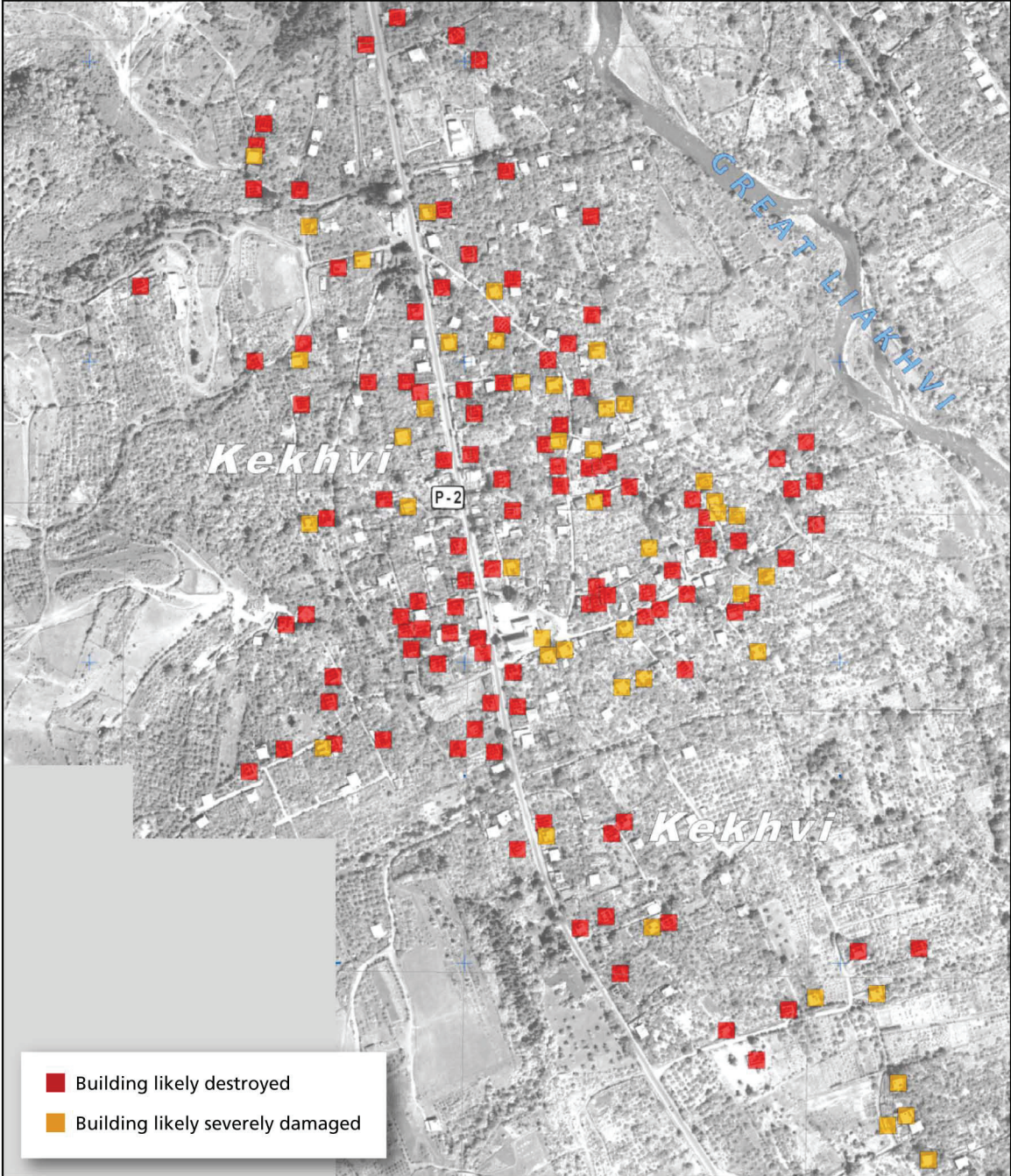
²²¹ Telephone intercept, Vilord to Merab Doguzov (20 August 2008). GM, Vol. V, Annex 315.



Photograph 3.7 - Burning homes in Kekhvi (19 August 2008). (Reuters/Vasily Fedosenko)

3.66 During the entire time that the houses were being set ablaze, the Russian army maintained a strong presence in Kekhvi. Photograph 3.8 shows a Russian tank emplacement in Kekhvi. The photograph was taken on 21 August.

Damage Assessment, Kekhvi



For illustrative purposes only.

Figure 3.7

Source: UNOSAT. GM, Vol. V, Annexes 402 and 403 (composite excerpts). Original images recorded on 19 August 2008.



Photograph 3.8 - Russian checkpoint, Kekhvi (21 August 2008). (Reuters/Vasily Fedosenko)

3.67 The occupying forces set the remaining homes in Kekhvi ablaze over the following days. On 22 August, nearly two weeks after hostilities had ended, two senior Ossetian military commanders were recorded discussing how all remaining buildings in Kekhvi had to be destroyed. The Deputy Head of the 7th Battalion of the South Ossetian military forces told the Commander of the 9th Battalion (Ghromi) that “[t]hey order us to set on fire everything that was left in Kekhvi” and that “now three vehicles of “KAMAZ” type [heavy Russian military trucks] are cleaning Kekhvi”²²². The 9th Battalion’s commander confirmed that the Russian army was also present in his location: “Russian entered this territory

²²² Telephone intercept, Commander of the 9th battalion (Ghromi), Toliv Goiaev and Deputy Head of the 7th battalion of the Ministry of Defense of the Republic of South Ossetia, Arsen Kvezerov, 22 August 2008 (hereinafter Telephone intercept, Toliv Goiaev and Arsen Kyezerov (22 August 2008)). GM, Vol. V, Annex 316.

too, they are there and everything is okay”²²³. The next day, the Associated Press photographed houses on fire in Kekhvi, just as the two military officers had discussed (Photograph 3.9).



Photograph 3.9 - Burning homes in Kekhvi (23 August 2008). (AP Photo/Dmitry Lovetsky)

3.68 By mid-September 2008, Kekhvi was obliterated. On 19 September, five weeks after the conclusion of fighting in South Ossetia, a South Ossetian official was recorded saying that the Russian army had razed Kekhvi and that “they are

²²³ *Ibid.*

going to build Russian something in Kekhvi”. “Kekhvi,” he said, “is razed to the ground by excavators and now the construction is in process”²²⁴.

3.69 The residents of Kekhvi were forcibly expelled or taken hostage. For example, Ms. Zaira Khetagashvili was told she would be killed if she refused to leave: “[T]hey told me to leave immediately or else they would kill me”. Her attackers vowed to “exterminate the whole Georgian ethnicity and kill everybody” and said that “Georgians should leave the area because it is Ossetian territory”²²⁵. 85 year-old Liza Gogashvili testified that the perpetrators “abused Georgian people and demanded that they leave the area immediately”²²⁶. Similarly, 83 year-old Makvala Melanashvili testified that soldiers “burn[ed] down the houses of the Georgian population” and they “did not care if the owner of the house was there or not”²²⁷. She “personally watched how they burned down the houses of my neighbors, saying that they would root out Georgians from the area so that we would never be able to come back again”²²⁸. Although the abuses she described were committed by Ossetian forces, she testified that the “Russian soldiers” “watched the situation and did not prevent or suppress the raids against the Georgian population”²²⁹. Another witness told the OSCE that she “met a Russian/Ossetian military patrol” who ordered her to “leave the

²²⁴ Telephone intercept, unidentified man to Serzhik Bestaev, 19 September 2008. GM, Vol. V, Annex 317.

²²⁵ Declaration of Zaira Khetagashvili (21 August 2008). Observations of Georgia, Interim Measures, Annex 32.

²²⁶ Declaration of Liza Gogashvili (21 August 2008), *op. cit.* GM, Vol. V, Annex 395.

²²⁷ Declaration of Makvala Melanashvili (21 August 2008). Observations of Georgia, Interim Measures, Annex 34.

²²⁸ *Ibid.*

²²⁹ *Ibid.*

village”²³⁰. When a resident returned to Kekhvi to try to save his cattle, Ossetian soldiers seized him as they were “preparing to burn his neighbor’s house”²³¹. They demanded: “Why are you here? . . . It’s not your house anymore. It’s ours. Why don’t you understand this already?”²³²

3.70 The ethnic Georgians who tried to remain in Kekhvi were detained by Russian and separatist forces. This happened to 19 residents of the village. For example, a 71 year-old resident was in his yard on 12 August, after his house had been burned the day before, when “Ossetian forces armed with automatic weapons and wearing camouflage uniforms with white armbands spotted him and forced him into a neighbor’s yard at gunpoint”²³³. He described how:

One of them loaded his weapon and pointed it at me. He said, ‘I’ll kill you, you motherfucker!’ I begged them, ‘Please don’t kill me. I haven’t done anything. I am an elderly man.’ A second fighter came and pushed the gun away and said, ‘Don’t kill him.’ The first then kicked me in the chest and I fell back on the concrete. I must have hit my head because I lost consciousness. When I woke up I struggled to get up. The second fighter kicked me in the neck and I fell back down. They picked me up and walked [me] out of the yard²³⁴.

²³⁰ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 35. GM, Vol. II, Annex 71.

²³¹ HRW, *Up in Flames* (2009), *op. cit.*, p. 135. GM, Vol. III, Annex 156.

²³² *Ibid.*, pp. 135-136.

²³³ *Ibid.*, p. 173.

²³⁴ *Ibid.*, pp. 173-174.

3. *Other Villages*

3.71 The experiences of Kvemo Achabeti, Zemo Achabeti and Kekhvi were not unique in Kurta Municipality. The other villages in the area underwent the same violent discrimination at the hands of the Russian army and Ossetian forces. The ethnic cleansing of Tamarasheni was described at paragraphs 3.14 to 3.16, above. Similar events happened throughout Kurta Municipality. For example, a witness testified that the village of Kurta was “occupied by tanks” and “Russian soldiers”, who shouted to the Georgian population to “leave the village”, saying “Georgians get out of here, to Georgia, or we will kill you!”²³⁵ After escaping through the garden, the witness looked back and saw the houses in the village on fire²³⁶. The same thing happened in the village of Dzartsemi, where a witness testified that “our village was attacked by Russian troops” who entered with their “military equipment” and “started destruction of the population and their property”²³⁷.

3.72 As shown in the satellite image found at Figure 3.4, above, all of the ethnic Georgian villages located in Kurta Municipality were set on fire²³⁸.

²³⁵ Declaration of Nugzar Gogidze, Protocol of a Victim Testimonial (29 August 2008), p. 1. GM, Vol. V, Annex 353.

²³⁶ *Ibid.* Similarly, on 27 August, AI representatives traveling from Java in the north of South Ossetia to Tskhinvali in the south “observed scenes of total destruction, with houses pillaged, burnt and many in ruins”, including in Kurta where there was “ongoing looting”. Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 42. GM, Vol. III, Annex 158. AI interviewed an elderly woman in that village; she described how Russian-speaking “[m]en in military uniform” who were armed with Kalashnikovs had “burnt about 15 houses in Kurta”. *Ibid.*, p. 41.

²³⁷ Statement of Zhuzhuna Zhuzhaniashvili (19 August 2008), p. 2. GM, Vol. V, Annex 350.

²³⁸ UNOSAT, *Update 1: Active Fire Locations for Tskhinvali, South Ossetia, Georgia* (7-20 Aug. 2008), *op. cit.* GM, Vol. V, Annex 398.

Satellite images depicting the destruction of the individual villages of Kurta Municipality may be found at Annexes 400 - 405.

B. EREDVI MUNICIPALITY

3.73 The Russian army, in cooperation with separatist forces, also carried out ethnic cleansing against the ethnic Georgian population in the Eredvi Municipality of South Ossetia, located north-east of Tskhinvali along the Patara Liakhvi Valley. The ethnic Georgian villages in Eredvi Municipality were: Vanati, Satskheneti, Qsuisi, Disevi, Eredvi, Argvitsi, Berula, Beloti, Atriskhevi, Charebi, Zonkari and Frisi. Each of these villages was looted and burned. As in Kurta Municipality, the Russian army played a central role in these operations, much of which occurred long after the end of fighting in South Ossetia, as exemplified by the abuses committed in Eredvi village that are detailed below.

1. *Eredvi*

3.74 Troops from the Russian army jointly looted and burnt the village of Eredvi with Ossetian soldiers. One resident of the village testified that a combined force of Russian soldiers “wearing uniforms with Russian flags” and Ossetians entered the village and stopped in the centre²³⁹. They then “divided into groups and went all over the village” and “started robbing the houses”²⁴⁰. He testified that he could “clearly see how Russians and Ossetians were taking furniture and other items and loading on the vehicles” and that the “Russians and

²³⁹ Statement of Nodar Beruashvili (10 July 2009), p. 1. GM, Vol. V, Annex 388.

²⁴⁰ *Ibid.*

Ossetians were looting together”²⁴¹. Once a house had been fully looted, they began “burning the house down” by employing a “special weapon” that they shot at the house to set it on fire²⁴². The Russian and Ossetian soldiers also sometimes used “kerosene that they had prepared in bottles”, which they poured in the house and set on fire²⁴³. In that regard, he witnessed his own house being burned down by a group of seven or eight Russian soldiers and Ossetians who “took everything out of the house” and then “poured the kerosene on the first floor and set fire to the house”²⁴⁴.

3.75 The use of kerosene by Russian and separatist forces is corroborated by the following recorded conversation. In it, on 20 August, Merab Doguzov, the Deputy Head of a South Ossetian military unit, planned the torching of Georgian homes with Tolik Bibilov, the Deputy Commander of a Russian “peacekeeping” unit – the North Ossetia-Alania Peacekeeping Battalion. In an interview after the conflict, the Commander of this unit stated that his “battalion is Russian” and that its “fate is decided at the level of Russian government”²⁴⁵. Bibilov, an active duty Russian military officer, was subsequently appointed Minister of Emergency Situations in the *de facto* South Ossetian government²⁴⁶. They were recorded saying:

Doguzov: Listen; prepare bottles of kerosene.

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ Interview with Kazbek Frieve, *OS Radio* (21 January 2009). GM, Vol. IV, Annex 284.

²⁴⁶ “South Ossetian Cabinet Revamped”, *Civil Tbilisi* (1 November 2008). GM, Vol. IV, Annex 271.

Bibilov: Yes.

Doguzov: Otherwise it will take time for it to work.

Bibilov: Okay²⁴⁷.

3.76 The destruction of Eredvi was comprehensive, and as indicated by the date of the foregoing recorded conversation, largely occurred after the end of hostilities. The OSCE's human rights assessment team interviewed a witness from Eredvi who described how "his wife's elderly parents" were forced "out of their house" and watched as it was burned down "before their eyes"²⁴⁸. In addition, "other displaced persons from the same village provided nearly identical accounts of their own experiences and of the near total destruction of the village"²⁴⁹. For example, "[m]any witnesses described how the fires were often started by putting a flammable red substance on the beds and then setting it ablaze". The "damage of the village from deliberate arson was so complete that one displaced person commented that 'now, there is no village called Eredvi'"²⁵⁰.

3.77 These reports are corroborated by separatist officials. For example, on 13 August 2008, a senior officer of the separatist Defence Force was recorded reporting that Eredvi was "completely burnt down"²⁵¹. One week later, on 20

²⁴⁷ Telephone intercept, Deputy Head of the 7th Battalion of the South Ossetian Defence Force, Merab Doguzov, to Deputy Commander, North Ossetia-Alania Peacekeeping Battalion, Tolik Bibilov (20 August 2008). GM, Vol. V, Annex 314.

²⁴⁸ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 42. GM, Vol. II, Annex 71.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ Telephone intercept, Arsen Kyezerov and unidentified woman (13 August 2008). GM, Vol. V, Annex 313.

August, that is, ten days after fighting in South Ossetia ended, an Ossetian military officer was recorded discussing the destruction of what remained of Eredvi:

- Vilord: Listen, we need 10 persons. *We have to completely raze Eredvi to the ground.*
- Doguzov: Now the guys came from above and from below. We should go with white bandages as it is necessary. Do you have anybody?
- Vilord: I'm in Dmenisi now and I will return soon.
- Doguzov: Yes, with 10 persons, representatives of the Ministry of Emergency Situations are coming from below with necessary technique [equipment] and we will flatten it to the ground. Kekhvi is already being razed to the ground.
- Vilord: *It means that everything left should be set on fire and flattened to the ground*²⁵².

Two days after this discussion, a senior Ossetian military officer was recorded reporting that he had been ordered to “set on fire everything that was left” in “Eredvi”²⁵³.

²⁵² Telephone intercept, Vilord to Merab Doguzov (20 August 2008), *op. cit.* GM, Vol. V, Annex 315. (emphasis added).

²⁵³ Telephone intercept, Tolik Goiaev and Arsen Kyezerov (22 August 2008), *op. cit.* GM, Vol. V, Annex 316.

3.78 Further evidence of the participation of Russian forces in the destruction of Eredvi is provided by AI, whose researchers visited Eredvi four days later, now two weeks after fighting had ended. They witnessed ongoing looting and burning, and observed that “Russian military equipment continued to pass through Eredvi”²⁵⁴. AI found that “Russian checkpoints controlled entry and exit to the village”, but these soldiers did not search Ossetian “trucks or other large vehicles”. That evening, AI representatives “encountered a group of men in military uniform and was told by one of them, who appeared to be a Russian army officer from North Ossetia, not to report having met them there”. When AI “asked why they were not taking action to extinguish fires in the village, they answered ‘that’s the policy’ (*politika takaya*)”²⁵⁵.

3.79 Satellite images confirm that houses in Eredvi continued to be set on fire and destroyed after combat in South Ossetia had ended, on 19 August, and still new fires continued to engulf homes on 22 August²⁵⁶. The satellite imagery also demonstrates the high level of destruction in Eredvi and surrounding areas²⁵⁷. As shown in Figure 3.8, by 19 August, more than 290 buildings had been affected, over three-quarters (222) of which were completely destroyed²⁵⁸.

²⁵⁴ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 43 (emphasis added). GM, Vol. III, Annex 158.

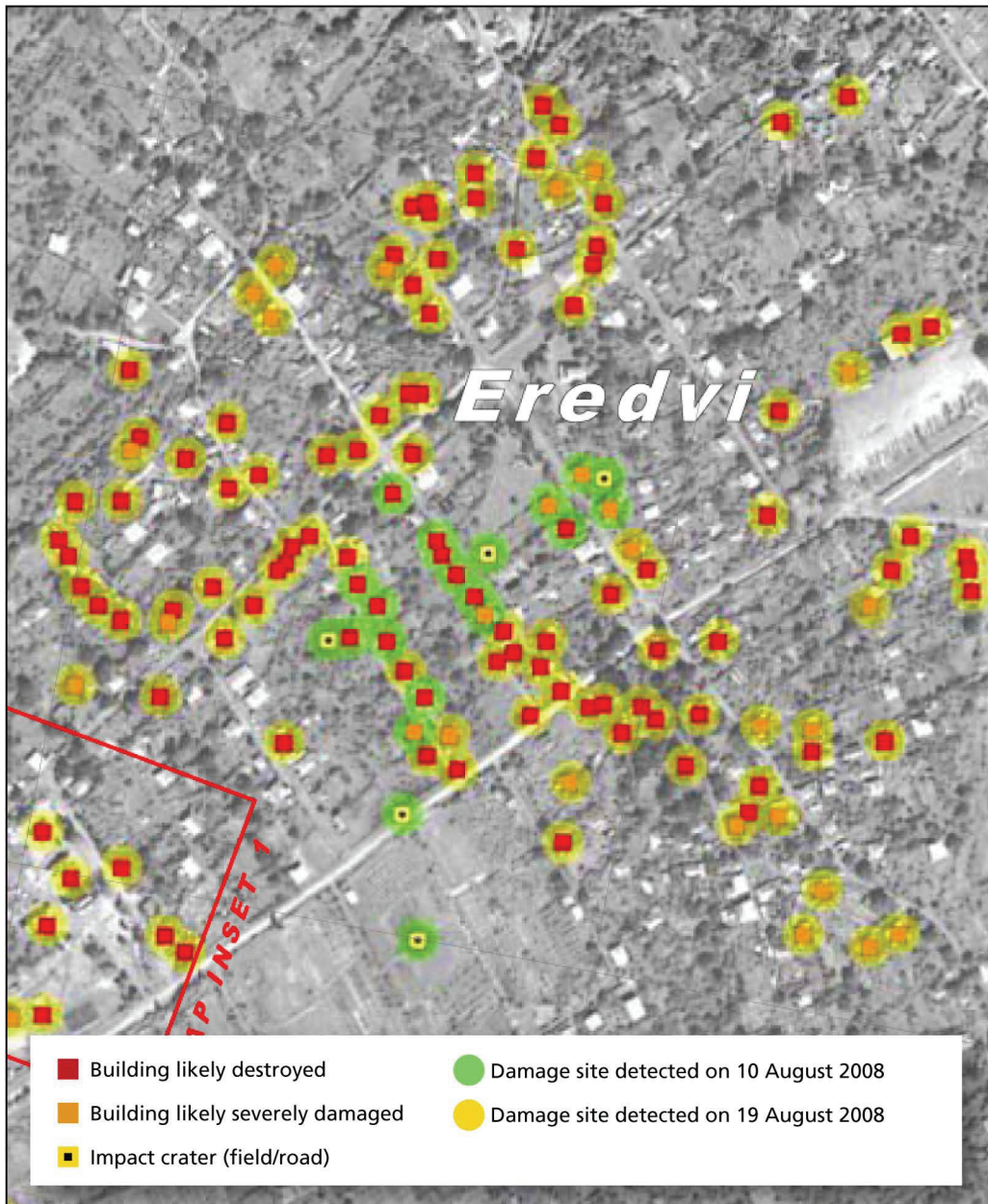
²⁵⁵ *Ibid.*

²⁵⁶ UNOSAT, *Update 2: Active Fire Locations for Tskhinvali, South Ossetia, Georgia - Active Fire Locations Detected with MODIS*, Imagery Recorded 7-24 August 2008 (24 August 2008). GM, Vol. V, Annex 399.

²⁵⁷ UNOSAT, *Village Damage Summary: Eredvi, Berula, and Argvitsi, South Ossetia, Georgia*, Imagery Recorded on 10 and 19 August 2008 (16 October 2008) (hereinafter UNOSAT, *Village Damage Summary: Eredvi, Berula, and Argvitsi South Ossetia, Georgia* (10, 19 Aug. 2008).) GM, Vol. V, Annex 408.

²⁵⁸ *Ibid.*

Damage Assessment, Eredvi



For illustrative purposes only.

Figure 3.8

Source: UNOSAT. GM, Vol. V, Annex 408 (excerpt).
Original images recorded on 10 & 19 August 2008.

While only 9 buildings had been destroyed in Eredvi and its surrounding area on 10 August, by 19 August, 147 more buildings were burned down²⁵⁹. A second study by technical experts commissioned by AI confirmed this increase in destruction by comparing imagery from 10 August and 19 August²⁶⁰. The locations of the burned houses in the satellite photographs showed that the arsonists had gone down every street in the village²⁶¹.

3.80 Ethnic Georgian homes continued to be burned and looted after these satellite photographs were taken on 19 August. Photograph 3.10, taken by the Associated Press on 28 August, shows a house on fire in Eredvi, 18 days after the end of hostilities in South Ossetia.

²⁵⁹ AAAS, *High-Resolution Satellite Imagery and Conflict in South Ossetia* (2008), *op. cit.*, pp. 11-12. GM, Vol. V, Annex 406.

²⁶⁰ *Ibid.*

²⁶¹ UNOSAT, *Village Damage Summary: Eredvi, Berula, and Argvitsi South Ossetia, Georgia* (10, 19 Aug. 2008), *op. cit.* GM, Vol. V, Annex 408.



Photograph 3.10 - House on fire in Eredvi (28 August 2008). (AP Photo/Dmitry Lovetsky)

3.81 When HRW visited Eredvi on 6 September, nearly a month after the fighting had ended, it found more “active fires” and that “every house in the village had fire damage”²⁶². The OSCE fact-finding team also “visited Eredvi and confirmed extensive damage to the village”²⁶³.

3.82 As elsewhere, in Eredvi the Russian and separatist forces expelled the inhabitants and threatened to kill those who refused to leave. The OSCE’s

²⁶² HRW, *Up in Flames* (2009), *op. cit.*, pp. 137-138. GM, Vol. III, Annex 156.

²⁶³ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 42. GM, Vol. II, Annex 71.

human rights fact-finding mission reported that men in “military uniforms told the inhabitants they had to leave” and “if you don’t leave, you will be killed”²⁶⁴.

2. Other Villages

3.83 The ethnic cleansing in Eredvi village was repeated in ethnic Georgian villages throughout Eredvi Municipality, including weeks after the end of hostilities. For example, on 13 August a senior officer of the separatist Defence Force was recorded reporting that “*We set Disevi on fire*”²⁶⁵. Two women from that village interviewed by AI described how the “Russian soldiers... just held their positions at the checkpoints and looked on as the looting was taking place”²⁶⁶. HRW spoke by telephone with one of the last Georgian residents of the village on 13 September, who said that “most of the village had been burned” and that “eight or nine houses were burned in Disevi on September 12, and two on September 13”, that is, over a month after combat had ceased²⁶⁷. On 15 September, she was forced to flee when more houses in her neighbourhood were burnt; another witness confirmed that “houses were burning” in Disevi that day²⁶⁸.

²⁶⁴ *Ibid.*, p. 47.

²⁶⁵ Telephone intercept, Arsen Kvezerov to unidentified woman, 13 August 2008, *op cit.* GM, Vol. V, Annex 313.

²⁶⁶ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 43. GM, Vol. III, Annex 158.

²⁶⁷ HRW, *Up in Flames* (2009), *op. cit.*, pp. 138-139. GM, Vol. III, Annex 156.

²⁶⁸ *Ibid.*, p. 139. When HRW researchers returned to Disevi on 25 November 2008, they found that “the village appeared destroyed and completely deserted”. *Ibid.* On 16 September, HRW reported it had “documented numerous attacks and threats against civilians” over the previous 10 days, including in Disevi, where “the vast majority of houses in the village had been burned”.

3.84 Only ethnic Georgians were targeted in Disevi. One witness interviewed by AI said that “[i]t was just Georgian houses that were destroyed”. In contrast, “[t]hose houses where there were mixed marriages survived.” The “rest were burnt”²⁶⁹. The OSCE’s human rights fact-finding mission confirmed that only ethnic Georgian houses in Disevi were destroyed. It reported that “Disevi was ... almost totally destroyed by arson” and that even cultural monuments dating from the 14th century and earlier were ruined²⁷⁰. Of the approximately 300 houses in the village, “all but seven were burned”. The “several houses” that were “spared” all “belonged to ethnic Ossetians”²⁷¹.

3.85 The same things happened in Vanati, another village in Eredvi Municipality. One resident testified that “Russian troops entered the village” and “closed the entrances of the village with tanks”²⁷². The Russian soldiers, he testified, were “wearing Russian military uniforms” and had “Russian flags” on their shoulders and chests²⁷³. “After the Russians subjected the village to their control”, they were joined by Ossetian military forces, who together with Russian army personnel looted and burned houses in the village:

Russians and Ossetians were going in groups with cars. They were approaching the houses with cars, taking everything they

HRW, *Georgia: EU Mission Needs to Protect Civilians* (2008), *op. cit.* GM, Vol. III, Annex 153.

²⁶⁹ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 43. GM, Vol. III, Annex 158.

²⁷⁰ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 42. GM, Vol. II, Annex 71.

²⁷¹ *Ibid.*

²⁷² Declaration of Valerian Makhniashvili (10 July 2009), p. 1. GM, Vol. V, Annex 382.

²⁷³ *Ibid.*, pp. 1-2.

liked out of the house. They were loading large things on the trucks. Then they were setting fire to empty houses. There were cases where they were pouring fuel around the house and setting fire to it. They were also shooting the houses with the weapon similar to the grenade launcher and it was immediately under fire²⁷⁴.

3.86 This testimony is corroborated by another resident of Vanati, who testified that “Russian forces” “entered the village” travelling on “tanks and IFVs [Infantry Fighting Vehicles]” that bore “Russian flags”²⁷⁵. He observed that “[o]ne group entered the village from the South, from the direction of the village Eredvi” while the “other group came from the Java area”²⁷⁶. The Russian military “closed [the] two entrances to the village”, erecting “four block-posts, two at each entrance”²⁷⁷. It therefore “became impossible to enter or leave the village without their permission, especially by large groups”²⁷⁸. However, that same day, “groups of armed Ossetians”, including some wearing the uniform of the separatist Ministry of Interior, “started entering the village on a massive scale” travelling “through the Russian block-posts” and “moving around in the village the whole day together with Russians”²⁷⁹. These combined groups of Russians and Ossetians then commenced “robbing and burning the village”²⁸⁰. On the third day of this systematic pillaging of Vanati, the witness, while hiding in the forest near the village, observed:

²⁷⁴ *Ibid.*, p. 2.

²⁷⁵ Declaration of Besik Sidamonidze (24 July 2009), p. 1. GM, Vol. V, Annex 391.

²⁷⁶ *Ibid.*, p. 2.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*

One of [the] Russian block-posts was at the entrance of the village near Jojiaant Kari [a neighborhood in Vanati]. There were two IFVs at the block-post. If we take into consideration that the crew of the IFV consists of 11-12 soldiers, there were around 20 soldiers at the block-post. It was around noon when 4 Russian soldiers left the block-post. One of them had a small fuel container in his hand. They entered the house near the block-post. When they left the house, one of them was holding a blue wine container instead of the fuel container. The house went up in flames in a few seconds after they left. It burnt down totally. I was observing everything with my binoculars and I saw it perfectly. Anyway, one could see this without binoculars as well, since I was not too far away. In the same way, Russian soldiers burnt three other houses. These four houses belonged to ethnic Georgians, Shota Jojishvili, Viktor Jojishvili, Emzar Jojishvili, Nodar and Gogia Jojishvili. The mentioned Russian soldiers were first entering the houses and taking out the items. By the time they were leaving the houses were already on fire²⁸¹.

3.87 As in Eredvi, the houses of ethnic Ossetians in Vanati were spared. One witness testified that “[o]nly the houses of Ossetian families were not burnt in the village”²⁸². Another resident confirmed that “nearly the entire village was fully burnt” with the only exceptions being “a few houses belonging to Ossetians” that had “pieces of white cloth on the gates of these houses”²⁸³. Similarly, HRW found that in Vanati almost all the houses were burned; the only

²⁸¹ *Ibid.*, pp. 2-3.

²⁸² Declaration of Valerian Makhniashvili, (10 July 2009), *op. cit.*, p. 2. GM, Vol. V, Annex 382.

²⁸³ Declaration of Besik Sidamonidze (24 July 2009), *op. cit.*, p. 3. GM, Vol. V, GM, Vol. V, Annex 391.

exceptions were “those that allegedly belonged to the few Ossetian villagers”²⁸⁴. These houses had “signs” that “identified their Ossetian ownership”²⁸⁵.

3.88 Satellite images depicting the destruction of other villages in Eredvi Municipality may be found at Annex 408.

C. TIGVA MUNICIPALITY

3.89 Tigva Municipality is located to the southeast of Tskhinvali, and includes the two ethnic Georgian villages of Avnevi and Nuli²⁸⁶. Like ethnic Georgian villages elsewhere in South Ossetia, they were looted and burned by Russian and separatist military forces, and their ethnic Georgian inhabitants were expelled.

1. *Avnevi*

3.90 The burning of Avnevi long after the end of fighting in South Ossetia is confirmed by numerous sources. For example, a witness in Avnevi observed how “Russian soldiers accompanied” by “Ossetian separatists” were “burning houses” and stealing “cattle and cars”²⁸⁷. Similarly, another resident of Avnevi testified that “Russian soldiers” who were “wearing Russian military uniforms” and had “Russian flags” and the word “Russia” on their shoulders, “entered the

²⁸⁴ HRW, *Up in Flames* (2009), *op. cit.*, p. 138. GM, Vol. III, Annex 156.

²⁸⁵ *Ibid.*

²⁸⁶ Avnevi and Nuli were formally part of Znauri District in the former South Ossetian Autonomous District.

²⁸⁷ Declaration of Ruslan Sikturashvili, Protocol of a Victim Testimonial (2 September 2008), p. 2. GM, Vol. V, Annex 360. The witness explained that he could distinguish between the Russian soldiers and the separatists by their clothing. *Ibid.*

village”²⁸⁸. These Russian soldiers told him that they had come “in order to burn the houses of Georgians”²⁸⁹. He described how, in the days that followed, the ethnic Georgian homes were systematically looted and burnt:

The looting was carried out in the organized manner. The Ossetians dressed in military uniforms were moving around the village in groups (composed of 4-5 men). When they were approaching a house, first, they were shooting in order to check whether there were anyone inside. Then they were bringing vehicles near the house and taking everything they liked. When they were done with the house, they were shooting at the house with incendiary weapon and it was burning. I witnessed destruction of all houses in our neighborhood. Approximately 10 houses were burnt a day²⁹⁰.

Ultimately, the witness’s own house was burnt down²⁹¹.

3.91 On 4 September, nearly a month after the Georgian military had withdrawn from South Ossetia, 86 year-old Elena Zoziashvili told HRW that her home in Avnevi had been burnt several days earlier²⁹². AI also interviewed elderly and infirm Georgian men who remained in Avnevi after the other residents had fled²⁹³. They said that “[o]nly the old people stayed behind, those who didn’t have relatives”²⁹⁴. One of those who remained, a seriously ill 50

²⁸⁸ Declaration of Dimitri Kvinikadze (4 August 2009). GM, Vol. V, Annex 392.

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

²⁹² HRW, *Up in Flames* (2009), *op. cit.*, p. 141. GM, Vol. III, Annex 156.

²⁹³ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 40. GM, Vol. III, Annex 158.

²⁹⁴ *Ibid.*

year- old man, was “burnt ... to death in his home”²⁹⁵. Another man, approximately the same age, was also killed²⁹⁶. The perpetrators of these abuses included men in uniform who “began setting fire to things from 11 o’clock in the morning and again every night”²⁹⁷. Photograph 3.11, taken by HRW on 4 September, nearly a month after the end of military hostilities, shows an ethnic Georgian house on fire in Avnevi.



Photograph 3.11 - Burning house in Avnevi (4 September 2008). (Human Rights Watch)
Original image available at http://www.hrw.org/legacy/photos/2008/georgia_galleries.

3.92 In Avnevi, only ethnic Georgian houses were destroyed and their inhabitants forcibly removed. One resident, for example, described how the

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*

Russian and Ossetian soldiers spared a neighbor's house after they were told that an "Ossetian lived there"²⁹⁸.

3.93 AI visited the village and "observed a similar, if not so complete, state of destruction" as it had witnessed elsewhere²⁹⁹. The reason was easy to see. "Painted on the gates and walls of some houses" were the words "Iron" ("Ossetians") and "Zanyato" ("Occupied")". Unlike the homes owned by ethnic Georgians, these specially marked houses were "not burnt or destroyed"³⁰⁰. A photographer with the Associated Press photographed one such sign in Avnevi, which declared in large letters: "Ossetians live here". As can be seen in Photograph 3.12, this house was untouched. As one resident of Avnevi testified, "no one burnt houses in the Ossetian neighborhood"³⁰¹.

²⁹⁸ Declaration of Dimitri Kvinikadze (4 August 2009). GM, Vol. V, Annex 392.

²⁹⁹ Amnesty International, *Civilians in the Line of Fire* (2008), *op. cit.*, p. 43. GM, Vol. III, Annex 158.

³⁰⁰ *Ibid.*, pp. 40, 43. Amnesty International "established that some houses belonging to Georgians had indeed been occupied by Ossetians." *Ibid.*

³⁰¹ Declaration of Dimitri Kvinikadze (4 August 2009). GM, Vol. V, Annex 392.



Photograph 3.12 - “Ossetians Live Here.” Sign on home in Eredvi
(4 September 2008). (AP Photo/ Sergey Ponomarev)

3.94 HRW confirmed that the ethnic Ossetian population of Avnevi was spared the depredations suffered by its ethnic Georgian residents. HRW observed that Avnevi had previously had an ethnic Georgian population, which was administered by Georgia, and an ethnic Ossetian population, which was administered by the separatist *de facto* authorities³⁰². HRW found that “[w]idespread looting and torching in the Tbilisi-administered part began around August 12, and continued at a lesser scale at least until early September, causing most villagers to flee”³⁰³. When HRW “visited Avnevi on September 4, its Tbilisi-administered part was almost fully destroyed by fire and looting”³⁰⁴. An

³⁰² HRW, *Up in Flames* (2009), *op. cit.*, p. 141. GM, Vol. III, Annex 156.

³⁰³ *Ibid.*

³⁰⁴ *Ibid.*

HRW observer “saw and photographed two active fires in this part of the village”³⁰⁵.

3.95 UNOSAT analysis of satellite imagery determined that, by 19 August, no fewer than 153 buildings had been damaged in Avnevi, as shown in Figure 3.9. The imagery reveals that fires were set to nearly every home in the Tbilisi-administered sector -- only a handful of homes remained intact with their white roofs indicating no signs of harm³⁰⁶. Along the main road cutting through Avnevi, the image appears to show that all but approximately seven homes were likely destroyed³⁰⁷. On 19 September, a commander of a separatist military unit was recorded saying that “Avnevi” had been “razed to the ground” and that “everything is burnt down”³⁰⁸.

2. Nuli

3.96 The same type of ethnic cleansing occurred in Nuli. The OSCE human rights assessment team reported that the village had been “systematically burned”, and found evidence that “Russian troops were accompanying Ossetians and helping them to set the fires”³⁰⁹. In this village, the OSCE reported:

³⁰⁵ *Ibid.*

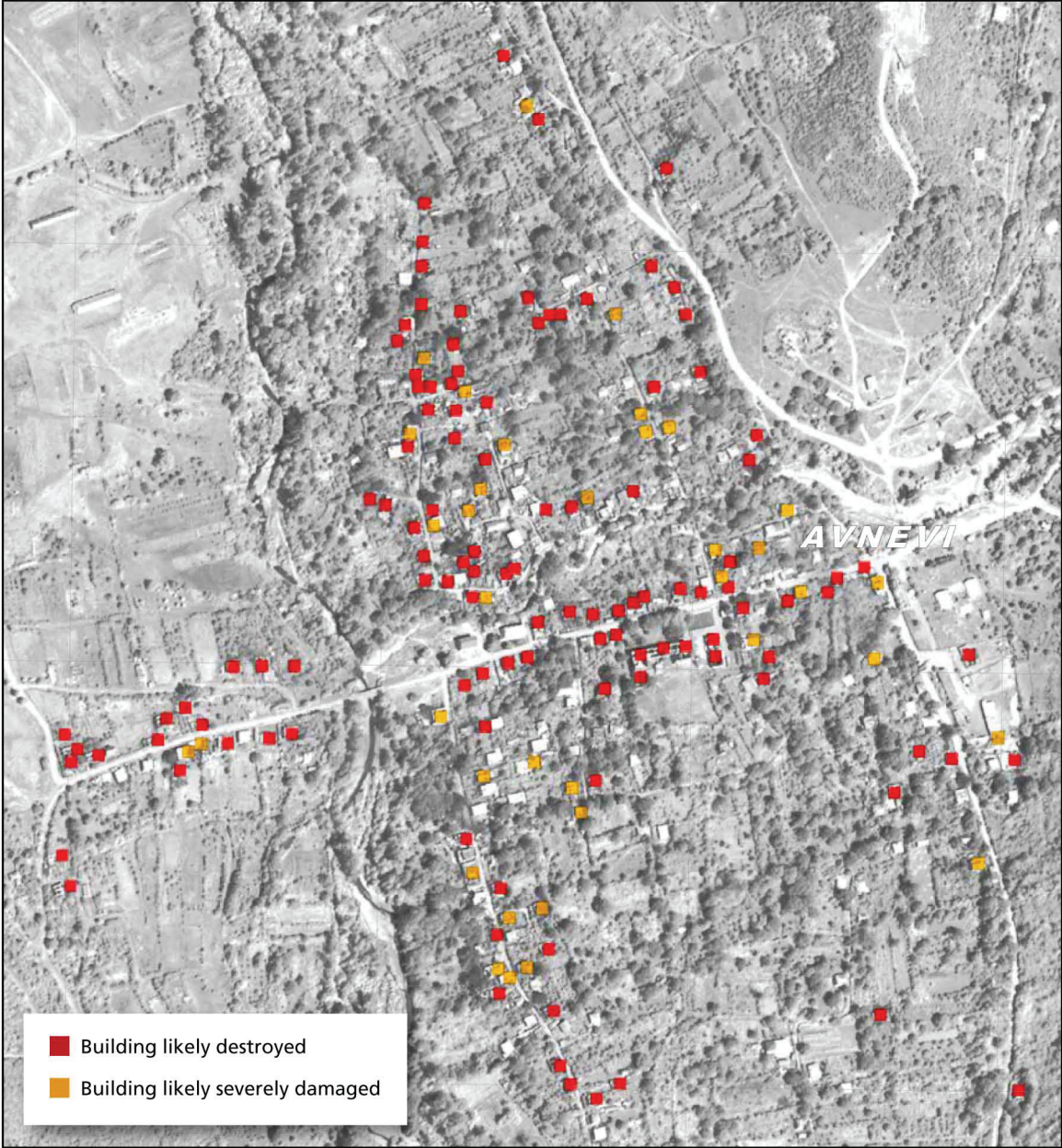
³⁰⁶ UNOSAT, *Village Damage Summary: Avnevi, South Ossetia, Georgia*, Imagery Recorded on 19 August 2008 (10 October 2008), *op. cit.* GM, Vol. V, Annex 407.

³⁰⁷ *Ibid.*

³⁰⁸ Telephone intercept, unidentified man to Serzhik Bestaev (19 September 2008), *op. cit.* GM, Vol. V, Annex 317. Bastaev was also asked, “What about Dvani?” He replied: “Only old people are left in Dvani, while in Dirbi and others almost nobody is left.” *Ibid.*

³⁰⁹ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 43. GM, Vol. II, Annex 71.

Damage Assessment, Avnevi



For illustrative purposes only.

Figure 3.9

Source: UNOSAT. GM, Vol. V, Annex 407 (excerpt).
Original image recorded on 19 August 2008.

“Russian armed forces and ‘Ossetians’ were looting together, sharing the plunder from the houses”³¹⁰. The result was the complete destruction of the village. On 4 September 2008, HRW visited Nuli and “saw that most of its houses had been burned and found the village deserted”³¹¹. The OSCE saw the same thing when it visited Nuli³¹².

3.97 This pattern of ethnic cleansing is confirmed by eye-witness testimony. For example, one resident of Nuli described how the Russian army both protected Ossetian looters and arsonists, and actively participated in such abuses themselves. He testified that a strong contingent of the “Russian army”, including tanks and APCs, held “positions immediately next to our village” from which they “control[ed] our village fully”³¹³. As a result, “nobody could enter the village without their permission”³¹⁴. From this vantage point, he testified, the Russian army “could see the houses burning in the village” but “did not react”³¹⁵. To the contrary, the “Russian soldiers were looting and burning the houses together with Ossetians”³¹⁶. The witness specifically described how he saw “the houses of my neighbors being burnt”³¹⁷.

³¹⁰ *Ibid.*, p. 43

³¹¹ HRW, *Up in Flames* (2009), *op. cit.*, p. 142. GM, Vol. III, Annex 156.

³¹² OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 43. GM, Vol. II, Annex 71.

³¹³ Declaration of Omar Chavchavadze (24 July 2009). GM, Vol. V, Annex 390.

³¹⁴ *Ibid.*

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*

³¹⁷ *Ibid.*

3.98 Another eyewitness in Nuli described the “massive and organized destruction of the houses of Georgians” in the village during which “approximately 10-15 houses were looted a day and then burnt”³¹⁸. He testified that an Ossetian carrying a submachine gun and hand grenade came to him together with a “Russian soldier wearing a Russian military uniform”³¹⁹. Together, they “inspected my house”³²⁰. He was told: “If you are still here tomorrow, we shall kill you”³²¹.

3.99 Figure 3.10 is a satellite image of Nuli taken on 19 August. UNOSAT’s analysis concluded that 94 buildings had likely been destroyed and another 25 were likely severely damaged³²².

D. THE RUSSIAN-OCCUPIED “BUFFER ZONE”

3.100 The direct participation of the Russian military in ethnic cleansing in Russia’s self-proclaimed and occupied “buffer zone” in areas of Georgia adjacent to South Ossetia is illustrated by the abuses committed against the ethnic Georgian population in the village of Avlevi in Kareli District. A witness from that village testified that the “Russian troops” occupying Avlevi “were shooting peaceful villagers with all the weapons they had”³²³, and together with

³¹⁸ Declaration of Otar Tabatadze (4 August 2009). GM, Vol. V, Annex 393.

³¹⁹ *Ibid.*

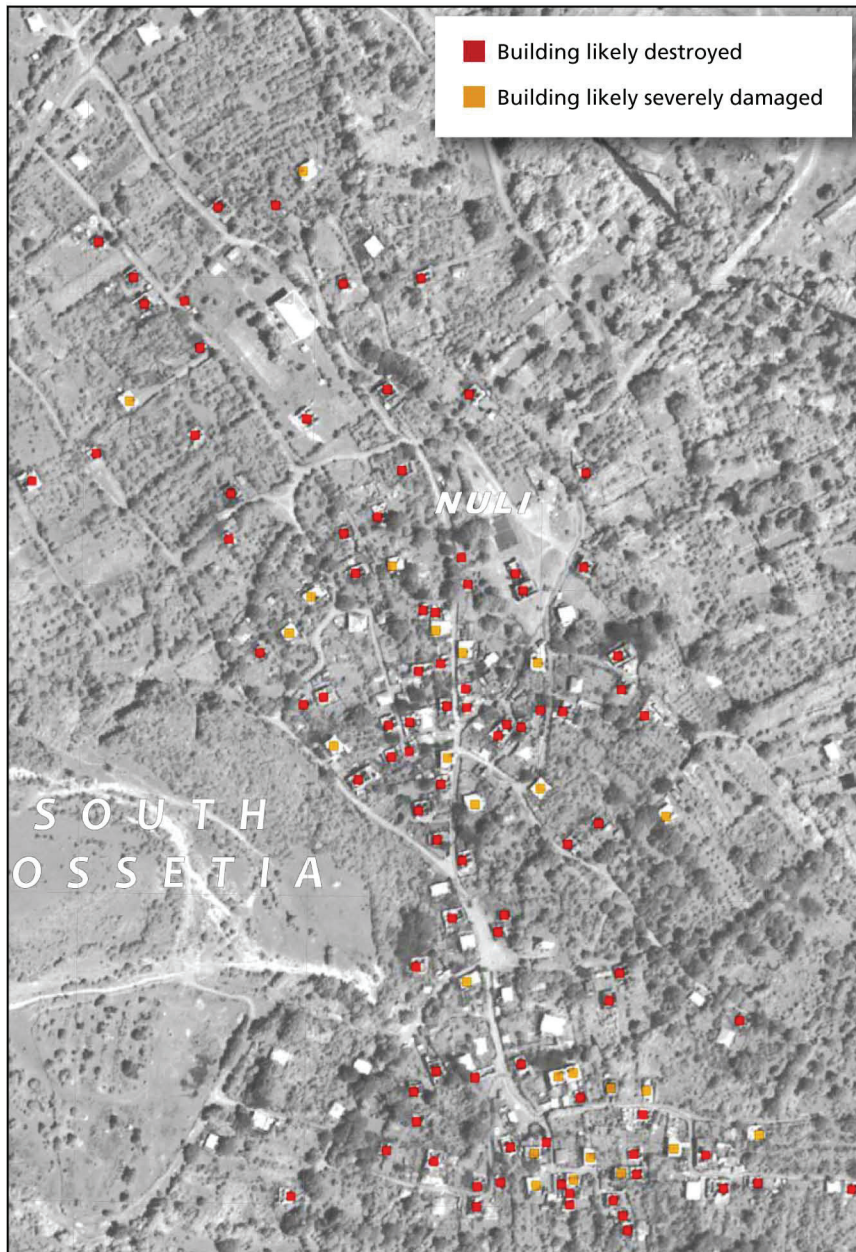
³²⁰ *Ibid.*

³²¹ *Ibid.*

³²² UNOSAT, *Village Damage Summary: Nuli, South Ossetia, Georgia, Imagery Recorded on 19 August 2008* (19 August 2008). GM, Vol. V, Annex 397.

³²³ Declaration of Shota Gogichaishvili, Protocol of a Victim Testimonial (25 September 2008), p. 1. GM, Vol. V, Annex 369.

Damage Assessment, Nuli



For illustrative purposes only.

Figure 3.10

Source: UNOSAT. GM, Vol. V, Annex 397 (excerpt).
Original image recorded on 19 August 2008.

Ossetian soldiers, “looted the village”³²⁴. He testified that when the “Russian soldiers and Ossetian separatists entered my yard”, he escaped by jumping through a window, and saw how these soldiers were “beating my neighbor” and stealing a vehicle³²⁵. The Russian soldiers, he reported, “rushed into my house” and upon seeing his sick mother, began “verbally abusing and intimidating her, threatening [her] with death if she did not leave the house”³²⁶. The soldiers shouted that “no Georgian would live there and if they stayed, they would be killed”³²⁷. He further testified that they “looted my house completely -- they took anything they could, the rest was destroyed”³²⁸.

3.101 Another resident of Avlevi described similar abuses committed by Russian forces. He testified that “Russian military armored vehicles, tanks and ‘Ural’ cars” displaying “flags of the Russian Federation” entered the village, followed by “Russian military men”³²⁹. These soldiers, he testified, began “shooting” to “frighten the population and expel us from the village”.³³⁰ The soldiers “beat and tortured whoever they captured”³³¹. He testified that the “Russian soldiers captured Zurab Tabutsadze and his son Dimitry” and “beat

³²⁴ *Ibid.*, p. 2.

³²⁵ *Ibid.*, p. 1.

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ *Ibid.*

³²⁹ Declaration of Tsiuri Megrelishvili, Protocol of a Victim Testimonial (6 September 2008) (hereinafter Declaration of Tsiuri Megrelishvili (6 September 2008).), p. 1. GM, Vol. V, Annex 364.

³³⁰ *Ibid.*

³³¹ *Ibid.*

them with gun barrels and shot the foot of Dimitry Tabutsadze and left them on the road, half alive”³³². They also murdered Ilia Tkhlashidze, an elderly resident of the village who had said to them: “I was fighting for you in Berlin, what do you want from us?”³³³.

3.102 This testimony is corroborated by other witnesses from Avlevi. One described how Russian soldiers entered the village in their “military vehicles and Ural cars” while “shooting and shouting: ‘Leave the village’ ‘Go away’”³³⁴. The “Russian soldiers,” he testified, “chas[ed] the villagers” with “their armored vehicles” while shooting in order to “frighten them”³³⁵. The soldiers “rob[bed] and burn[ed] the houses in the empty village” and “took anything they could and burnt the rest”³³⁶. This witness was captured by a Russian soldier who told him to “leave this village, it is not your village anymore”³³⁷. Similarly, another villager from Avlevi testified that the Russian soldiers in the village “said they would kill anybody who would not leave the village” and that “Georgians should not live in this village”³³⁸. She further testified that “[w]hile Russian soldiers were staying in the village, they were cursing us, beating and torturing whoever they caught, robbing [us] and did not let us enter our houses”³³⁹. The soldiers,

³³² *Ibid.*

³³³ Declaration of Gaioz Tkhlashidze (5 September 2008), p. 1. GM, Vol. V, Annex 362. *See also* Declaration of Tsiuri Megrelishvili (6 September 2008), *op. cit.*, p. 1. GM, Vol. V, Annex 364; Declaration of Maro Kokolashvili (27 October 2008), p. 1. GM, Vol. V, Annex 372.

³³⁴ Declaration of Gaioz Tkhlashadze (5 September 2008), *op. cit.*, p. 1. GM, Vol. V, Annex 362.

³³⁵ *Ibid.*

³³⁶ *Ibid.*, pp. 1-2.

³³⁷ *Ibid.*, p. 1.

³³⁸ Declaration of Maro Kokalashvili (27 October 2008), p. 1. GM, Vol. V, Annex 372.

she testified, “were trying to expel us from our houses and for that reason, were burning and robbing them”³⁴⁰.

3.103 The experience of Avlevi was repeated throughout the Russian-occupied “buffer zone”. For example, the ethnic Georgian village of Dvani in Kareli District was also destroyed by Russian troops, and its inhabitants were forcibly removed. One witness testified that Russian armored vehicles entered the village flying the Russian flag³⁴¹. Russian soldiers “looted and burned houses of the Georgians and ordered them to leave the village”³⁴². He reported how the soldiers “killed anyone who dared to argue with them”, shooting two of the villagers because they refused to leave the village³⁴³. The Russian soldiers, he testified, “looted and burnt down my house”³⁴⁴. Another resident of Dvani witnessed similar abuses by the Russian army³⁴⁵. He testified that when the Russian military entered the village Russian soldiers began “looting and setting fire to the houses and forced the Georgian population to leave the village”³⁴⁶. The soldiers shot and killed two residents who refused to leave, even killing one

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ Declaration of Vazha Kopadze, Protocol of a Victim Testimonial (31 August 2008), p. 1. GM, Vol. V, Annex 356.

³⁴² *Ibid.*

³⁴³ *Ibid.*

³⁴⁴ *Ibid.*

³⁴⁵ Declaration of Victor Bezhanishvili, Protocol of a Victim Testimonial (31 August 2008). GM, Vol. V, Annex 355.

³⁴⁶ *Ibid.*, p. 2.

by putting a gun in his mouth and shooting³⁴⁷. Another villager, he testified, had his jaw broken by Russian soldiers who hit him with a gun barrel while ordering him to “leave the village”, saying “this territory did not belong to Georgia anymore”³⁴⁸. Another resident described how the “Russian soldiers were capturing the villagers who did not manage to leave, beating, torturing and killing them”³⁴⁹. She heard these Russian soldiers “shouting that they would kill everybody and expel all Georgians”³⁵⁰.

3.104 The same thing happened in the village of Tkviavi in Gori District, where a witness reported that “Russian military troops entered the village on tanks and armored vehicle[s],” followed by Ossetian forces³⁵¹. He testified the “Russian soldiers were doing nothing to prevent the Ossetians and the mercenaries from attacking the Georgian population. On the contrary, they assisted them in breaking open the gates of houses by breaking into the locked yards with their armored machines, in order to give the looters the opportunity to move vehicles inside”³⁵². While hiding in the fields after fleeing, the witness “saw the whole village in flames”³⁵³. He later saw that his “household was burnt”³⁵⁴.

³⁴⁷ *Ibid.*

³⁴⁸ *Ibid.*, p. 2.

³⁴⁹ Declaration of Inga Ivanishvili, Protocol of a Victim Testimonial (6 September 2008), p. 1. GM, Vol. V, Annex 365.

³⁵⁰ *Ibid.*

³⁵¹ Declaration of Teimuraz Jashashvili, Protocol of a Victim Testimonial (23 August 2008), p. 2, Annex 352.

³⁵² *Ibid.*

³⁵³ *Ibid.*

3.105 Russian armed forces committed similar abuses against ethnic Georgians in the village of Atotsi, in Kareli District. A resident testified:

Russian forces started entering the village and attacking and killing peaceful population. They came with heavy armored vehicles and were targeting the villagers. The villagers started leaving their houses -- they were hiding in the gardens. Those who did not manage to escape were captured, beaten, tortured and gathered in the centre of the village. My son and I did not manage to hide. We were captured by Russians as well. First, we were abused in our own house. Then we were forcibly taken to the centre of the village where other captured people had been collected together. Russian soldiers were shouting that Georgians would be expelled and that no Georgian would live there. There were saying: 'Go away, it is Russia'³⁵⁵.

Continuing, she testified:

There were around 80 of us gathered in the centre of the village -- mostly women, children and elderly. They were telling us that they would kill us. They were acting like Nazi -- beating and verbally insulting us. They picked up three young men, tied their hands and took towards Znauri. When they finished with looting the village, they went away. There were too many of us so they did not take us with them. They told us, Georgians, to leave the village and not to return or we would be killed. Russian soldiers were saying: 'It is Russia'³⁵⁶.

Section III. Hostage-Taking and Deportations

3.106 The violent discrimination that Russian and Ossetian forces directed at ethnic Georgians was not confined to looting and burning their villages and

³⁵⁴ *Ibid.*

³⁵⁵ Declaration of Liana Kuchishvili, Protocol of a Victim Testimonial (19 September 2008), p. 1. GM, Vol. V, Annex 368.

³⁵⁶ *Ibid.*

expelling the inhabitants. Some Georgians did not leave their villages in South Ossetia, despite the threats from Russian and Ossetian military personnel. Most of these Georgians were elderly or infirm, and unable or too frightened to uproot themselves and traverse hostile countryside to a safe haven in other parts of Georgia. Some others were caught trying to gather up family possessions before leaving. Still others were stopped by Russian and Ossetian forces even as they tried to heed their instructions to flee. Many of these Georgians were detained and imprisoned in Tskhinvali. The rest were physically deported by Russian forces to Gori, a city under Russian occupation in the “buffer zone” beyond the administrative boundary of South Ossetia.

A. DETENTION OF ETHNIC GEORGIANS

3.107 The discriminatory acts perpetrated by Russian and Ossetian forces included searching out and detaining those ethnic Georgians who remained in their villages. This happened to at least 159 Georgians who stayed in South Ossetia or in villages along the administrative border with the rest of Georgia. According to HRW, at least 76 of these detainees were 60 years-old or older, and at least 17 were 80 or older; the youngest detainee was 8 years-old,³⁵⁷ and at least 40 detainees were women³⁵⁸. HRW interviewed many of the detainees after

³⁵⁷ HRW, *Up in Flames* (2009), *op. cit.*, p. 170. GM, Vol. III, Annex 156.

³⁵⁸ Human Rights Watch, *Russia/Georgia: Investigate Abuses of Detainees, Allegations of Execution, Torture in South Ossetia* (21 September 2008). GM, Vol. III, Annex 154. Most of the detainees were seized from the ethnic Georgian enclave north of Tskhinvali; no fewer than 80 (approximately half of all detainees) were captured in just 4 villages: Kvemo Achabeti, Zemo Achabeti, Tamarasheni and Kekhvi.

their release and concluded that it was “very clear” they had been “unlawfully detained *on the basis of their ethnicity*”³⁵⁹.

3.108 Ethnic Georgians were rounded up and detained in the immediate aftermath of the Russian invasion. For example, 48 year-old Manuna Gogidze described how on the day the conflict started, “she and 15 others were forced out of her neighbor’s cellar” and “lined up against a wall”.³⁶⁰ They were then “loaded into a truck and taken” to the *de facto* Interior Ministry’s detention centre in Tskhinvali³⁶¹. The Russian military was directly involved in this round-up of ethnic Georgians. Human Rights Watch found that “Russian forces directly participated in the detention of ethnic Georgians”³⁶² and that detainees were captured by “Russian forces”³⁶³. It concluded that “Ossetian forces, at times together with Russian forces, detained some of the residents they found remaining in these villages, particularly the ethnic Georgian villages of South Ossetia; in most cases, detentions took place in the context of the campaign of looting and destruction”³⁶⁴. For example, HRW found evidence that Russian soldiers cooperated with Ossetian forces to detain elderly residents in Tamarasheni³⁶⁵.

³⁵⁹ “Georgian Civilians Tell of Miserable Conditions as War Captives,” *Washington Post* (24 August 2008) (emphasis added). GM, Vol. IV, Annex 257.

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*

³⁶² HRW, *Up in Flames* (2009), *op. cit.*, p. 171. GM, Vol. III, Annex 156.

³⁶³ *Ibid.*, p. 4.

³⁶⁴ *Ibid.*, p. 170.

³⁶⁵ *Ibid.*, p. 174.

3.109 HRW’s conclusion regarding the participation of the Russian army in detaining ethnic Georgian civilians is corroborated by other evidence. One witness from the village of Avlevi testified about how, while hiding in her garden, she witnessed Russian soldiers “taking people as hostages”³⁶⁶. The soldiers spotted and tried to capture her, chasing her in an armored vehicle. She was able to evade capture by hiding in the bushes³⁶⁷. Another witness testified that her mother was “captured by the Russian soldiers” working along with separatist forces³⁶⁸. Still another described his capture in the village of Karaleti³⁶⁹. He testified that he, along with several other ethnic Georgians, were “approached” by a “Russian military vehicle” carrying “a number of Russian soldiers on it”³⁷⁰. These soldiers were “accompanied” by an Ossetian soldier who pointed a gun at the villagers and “ordered us to go towards Tskhinvali”³⁷¹. The villagers complied with this order, and were followed by the “military vehicle with the Russian soldiers”³⁷². Similarly, a resident of Zemo Khviti testified that when Russian tanks entered the village he, along with another villager, was captured by Russian soldiers, as well as Chechens and Cossacks³⁷³. He testified that they commenced “hitting our heads upon the armored vehicles”, causing them to bleed, and “tied our hands and feet and made us lie on the

³⁶⁶ Declaration of Eliko Arsenadze, Protocol of a Victim Testimonial (6 September 2008), p. 1. GM, Vol. V, Annex 363.

³⁶⁷ *Ibid.*

³⁶⁸ Declaration of Tinatin Gagnidze (23 August 2008), *op. cit.*, p. 2. GM, Vol. V, Annex 351.

³⁶⁹ Declaration of Giorgi Kharibegashvili (2 September 2008). GM, Vol. V, Annex 359.

³⁷⁰ *Ibid.*, p. 2

³⁷¹ *Ibid.*

³⁷² Declaration of Giorgi Kharibegashvili (2 September 2008), p. 2. GM, Vol. V, Annex 359.

³⁷³ *Ibid.*

ground”³⁷⁴. The soldiers called them “‘pigs’ in Russian”, and said “they would destroy Georgians”.³⁷⁵ They were ultimately released after being interrogated by a Russian colonel³⁷⁶. Another witness described being “captured” by Ossetian forces “in front of the Russian soldiers”³⁷⁷.

3.110 The testimony of Enver Babutsidze of Kvemo Achabeti is particularly revealing. He describes how he was being told by his uncle that “Russian soldiers had seized” a neighbor named Vazha Vazagashvil, when:

a Russian soldier suddenly jabbed me in the back with the point of his rifle and hit me with the butt. He ordered my uncle and I to go with him. About ten more soldiers, mostly Russian soldiers with some Ossetians, came over and ordered my uncle to go inside the house. They ordered me to follow them. The soldiers took me to where Vazha was lying on the ground and ordered Vazha to stand up. Speaking in Russian, they called us ‘Georgian pigs’ and shouted ‘what are you doing here!’³⁷⁸

Mr. Babutsidze was then taken to Tskhinvali “on foot in the custody of a group of Russian and Ossetian soldiers” who were led by a “lieutenant in the Russian army”³⁷⁹.

3.111 Russia’s role in the detention of ethnic Georgians was not limited to participating in their capture. In addition, Russian military personnel also

³⁷⁴ *Ibid.*, p. 2.

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*

³⁷⁷ Declaration of Liza Gogashvili (21 August 2008), p. 2. GM, Vol. V, Annex 295.

³⁷⁸ Declaration of Enver Babutsidze (31 August 2008), p. 2. GM, Vol. V, Annex 357.

³⁷⁹ *Ibid.*

participated in their custody at the *de facto* Interior Ministry building in Tskhinvali in conditions that HRW found were “inhuman and degrading”³⁸⁰. HRW found evidence that detainees were “interrogated by people who introduced themselves as members of Russian forces”³⁸¹. Further, “[s]everal detainees told Human Rights Watch that Russian Federation officials were present at certain times at the Ministry of Interior during their detention”³⁸². This included one detainee who reported she was interrogated on 12 August by someone who introduced himself as a Russian vice-colonel³⁸³. Another detainee described being interrogated on 19 or 20 August by men in uniforms with the Russian Prosecutor-General insignia³⁸⁴. Still another detainee reported being interrogated around 20 August by men who spoke only Russian, some of whom wore military uniforms³⁸⁵. Similarly, the OSCE human rights fact-finding

³⁸⁰ HRW, *Up in Flames* (2009), *op. cit.*, pp. 4, 10, 127, 171. GM, Vol. III, Annex 156. *See also* “Georgian Civilians Tell of Miserable Conditions as War Captives,” *Washington Post*, (24 August 2008). GM, Vol. IV, Annex 257. There is overwhelming evidence of the abusive conditions in which the ethnic Georgian detainees were confined. For instance, many of the detainees were brutally beaten. Former detainees interviewed by HRW said that: “many of the men, particularly the young men, were beaten, and that some were beaten frequently. They described consistently how men would be taken out of their cells and out of the basement, and how, when they were returned, they showed clear signs of beatings.” *Ibid.*, p. 176. One detainee described these beatings: “We saw them being taken upstairs and we could hear their screams. When they were brought back, they would bear clear signs of beating... I saw the bruises myself as I was trying to help them. There was a young man from Tirdznisi who was beaten several times. I saw large dark bruises mostly on his back ...” *Ibid.*, p. 176.

The detainees were also subjected to anti-Georgian hate speech. For example, 60 year-old Tina Beberidze testified that “[t]hey abused us” and “called us “Georgian pigs.” HRW, *Up in Flames* (2009), *op. cit.*, p. 177. GM, Vol. III, Annex 156.

³⁸¹ *Ibid.*, p. 171.

³⁸² *Ibid.*, p. 177.

³⁸³ *Ibid.*, p. 171.

³⁸⁴ *Ibid.*, p. 177 & n. 496.

³⁸⁵ *Ibid.*

mission was told by a detainee that she saw “‘Russians acting as supervisors’ of the detention centre”³⁸⁶.

3.112 Other detainees have testified that there were Russian soldiers in military uniforms standing along the steps leading to the *de facto* Interior Ministry building³⁸⁷, and that “Russian soldiers were located immediately outside the prison”³⁸⁸.

3.113 One detainee testified that “[t]here was a place in the prison where Russians and Ossetians interrogated the hostages” and that his “interrogation was mostly carried out by Russian officers” who “had stars on their uniforms” and “‘Russia’ was written on their badges”³⁸⁹. Another detainee described how the “situation at the building of the South Ossetian Interior Ministry was completely controlled by the Russian military”, and that he was “often beaten in the presence of Russian military personnel, as were other Georgian hostages”³⁹⁰. He testified that “[a]lthough Russian soldiers” had initially remained outside the detention centre, “starting on 16 August Russian officers appeared inside”, and on 17 August he was “interrogated by Russian officers wearing Russian military uniforms”, including a “Russian military officer with three stars on his shoulders”³⁹¹. The interrogation was “conducted in Russian, and if a hostage did

³⁸⁶ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 38. GM, Vol. II, Annex 71.

³⁸⁷ Declaration of Enver Babutsidze (31 August 2008), p. 2. GM, Vol. V, Annex 357.

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.*

³⁹⁰ Declaration of David Dzadzamia (16 July 2009), p. 2. GM, Vol. V, Annex 389.

³⁹¹ *Ibid.*, p. 4.

not know Russian, an Ossetian interpreted”³⁹². He testified that “[w]e were made to sign forms three times”, and, “[p]eriodically, someone wearing a Russian military uniform came to collect completed forms”³⁹³.

3.114 The detainee further testified: “the Russian military officer with three stars on his uniform ordered me to put on a Georgian military uniform and told me to read a prepared text in front of a camera” in the presence of “another Russian officer and Russian journalists”³⁹⁴. The detainee was beaten and threatened with death if he refused to read the statement, which he was ultimately forced to do³⁹⁵.

3.115 The presence of Russian troops at the detention centre is confirmed by photographic evidence. Photograph 3.13 shows the *de facto* Interior Ministry detention centre³⁹⁶. A few meters away from the detention centre are temporary barracks for Russian troops³⁹⁷.

³⁹² *Ibid.*

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*

³⁹⁵ *Ibid.* The witness testified that he was “made to say that I was a reservist and that 400 reservists had gathered at the Marjanishvili Square on 6 August and arrived in Tamarasheni on 7 August. After Tskhinvali had been destroyed by being bombed, on 8 August, we were ordered to enter the city from the direction of Tamarasheni. When we entered the city we found the bodies of dead children, women and elderly civilians. Because I felt badly, threw away my gun and ran towards Tamarasheni, where I voluntarily surrendered.” *Ibid.* This statement was “written in Russian on a sheet of paper” that was placed in front of him. *Ibid.*

³⁹⁶ The photograph was taken by Jonathan Littel, a freelance photographer and was obtained by Georgia through Amnesty International.

³⁹⁷ Declaration of Enver Babutsidze (31 August 2008). GM. Vol. V, Annex 357. (identifying “temporary housing where Russian soldiers stayed”).



Photograph 3.13 - South Ossetian *de facto* Interior Ministry detention centre with Russian troop barracks in background. (Jonathan Littel, obtained through AI)

B. DEPORTATIONS

3.116 In addition to seizing ethnic Georgians and holding them as detainees, Russian military personnel located and deported ethnic Georgians from South Ossetia to Russian-occupied Gori, to the south of the South Ossetian administrative boundary. *The Telegraph* of London included an eyewitness account of one such transport of deported ethnic Georgians: “Russian military trucks dumped weeping Georgian civilians forcibly removed from their devastated homes onto the tarmac” outside Gori³⁹⁸. Another account was supplied by *The Financial Times*, which reported that forces associated with “Russia’s emergency situations ministry” removed Georgian villages from Kurta and transported them to Gori³⁹⁹. *Time Magazine* similarly reported that “officials from the Russian Ministry of Emergency Services” had “cleared the Georgian villages of old men and women who had stayed behind to protect property and livestock”⁴⁰⁰. Photograph 3.14 shows ethnic Georgians being deported to Gori.

³⁹⁸ “LSO Conducted Valery Gergiev Leads Pro-Russia Concert in Ossetia”, *The Telegraph* (21 August 2008). GM, Vol. IV, Annex 253.

³⁹⁹ “Georgian Refugees Tell of Attacks and Looting”, *The Financial Times* (18 August 2008). GM, Vol. IV, Annex 248.

⁴⁰⁰ John Wendle, “Fanning Ethnic Flames in Georgia”, *Time Magazine* (20 August 2008). GM, Vol. IV, Annex 251.



Photograph 3.14 - Ethnic Georgians from South Ossetia being taken by Russian forces to Gori. (16 August 2008). (AP Photo/Dmitry Lovetsky)

3.117 The OSCE Chairman-in-Office, Mr. Alexander Stubb, himself witnessed how, in his words, “Russian emergency troops brought in two lorries full” of “elderly Georgians from southern Ossetia who had been torn away from their homes”⁴⁰¹. He observed that the deportees, once deposited in Gori, were left “sitting there on the street with all their belongings”⁴⁰². Mr. Stubb described the Russian forces who had removed these ethnic Georgians as “clearly trying to empty southern Ossetia of Georgians”, which he said, does not “go[] by any of the books that we deal with in international relations”⁴⁰³.

⁴⁰¹ “S. Ossetia ‘emptied of Georgians’”, *BBC News* (25 August 2008). GM, Vol. IV, Annex 259.

⁴⁰² *Ibid.*

⁴⁰³ *Ibid.*

* * *

3.118 In sum, the evidence shows that Russian military forces were full and active participants in a violent campaign of racial discrimination that ethnically cleansed ethnic Georgians from South Ossetia and adjacent areas. Further, in addition to perpetrating these discriminatory acts directly, the Russian army both aided and abetted Ossetian forces in acts of violence directed at the ethnic Georgian population, and took no meaningful steps to stop them from carrying out these abuses. By perpetrating these acts of racial discrimination, Russia breached its obligations under the Convention, including those under Articles 2, 3 and 5, as described in further detail in Chapter 9.

CHAPTER IV.

**RUSSIA'S RESPONSIBILITY FOR ACTS OF DISCRIMINATION
COMMITTED BY SOUTH OSSETIAN FORCES**

4.1 In the preceding Chapter, Georgia described the direct participation of Russian military forces in violent acts of discrimination against the ethnic Georgian population of South Ossetia and adjacent areas. Not all the acts of ethnic cleansing were committed, or aided and abetted, by the Russian army, however. The South Ossetian armed forces also engaged in violent abuses against ethnic Georgians. In this Chapter, Georgia presents the evidence of Russia's command and control of the South Ossetian separatist administration and military apparatus, and its corresponding responsibility for the acts of ethnic discrimination committed against ethnic Georgian civilians by Ossetian military elements, even when Russian troops were not physically present at the scene of those acts.

4.2 The evidence shows that by the summer of 2008, Russia had achieved complete domination of the separatist administration in South Ossetia. Section I of this Chapter describes Russia's relationship with the Ossetian separatist forces during the ethnic conflict of 1991-1992, when, with Russian support, the Ossetian separatists succeeded in permanently expelling over 10,000 ethnic Georgians from their places of residence in South Ossetia⁴⁰⁴. The remaining Georgian population primarily lived in ethnic Georgian or majority-Georgian villages clustered to the north, west and east of Tskhinvali. These villages were administered and protected by Georgia from 1992 to 2008. By contrast, ethnic Ossetian villages were administered by the *de facto* South Ossetian authorities that were established with Russian support. The most powerful force in South

⁴⁰⁴ U.N. Economic and Social Council, Commission on Human Rights, *Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Georgia*, U.N. Doc. E/CN.4/2006/71/Add.7 (24 March 2006), paras. 8-9. (hereinafter "*Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Georgia*" (2006)). GM, Vol. II, Annex 63.

Ossetia during this period was the Russian troops which formally served as “peacekeepers” and controlled South Ossetia’s administrative boundaries. The evidence shows how Russia’s control over South Ossetian territory and the *de facto* South Ossetian administration steadily grew after 1992.

4.3 Section II describes how by 2008 Russia achieved complete control over the *de facto* South Ossetian administration. The evidence demonstrates that this was not done against the separatists’ will; to the contrary, the South Ossetian authorities made integration with, and subordination to, Russia their *raison d’être*. Consequently, by 2008, Russia -- at the invitation of the *de facto* administration -- had come to dominate all aspects of South Ossetia’s administration, finances, military and police.

4.4 Finally, Section III shows that by the time of the 2008 ethnic cleansing, Russia had installed its own military and security officials in all key positions of the *de facto* South Ossetian administration, such that South Ossetia’s military and paramilitary forces were effectively under direct Russian command and control. The evidence demonstrates that the positions of Minister of Defence, Secretary of the Security Council, Minister of Internal Affairs, Chairman of the Committee on State Security, Commander of the State Border Guard, and Chairman of the Committee on State Control and Economic Security, were all occupied by active duty General Officers of the Russian Federation’s military and security services. Further, to augment the military forces under the command and control of these Russian officers assigned to leadership posts in the *de facto* South Ossetian administration, State military commissariats in Russia recruited, organized and transported hundreds of Russians -- many already serving in Russian military units -- to South Ossetia, where they were integrated into the *de facto* South Ossetian defence forces. Thus, not only were

the South Ossetian military units under the command and control of Russian General Officers, those under their command were largely Russians, including Russian soldiers, as well.

Section I. Ethnic Cleansing, 1991-1992

4.5 In the Soviet Union, South Ossetia was an Autonomous District within the Georgian Soviet Socialist Republic. According to the last Soviet census in 1989, the population of South Ossetia was approximately 99,000, roughly 65 percent of whom were ethnic Ossetians and 29 percent of whom were ethnic Georgians⁴⁰⁵. Although the two ethnic groups had traditionally enjoyed good relations, with high levels of interaction and intermarriage, elements within South Ossetia were not satisfied with autonomous status within Georgia, advocating instead a complete separation from Georgia. Toward this end, the so-called South Ossetian Popular Front was created in 1988; and on 20 September 1990 it declared the establishment of a new “South Ossetian Democratic Republic” as a fully sovereign entity within the USSR, having no connection to Georgia⁴⁰⁶. Georgia rejected this unilateral act of secession and threatened to prevent it, by force if necessary. Because two-thirds of the population were ethnic Ossetian, the separatists enjoyed both numerical superiority and strategic advantages vis-à-vis the minority ethnic Georgian community. To further their goal of separation from Georgia, the Ossetian separatists organized and carried out a violent campaign of ethnic cleansing directed at the ethnic Georgian

⁴⁰⁵ Letter from Ministry of Economic Development of Georgia, Department of Statistics, to Deputy Head of the Department of Public International Law, Ministry of Justice of Georgia (11 August 2009) (reporting 1989 Soviet census data). GM, Vol. V, Annex 353.

⁴⁰⁶ Declaration of State Sovereignty of the Soviet Democratic Republic of South Ossetia (20 September 1990). GM, Vol. III, Annex 95.

population, which as a minority the latter were powerless to stop. Military conflict then ensued between the separatists and Georgian military and police forces, whose objectives were to prevent the secession of South Ossetia from Georgia, and to protect the ethnic Georgians living in South Ossetia who were under attack from the separatists. When the armed conflict came to an end in June 1992, the separatists had gained control of most of South Ossetia, but Georgian forces managed to maintain control over certain areas where there was a majority ethnic Georgian population. A cease-fire froze these battle lines and administrative arrangements into place⁴⁰⁷. The demographic changes produced by the ethnic violence were substantial. In the regions of South Ossetia that had come under separatist control, nearly the entire ethnic Georgian population had been expelled. Over 10,000 ethnic Georgians were permanently forced from their places of residence in this manner⁴⁰⁸.

4.6 The ethnic cleansing campaign began early in January 1991 when large numbers of ethnic Georgians were forced to flee the regional capital, Tskhinvali, because of increasing anti-Georgian violence. According to a 1992 Human Rights Watch report:

Ossetian bands, consisting mainly of armed young men in civilian clothes, were reported to have repeatedly and systematically threatened Georgians (who frequently were their neighbors), beat them up, and looted their homes.

After the mass exodus of Georgians, Ossetian ‘guerrillas’ robbed their homes bare; moreover, an estimated sixty-two Georgian

⁴⁰⁷ Agreement on Principles of the Settlement of the Georgian-Ossetian Conflict between the Republic of Georgia and the Russian Federation (the “Sochi Agreement”) (24 June 1992) (hereinafter “Sochi Agreement”) (1992). GM, Vol. III, Annex 102.

⁴⁰⁸ *Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Georgia* (2006), *op. cit.*, paras. 8-9. GM, Vol. II, Annex 63.

homes were burned. Sometimes the burning of homes was purely gratuitous. On other occasions, the guerrillas targeted those Georgians they suspected of fraternizing with or billeting the Georgian militia⁴⁰⁹.

4.7 Over the ensuing weeks and months, the ethnically-motivated violence spread throughout South Ossetia. The resulting mass displacement of ethnic Georgians has been recognized by the international community as ethnic cleansing. For example, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights described how the conflict in South Ossetia caused “large-scale ethnic cleansing”⁴¹⁰.

4.8 In light of the international recognition of the ethnic cleansing to which ethnic Georgians were subjected in 1991-1992, an exhaustive accounting of all the specific areas affected is unnecessary. A few examples drawn from Znauri District west of Tskhinvali, where the houses of ethnic Georgians were systematically burned and destroyed and their inhabitants abused, will suffice to illustrate the facts.

4.9 During 1991, 12 of the 14 predominantly ethnic Georgian villages of the Znauri District came under separatist control⁴¹¹. In these villages, approximately

⁴⁰⁹ *Ibid.*

⁴¹⁰ U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, Report submitted by Mr. Asbjorn Eide*, U.N. Doc. E/CN.4/Sub.2/1993/34 (10 August 1993), para. 285. GM, Vol. II, Annex 9. See also UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Working Paper Containing Suggestions for a Comprehensive Programme of Prevention of Discrimination and Protection of Minorities*, UN Doc. E/CN.4/Sub.2/1994/36 (6 July 1994), para. 31 (same). GM, Vol. II, Annex 17.

⁴¹¹ Declaration of Giorgi Kapanadze (10 July 2009). GM, Vol. V, Annex 381.

400 ethnic Georgian houses were burned down, including some 100 houses in Akhalsheni, 30 in Nedlati, 40 in Kaleti, and 20 in the town of Znauri⁴¹². In the villages of Khundisubani, Zemo and Kvemo Okona, Zvileti, Tkisubani and Sunisi, nearly half of all ethnic Georgian houses were destroyed⁴¹³. Of the roughly 3,000 ethnic Georgians who had lived in the 12 predominantly Georgian villages of Znauri District before the conflict, all but 200 -- more than 90 percent -- were ultimately forced to flee⁴¹⁴.

4.10 These ethnically-motivated attacks on Georgians unfolded at a time when more than 500 Soviet (until December 1991) and Russian Federation (after January 1992) troops were stationed in or sent to South Ossetia.⁴¹⁵ At all times, they represented the predominant military force in the area. Yet they did nothing to prevent the ethnic cleansing that was taking place or to protect the ethnic Georgians who were its targets. To the contrary, when the Soviet and later Russian troops intervened in the conflict, it was consistently on the Ossetian side. It was well-publicized Soviet and then Russian policy at the time to oppose Georgia's independence, and when this proved impossible, to weaken the fledgling Georgian State. Accordingly, Soviet and then Russian troops intervened as necessary to save the Ossetian separatists from defeat, and to help them establish control over parts of South Ossetia. In the process, they sometimes accompanied Ossetian forces carrying out ethnic cleansing against

⁴¹² Declaration of Malkhaz Meskhi (25 May 2009). GM, Vol. V, Annex 377. *See also* Declaration of Vazha Tsiskadze (10 July 2009). GM, Vol. V, Annex 385.

⁴¹³ Declaration of Malkhaz Meskhi (25 May 2009). GM, Vol. V, Annex 377.

⁴¹⁴ *Ibid.*

⁴¹⁵ Human Rights Watch, *Bloodshed in the Caucasus: Violations of Humanitarian Law and Human Rights in the Georgia-South Ossetia Conflict* (March 1992), p. 13. GM, Vol. III, Annex 145.

Georgians, and allowed it to take place. According to one Russian woman who was married to a Georgian and whose home was attacked:

We asked the USSR MVD troops for help but they refused. But they would help Ossetians. When we ask the soldiers to accompany us they refused and would give us no guarantees. When my house was robbed, the man on duty and the garrison said, ‘You started this porridge, now eat it up!’⁴¹⁶

4.11 A former local administrative official similarly testified that “when houses of Georgians were being burnt in these villages, the Soviet troops were deployed in Znauri district, but they did not react”⁴¹⁷.

4.12 By the middle of 1992, with large portions of South Ossetia cleansed of ethnic Georgians, the parties to the conflict agreed to the cessation of hostilities. On 24 June 1992, the Agreement on the Principles of the Settlement of the Georgian-Ossetian Conflict (the “Sochi Agreement”) was signed. Notably, the parties to the Sochi Agreement were only Georgia and Russia. The separatists were not signatories. After the Sochi Agreement, the *de facto* separatist regime controlled Java District, substantial parts of Tskhinvali District, large portions of Znauri District and the western part of Akhagori District, while the Georgian government remained in control of two municipalities to the north and east of Tskhinvali (Kurta and Eredvi Municipalities, respectively), two villages in Znauri District that were subsequently incorporated into Tigva Municipality, and the eastern portions of Akhagori District. Figure 4.1 depicts the areas of South Ossetia controlled by Tbilisi and the separatist *de facto* regime as of June 1992.

⁴¹⁶ HRW, *Bloodshed in the Caucasus* (1992), *op. cit.*, p. 23. GM, Vol. III, Annex 145.

⁴¹⁷ Declaration of Vazha Tsiskadze (10 July 2009), *op. cit.* GM, Vol. V, Annex 385.

4.13 The Sochi Agreement established a Joint Control Commission (“JCC”), comprised of Georgian, Russian, and North Ossetian and South Ossetian representatives in addition to participation by the Organization for Security and Cooperation in Europe (“OSCE”)⁴¹⁸. The JCC was charged with supervising observance of the Sochi Agreement, drafting and implementing conflict settlement measures and promoting dialogue. The Sochi Agreement also provided for the return of refugees. In particular, Article 4 stated:

The Parties shall start immediately negotiations on economic restoration of the regions located in the conflict zone and creation of proper conditions for return of refugees.

The Parties deem it inadmissible to apply economic sanctions and blockade, and any other impediments to free movement of commodities, services and people and commit themselves to provide humanitarian assistance to the affected population⁴¹⁹.

4.14 Russia’s violations of these commitments and its denial to ethnic Georgians of the right to return, both under the Sochi Agreement and (especially) the 1965 Convention, will be addressed in Chapter 5 of this *Memorial*.

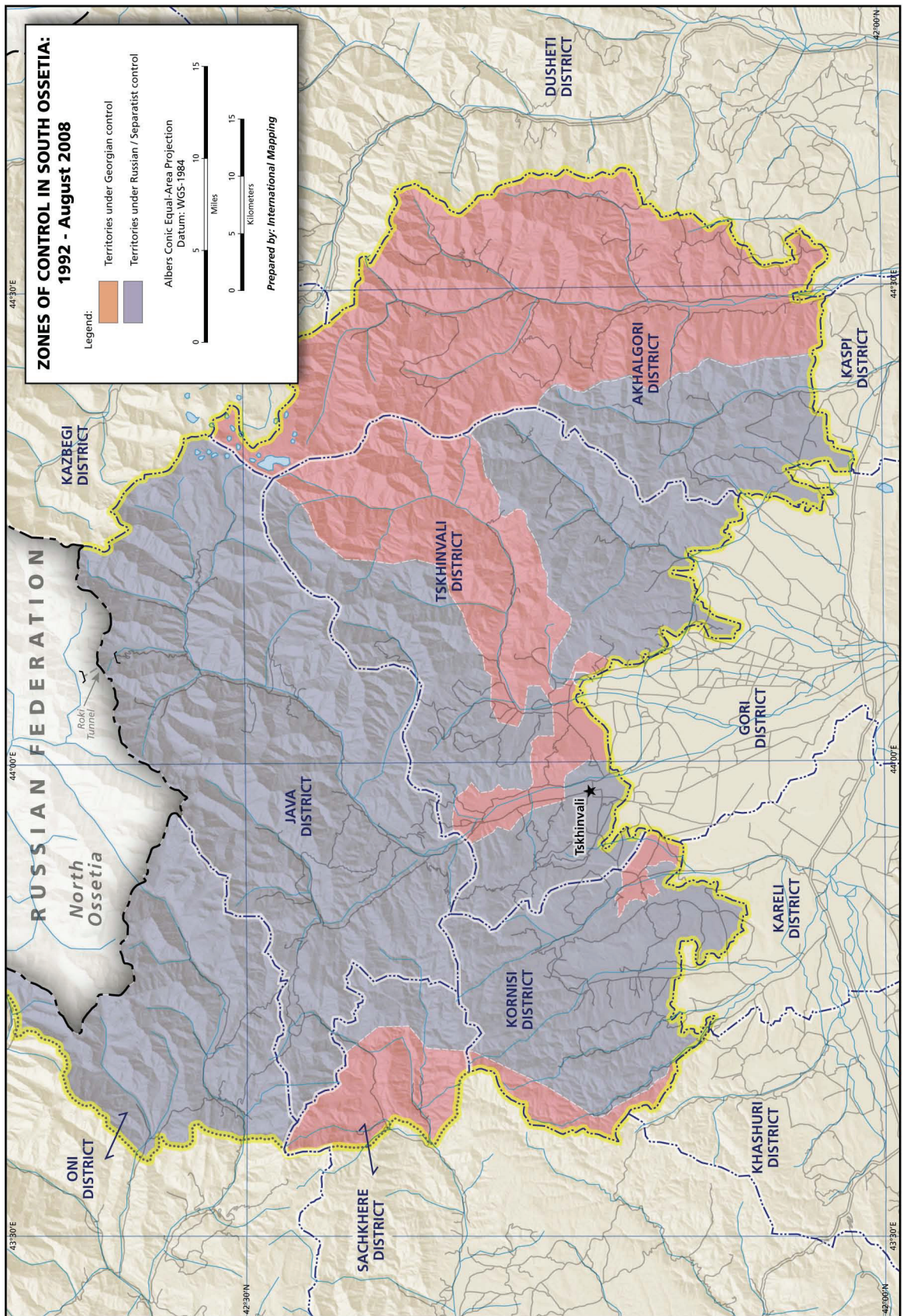
4.15 The Sochi Agreement also established the Joint Peacekeeping Forces group (“JPKF”) to monitor the ceasefire in South Ossetia⁴²⁰. The JPKF was ostensibly intended to provide a tri-partite peacekeeping force of Georgian, Russian and North Ossetian contingents⁴²¹. In this manner, Russia’s military presence in South Ossetia, legally a part of Georgia, was given legitimacy.

⁴¹⁸ Sochi Agreement (1992), *op. cit.*, Art. 3. GM, Vol. III, Annex 102.

⁴¹⁹ *Ibid.*, Art. 4.

⁴²⁰ *Ibid.*, Art. 3, para. 3.

⁴²¹ *Ibid.*, Art. 10.



For illustrative purposes only.

Figure 4.1

Georgia was compelled to agree to it as a condition of the cease-fire enforced by Russian troops, which stopped, at least temporarily, the ethnic cleansing of Georgian civilians carried out by Ossetian militias⁴²². In fact, the JPKF was dominated by the ostensibly neutral Russian peacekeepers and their North Ossetian allies, whose ethnic kinship and sympathy for their South Ossetian brethren rendered them anything but neutral as well⁴²³. In all, Russian and North Ossetian “peacekeepers” outnumbered their Georgian counterparts by two-to-one⁴²⁴.

Section II. Russia’s Domination of South Ossetia

4.16 It was after the signing of the Sochi Agreement that Russia began to exercise increasing control over the *de facto* South Ossetian authorities, sustaining them militarily and economically, and eventually appointing active-duty Russian military and security officials as senior Ministers of the *de facto* South Ossetian government, responsible for all military, police and intelligence activities in South Ossetia, and directly responsible to their superiors in Moscow. By August 2008, Russia had achieved complete control over the *de facto* governmental authority in South Ossetia, including the “President”, Eduard Kokoity, who was also chosen for his job by Moscow. Russia’s control over the South Ossetian authorities and their *de facto* governmental organs was not imposed against the will of the latter. To the contrary, it was welcomed by them.

⁴²² Eduard Shevardnadze, “Thoughts about Past and Future” (2006). GM, Vol. III, Annex 175.

⁴²³ International Crisis Group, *Georgia’s South Ossetia Conflict: Make Haste Slowly*, Europe Report No. 183 (7 June 2007). GM, Vol. III, Annex 162.

⁴²⁴ Each party (Russian, North Ossetian and Georgian) was to provide a maximum of 500 troops to the JPKF. Decision #1 of the Session of the Joint Control Commission (JCC) Vladikavkaz (4 July 1992). GM, Vol. III, Annex 103.

As expressed on repeated occasions by Mr. Kokoity, South Ossetia aspired to be, and considered itself, a part of Russia, subject and subordinate to the governmental authorities in Moscow. Thus, the South Ossetian “government”, whose senior members were Russian officials or appointed by them, willingly placed itself under Russian control.

4.17 Throughout the 1990s, beginning soon after the Sochi Agreement was signed and the cease-fire was implemented, Russia abandoned its putative neutrality by organizing, financing, training and arming South Ossetia’s *de facto* security forces. According to Mr. Alan Parastaev, who was the Minister of Internal Affairs in the *de facto* South Ossetian government at the time:

[t]he Ministry of Internal Affairs which I led did not have any kind of an armed unit. To solve this issue, a letter was sent by Ludwig Chibirov [then the President of the *de facto* South Ossetian government] to the President of the Russian Federation, [Boris] Yeltsin, so that Russia could assist us in equipping a special police unit of the Ministry of Internal Affairs. The letter was given a positive response and soon we received full equipment for the special police force (“OMON”). It included military uniforms as well as firearms, ammunition, means of communication and other necessary equipment. Consequently, we equipped a unit composed of 350 persons. With the help of this unit, I could make the situation stable in the Republic and accordingly, OMON became the main means of exercising control over the Republic. Besides, we were getting means of transportation from Russia in the form of vehicles⁴²⁵.

4.18 In his testimony, Mr. Parastaev further explained how weapons from Russia reached South Ossetia with the assistance of the Russian Federal Security

⁴²⁵ Statement of Alan Parastaev (23 June 2009). GM, Vol. V, Annex 411.

Service (“FSB”) and Russian Military Intelligence (“GRU”), all of which ensured that the weapons bypassed Russian customs registration⁴²⁶.

4.19 Russia also played a key role in creating and training South Ossetian military forces. In 2000, for instance, two senior Russian officers arrived in Tskhinvali to assemble a group of approximately 800 ethnic Ossetians, whom they then took to Russia for intensive military training⁴²⁷. Within a period of three months, the Ossetians came back trained and armed, fully prepared for service in separatist militia units⁴²⁸. In other instances, South Ossetian military groups were sent to North Ossetia for training with the Russian 58th Army⁴²⁹.

4.20 Beginning in 2000, GRU officers arrived in Tskhinvali and took charge of forming Ossetian armed units, including the “*Apalchenie*” militia, which were village-based armed groups that included civilians⁴³⁰. The GRU provided members of these units both arms and salaries⁴³¹. At least by 2003, South Ossetian militia were receiving their salaries directly from Russia. Ordinary soldiers were paid 4,000 rubles, while officers were paid 8,000 rubles⁴³². One

⁴²⁶ *Ibid.* (“Weapons were brought to South Ossetia from Russia bypassing the post of Zaramag (*i.e.* were not registered at the Russian customs). The agents of the Main Intelligence Unit of the Ministry of Defense of Russia (GRU) and those of the Federal Security Service (FSB) were involved in this process”).

⁴²⁷ Interview with Akaki Tsotniashvili (20 May 2009). GM, Vol. V, Annex 376.

⁴²⁸ *Ibid.*

⁴²⁹ Statement of Alan Parastaev (23 June 2009). GM, Vol. V, Annex 411. *See also* Interview with Akaki Tsotniashvili (30 May 2009), *op. cit.* GM, Vol. V, Annex 376.

⁴³⁰ Interview with Akaki Tsotniashvili (20 May 2009), *op. cit.* GM, Vol. V, Annex 376.

⁴³¹ Declaration of Malkhaz Meski (25 May 2009), *op. cit.* GM, Vol. V, Annex 377.

⁴³² *Ibid.*

witness testified that the “personally witnessed” that “Russian officers were creating and training these armed groups”.⁴³³ Another witness described how:

Russians were conducting trainings for Ossetians. They would collect the local Ossetian males, including even school children of the age of 14-15. They were installing targets and teaching them to shoot, and then leaving them with weapons and ammunition. The trainings were conducted by Russian officers, but these were not peacekeepers⁴³⁴.

4.21 This military assistance escalated in 2004, when Russia appointed a Russian General Officer, Lieutenant General Anatoly Barankevich, to serve as South Ossetia’s *de facto* Minister of Defence and Emergency Situations. As Lieutenant General Barankevich himself explained, as Defence Minister of South Ossetia he endeavoured “to add people, staff, create sub-units, conduct trainings and make battle arrangements”⁴³⁵. These activities were seen by a witness who observed “Russian officers” who “were wearing Russian military uniforms with Russian flags” conducting trainings of the Ossetian militia⁴³⁶

4.22 Russia performed similar services for the *de facto* South Ossetian police forces. In 2000, FSB officers arrived in Tskhinvali and promptly took control of

⁴³³ Declaration of Lavrenti Gabatashvili (10 July 2009). GM, Vol. V, Annex 415.

⁴³⁴ Declaration of Tsitsino Shaorshadze (10 July 2009). GM, Vol. V, Annex 383.

⁴³⁵ “There is no place for this President in South Ossetia”, (Interview with Anatoly Barankevich), *Kommersant* (4 December 2008). GM, Vol. 4, Annex 277. *See also* “I am not going to hide that Russia has armed it well here”, *Vlast*, No. 38 (641) (26 September 2005) (interview with Speaker of the *de facto* South Ossetian Parliament, Znaur Gassiev, who described how South Ossetia had been “armed” by “Russia”). GM, Vol. IV, Annex 215.

⁴³⁶ Declaration of Lavrenti Gabatashvili (10 July 2009), *op. cit.* GM, Vol. V, Annex 415. *See also* Declaration of Zurab Khutsishvili (July 10 2009). GM, Vol. V, Annex 413; Declaration of Spartak Nefaridze (July 10 2009). GM, Vol, V, Annex 414.

all the law enforcement organs in South Ossetia⁴³⁷. The work of establishing the *de facto* South Ossetian security apparatus was divided between the FSB and the GRU. The FSB controlled the fields of intelligence, security and police, while the GRU was primarily responsible for the creation and training of Ossetian armed militia and the delivery of the arms they would need to fight⁴³⁸.

4.23 Russian control of South Ossetia was exercised through senior, active-duty Russian military officers who were assigned to the most senior positions in the *de facto* South Ossetian government, and given direct responsibility for all military, security and intelligence matters in that territory. As indicated, Russian **Lieutenant-General Anatoly Barankevich** was assigned the role of Minister of Defence and Emergency Situations of South Ossetia in 2004. He was succeeded by another senior active duty Russian military officer, **Major-General Andrei Ivan Laptev**, who served in the same capacity from December 2006 to March 2008⁴³⁹. As Minister, Major General Laptev exercised direct command over all *de facto* South Ossetian military and other security forces, and over all weapons, vehicles and other equipment belonging to those forces. Prior to his appointment as Minister of Defence, Major General Laptev served in the same *de facto* Ministry as Head of General Headquarters⁴⁴⁰.

⁴³⁷ Interview with Akaki Tsotniashvili (20 May 2009), *op. cit.* GM, Vol. V, Annex 376.

⁴³⁸ *Ibid.*

⁴³⁹ Andrei Illarionov, "The Russian Leadership's Preparation for War, 1999-2008", *The Guns of August 2008: Russia's War in Georgia*, Svante E. Cornell & Frederick Starr eds., Central Asia-Caucasus Institute (2009) (hereinafter Illarionov, "Russian Leadership's Preparation for War, 1999-2008" (2009)), p. 81. GM, Vol. III, Annex 178.

⁴⁴⁰ Ministry of Internal Affairs, Government of the Republic of Georgia, *Russian Officials in the De Facto Administrations of South Ossetia and Abkhazia* (undated) (hereinafter *Russian Officials*

4.24 In June 2004, the Russian FSB appointed **General Mairbeg Bichegkaev** to serve as Chairman of the *de facto* South Ossetian Committee of State Security (“KGB”). Prior to his transfer, General Bichegkaev served as Deputy Head of the North Ossetian Security Service. In January 2005, he was replaced by another Russian General Officer, **Major General Anatoly Yarovoy**. Prior to his assignment in South Ossetia, Major General Yarovoy headed the FSB branch in the Republic of Mordovia in central Russia from 2001 to 2004⁴⁴¹. Before that, he had worked at the FSB’s unit in Astrakhan District in the south-eastern part of the Russian Federation⁴⁴². In February 2006, Major General Yaravoy was succeeded as Chairman of the *de facto* South Ossetian KGB by **Major General Nikolai Vasili Dolgopolov**. Before his appointment to the *de facto* South Ossetian government, Major General Dolgopolov had a long career in Soviet and then Russian counter-intelligence. From 1983 to 1999, he worked at the Soviet and then Russian KGB, reconstituted as the FSB, Moscow Division⁴⁴³. Between 1999 and 2005, Major General Dolgopolov served as Head of the FSB in the Russian Republic of Mari-El⁴⁴⁴.

4.25 Russia also controlled South Ossetia’s military and other security forces through **Major General Igor Sergey Grudnev**, the Military Advisor to the *de*

in the De Facto Administrations of South Ossetia and Abkhazia (undated)). GM, Vol. V, Annex 409.

⁴⁴¹ Illarionov, “Russian Leadership’s Preparation for War, 1999-2008” (2009), *op. cit.*, pp. 58, 81. GM, Vol. III, Annex 178.

⁴⁴² *Russian Officials in the De Facto Administrations of South Ossetia and Abkhazia* (undated), *op. cit.* GM, Vol. V, Annex 409.

⁴⁴³ Illarionov, “Russian Leadership’s Preparation for War, 1999-2008” (2009), *op. cit.*, pp. 58, 81. GM, Vol. III, Annex 178.

⁴⁴⁴ *Ibid.*

facto President of South Ossetia, Mr. Eduard Kokoity. Major General Grudnev served in this capacity from 2005 to 2006. Prior to serving in South Ossetia, he held numerous leadership positions in the Russian military command. In 1999, he managed special operations in Chechnya, and was subsequently named Deputy Military Commander in that region. From 2001 to 2003, he was the Head of the Piatigorsk Operative Division of the Russian Internal Forces in southern Russia. Still later, he was given the position of Deputy Commander of Russian Internal Forces in Siberia. After his service in South Ossetia, Major General Grudnev was transferred back to the Russian Federation⁴⁴⁵.

4.26 Russian control of South Ossetia extended beyond the military and security apparatus, and included the economic sphere as well. Indeed, the majority of the South Ossetian economy was financed by direct budgetary subsidies from the Russian Federation⁴⁴⁶. According to South Ossetia's former Minister of the Interior, Mr. Parastaev, Russia's "financial assistance was the only source of income for us and the means with which we were attempting to survive and work"⁴⁴⁷.

4.27 The monies South Ossetia received from Russia were funnelled through the North Ossetian budget⁴⁴⁸. The Russians transferred the money allocated for South Ossetia to the account of the North Ossetian Ministry of Finance where it

⁴⁴⁵ *Russian Officials in the De Facto Administrations of South Ossetia and Abkhazia* (undated), *op. cit.* GM, Vol. V, Annex 409.

⁴⁴⁶ Alexey Pleshkov, "South Ossetia: Fight for the financial hole" (1 September 2008) (hereinafter Pleshkov, "South Ossetia: Fight for the financial hole" (2008). GM, Vol. IV, Annex 281; Statement of Alan Parastaev (23 June 2009). GM, Vol. V, Annex 411.

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*

was re-classified as “assistance” before being sent to South Ossetia⁴⁴⁹. South Ossetian separatists received the money in cash⁴⁵⁰.

4.28 The Russian Federation not only brought South Ossetia’s *de facto* government and economy within its embrace, it is also took the South Ossetian people under its roof by granting them Russian citizenship and giving them Russian passports. The process of “passportization” began in the late 1990s but accelerated dramatically in October 2003 when the Russian government amended its citizenship laws to simplify the procedure for South Ossetians to acquire Russian passports⁴⁵¹.

4.29 The next month, in November 2003, Russia’s Security Council Secretary, Igor Ivanov, met with the leaders of South Ossetia and agreed to expedite the process of granting Russian citizenship to residents of the two separatist territories⁴⁵². Russian media sources reported that the Russian Ministry of Foreign Affairs was preparing tens of thousands of blank passports to be sent to these territories⁴⁵³. Having been granted Russian citizenship, South Ossetians

⁴⁴⁹ *Ibid.*

⁴⁵⁰ *Ibid.*

⁴⁵¹ “Putin corrected law on citizenship”, *Lenta.ru* (24 September 2003). GM, Vol. IV, Annex 193.

⁴⁵² Illarionov, “Russian Leadership’s Preparation for War, 1999-2008” (2009), p. 55. GM, Vol. III, Annex 178.

⁴⁵³ *Ibid.*

who chose to accept Russian passports were able to vote in the Russian Federation's Presidential elections on 14 March 2004⁴⁵⁴.

4.30 Other attributes of Russian citizenship were also provided to South Ossetians. In particular, the Russian Federation provided South Ossetians with pensions substantially greater than the Georgian government could afford to provide. For example, in 2004, Russian pensions paid in South Ossetia ranged from the equivalent of US\$100 to US\$150 per month (compared to Georgian pensions of US\$9 per month)⁴⁵⁵. In 2005, a separatist official responsible for the South Ossetian pension fund explained that it was his intention to build a "common legal space with Russia" and to "apply all the benefits existing in the territory of Russian Federation to the population living in our republic"⁴⁵⁶.

4.31 Russian financial support for South Ossetia and its people was intended to foster the "integration, deepening of political, economic, cultural and other ties with the Republic of North Ossetia"⁴⁵⁷. Further to this end, by September 2005, it was reported that "a number of agreements of industrial and agricultural sectors were signed between South and North Ossetia" as well as "agreements

⁴⁵⁴ "South Ossetia preparing for Presidential Elections in Russian Federation", *Regnum* (29 January 2004). GM, Vol. IV, Annex 196.

⁴⁵⁵ Therese Freese, *Fate of Conflict Zone Residents Hangs on a Thread in South Ossetia*, Central Asia-Caucasus Institute (28 July 2004). GM, Vol. III, Annex 174.

⁴⁵⁶ Interview with the Chairman of Pension Fund and Social Protection of South Ossetia, *IA Regnum* (9 March 2005). GM, Vol. IV, Annex 210.

⁴⁵⁷ "Presidents of North and South Ossetia discussed the process of fulfillment of Putin's instructions", *IA Regnum* (21 July 2005). GM, Vol. IV, Annex 213.

between separate regions of North Ossetia-Alania and South Ossetia”⁴⁵⁸. These agreements had been entered into in furtherance of the “enhancing and expanding integration between the two republics”⁴⁵⁹.

4.32 In March 2006, Mr. Kokoity, the South Ossetian *de facto* President, declared that “North and South Ossetia must work as a single government” that must “coordinate our affairs”⁴⁶⁰. In fulfilment of that aspiration, on 22-24 March 2006, an extraordinary joint session of the South Ossetia and North Ossetia parliaments was held in the North Ossetian city of Vladikavkaz. Issues discussed included the “strengthening” of the “social, political and economic situation” and the “implementation” of “integration projects” involving “economic, trade and cultural cooperation”⁴⁶¹. Genadi Bukaev, an Assistant to the Russian Prime Minister, told the joint session that they would soon be a unified republic. He also stated that the “Russian leadership has already considered this issue”, which was why those present “should facilitate to soonest realisation of the taken decision”⁴⁶².

4.33 Two months later, in May 2006, Mr. Kokoity publicly expressed great “satisfaction” with the “positive results” that had been “achieved in the field of

⁴⁵⁸ “Heads of North and South Ossetia signed a joint statement in Tskhinvali”, *IA Regnum* (18 September 2005) (hereinafter “Heads of N. and S. Ossetia signed joint statement” (2005)). GM, Vol. IV, Annex 214.

⁴⁵⁹ *Ibid.*

⁴⁶⁰ “Kokoity: North and South Ossetia must work as a single government”, *IA Regnum* (28 March 2006) (hereinafter “Kokoity: North and South Ossetia must work as a single government” (2006)). GM, Vol. IV, Annex 220.

⁴⁶¹ *Ibid.*

⁴⁶² “Russian leadership took a principal decision on South Ossetia joining RF”, *IA Regnum* (23 March 2006). GM, Vol. IV, Annex 218.

integration of the two Ossetias”⁴⁶³. Urging even greater integration, Mr. Kokoity declared there “should not be borders between unified Ossetia” and that “[a]ll of us -- we are citizens of Russia and shall be strengthening the positions of Russia, we have a big responsibility, and we have to perform our duty jointly and in full cooperation”⁴⁶⁴.

4.34 In light of his expressed desire to integrate South Ossetia into Russia, and his commitment to “strengthening the positions of Russia”, it is not surprising that Mr. Kokoity became President of South Ossetia’s *de facto* government, in 2001, with Russia’s full backing.

4.35 That year, members of the Research Institute of Humanitarian Affairs in Moscow, working under the command of the Russian FSB, met with Mr. Alan Parastaev, the *de facto* Minister of Internal Affairs, to inform him of their “interest” in his political career. According to Mr. Parastaev, he was told that the Research Institute worked in the field of “election technologies” and wanted to help him win the presidential elections in South Ossetia if he decided to run⁴⁶⁵. Mr. Parastaev was asked about his vision for the resolution of the conflict between South Ossetia and Georgia. When he responded that it should be resolved through negotiations, his interviewers reacted with disapproval⁴⁶⁶.

⁴⁶³ “Eduard Kokoity: We shall not stop in our achievements”, *IA Regnum* (19 May 2006) (hereinafter “Eduard Kokoity: We shall not stop in our achievements” (2006)). GM, Vol. IV, Annex 222.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ Statement of Alan Parastaev (23 June 2009). GM, Vol. V, Annex 411.

⁴⁶⁶ *Ibid.*

Although they met with him one more time, the FSB lost interest in him⁴⁶⁷.

According to Mr. Parastaev:

I think I was not regarded to be a suitable candidate for Russians because of my attitude toward Georgians and towards methods of regulating the conflict and therefore, they did not continue working with me. Instead, they found Eduard Kokoity [South Ossetia's current "President"] that was under the control of Russian special services... With their help, Kokoity managed to become a president⁴⁶⁸.

4.36 Mr. Parastaev's testimony is corroborated in an account by Mr. Andrei Illarionov, who served as the senior economic advisor to Russia's President from 2000 to 2005. In a 2009 article, Mr. Illarionov described the so-called "Meeting of Four" that took place in February 2001⁴⁶⁹. During this meeting, an agent of the FSB met with three men who were considered to be the most radical South Ossetian leaders in order to "work out a strategy that would deny victory to the incumbent, Ludvig Chibirov" of whom Russia no longer approved⁴⁷⁰. The invitees included the intellectual leader of the South Ossetian national movement, Alan Chochiev; former South Ossetian "Prime Minister" Gerasim Khugaev; and the Russian citizen and former South Ossetian trade representative in Moscow, Eduard Kokoity⁴⁷¹. Ultimately, the Russians selected Mr. Kokoity

⁴⁶⁷ *Ibid.*

⁴⁶⁸ *Ibid.*

⁴⁶⁹ Illarionov, "Russian Leadership's Preparation for War, 1999-2008" (2009), *op. cit.*, p. 52. GM, Vol. III, Annex 178.

⁴⁷⁰ *Ibid.*

⁴⁷¹ *Ibid.* See also "South Ossetia – it is already Russia", *Nezavisymaia Gazeta* (17 September 2004) (Mr. Kokoity states in an interview that he has been a Russian citizen since 1992). GM, Vol. IV, Annex 199.

as their favoured candidate, precisely because of his strong anti-Georgian views and his desire for integration with Russia⁴⁷².

4.37 With Russia's backing, Mr. Kokoity won election as the President of South Ossetia on 6 December 2001. As one informed observer noted, Mr. Kokoity "remained the only aspirant whom the Russian authorities were prepared to support in the South Ossetian president elections scheduled for late 2001"⁴⁷³.

4.38 Almost immediately after his election, Mr. Kokoity "revealed a plan to gain legal independence for South Ossetia by launching a war against Georgia"⁴⁷⁴. The following month, Mr. Kokoity urged the *de facto* South Ossetian Parliament to adopt a decree requesting Russian authorities to admit South Ossetia to the Russian Federation⁴⁷⁵. According to the then-economic advisor to Russia's President, the Chairman of South Ossetia's *de facto* Parliament, Stanislav Kochiev, hand-delivered the request to Moscow in March 2002⁴⁷⁶. According to the same source, on 15 January 2003, Mr. Kokoity repeated his request for unification with Russia in a meeting with President Putin⁴⁷⁷. The "Russian leadership responded on February 2, 2003, by sending

⁴⁷² See Illarionov, "Russian Leadership's Preparation for War, 1999-2008" (2009), *op. cit.*, p. 52. GM, Vol. III, Annex 178; Statement of Alan Parastaev (23 June 2009). GM, Vol. V, Annex 411.

⁴⁷³ Illarionov, "Russian Leadership's Preparation for War, 1999-2008" (2009), *op. cit.*, p. 52. GM, Vol. III, Annex 178.

⁴⁷⁴ *Ibid.*

⁷¹ *Ibid.*

⁴⁷⁶ *Ibid.*

⁴⁷⁷ *Ibid.*

significant military equipment, including twelve T-55 tanks, via the Roki Tunnel to South Ossetia”⁴⁷⁸. It was one of numerous shipments of arms and military equipment by Russia to South Ossetian separatist forces in the build-up to the armed conflict that began in August 2008. For Mr. Kokoity and the South Ossetian leadership, it was another sign that South Ossetia was on the way to full integration with Russia. By September 2004, when a journalist asked him about the prospects of integration with the Russian Federation, Mr. Kokoity answered: “South Ossetia is already Russia, notwithstanding likes and dislikes of anyone. 98% of the population of our Republic are Russian citizens”⁴⁷⁹.

4.39 Thus, as Mr. Kokoity himself had admitted, by September 2004, if not earlier, the “Russification” of South Ossetia was, for all practical purposes, a fait accompli. Russia’s control over South Ossetia, and its *de facto* political authorities and governmental organs was firmly established. Moscow’s man had been installed as President, Russian military and intelligence officials occupied the most important posts in the *de facto* regime -- controlling the *de facto* South Ossetian security forces and their arms and other equipment -- the economy was entirely dependent on Russian aid and increasingly intertwined with North Ossetia’s, and the vast majority of Ossetians had become passport-carrying citizens of the Russian Federation. Equally significant, there was no Ossetian resistance to Russian control. To the contrary, integration into Russia and subordination to Moscow were precisely what the Ossetian separatists had sought.

⁴⁷⁸ *Ibid.*

⁴⁷⁹ “South Ossetia – it is already Russia”, *Nezavisymaia Gazeta* (17 September 2004), *op. cit.* GM, Vol. IV, Annex 199.

4.40 Thereafter, Russian control and dominance in South Ossetia continued to grow. In November 2005, the South Ossetian “Prime Minister” announced that the “structure” of the *de facto* South Ossetian government would be “adapted according to the Russian analogue” whereby the existing system would be “replaced by structures and agencies analogous to those of Russian Federation” and the “function of the ministries” of South Ossetia would be “adapted to the Russian version as well”⁴⁸⁰.

4.41 In 2007, Mr. Kokoity urged the residents of South Ossetia to participate in Russian elections to the State Duma, saying: “We will act in strict compliance with the Russian Federation legislation, to create all necessary conditions for normal voting of Russian Federation citizens on the territory of South Ossetia”⁴⁸¹. Mr. Kokoity declared that “every citizen of South Ossetia is obligated to appear to polling station and vote” in the Russian elections⁴⁸².

4.42 By the beginning of 2008, South Ossetia’s integration into Russia was far along. On 20 February, after meeting with the Chairman of the Russian State Duma’s Committee on International Affairs, Mr. Kokoity announced that “new plans have been elaborated” for South Ossetia that were “linked with the fact that Russia already now has a moral right to more actively support interests of

⁴⁸⁰ “Structural changes were made within government of South Ossetia”, *IA Regnum* (29 November 2005). GM, Vol. IV, Annex 216.

⁴⁸¹ “The Head of South Ossetia appealed to the people to actively participate in the State Duma elections”, *IA Regnum* (26 November 2007) (hereinafter “Head of South Ossetia appealed to the people to actively participate in State Duma elections” (2007)). GM, Vol. IV, Annex 226.

⁴⁸² *Ibid.*

Russian Federation citizens living” in South Ossetia⁴⁸³. In that connection, Mr. Kokoity emphasized that “[w]e are citizens of Russia” whose “struggle and will” is to “integrate into Russia”⁴⁸⁴. The plan, Mr. Kokoity made clear, was a “Russian plan” that would be “implemented by Russian Federation” and its goal was “maximum integration into Russia”⁴⁸⁵.

4.43 The content of these Russian plans soon became apparent. On 21 March 2008, the Russian State Duma adopted a Resolution calling on the Government to consider “the expediency of recognizing the independence” of South Ossetia (and Abkhazia) and calling for greater support to “Russian citizens” in both regions. In an address to the Duma on 2 April 2008, the Russian Foreign Minister said that he would carefully consider its recommendations and promised to provide support to the people of South Ossetia and Abkhazia, “most of which are citizens of Russia”.

4.44 In sum, in the years following the initial bout of ethnic cleansing in 1991-1992, Russia came to control the *de facto* South Ossetian administration. For all practical purposes, by 2008 South Ossetia had become an appendage of Russia itself.

⁴⁸³ “Eduard Kokoity: Recognition of South Ossetia’s independence is really possible already in 2008”, *IA Regnum* (20 February 2008) (hereinafter “Kokoity: Recognition of S. Ossetia’s independence is possible” (2008)). GM, Vol. IV, Annex 227.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ *Ibid.*

Section III. Russia's Command and Control of South Ossetian Military Forces, 2008

4.45 By the summer of 2008, when the ethnic Georgian villages of South Ossetia were systematically destroyed and their inhabitants expelled, the separatist authorities in South Ossetia had become completely controlled by Russia -- politically, economically and militarily. Indeed, this was the concerted choice of the *de facto* South Ossetian leadership, who openly invited integration into Russia and subservience to Moscow.

4.46 In the immediately preceding Chapter, Georgia described how the Russian army directly participated in ethnic cleansing when its personnel looted and burned ethnic Georgian villages, violently abused the inhabitants and threatened them with death if they refused to leave. Sometimes the Russian military engaged in these abuses alone or in collaboration with separatist forces; other times, the Russian army was present when separatist forces engaged in ethnic cleansing but failed to intervene. All of these acts and omissions engage Russia's responsibility. In addition, South Ossetian forces sometimes operated outside the physical presence of Russian military units when they committed abuses against ethnic Georgians. However, as described below, Russia is responsible for their acts of ethnic cleansing, even when the Russian army was not physically present.

4.47 Not only was South Ossetia completely controlled in all material respects by Russia, as described above in Section II, but the separatist military forces themselves were under the command and control of senior Russian military and security officers, who had been installed in these positions by Russia, and who in fact directed the South Ossetian military and paramilitary forces. Further, in the days preceding the ethnic cleansing, Russia augmented the strength of the

separatist military apparatus by using its State organs to recruit additional manpower from Russia, many of whom were members of Russian military units. These facts, singly and collectively, demonstrate Russia's responsibility for acts of discrimination committed by South Ossetian forces.

A. RUSSIAN OFFICERS IN THE SOUTH OSSETIAN ADMINISTRATION

4.48 During the ethnic cleansing carried out directly by Russian military forces in South Ossetia in and after August 2008, and carried out by South Ossetian forces operating in collaboration with or under the protection of Russian forces, as described in Chapter 3, all top military and security positions in the *de facto* South Ossetian administration were occupied by Russian State officials. As detailed below, these included the highest-ranking *de facto* positions relating to defence, intelligence, border security, finance and governmental administration, including, *inter alia*, the Minister of Defence, the Secretary of the Security Council, the Minister of Internal Affairs, the Chairman of the KGB, the Commander of the State Border Guard, and the Chairman of the Committee on State Control and Economic Security.

1. *South Ossetia's Russian Minister of Defence and Emergency Situations*

4.49 **General Vasili Lunev** was appointed Minister of Defence and Emergency Situations of South Ossetia in March 2008. He was the third successive Russian General Officer to assume this position, dating back to 2004⁴⁸⁶. Prior to his appointment as the Minister of Defence and Emergency Situations, General Lunev had a succession of senior posts in the Russian army. From 2003 to 2004, he was the First Deputy of the Army Command of the

⁴⁸⁶ See *supra* Chapter 4, para. 4.23.

Siberian Military District. From 2004 to 2007, he served in Syria as a Russian military advisor. In 2007-2008, he was the Military Commissioner of the Perm Region of Russia⁴⁸⁷. As is clear from an interview he gave on 14 August 2008, his appointment to serve in South Ossetia was not his personal choice.

Question: How did it happen that you, Russian General that served in the Far East, Siberia, Ural -- were appointed as the Minister of Defense and Emergency Situations of South Ossetia?

General Lunev: It happened because it was necessary.

Question: Could you give more details?

General Lunev: No details.

Question: You worked in Perm only for a couple of months. Then you left. Did it happen because you were needed in the South?

General Lunev: Yes.

Question: So it was not your own initiative, was it?

General Lunev: No, it was not⁴⁸⁸.

4.50 General Lunev's interview makes equally clear that his appointment was a prelude to military action.

⁴⁸⁷ "Interview with Vasily Lunev", *Companion Magazine* (14 August 2008) (hereinafter "Interview with Vasily Lunev" (2008)). GM, Vol. IV, Annex 245. *See also* Illarionov, "Russian Leadership's Preparation for War, 1999-2008" (2009), *op. cit.* p. 82. GM, Vol. III, Annex 178.

⁴⁸⁸ "Interview with Vasily Lunev" (2008), *op. cit.* GM, Vol. IV, Annex 245.

Question: Did you understand that you were going to the place where you will have to command the army in action?

General Lunev: Yes, I did⁴⁸⁹.

4.51 Reflecting the integration of the *de facto* separatist defence organs into the Russian chain of command, on 9 August (during the ethnic cleansing), Russia transferred General Lunev from the *de facto* South Ossetian Defence Ministry and appointed him Commander of the Russian 58th Army⁴⁹⁰, that is, the same military unit that spearheaded Russia's invasion of Georgia. He was replaced as Minister of Defence by yet another Russian General Officer, Major General Yuri Tanaev.

2. *South Ossetia's Russian Secretary of the Security Council*

4.52 The high-ranking position of Secretary of the Security Council of South Ossetia's *de facto* administration was also occupied by a Russian General Officer during the ethnic cleansing of August 2008 and thereafter. Before his appointment in South Ossetia, **Lieutenant General Anatoly Barankevich** was an officer in the Russian army, where his assignments included such high-profile positions as First Deputy Military Commissioner of Chechnya and Deputy Military Commissioner of Stavropol Krai⁴⁹¹. Lieutenant General Barankevich was originally appointed South Ossetia's Minister of Defence in 2004, and

⁴⁸⁹ *Ibid.*

⁴⁹⁰ Illarionov, "Russian Leadership's Preparation for War, 1999-2008" (2009), *op. cit.*, p. 82. GM, Vol. III, Annex 178.

⁴⁹¹ *Ibid.*

became the Secretary of the *de facto* Security Council of South Ossetia in December 2006⁴⁹².

4.53 Following the military hostilities of August 2008, Lieutenant General Barankevich was transferred by the Russian government to the position of Deputy to the Minister of Regional Development of the Russian Federation on Restoration of South Ossetia. Lieutenant General Barankevich explained that the Minister of Regional Development had told him that the “Department of South Ossetia would be created and would work under my supervision, because I know the situation in South Ossetia a bit better than others in Moscow”⁴⁹³. The transfer of Lieutenant General Brankevich and other Russian military officers back and forth between direct employment by official organs of the Russian Federation and service in senior posts in South Ossetia further confirms the incorporation of the *de facto* South Ossetian administration into the Russian chain of command, and Russia’s control over that administration.

3. *South Ossetia’s Russian Minister of Internal Affairs*

4.54 South Ossetia’s Minister of Internal Affairs during the ethnic cleansing of 2008 was **General Mikhail Mindzaev**, an active service officer in the Russian police. In this capacity, he was present at, and responsible for, the detention of ethnic Georgian civilians at the *de facto* Ministry of Internal Affairs building in Tskhinvali, described above at paragraphs 3.108 and 3.111 to 3.115. General Mindzaev was transferred to South Ossetia in May 2005. Prior to his arrival,

⁴⁹² *Russian Officials in the De Facto Administrations of South Ossetia and Abkhazia* (undated), *op. cit.* GM, Vol. V, Annex 409.

⁴⁹³ “There is no place for this President in South Ossetia” (Interview with Anatoly Barankevich), *Kommersant* (4 December 2008), *op. cit.* GM, Vol. IV, Annex 277.

General Mindzaev served in the Ministry of Internal Affairs of North Ossetia, including as Deputy Head of Headquarters⁴⁹⁴. In 2004, he commanded Special Task Force Alpha during the counter-terrorist operation in Beslan⁴⁹⁵.

4. *South Ossetia's Russian Chairman of the Committee of State Security*

4.55 In November 2006, **Lieutenant General Boris Atoev** became the Chairman of the South Ossetian KGB⁴⁹⁶. He was preceded in this position by other Russian General Officers: General Mairbeg Bichegkaev (June 2004-January 2005), Lieutenant General Anatoli Yarovoy (January 2005-February 2006) and Major General Nikolai Dolgoplov (February-November 2006). Prior to his arrival, Lieutenant General Atoev served in the Russian security service in Kabardino-Balkaria, a constituent Republic of Russia and as a senior fellow at the FSB central directorate in Moscow⁴⁹⁷.

5. *South Ossetia's Russian Commander of the State Border Guard*

4.56 Russian **Colonel Oleg Chebotariov** served as Commander of the *de facto* South Ossetian administration's State Border Guards during the ethnic cleansing of 2008. Prior to assuming this command, he was employed by the Federal Security Service of the Russian Federation, based in Tskhinvali. In 2005, he participated in the formation of the *de facto* Border Service of the

⁴⁹⁴ *Russian Officials in the De Facto Administrations of South Ossetia and Abkhazia* (undated), *op. cit.* GM, Vol. V, Annex 409.

⁴⁹⁵ Illarionov, "Russian Leadership's Preparation for War, 1999-2008" (2009), *op. cit.*, p. 81. GM, Vol. III, Annex 178.

⁴⁹⁶ *Ibid.*

⁴⁹⁷ *Ibid.*

Committee of State Security of South Ossetia; he later became its Commander⁴⁹⁸. He is still another senior Russian military officer who was transferred back and forth between Russian State organs and the *de facto* administration in South Ossetia.

6. *South Ossetia's Russian Chairman of State Control and Economical Security*

4.57 On 29 March 2007, Russian **Colonel Batraz Taimuraz Takazov** became the Chairman of the State Control and Economical Security Committee of the *de facto* South Ossetian administration. Prior to coming to South Ossetia, Colonel Takazov spent many years working in the North Ossetian Ministry of Internal Affairs and in North Ossetia's investigative unit of the Main Tax Inspection. From 1993 to 1999, Colonel Takazov served as Deputy Head of the North Ossetian Unit of the Federal Service of Tax Police. He worked with the tax police in Nalchik and Rostov. In 2004, Colonel Takazov was appointed Deputy Head of the local Tax Service of Bataiskiy District of Rostov Region. He holds the rank of Colonel of Economic Security in the Russian Federation⁴⁹⁹.

* * *

4.58 Thus, senior Russian military and police officers occupied all top-level military, security and intelligence positions in the *de facto* South Ossetian administration at the time of the ethnic cleansing against Georgians in August 2008 and thereafter.

⁴⁹⁸ *Russian Officials in the De Facto Administrations of South Ossetia and Abkhazia* (undated), *op. cit.* GM, Vol. V, Annex 409.

⁴⁹⁹ *Ibid.*

B. RUSSIA'S INTEGRATION OF RUSSIAN "VOLUNTEERS" INTO SOUTH OSSETIAN MILITARY UNITS

4.59 Not only were all *de facto* South Ossetian military, security and police units under the command and control of Russian officers, many of the troops they commanded were also members of Russian military units in temporary service in South Ossetia. In that regard, immediately prior to and during the ethnic cleansing of 2008, many so-called "volunteers" crossed the Russian border into South Ossetia⁵⁰⁰. These volunteers participated in discriminatory abuses against ethnic Georgians, and like the Russian army units and separatist military forces, they were subject to the command and control of the Russian armed forces.

4.60 The arrival of the volunteers was induced by Russia. In the months preceding the armed conflict, Russian officials declared that "each citizen of Russia has the right to defend the citizens of Russia in Abkhazia and South Ossetia" and forecast that "a great number of volunteers" would go to Georgia in the case of a conflict⁵⁰¹. On 2 August, Russian authorities announced a general mobilization of "volunteers"⁵⁰² and on the day the war began, Russian Prime

⁵⁰⁰ Tom Parfitt, "Armed Cossacks pour in to fight Georgians", *The Guardian* (9 August 2008). (hereinafter Parfitt, "Armed Cossacks pour in to fight Georgians (2008)"). GM, Vol. IV, Annex 237.

⁵⁰¹ Statement by the Councilor of the President of Russia General Aslakhonov, *Aslakhonov: The volunteers from Northern Caucasia will defend Abkhazia and South Ossetia* (5 April 2008). GM, Vol. IV, Annex 228.

⁵⁰² Interview with Andrey Illarionov, *Echo of Moscow Radio* (24 October 2008) (hereinafter Interview with Andrey Illarionov (2008)). GM, Vol. IV, Annex 270.

Minister Putin observed that “many volunteers” were heading to South Ossetia and warned it would be “very hard to maintain peace”⁵⁰³.

4.61 In fact, these so-called “volunteers” were agents of the Russian State. Russian newspapers reported that they were registered and organized at recruiting stations run by Russian military commissariats⁵⁰⁴. One Russian publication reported that “Cossack volunteers from the Rostov district” were being sent to “the City and District Military Commissariats, through which they can find themselves either in the composition of Russian peacekeeping forces or in the composition of 58th army”⁵⁰⁵. Another reported that “[t]he lists of the Cossack-volunteers will be sent to military commissariats according to their places of residence. Those enlisted for military service will be sent to Cossack motorized infantry regiment No. 429”⁵⁰⁶. Still another reported that the “ataman of Don Cossack Host, Victor Vodolatskiy made an appeal to all Cossacks to come to military commissariats and register as members of this regiment”⁵⁰⁷. Similarly, a representative of the Terek Cossacks stated that volunteers were

⁵⁰³ Parfitt, “Armed Cossacks pour in to fight Georgians” (2008), *op. cit.* GM, Vol. IV, Annex 237.

⁵⁰⁴ “7 Thousand Volunteers left North Ossetia for South Ossetia”, *Caucasian Knot* (9 August 2008) (hereinafter “7 Thousand Volunteers left North Ossetia” (2008)). GM, Vol. IV, Annex 236. *See also* Interview with Andrey Illarionov (2008), *op. cit.* GM, Vol. IV, Annex 270.

⁵⁰⁵ “Ossetians of Karachaevo-Cherkessia form volunteer units to help South Ossetia”, *Caucasian Knot* (11 August 2008). GM, Vol. IV, Annex 241. *See also* “Atamans announced about march of volunteers”, *Vesti* (11 August 2008) (reporting Cossack volunteers were referred to “military commissariats according to their places of residence”). GM, Vol. IV, Annex 242.

⁵⁰⁶ Maria Bondarenko, “Atamans announced about the march of volunteers: Age limit has been increased for Don Cossack volunteers”, *Nezavisimaya Gazeta* (11 August 2008). GM, Vol. IV, Annex 230.

⁵⁰⁷ “Cossacks are creating motorized infantry regiment to assist South Ossetia”, *Lenta.ru* (8 August 2008). GM, Vol. IV, Annex 234.

“sent to South Ossetia through [the] North Ossetian military commissariat”⁵⁰⁸. Likewise, a leader of the Don Cossacks said that “subdivisions of volunteers will be formed together with the regional military commissariats”⁵⁰⁹.

4.62 The international media observed that “hundreds of volunteer fighters” had arrived at a recruitment center in North Ossetia that was “apparently organized by Russian authorities”⁵¹⁰. Further illustrating Russian State involvement in the recruitment of volunteers, government officials in Khasavyurt, in the Russian Republic of Dagestan, hosted a rally in support of South Ossetian separatists and signed up volunteers⁵¹¹. A recruiting centre in Vladikavkaz, in North Ossetia, likewise coordinated the formation of volunteer units with “interested community organizations and state structures”⁵¹². As late as 19 August, after hostilities had ended but while the ethnic cleansing continued, “volunteers from all over Russia” were signing up for service at regional recruitment units run by Russian military commissariats⁵¹³.

⁵⁰⁸ “7 Thousand Volunteers left North Ossetia” (2008), *op. cit.* GM, Vol. IV, Annex 236.

⁵⁰⁹ Konstantine Kukharenko, “Military men nod to politicians”, *Rossyskaia Gazeta* (8 August 2008). GM, Vol. IV, Annex 233.

⁵¹⁰ “Russia’s Cossacks rush to join fighting with their ‘brothers’”, *Trendz News* (11 August 2008). GM, Vol. IV, Annex 239.

⁵¹¹ “Over thousand Dagestan volunteers ready to go to South Ossetia”, *Caucasian Knot* (8 August 2008) (hereinafter “Over thousand Dagestan volunteers ready to go (2008)). GM, Vol. IV, Annex 235.

⁵¹² “Volunteers are able not only to fight”, *Main News* No. 29 (18 August 2008) (hereinafter “Volunteers are able not only to fight (2008)). GM, Vol. IV, Annex 249.

⁵¹³ “From Murmansk to South Ossetia”, *Murmansk Gazette* (19 August 2008). GM, Vol. IV, Annex 250.

4.63 Not only were the volunteers recruited and organized by Russian State organs, many were already members of Russian military units. For example, on 8 August, an official in Khasavyurt reported that hundreds of volunteers had signed up to fight in South Ossetia and that almost all of the volunteers were members of the Home Guard⁵¹⁴. At the recruiting centre for volunteers in Vladikavkaz, officials “establish[ed] the place of military registration” for all volunteers, many of whom were reported to be members of the “local home guards”⁵¹⁵. The head of another recruitment post in North Ossetia reported that the volunteers were men “who served in the Russian army or law-enforcement bodies, with experience of military operations in hotspots”⁵¹⁶.

4.64 In addition, Russian State organs provided the volunteers with supplies and the transportation necessary to go to South Ossetia. For example, volunteers reporting to a recruitment center in Vladikavkaz said they were given “assault rifles and \$400 (€266) to buy uniforms”⁵¹⁷. On 8 August 2008, one member of an armed Cossack unit told reporters that units of Cossack fighters were being bussed to Tskhinvali, and that “[t]hey give you a uniform on the way and you get issued with weapons when you arrive”⁵¹⁸. The buses transporting volunteers had to pass through the Roki tunnel, the only route linking North Ossetia and South

⁵¹⁴ “Over thousand Dagestan volunteers ready to go” (2008), *op. cit.* GM, Vol. IV, Annex 235.

⁵¹⁵ “Volunteers are able not only to fight” (2008), *op. cit.* GM, Vol. IV, Annex 249.

⁵¹⁶ Daniel McLaughlin, “Breakaway regions backed by Caucasian neighbors”, *The Irish Times* (12 August 2008). GM, Vol. IV, Annex 243.

⁵¹⁷ *Ibid.*

⁵¹⁸ Parfitt, “Armed Cossacks pour in to fight Georgians”, *The Guardian* (9 Aug. 2008), *op. cit.* GM, Vol. IV, Annex 237. *See also* Witness Interview Protocol, Interview of Artur Oleg Kaloev (14 May 2009) (volunteer testifies that he and others were taken by bus to Tskhinvali where they were given “weapons and ammunition”). GM, Vol. V, Annex 375.

Ossetia, which was under the exclusive control of the Russian military. The military correspondent of one Russian newspaper who was travelling with a convoy of volunteers reported: “On the border to South Ossetia no one controlled our convoy of 10 buses and 200 soldiers. We only had to hold up our passports. ‘Through you go boys’ they said. ‘Fight for Russia!’”⁵¹⁹

4.65 Once in South Ossetia, the volunteers were trained and integrated into South Ossetian military units. On 7 August, South Ossetia’s *de facto* President, Eduard Kokoity, stated that “[w]e have an influx of volunteers coming into the republic” and declared that “those who are arriving are being organized into army units. These units will be under the command of our Defence Ministry”⁵²⁰, which, as shown above, was under the command of a Russian General Officer, General Lunev. The Secretary of the *de facto* Security Council of South Ossetia, also a Russian General Officer, Anatoly Barankevich, declared prior to the opening of hostilities that volunteers “will have the status of military servicemen of South Ossetia and will be armed from the arsenals” of South Ossetia⁵²¹. One of the volunteers in South Ossetia reported that “[w]hen we arrived in Tskhinval... we were armed by the officers of OMON [special unit of the Ministry of Interior of South Ossetia] and then we were sent to a sweep”⁵²².

⁵¹⁹ “‘Local wars ahead’: An interview with former soldier and journalist Arkady Babchenko on the Russian military action in South Ossetia and Georgia” (18 September 2008). GM, Vol. IV, Annex 265.

⁵²⁰ “Georgia and South Ossetia exchange fire”, *Russia Today* (7 August 2008). GM, Vol. IV, Annex 232.

⁵²¹ Bondarenko, “Don Cossacks are getting ready to fight in South Ossetia” (2008), *op. cit.* GM, Vol. IV, Annex 230.

⁵²² Interview of Sergei Giorgi Karginov, Witness Interview Protocol (13 May 2009). GM, Vol. V, Annex 374.

As noted above, the *de facto* South Ossetian Interior Ministry was commanded by yet another Russian officer, General Mikhail Mindzaev.

4.66 Just prior to the start of the ethnic cleansing, the Russian publication *Izvestia* reported: “There is an inconspicuous fence in the outskirts of Tskhinvali. Journalists are not let in. Only two flags at the gates -- Ossetian and Russian -- disclose that this is a military base” where “volunteers that came from different parts of Russia to defend South Ossetia, are being trained”⁵²³. The training and arming of these “volunteer” forces is corroborated by the Russian media, which reported that the “military registration and enlistment office give uniforms to volunteers” who then receive their “weapons and ammunition” from “the South Ossetian authorities”⁵²⁴.

4.67 Further demonstrating that these men served Russia, after the conflict numerous volunteers received Russian State honours.⁵²⁵

* * *

4.68 In sum, in the years following the ethnic cleansing of 1991-1992, Russia assumed an ever-increasing level of control over the separatist authorities, who openly subordinated themselves to the Russian State. By 2008, all military,

⁵²³ Yuri Snegirev, “Volunteers have come even from Moscow”, *Izvestia* (6 August 2008). GM, Vol. IV, Annex 231.

⁵²⁴ “In North Ossetia, volunteers are trying to create official battalions to be sent to South Ossetia, with the help of military registration and enlistment offices (military commissariat)”, *Echo of Moscow Radio* (11 August 2008). GM, Vol. IV, Annex 240.

⁵²⁵ “The Defenders of South Ossetia were honored in Vladikavkaz”, *IA Regnum* (15 January 2009). GM, Vol. IV, Annex 282.

security and police units of South Ossetia were under the command of Russian officers, and many of the individual fighters under their command were Russians as well, having been recruited from Russian military units for service in South Ossetia by Russian State organs. The evidence shows that throughout the ethnic cleansing in South Ossetia during August 2008 and thereafter, Russia exercised command and control not only over Russian military forces, but also over South Ossetian military and paramilitary forces. Russia's legal responsibility flowing from the abuses that both Russian and Ossetian units perpetrated against ethnic Georgians is discussed in Chapter 9.

PART C.

**DISCRIMINATION THROUGH THE FRUSTRATION OF RIGHT OF
RETURN FOR ETHNIC GEORGIAN IDPS**

CHAPTER V.

**RUSSIA'S DENIAL OF THE RIGHT OF RETURN
TO ETHNIC GEORGIANS FROM SOUTH OSSETIA**

5.1 As shown in Chapters 3 and 4, Russia discriminated against the ethnic Georgian population of South Ossetia by participating in and supporting efforts to ethnically cleanse that territory of Georgians in 1991-1992 and again in 2008. As a result of this discriminatory conduct, thousands of ethnic Georgians were forcibly displaced. In this Chapter, Georgia shows that, with very few exceptions, these displaced Georgians have been prevented from returning to their homes by Russia and the separatist authorities operating under Russian control.

5.2 The refusal by Russia to permit displaced ethnic Georgians to return to their places of residence is unlawful discrimination that is prohibited by the 1965 Convention. In that regard, CERD General Recommendation 22, which interprets Article 5 of the 1965 Convention and addresses “refugees and displaced persons”, takes account of the fact that “foreign military, non-military and/or ethnic conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria...”⁵²⁶. It expressly provides that “[a]ll such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety”⁵²⁷. Further, the General Recommendation states that “[a]ll such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to

⁵²⁶ U.N. Office of the High Commissioner for Human Rights, CERD, *General Recommendation No. 22: Art. 5 and refugees and displaced persons*, Forty-ninth Session, U.N. Doc. A/51/18 (1996). GM, Vol. II, Annex 21.

⁵²⁷ *Ibid.*

them”⁵²⁸. By refusing to permit displaced ethnic Georgians to return to South Ossetia, Russia has violated these obligations under the 1965 Convention.

5.3 Almost the entire ethnic Georgian population had fled the separatist-controlled areas of South Ossetia by the time the Sochi Agreement was signed in 1992. As shown below, the vast majority of these ethnic Georgians have been prevented from returning to their homes. Similarly, the victims of the ethnic cleansing of 2008 have also been prevented from returning.

Section I. IDPs from the Ethnic Cleansing, 1991-1992

5.4 Georgians were ethnically cleansed from South Ossetia in 1991-1992. The separatist authorities in South Ossetia, supported by Russia, instituted a policy of preventing ethnic Georgian IDPs from returning. In the first round of ethnic cleansing, more than 10,000 ethnic Georgians were forcibly and permanently displaced from their places of residence. Many of the expelled ethnic Georgians had lived in Tskhinvali, the South Ossetian capital. They have never been permitted to return. Those who tried to reclaim their homes were re-expelled at gunpoint and told that Georgians were not allowed to live in South Ossetia⁵²⁹. In one such case, an ethnic Georgian was told by the Mayor, Mr. Kosta Phukhaev, that Georgians were not allowed to own property in Tskhinvali,

⁵²⁸ *Ibid.*

⁵²⁹ Shota Khaduri, “Have We Really Lost Samachablo?”, *Asaval-Dasavali* (5-11 October 1998). GM, Vol. IV, Annex 191.

when he sought assistance in recovering property that had been taken over by an Ossetian⁵³⁰.

5.5 Former residents of the Znauri District of South Ossetia have testified to the widespread use of violence and intimidation to prevent the return of ethnic Georgian IDPs⁵³¹. Kaleti village, for example, had approximately 80 families, divided evenly between ethnic Georgians and Ossetians. Nearly the entire Georgian population was expelled⁵³². The experience of Akaki Gogaladze is representative⁵³³. In July 1999, a UN representative told Mr. Gogaladze that the United Nations would assist him in resettling in Kaleti. Upon returning, he found his house had been destroyed. The day after his return, Mr. Gogaladze disappeared. His son sought assistance from the Russian peacekeepers deployed in the village, but his request was ignored. Several days later, Mr. Gogaladze's corpse was found tortured and mutilated in a well in the village. Although Mr. Gogaladze's family filed a complaint with the Tskhinvali Prosecutor, no investigation occurred. Similarly, when another former resident tried to return to Kaleti, his house was bombed with a hand grenade shortly after he had repaired

⁵³⁰ *Ibid.*

⁵³¹ See e.g., Declaration of Giorgi Kapanadze (10 July 2009). GM, Vol. V, Annex 381; Declaration of Tsitsino Shaorshadze (10 July 2009). GM, Vol. V, Annex 383; Declaration of Nanuli Gogaladze (10 July 2009). GM, Vol. V, Annex 386; Declaration of Malkhaz Meskhi (25 May 2009). GM, Vol. V, Annex 377; Declaration of Vazha Tsiskadze (10 July 2009). GM, Vol. V, Annex 385.

⁵³² Declaration of Nanuli Gogaladze (10 July 2009), *op. cit.* GM, Vol. V, Annex 386.

⁵³³ *Ibid.* Malkhaz Meskhi, Vazha Tsiskadze and Tsitsino Shaorshadze also discuss the attack against Akaki Gogaladze upon his attempt to return to Kaleti. See GM, Vol. V, Annexes 377; 385; 383.

it with UN assistance⁵³⁴. Not surprisingly, few other ethnic Georgians have attempted to return to Kaleti⁵³⁵.

5.6 Similar treatment was given to an ethnic Georgian who attempted to return to the village of Tkisubani in 2000 in order to retrieve a car he left behind when he fled several years earlier⁵³⁶. Upon his arrival, members of a South Ossetian special police unit asked why he had returned. He responded that he wanted to see the Head of the Criminal Investigation Department regarding his car. The police officers started beating him and his friend with their guns. When the men tried to escape, the officers shot his feet, then continued beating him, and burned his friend's head with fire. They then tied him up, placed him against the wall and poured petrol on him. His injuries were so severe he was unable to stand for over two months⁵³⁷. Because of such attacks, few ethnic Georgians have been able to return to their villages. Only two of 70 Georgian families returned to Tkisubani⁵³⁸. Even more typical is Zvileti, where no ethnic Georgians returned⁵³⁹.

5.7 As a member of the Joint Control Commission (“JCC”), established pursuant to the Sochi Agreement, Russia committed itself from 1992 onwards to

⁵³⁴ Declaration of Nanuli Gogaladze (10 July 2009), *op. cit.* GM, Vol. V, Annex 386.

⁵³⁵ *Ibid.* See also Declaration of Malkhaz Meskhi (25 May 2009), *op. cit.* GM, Vol. V, Annex 377; Declaration of Vazha Tsiskadze (10 July 2009), *op. cit.* GM, Vol. V, Annex 385; Declaration of Tsitsino Shaorshadze (10 July 2009), *op. cit.* GM, Vol. V, Annex 383.

⁵³⁶ Declaration of Ilia Kobaladze (10 July 2009). GM, Vol. V, Annex 384. See also Declaration of Malkhaz Meskhi (25 May 2009), *op. cit.* GM, Vol. V, Annex 377.

⁵³⁷ Declaration of Ilia Kobaladze (10 July 2009). GM, Vol. V, Annex 384.

⁵³⁸ Declaration of Malkhaz Meskhi (25 May 2009), *op. cit.*, p. 3. GM, Vol. V, Annex 377.

⁵³⁹ *Ibid.*

maintain security and respect the rights of ethnic Georgians to return to their homes in South Ossetia. One of the early decisions of the JCC was to specify that the peacekeeping force (“JPKF”) that was envisaged by the Sochi Agreement would be responsible for helping to restore peace, support law and order in the armed conflict zone, ensure compliance with the ceasefire, and take active measures against the use of weapons by armed formations⁵⁴⁰. The JCC subsequently decided to subordinate the JPKF to a united military command, which was headed by a Russian commander and comprised primarily of Russian soldiers⁵⁴¹. On 13 February 1997, the JCC adopted the Procedure of Voluntary Return of Refugees and IDPs, committing Russia and the other members, *inter alia*, to respect “the right of voluntary return of refugees and IDPs to places of their previous permanent residence” and to protect “refugees and IDPs from possible persecution or restriction of their right to freedom, as well as other actions that infringe their safety and dignity after their return”⁵⁴².

5.8 Notwithstanding these commitments, the Russian peacekeepers in South Ossetia enabled separatist security forces, who operated under the command and control of the senior Russian military officers that ran South Ossetia’s *de facto* Ministries of Defence and Internal Affairs, to violently obstruct the return of Georgian IDPs; and they actively participated and assisted in these

⁵⁴⁰ *Provision On Joint Peacekeeping Forces (JPKF) and Law and Order Keeping Forces (LOKF) in the Zone of Conflict*, Annex 1 of Protocol 3 of the JCC dated 12 July 1992 (12 July 1992), Art. 1. GM, Vol. III, Annex 104.

⁵⁴¹ *Regulation Concerning the Basic principles of Operation of the Military Contingents and of the Groups of Military Observers Designated for the Normalization of the Situation In the Zone of the Georgian-Ossetian Conflict*, Annex #1 to the JCC Decree of 6 December 1994 (6 December 1994), Art. 2. GM, Vol. III, Annex 114.

⁵⁴² *JCC Procedure of Voluntary Return of Refugees and IDPs as a Result of the Georgian-Ossetian Conflict to the Places of their Permanent Residence*, Annex 3 (13 February 1997). GM, Vol. III, Annex 120.

discriminatory practices⁵⁴³. As witnessed by Mr. Malkhaz Meskhi and Mr. Vazha Tsiskadze, local Georgian officials in Tigva Municipality, attempts to secure protection for Georgian IDPs returning to Kaleti were met with negative responses from Russian peacekeepers “because the local Ossetians were against it”⁵⁴⁴. In December 2000, Mr. Meskhi met with the Russian General Yevgenii Churaev, Commander of Peacekeeping Forces, in order to request his assistance in the return of Georgians to Kaleti. General Churaev informed him that it would be impossible, because local Ossetians had compiled a lengthy list of ethnic Georgians who were forbidden to return⁵⁴⁵. The ostensible reasons for denying their right of return included having engaged in “anti-Ossetian propaganda” and being related to alleged fighters⁵⁴⁶. The Russian peacekeepers followed the Ossetians’ wishes. As Kaleti villagers testify, Russian forces witnessed violent attacks by Ossetians against ethnic Georgians attempting to return to their homes, and refused to respond or assist them⁵⁴⁷.

Section II. IDPs from the Ethnic Cleansing, 2008

5.9 By the time most (but not all) of the violence against ethnic Georgians had subsided, late in 2008, the total ethnic Georgian population of South Ossetia had been reduced by over 20,000. The Georgians comprising this group of IDPs

⁵⁴³ See, e.g., Declaration of Giorgi Kapanadze (10 July 2009). GM, Vol. V, Annex 381; Declaration of Vazha Tsiskadze (10 July 2009), *op. cit.* GM, Vol. V, Annex 385.

⁵⁴⁴ Declaration of Malkhaz Meskhi (25 May 2009), *op. cit.*, p. 3. GM, Vol. V, Annex 377. See also Declaration of Vazha Tsiskadze (10 July 2009), *op. cit.* GM, Vol. V, Annex 385.

⁵⁴⁵ *Ibid.*

⁵⁴⁶ Declaration of Malkhaz Meskhi (25 May 2009), *op. cit.*, p. 3. GM, Vol. V, Annex 377.

⁵⁴⁷ See, e.g., Declaration of Tsitsino Shaorshadze (10 July 2009), *op. cit.* GM, Vol. V, Annex 383; Declaration of Nanuli Gogaladze (10 July 2009), *op. cit.* GM, Vol. V, Annex 386.

from South Ossetia have not been allowed back. This has been the deliberate policy of the South Ossetian separatist regime, supported by Russia. By contrast, ethnic Ossetians who fled South Ossetia at the outbreak of the armed conflict in August 2008 have been welcomed back and successfully repatriated⁵⁴⁸. Of approximately 33,000 to 38,000 Ossetians who took refuge abroad (the vast majority in North Ossetia), the overwhelming majority -- approximately 31,800 to 36,800 -- returned to South Ossetia shortly after the cease-fire⁵⁴⁹. Only ethnic Ossetians, and not ethnic Georgians, have been allowed back.

5.10 Human Rights Watch (“HRW”) interviewed members of the South Ossetian security forces who forcibly expelled ethnic Georgians from South Ossetia in 2008, and burned down their houses. These South Ossetian military personnel, who operate under Russian command⁵⁵⁰, admitted that “the objective was to ensure that ethnic Georgians would not have the houses to return to”⁵⁵¹. HRW also interviewed a South Ossetian counterintelligence officer who said:

⁵⁴⁸ Council of Europe, Parliament Assembly, Committee on Migration, Refugees, and Population, *Report: The humanitarian consequences of the war between Georgia and Russia: Follow-up given to Resolution 1648 (2009)*, Doc. 11859 (9 April 2009) (hereinafter *Report: The Humanitarian Consequences of the War between Georgia and Russia: Follow-Up given to Resolution 1648 (2009)*, Doc. 11859 (2009)), para. 34. GM, Vol. II, Annex 62; Council of Europe, Commissioner for Human Rights, Thomas Hammarberg, *Special Follow-Up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner's six principles for urgent human rights and humanitarian protection* CommDH92008)37 (16 December 2008) (hereinafter Hammarberg, *Implementation of the Commissioner's six principles for urgent human rights and humanitarian protection* CommDH92008)37 (16 Dec. 2008)), p. 2. GM, Vol. II, Annex 58.

⁵⁴⁹ *Report: The Humanitarian Consequences of the War between Georgia and Russia: Follow-Up given to Resolution 1648 (2009)*, Doc. 11859 (2009), *op. cit.*, para. 34. GM, Vol. II, Annex 62; *Ibid.*, p. 2.

⁵⁵⁰ *See supra* Chapter 4, paras. 4.45-4.58.

⁵⁵¹ “Pictures ‘Show Georgia Torching’”, *BBC News* (29 August 2008). GM, Vol. IV, Annex 261.

“We burned these houses. We want to make sure that they [the Georgians] can’t come back, because if they do come back, this will be a Georgian enclave again and this should not happen”⁵⁵².

5.11 During and since the 2008 ethnic violence, South Ossetian separatist leaders have openly publicized the fact that ethnic Georgian villages were destroyed to make it impossible for Georgians to return to or live in South Ossetia. The Chairman of the *de facto* South Ossetian Parliament, Mr. Znaur Gassiev, publicly declared that: “We did a bad thing, I know. But Georgians will not return here anymore. We have burnt down all of their houses in the enclaves. There was no other way of stopping the war and cutting the knot”⁵⁵³.

5.12 Other South Ossetian separatist leaders were less apologetic. The *de facto* President, Mr. Eduard Kokoity, was asked whether “Georgian civilians” would “be allowed to return.” His response, on 15 August 2008, was categorical: “We do not intend to let anybody in here anymore”⁵⁵⁴. Mr. Kokoity was asked to describe what was then happening in the ethnic Georgian enclaves of South Ossetia. He responded: “Nothing, we have flattened everything there. The boundaries of South Ossetia have been defined”⁵⁵⁵.

⁵⁵² Human Rights Watch, “Russia/Georgia: Investigate Civilian Deaths” (14 August 2008). GM, Vol. III, Annex 149.

⁵⁵³ Dmitry Steshin, “South Ossetia has been won over. What to do with it in the future?”, *Pravda* (22 August 2008). GM, Vol. IV, Annex 255.

⁵⁵⁴ Republic of South Ossetia New Agency, Press conference conducted in the International Press Centre of Tskhinvali (26 August 2008). Observations of Georgia, Interim Measures, Annex 40.

⁵⁵⁵ *Ibid.*

5.13 After Mr. Kokoity proclaimed that ethnic Georgians would not be “let... in here anymore,” the Russian Ministry of Foreign Affairs characterised his statement as “emotional”⁵⁵⁶. However, the Foreign Ministry agreed with Mr. Kokoity that ethnic Georgians would not be permitted to return to South Ossetia for the indefinite future. The Foreign Ministry said, “the practical process of refugee return” would have to “bear[] a protracted character”, and “much time” would need to “pass before the wounds are healed and trust is restored. Only after this will the conditions be created for discussing practical aspects connected with the problem of refugees”⁵⁵⁷. Until then, Russian military forces, who guard South Ossetia’s administrative boundary with the rest of Georgia -- since April 2009 as the official State Border Guards of South Ossetia, pursuant to a formal agreement between Russia and the South Ossetian separatist regime -- are charged with continuing to enforce the ban on return of ethnic Georgian IDPs⁵⁵⁸.

Section III. The Ongoing Prevention of Return to South Ossetia

5.14 The OSCE’s human rights fact-finding mission determined in late November 2008: “Clearly, the *de facto* authorities in South Ossetia... have not created the conditions necessary to enable and encourage displaced persons to return to their former places of residence. Worse... the *de facto* authorities in South Ossetia have made statements and taken steps that indicate they do not intend to let displaced persons return”, in violation of “OSCE commitments” that

⁵⁵⁶ Russian Ministry of Foreign Affairs Information and Press Department, “Commentary Regarding a Statement of South Ossetian President Eduard Kokoity August 17, 2008” (17 August 2008). GM, Vol. IV, Annex 247.

⁵⁵⁷ *Ibid.*

⁵⁵⁸ *See infra* Chapter 7, para. 7.5.

“prohibit mass expulsions and require States to facilitate the voluntary return of displaced persons in dignity and safety”⁵⁵⁹.

5.15 Indeed, senior officials of the *de facto* South Ossetian regime have publicly and repeatedly proclaimed that it is their administration’s official policy to prohibit the return of ethnic Georgian IDPs who were ethnically cleansed from that territory. The *de facto* Minister of the Interior, a Russian General Officer, Mikhail Mindzaev, announced that 4,000 ethnic Georgians would be prosecuted if they attempted to return to South Ossetia; the remaining ethnic Georgians “would only be allowed to return if they renounce their Georgian citizenship”⁵⁶⁰. South Ossetia’s *de facto* Deputy Prime Minister, whose superior, the *de facto* Prime Minister, is a Russian governmental official⁵⁶¹, told the OSCE Mission: “If a Georgian who decides to remain in South Ossetia does not meet our expectations, they will be expelled... I don’t want Georgians to return... and they won’t be able to”⁵⁶². Not surprisingly, Human Rights Watch reported that it “is not aware of any steps taken by the Ossetian authorities to enable the displaced to return”⁵⁶³.

⁵⁵⁹ OSCE, Office for Democratic Institutions and Human Rights, *Human Rights in the War-Affected Areas Following the Conflict in Georgia* (27 November 2008) (hereinafter OSCE, *Human Rights in the War Affected Areas* (2008)), pp. 17-18. GM, Vol. II, Annex 71.

⁵⁶⁰ OSCE, *Human Rights in the War Affected Areas* (2008), *op. cit.*, p. 48. GM, Vol. II, Annex 71.

⁵⁶¹ *See infra* Chapter 7, para. 7.7.

⁵⁶² OSCE, *Human Rights in the War Affected Areas* (2008), *op. cit.*, p. 48. GM, Vol. II, Annex 71.

⁵⁶³ Human Rights Watch, *Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia* (January 2009) (hereinafter HRW, *Up in Flames* (2009)), p. 153. GM, Vol. III, Annex 156.

5.16 After visiting South Ossetia in September 2008, the Commissioner for Human Rights of the Council of Europe, Mr. Thomas Hammarberg, reported in October 2008 that the “principle of the right of return... needs to be implemented”⁵⁶⁴. In his follow-up mission in mid-November 2008, Mr. Hammarberg again criticised the *de facto* regime for failing to implement this obligation⁵⁶⁵. In mid-May 2009, he was compelled to reiterate that “[i]t is deeply regrettable that most ethnic Georgians who have fled South Ossetia have not been in a position to return”⁵⁶⁶.

5.17 The discriminatory nature of these policies is underscored by the treatment given to ethnic Ossetian refugees who, in contrast with ethnic Georgians, have been allowed to return to South Ossetia unimpeded⁵⁶⁷. By April 2009, more than 95% of those who fled to North Ossetia in August 2008 had returned to their homes in South Ossetia⁵⁶⁸. As confirmed by the Commissioner for Human Rights of the Council of Europe, “The great majority of those who

⁵⁶⁴ Council of Europe, Commissioner for Human Rights, Thomas Hammarberg, *Special Follow-Up Mission to Georgia Including South Ossetia, Summary of Findings from 25-27 September 2008*, CommDH(2008)33 (21 Oct. 2008) (hereinafter Hammarberg, *Special Follow-Up Mission to Georgia Including South Ossetia* (21 Oct. 2008)), para. 4. GM, Vol. II, Annex 57.

⁵⁶⁵ Hammarberg, *Implementation of the Commissioner’s six principles for urgent human rights and humanitarian protection*, CommDH(2008)37 (16 Dec. 2008), *op. cit.*, paras. 8-14. GM, Vol. II, Annex 58.

⁵⁶⁶ Council of Europe, Commissioner for Human Rights, Thomas Hammarberg, *Report on Human Rights Issues Following the August 2008 Armed Conflict*, CommDH(2009)22 (15 May 2009), para. 11. GM, Vol. II, Annex 66.

⁵⁶⁷ *Report: The Humanitarian Consequences of the War between Georgia and Russia: Follow-Up given to Resolution 1648 (2009)*, Doc. 11859 (2009), *op. cit.*, para. 34. GM, Vol. II, Annex 62.

⁵⁶⁸ *Ibid.*, para. 2.

fled to Russia have returned”; in contrast, “[e]thnic Georgians who fled southwards have not been able to move back”⁵⁶⁹.

5.18 The OSCE’s human rights investigative mission likewise concluded that “[t]he ethnic Georgians who fled have been prevented by the Russian and South Ossetian forces from returning”⁵⁷⁰. The OSCE team reported that there were ethnic Georgians who “have not been able to return to their houses because police stop people from entering that area”⁵⁷¹. As the OSCE report succinctly put it: “It is clear that the *de facto* authorities in South Ossetia... including Russian military authorities, have not taken steps to facilitate and ensure that displaced persons can return voluntarily to their former places of residence in safety and dignity, in line with obligations under international standards”⁵⁷².

5.19 Often, as reported by the Council of Europe and the OSCE, it is the Russian troops guarding the administrative border of South Ossetia who prevent ethnic Georgians from returning. Russia’s Major General Marat Kulakhmetov informed the Council of Europe’s Human Rights Commissioner that “Russian troops” were responsible for “patrolling the administrative border of South Ossetia”⁵⁷³. The OSCE investigative mission found that “[t]he administrative

⁵⁶⁹ Hammarberg, *Implementation of the Commissioner’s six principles for urgent human rights and humanitarian protection* CommDH92008)37 (16 Dec. 2008), *op. cit.*, p. 2. GM, Vol. II, Annex 58.

⁵⁷⁰ OSCE, *Human Rights in the War Affected Areas* (2008), *op. cit.*, p. 33. GM, Vol. II, Annex 71.

⁵⁷¹ *Ibid.*, p. 48.

⁵⁷² *Ibid.*, p. 6.

⁵⁷³ Hammarberg, *Special Follow-Up Mission to Georgia Including South Ossetia* (21 Oct. 2008), *op. cit.*, para. 62. GM, Vol. II, Annex 57.

boundary is now guarded by Russian troops who strictly enforce the closure”⁵⁷⁴. One “displaced person from Disevi village”, for example, who “tried to return to Disevi” was “prevented from doing so by Russian soldiers”⁵⁷⁵. Another “was turned back at a checkpoint after being told he should apply for a Russian passport and citizenship if he wanted to return to the village”⁵⁷⁶. For ethnic Georgians “it is impossible to get through the Russian-Ossetian check points”⁵⁷⁷. This arrangement, under which the Russian army patrols the administrative borders of South Ossetia, was formalized on 30 April 2009 by an agreement between Russia and the *de facto* South Ossetian administration, whereby the Russian military assumed responsibility for acting as the official State Border Guards of South Ossetia. As Russia admitted in its report on compliance with the Court’s indication of Provisional Measures, under that agreement Russia enforces the *de facto* administration’s policies regarding the refusal to admit ethnic Georgian IDPs⁵⁷⁸.

5.20 HRW found that ethnic Georgians were further discouraged from returning to their homes in South Ossetia by the failure of the Russian and South

⁵⁷⁴ OSCE, *Human Rights in the War Affected Areas* (2008), *op. cit.*, p. 63. GM, Vol. II, Annex 71.

⁵⁷⁵ *Ibid.*, p. 48.

⁵⁷⁶ *Ibid.*, pp. 48-49.

⁵⁷⁷ *Ibid.*, p. 48.

⁵⁷⁸ Report of the Russian Federation on Compliance with the Provisional Measures Indicated by the Order of the Court of 15 October 2008, *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (8 July 2009), p. 20 (“[E]ven if the Abkhaz and South Ossetian authorities might have imposed some restrictions on the crossing of their borders with Georgia, the Russian Federation is not in a position to interfere with such decisions of the respective authorities. The Russian border guards in Abkhazia and South Ossetia are obliged to act in accordance with the relevant Republic’s national regulations.”).

Ossetian *de facto* authorities to protect them against ongoing violence and looting:

[N]o effective measures were taken to stop the looting. Moreover, neither Ossetian nor Russian authorities have taken concrete measures to hold accountable those who intentionally destroyed the Georgian villages in the republic. Finally, Human Rights Watch is not aware of any steps taken by the Ossetian authorities to enable the displaced to return⁵⁷⁹.

5.21 In its report of January 2009, the Parliamentary Assembly of the Council of Europe likewise concluded that:

The return of IDPs to ethnic Georgian villages in South Ossetia and Abkhazia is considerably more difficult, if not outright impossible. Amidst continuing reports of acts of ethnic cleansing, most IDPs fear for their safety if they return, especially in the absence of independent international monitors from the EU and OSCE. In addition, most ethnic Georgian villages in South Ossetia have been looted and razed.

The return of ethnic Georgian IDPs to the break-away region of South Ossetia is further complicated by the insistence of the *de facto* authorities that IDPs returning to it accept the South Ossetian ‘nationality’ and rescind the Georgian one...⁵⁸⁰

5.22 In these circumstances, HRW issued an urgent call to Russia, which “exercises effective control over South Ossetia”, that “[e]thnic Georgians displaced from South Ossetia should be allowed to voluntarily return”⁵⁸¹. It stated:

⁵⁷⁹ HRW, *Up In Flames* (2009), *op. cit.*, p. 153. GM, Vol. III, Annex 156.

⁵⁸⁰ Council of Europe, Parliament Assembly, *The implementation of Resolution 1633 (2009) on the consequences of the war between Georgia and Russia*, Doc. 11800 (26 January 2009) (hereinafter *The implementation of Resolution 1633 (2009) on the consequences of the war*, Doc. 11800 (2009)), paras. 59-60. GM, Vol. II, Annex 60.

⁵⁸¹ HRW, *Up in Flames* (Jan. 2009), *op. cit.*, p. 5. GM, Vol. III, Annex 156.

The permanent forced displacement of thousands of people cannot be countenanced. As it exercises effective control over South Ossetia, Russia has an obligation to provide security to all persons living there, regardless of ethnicity; this is especially urgent in Akhagori district. Ethnic Georgians displaced from South Ossetia should be allowed to voluntarily return. Russia should publicly promote and implement the right of all persons displaced by the conflict, without regard to their ethnic background or imputed political affiliations, to return and live in their homes in South Ossetia in safety and dignity⁵⁸².

5.23 Even in the Akhagori District, where not all ethnic Georgians were expelled, a significant portion of the pre-August 2008 Georgian population fled in the face of ethnically-motivated abuses. The continued perpetration of such discrimination by Russian military forces and the *de facto* authorities that serve under Russian control, including physical violence, forced passportization and efforts to eradicate Georgian cultural identity, has forced many to leave and served as a powerful deterrent to return. The OSCE human rights investigative mission found that “[s]ince the new South Ossetian *de facto* administration has taken over in the Akhagori area, many people have left the region” and that “[m]ore than 5,100 individuals had left Akhagori by the end of October [2008]”⁵⁸³. The OSCE team had no doubt as to the reason for the mass exodus: “Georgians are leaving Akhagori because of the strong presence of Russian and Ossetian forces...”⁵⁸⁴ For example, Human Rights Watch has reported that the South Ossetian military forces are “attacking ethnic Georgians in Akhagori”⁵⁸⁵.

⁵⁸² *Ibid.*

⁵⁸³ OSCE, *Human Rights in the War Affected Areas* (2008), *op. cit.*, p. 50. GM, Vol. II, Annex 71.

⁵⁸⁴ *Ibid.*

⁵⁸⁵ Human Rights Watch, *Russia: Protect Civilians in Occupied Georgia, Fear of Ethnic Violence, Isolation in South Ossetian District* (25 November 2008). GM, Vol. III, Annex 155.

Similarly, the International Crisis Group observed the “Ossetian militia harassment” of ethnic Georgians “in Akhagori while the area has been under effective Russian control”⁵⁸⁶. These discriminatory acts compelled the Parliament of the Council of Europe in January 2009 to “condemn the ethnic cleansing in the Akhagori district by South Ossetian militia” as well as “Russia’s unwillingness to stop this from happening or to bring its perpetrators to justice”⁵⁸⁷.

5.24 Further discouraging ethnic Georgians from returning to Akhagori has been the *de facto* authorities’ ultimatum that all residents must take South Ossetian and Russian passports, and must correspondingly relinquish Georgian citizenship⁵⁸⁸. As one resident of Akhagori testified, “I was asked by Ossetians who were standing nearby whether I would agree to get Russian citizenship. I answered that I did not know. Then they told me: ‘if you do not want [Russian citizenship], you should leave this place...’”⁵⁸⁹ The policy was articulated by the South Ossetian *de facto* Chairwoman of the Information and Press Committee, who stated: “the South Ossetian government has said that any Georgian citizen who wants to live in the Leningori [the new name for Akhagori] region must obtain either Russian citizenship or South Ossetian citizenship. Anyone who doesn’t want to do so is free to leave”⁵⁹⁰. This discriminatory policy prompted

⁵⁸⁶ International Crisis Group, *Georgia: The Risks of Winter* (26 November 2008), p. 5. GM, Vol. III, Annex 164.

⁵⁸⁷ *The implementation of Resolution 1633 (2009) on the consequences of the war*, Doc. 11800 (2009), *op. cit.*, para. 63. GM, Vol. II, Annex 60.

⁵⁸⁸ OSCE, *Human Rights in the War Affected Areas* (2008), *op. cit.*, p. 48. GM, Vol. II, Annex 71.

⁵⁸⁹ Declaration of Mzia Midelashvili. Observations of Georgia, Interim Measures, Annex 35.

⁵⁹⁰ “Russian Passports for Akhagori Residents”, *Georgia Times* (16 January 2009). GM, Vol. IV, Annex 283.

the OSCE's High Commissioner on National Minorities to decry the "statements by those exercising jurisdiction over population and territory that the inhabitants have to acquire South Ossetian/Russian passports or leave their homes", which he warned, "could lead to further deterioration of the situation in the region and another wave of IDPs"⁵⁹¹.

* * *

5.25 In sum, the ethnic Georgian population of South Ossetia has undergone two rounds of ethnic cleansing, the first in 1991-1992 and the second in 2008. In both cases, Russian military forces operated to prevent the victims of these ethnically-targeted expulsions from returning home. Russia did so directly, through its army that has patrolled the administrative borders of South Ossetia and barred entry to ethnic Georgian IDPs attempting to return. It also did so indirectly, through the discriminatory acts and policies of the *de facto* administrative authorities that are under Russian State control, which Russian military forces have implemented. As explained in Chapter 9, by engaging in, and supporting, these acts of racial discrimination, Russia has breached Articles 2, 3 and 5 of the 1965 Convention.

⁵⁹¹ Letter from the OSCE High Commissioner on National Minorities, Knut Vollebaek, to the OSCE Chairman, Minister Alexander Stubb (27 November 2008), p. 2. GM, Vol. V, Annex 312.

CHAPTER VI.

**RUSSIA'S DENIAL OF THE RIGHT OF RETURN
TO ETHNIC GEORGIANS FROM ABKHAZIA**

6.1 In this Chapter, Georgia demonstrates Russia's discrimination against the ethnic Georgian population of Abkhazia by preventing more than 200,000 victims of ethnic cleansing from returning to their homes.

6.2 The Chapter is divided into four Sections. In Section I, Georgia shows how these ethnic Georgians came to be forcibly displaced by Russia and allied Abkhazian separatist forces. In that regard, Georgia shows that from 1992-1994, more than 200,000 ethnic Georgians were expelled from the region as a result of widespread acts of targeted violence. Georgia also shows that this initial episode of ethnic cleansing was made possible only by Russia's active collaboration with and control over Abkhaz militants.

6.3 In Section II, Georgia shows that Russia, in cooperation with Abkhazian forces, sought to prevent the return of ethnic Georgians to the Gali District by participating in another bout of ethnic cleansing in 1998, directed against those ethnic Georgians who had spontaneously returned to the District. In a period of just weeks in May and June 1998, Abkhaz separatists, again supported and directed by Russian troops, attacked and killed dozens of ethnic Georgians, burned hundreds of homes and drove thousands of ethnic Georgians out of Gali, forcing them to seek refuge in other parts of Georgia.

6.4 In Section III, Georgia describes how Russia and the Abkhazian *de facto* authorities prevented the ethnic Georgian victims of ethnic cleansing from returning to their homes in Abkhazia. Russia did so directly, by patrolling the administrative borders of Abkhazia with its military forces. It also did so indirectly, by supporting, defending and implementing the official policy of the Abkhazian administration of refusing to permit ethnic Georgians to return. In short, Russia gave effect to the position of the *de facto* Prime Minister,

Alexander Ankvab, that “the Abkhazian nation opposes the return of refugees”⁵⁹².

6.5 Finally, in Section IV, Georgia describes the expulsion from Abkhazia in August 2008 of those few ethnic Georgians who remained in the Kodori Gorge of Abkhazia, and how these victims of ethnic cleansing -- like those who had been previously expelled from elsewhere in Abkhazia -- were prevented by Russia from returning.

Section I. The Ethnic Cleansing of Abkhazia, 1992-1994

6.6 In this section, Georgia describes the background to Russia’s refusal to permit ethnic Georgians to exercise their right of return by showing how more than 200,000 ethnic Georgians were forcibly evicted from their homes in Abkhazia and expelled to other parts of Georgia in the period from 1992 to 1994.

6.7 For most of Soviet history, Abkhazia was an autonomous republic within the Georgian Soviet Socialist Republic. According to the last Soviet census in 1989, the total population was then approximately 525,100 and consisted of the following ethnic groups: 45.7% Georgians, 17.8% Abkhazians, 14.6% Armenians, 14.3% Russians, and 7.7% others⁵⁹³.

⁵⁹² German Pronin, “Abkhazia will provide Georgians with Autonomy”, *Utro.ru* (18 April 2005) (hereinafter Pronin, “Abkhazia will provide Georgians with Autonomy” (2005)). GM, Vol. IV, Annex 211.

⁵⁹³ Letter from Ministry of Economic Development of Georgia, Department of Statistics, to Deputy Head of the Department of Public International Law, Ministry of Justice of Georgia (11 August 2009) (providing 1989 Soviet census data). GM, Vol. V, Annex 318; Catherine Dale, *The Dynamics and Challenges of Ethnic Cleansing: The Georgia-Abkhazia Case*, Refugee

6.8 Ethnic tensions began to flare in Abkhazia as the Soviet Union began to disintegrate in the early 1990s. Ethnic Abkhazians generally favoured remaining part of the Soviet Union, while ethnic Georgians strongly favoured Georgian independence⁵⁹⁴. Once Georgia's independence was established, the demographics dictated that Abkhazia would be part of the Georgian State. The only way to alter this outcome was to change the demographics. That is precisely what the Abkhazian separatists set out to do; that is, create an Abkhaz-majority territorial entity that would be linked to Russia rather than Georgia by expelling the ethnic Georgian population. Through a violent campaign of ethnic cleansing largely carried out between 1992 and 1994, they succeeded. By the time the opening round of the conflict ended, very few ethnic Georgians remained in that territory. In subsequent years, to ensure that Abkhazia remained emptied of ethnic Georgians, Russia and the *de facto* authorities have acted to prevent ethnic Georgians from returning.

6.9 The wholesale cleansing of ethnic Georgians from Abkhazia has repeatedly been acknowledged by the international community, including by Russia. For instance in August 1993, the Sub-Commission on Prevention of Discrimination and Protection of the UN Commission on Human Rights described the “large-scale ethnic cleansing” that had occurred in Abkhazia⁵⁹⁵. In October 1993, the UN Security Council, in Resolution 876, expressed its deep

Survey Quarterly, Vol. 16, No. 3 (1997), p. 78 (hereinafter Dale, *The Dynamics and Challenges of Ethnic Cleansing: The Georgia-Abkhazia Case* (1997)). GM, Vol. III, Annex 171.

⁵⁹⁴ International Crisis Group, *Abkhazia Today*, Europe Report No. 176 (15 September 2006), p. 5. GM, Vol. III, Annex 161.

⁵⁹⁵ U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, Report submitted by Mr. Asbjorn Eide*, U.N. Doc. E/CN.4/Sub.2/1993/34 (10 August 1993), para. 285. GM, Vol. II, Annex 9.

concern regarding the “reports of ‘ethnic cleansing’” in Abkhazia⁵⁹⁶. In voting in favour of the Resolution, the Representative of Russia acknowledged that “massive ‘ethnic cleansing’” had been committed by “the Abkhazian side”⁵⁹⁷. That acknowledgement was consistent with an official Declaration by the Russian Federation on 2 October that accused the “leadership of Abkhazia” of having committed “genocide” and “rude violation of Human Rights”⁵⁹⁸.

6.10 The Organization for Security and Cooperation in Europe (“OSCE”) has likewise repeatedly recognized the violent anti-Georgian discrimination in Abkhazia as ethnic cleansing. For instance, the 1994 OSCE Budapest Document expressed “deep concern over ‘ethnic cleansing’, the massive expulsion of people, predominantly Georgian, from their living areas and the deaths of large numbers of innocent civilians”⁵⁹⁹. Similarly, the 1996 OSCE Lisbon Document:

condemn[s] the ‘ethnic cleansing’ resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia. Destructive acts of separatists, including obstruction of the return of refugees and displaced persons...⁶⁰⁰

6.11 Russia reiterated its support for the position adopted in the Lisbon Document when, in March 1997, it signed a Decision Taken by the Council of

⁵⁹⁶ U.N. Security Council, Res. 876, U.N. Doc. S/RES/876 (19 October 1993). GM, Vol. II, Annex 11.

⁵⁹⁷ U.N. Security Council, *Provisional Verbatim Record of the 3295th Meeting*, U.N. Doc. S/PV/3295 (19 Oct. 1993), p. 7 (Mr. Vorontsov of Russian Federation speaking). GM, Vol. II, Annex 12.

⁵⁹⁸ Declaration of the Government of the Russian Federation, signed at Moscow (2 October 1993). GM, Vol. III, Annex 107.

⁵⁹⁹ CSCE, *Budapest Document 1994: Towards a Genuine Partnership in a New Era* (6 December 1994), Statement on Georgia, para. 2. GM, Vol. II, Annex 68.

⁶⁰⁰ OSCE, Lisbon Summit, *Lisbon Document* (1996), para. 20 of the Summit Declaration. GM, Vol. II, Annex 69.

the Heads of States of the Commonwealth of Independent States, which took “note of the Declaration of [the] Lisbon Summit... condemning the ‘ethnic cleansing’ resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia”, as well as the “obstruction of the return of refugees and displaced persons”⁶⁰¹.

6.12 In 1999, the OSCE again reiterated its “strong condemnation... of the ‘ethnic cleansing’ resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia, Georgia, and of the violent acts in May 1998 in the Gali region”⁶⁰².

6.13 In light of the established historical fact (accepted not only by the UN and the OSCE, but also by Russia itself) that ethnic Georgians were ethnically cleansed from Abkhazia in 1992-1994, Georgia will not detain the Court by describing these events in great detail. Thus, in the paragraphs that follow, Georgia provides only a summary of the salient features of the ethnic cleansing⁶⁰³.

6.14 One of the first areas to fall victim to ethnic cleansing was the Gagra District in northwest Abkhazia in October 1992. One ethnic Georgian survivor confirmed that few others had escaped:

⁶⁰¹ Decision taken by the Council of the Heads of States of the Commonwealth of Independent States on Implementation of the Measures for Conflict Settlement in Abkhazia, Georgia. Signed at Moscow (28 March 1997). GM, Vol. III, Annex 122.

⁶⁰² OSCE, Istanbul Summit, *Istanbul Document* (1999), p. 49, para. 17. GM, Vol. II, Annex 70.

⁶⁰³ Should Russia now choose to contest the incontrovertible fact that ethnic cleansing took place in Abkhazia, Georgia remains prepared to supplement its evidentiary submissions.

[W]hile I was in Gagra I myself saw the mercenaries and people of different origin who were brought to Abkhazia committing atrocities against local Georgians. They would detain young Georgian boys, brought them together at the stadium of Gagra and shoot them en masse. Georgians were brutally tortured at the Gagra sea-side too. First they would behead Georgians and then played football with their heads. They also took blood and drank the Georgian blood as promised. It was horrific to see the murdered babies along with their mothers who were pitched on the streets of Gagra. After the seizure of Gagra the corpses of Georgians were taken in garbage trucks and dumped in one big hole and burnt⁶⁰⁴.

6.15 After Gagra, the cleansing campaign spread to other regions, including Sukhumi District. One survivor described the atmosphere of ethnic hatred in Sukhumi as follows:

During our stay in Sukhumi, the radio was broadcasting in Russian for Russians, Abkhazians and Armenians, stating that we, Georgians were their enemies, were living on their land, that the land does not belong to Georgians and that they should unite into one force and chase the Georgians out of Abkhazian territory. The same kinds of appeals were published in the newspaper ‘Sovetskaia Abkhazia’⁶⁰⁵.

6.16 Another survivor of Sukhumi described the horrors of what she saw:

While leaving Sukhumi I saw them tossing peaceful people from the windows, executing them at the main entrances of the apartment blocks, in the yards. I don’t remember the name of the

⁶⁰⁴ Declaration of Shaliko Chaladze, Victim Interrogation Protocol (October 1993). GM, Vol. V, Annex 320.

⁶⁰⁵ Declaration of Nunu Benidze, Victim Interrogation Protocol (23 December 1993). GM, Vol. V, Annex 322.

street but I witnessed them killing a young lady who was running away with a child in her hands⁶⁰⁶.

6.17 The brutality of the violence provoked the exodus of virtually the entire ethnic Georgian population from Sukhumi and surrounding areas. According to a 1995 Human Rights Watch (“HRW”) Report:

The Abkhaz attacks triggered a mass flight of Georgian civilians that international relief organizations ‘roughly estimated at 230,000 to 250,000 people.’ Some 50,000 of those fleeing came from Sukhumi. Those who fled along the main highway... had to contend with continuing fighting.... A second road out of Sukhumi led across the mountains behind Sukhumi, the 10,000 foot passes of the Caucasus, through the Kodori valley to the peaks of Svanetia and the Russian border beyond. This route -- described by one journalist as a ‘caravan of trauma’ -- spelled tragedy for thousands... Journalists described scenes of ‘refugees who had been stranded for weeks, lashed by rain and snow, sleeping fifty to a house or camping out in rickety Soviet-era cars.’ A blizzard in early October claimed many; their bodies remained by the sides of trails in the mountain passes⁶⁰⁷.

6.18 Not content simply to drive the ethnic Georgians from Sukhumi, the separatists killed many of those attempting to flee. According to Russian correspondents in Sukhumi at the time, ethnic Georgians who tried to leave by road faced fatal passport checks: “Abkhazs check the passports on the road and are killing everyone with the Georgian nationality.... The Georgians who are left in the city (according to information, several hundreds of them are hiding in

⁶⁰⁶ Declaration of Manuchar Nakopia, Victim Interrogation Protocol (15 October 1993). GM, Vol. V, Annex 323.

⁶⁰⁷ Human Rights Watch/Helsinki, Human Rights Watch Arms Project, *Georgia/Abkhazia: Violations of the Laws of War and Russia’s Role in the Conflict*, Vol. 7, No. 7 (March 1995) (hereinafter HRW, *Violations of the Laws of War* (1995)), p. 43 (internal citation omitted). GM, Vol. III, Annex 146.

the surrounding forests and sanatoriums of the Ministry of Defence) can soon fill the list of the victims of genocide”⁶⁰⁸.

6.19 Those who attempted to flee by sea fared no better. A Russian journalist reported on the refugees’ attempt to escape by sea: “Heavily loaded boats with people are shot by Abkhaz boats and the last time a fighter jet with Russian signs threw several bombs on Sukhumi”⁶⁰⁹.

6.20 The few ethnic Georgians that remained in Sukhumi after the assault faced continued risk of expulsion or worse. According to a Russian journalist: “Many of the remaining Georgians in city are expelled from their houses, or sometimes they are just murdered”⁶¹⁰.

6.21 Russian forces participated in the ethnic cleansing in Sukhumi. Russian volunteers and mercenaries, many of whom were, according to HRW, paid and dispatched by Russia⁶¹¹, began arriving in Sukhumi as early as August 1992⁶¹².

⁶⁰⁸ Aleksei Chelnokov, “Sukhumi in the Hands of Marauders”, *Izvestie* (7 October 1993). GM, Vol. IV, Annex 189.

⁶⁰⁹ Dmitri Kholodov, “The city is leaving by sea”, *Moskovski Komsomolec* (22 September 1993). GM, Vol. IV, Annex 188.

⁶¹⁰ Igor Rotar, “Green kerchief on the door—Abkhazians live here”, *Nezavisimaya Gazeta* (18 October 1993). GM, Vol. IV, Annex 190.

⁶¹¹ HRW, *Violations of the Laws of War* (1995), *op. cit.*, p.50. GM, Vol. III, Annex 146.

⁶¹² *Ibid.*, p. 20. Russia supplied the separatists with troops in the form of irregulars drawn from various locations in Russia. The Russian Legion recruited irregulars out of St. Petersburg. Declaration of Mikhail Georgievich Demianov, Protocol of Suspect Interrogation (29 November 1993) (hereinafter Declaration of Mikhail Georgievich Demianov (29 Nov. 1993)), p. 4. GM, Vol. V, Annex 324. Russian Major General Igor Linev recruited *boeviks* (militants) to serve in Abkhazia. *Ibid.* In late 1992, Georgia lodged a protest in the UN Security Council over the influx of organized armed groups from Russia and under Russian control. U.N. Sec. Council, *Letter dated 2 October 1992 from the Vice Chairman of the State Council of Georgia addressed*

The allied Abkhaz and Russian forces jointly besieged Sukhumi beginning in January 1993. Early in that year, separatist forces unsuccessfully attempted to attack Sukhumi by sea, an attempt that, according to one informed observer, revealed the “high-level complicity” between the Russians and Abkhaz since Abkhaz forces lacked military ships, and they “could have gotten them only from the Russian navy, which moors in Sochi, immediately over the Abkhaz border”⁶¹³.

to the Secretary-General and Appeal of the State Council of the Republic of Georgia to the Committee of Senior Officials of the Conference on Security and Cooperation in Europe, U.N. Doc. S/24626 (7 October 1992). GM, Vol. II, Annex 5.

The Abkhaz separatist forces were augmented by Russian irregulars from the Confederation of Mountain Peoples (“CMP”), a militarized political organization composed of fighters from the North Caucasian republics of the Russian Federation, including North Ossetia, Ingushetia, Karachayevo-Cherkessia, Dagestan and Kabardino-Balkaria. Svetlana Chervonnaya, *Conflict in the Caucasus* (1994) (hereinafter Chervonnaya, *Conflict in the Caucasus* (1994)) pp. 74, 86. GM, Vol. III, Annex 168. In August 1992, the Chairman of the CMP Parliament Iysuph Soslanbekov announced that the Confederation “must ensure the transfer of volunteers to the territory of Abkhazia”, and that “all the armed formations of the Confederation must engage any forces offering resistance and fight their way onto the territory of Abkhazia by any method”. In addition the CMP directive ordered “[a]ll persons of Georgian nationality on the territory of Confederation [including Abkhazia] [are] to be declared hostages”. Directive of the President of the Confederation of the Mountain Peoples of the Caucasus Musa Shanibov and the Chairman of the CMPC Parliament Yusup Soslambekov, 22 August 1992 (reprinted in Svetlana Chervonnaya, *Conflict in the Caucasus* (1994), p. 131)). In an interview in the Russian newspaper *Epicentr* in August 1992, an irregular boasted that “more than enough” Russians had joined the separatists. He described their relationship with the Russian army as:

“Brotherhood. We have full understanding with combatant officers, commanders of subdivision. The majority of them are supporting us, meaning that they stand for national interests of Russia. . . . I would say that Russian army officers support us morally. And this is not a small support. We can at any moment obtain an expert advice from them. There is nothing to hide, one can also receive solid, completely elaborated plan of military operations.”

“For the Right Affair?” *Epicentr* (18 Aug. 1992). GM, Vol. IV, Annex 186.

⁶¹³ Erika Dailey, *Human Rights and the Russian Armed Forces in the ‘Near Abroad’*, Helsinki Monitor, No. 2 (1994) (hereinafter Dailey, *Human Rights and the Russian Armed Forces* (1994)), p. 14. GM, Vol. III, Annex 169.

6.22 Around the same time, the Russian Defence Ministry dispatched a SU-25 fighter-bomber to attack Sukhumi⁶¹⁴. By March 1993, Russia had intensified its aerial assault of Sukhumi. On 19 March, Georgia shot down a Russian SU-27 over the city⁶¹⁵.

6.23 Russian participation in hostilities in Sukhumi was not limited to aerial bombardment. As noted in a 1995 HRW report:

The air attacks over Sukhumi were the most verifiable case of Russian forces aiding the Abkhaz. But there were other instances in which the evidence is persuasive that Russian forces were involved in logistics and supply at this point in the conflict. It is very likely, for example, that Russian forces supplied extensive

⁶¹⁴ An American journalist who witnessed the attack stated that the airplane dropped a 500-pound bomb that “pulverized a two-story residence and [tore] off the back halves of four surrounding houses”. Thomas Goltz, *Letter from Eurasia: The Hidden Russian Hand*, Foreign Policy, No. 92 (Autumn 1993) (hereinafter Goltz, *Letter from Eurasia* (1993)), p. 106. GM, Vol. III, Annex 167. Afterwards, the airplane returned and its “wing cannon and machine guns raked a street about 200 meters away from the bombing site, catching people outdoors who had emerged from the relative safety of their homes to help neighbours buried under the rubble”. *Ibid.*, p.106. After denying the raid and then blaming it on Georgia, Russian Defence Minister Pavel Grachev admitted the Russian attack but claimed it “had taken place in revenge for Georgian shelling of areas close to Eshera, a Russian defense research center and military base not far north of the Gumista River”. *Ibid.*, p. 107.

⁶¹⁵ HRW, *Violations of the Laws of War* (1995), *op. cit.*, p. 53. GM, Vol. III, Annex 146. See also Zhiroknov Mikhail Alexandrovich, “Air Forces in Abkhazia, Patriotic War of Abkhaz, Aviation in Abkhaz-Georgian War 1992-93”, No. 3 (2001), p. 3 (hereinafter Zhiroknov, “Air Forces in Abkhazia, Patriotic War of Abkhaz, Aviation in Abkhaz-Georgian War 1992-93” (2001).) GM, Vol. III, Annex 179; U.N. General Assembly, *Annex, Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights*, U.N. Doc. A/48/385 (23 September 1993), para. 48. GM, Vol. II, Annex 10. A UN Military Observer noted that “both the downed aircraft and the dead pilot confirmed that it was the advanced aircraft the Georgians claimed it was and that the pilot’s papers identified him as a major in the Russian air force”. HRW, *Violations of the Laws of War* (1995), *op. cit.*, p. 38. GM, Vol. III, Annex 146. See also *Krasnaia Zvezda*, (23 March 1993), p. 1 (cited in Dailey, *Human Rights and the Russian Armed Forces* (1994), *op. cit.*, pp. 14-15); Goltz, *Letter from Eurasia* (1993), *op. cit.*, pp. 103-110. GM, Vol. III, Annex 167. Georgia lodged a formal, but futile, protest with Moscow about the bombings of Georgian civilian areas, including Sukhumi, by Russian aircraft. Communication from K. Khgenti, Tbilisi to Ministry of Foreign Affairs of Russian Federation (16 March 1993). GM, Vol. IV, Annex 303.

military assistance to the Abkhaz fighters during sea-borne landings in attempts to retake Sukhumi.... [Furthermore] at least some heavy weapons, transport and fuel were supplied by Russian forces”⁶¹⁶.

In addition, the Russian army in Abkhazia was used as a conduit through which to deliver to the separatist military forces critical aerial photographs of areas of military activity via special couriers from Moscow⁶¹⁷.

6.24 Russia’s support for the attack on Sukhumi was publicly confirmed at the time S. P. Dbar, then leading Abkhazia’s mobilization. When questioned about the legitimacy of the attack, he stated: “You can assume that our actions are sanctioned; Moscow has approved it”⁶¹⁸. Similarly, Russia’s then Vice-President, Aleksandr Rutskoi, informed Mr. Vladislav Ardzinba, the *de facto* Abkhaz President, that the Sukhumi attack was sanctioned and no one would interfere with the separatists’ actions⁶¹⁹.

6.25 By the time the ethnic cleansing of Sukhumi was completed, virtually the entire ethnic Georgian population had been expelled.

⁶¹⁶ HRW, *Violations of the Laws of War* (1995), *op. cit.*, p. 38. GM, Vol. III, Annex 146.

⁶¹⁷ Declaration of Mikhail Georgievich Demianov (29 Nov. 1993), *op. cit.* GM, Vol. V, Annex 324. By early July 1993, the situation on the ground on Sukhumi was so dire that Georgian President Eduard Shevardnadze informed the President of the UN Security Council that the city was under siege by large-calibre mortars, howitzers and Grad rocket launchers with wide-area shells, all directed by Russian SU-25 aircraft. U.N. Security Council, *Letter dated 2 July 1993 from the head of state of the Republic of Georgia addressed to the President of the Security Council*, U.N. Doc. S/26031 (2 July 1993). GM, Vol. II, Annex 8. In addition, assault forces comprised of Russian “volunteers” had landed in coastal areas that were controlled by Russian troops. *Ibid.* GM, Vol. II, Annex 8.

⁶¹⁸ Declaration of Mikhail Georgievich Demianov (29 Nov. 1993), *op. cit.*, p. 6. GM, Vol. V, Annex 324.

⁶¹⁹ *Ibid.*, p. 5.

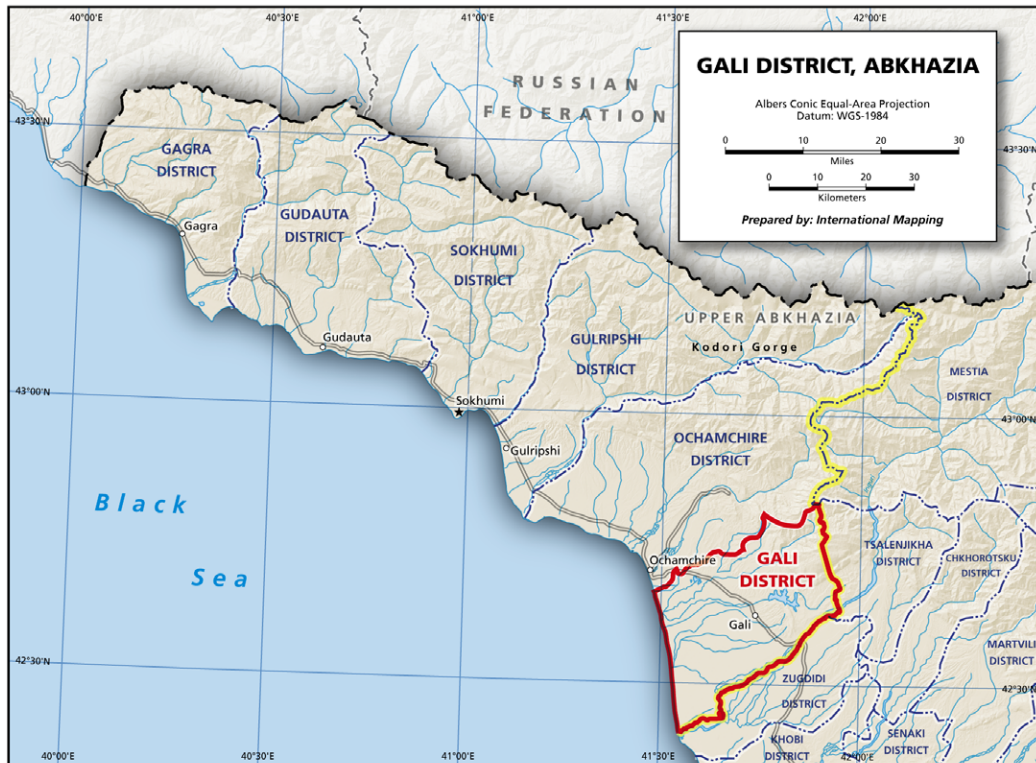
6.26 The ethnic cleansing that next took place in Ochamchire District in September 1993, lying to the southeast of Sukhumi, was much the same.

6.27 According to one eyewitness to the 15 September 1993 attack on Akhaldaba village, in Ochamchire District:

Abkhazs, Cossacks, Chechens and Russians, along with the armed Abkhaz women, raided the village. All of them were armed with grenade launchers, mortar guns, automatic rifles backed by tanks and armored vehicles. They screamed at us saying that they would not leave the area until they would have drunk the blood of the last Georgian survivor. Even the slightest resistance would have caused immediate death. The girls were forcefully driven by Abkhaz women into isolated rooms. I was with my baby and with my mothers and sisters. They threatened us that the Abkhaz men would rape us one by one. Then armed Abkhaz, Russians, Cossacks and Chechen men entered and searched us putting their hands into our breasts looking for jewelry. The men made threats to pull out our eyes with their fingers. Then the Abkhaz and their associates started to beat the women. The girls older than 10 years were taken way in the adjoining room and raped. We heard horrific shrieks from the girls. Our men were held nearby in the iron cells. That took place at the Abkhazian school of the Atara village. Our men's ears were ripped off and clothes ripped while their faces were bruised harshly. The Abkhazs and Chechens were bullying us to drive all of us to a single place and make a soap of us. They cried that they would fight until there was a not single Georgian left in Abkhazia⁶²⁰.

6.28 Next after Ochamchire was the Gali District in the far southeast of Abkhazia bordering the rest of Georgia. The location of Gali District relative to Abkhazia and the rest of Georgia is indicated in Figure 6.1 appearing below.

⁶²⁰ Declaration of Nana Arjevanidze, Victim Interrogation Protocol (12 October 199_). GM, Vol. V, Annex 321.



For illustrative purposes only.

Figure 6.1

6.29 Starting in late September 1993 and continuing through October, Abkhazian forces began carrying the campaign to expel the ethnic Georgian population to Gali, causing thousands of the District’s inhabitants to flee⁶²¹. One victim in Gali recounted how on the second day of the Abkhazian occupation of the Gali region, extremist forces entered Tagiloni village and “started genocide of [the] Georgian population.... [O]n October 4, 1993 Abkhazian extremists killed 69 year old Uolia Ablotia and 64 year old Valram Ablotia. [The s]ame day they tossed 43 year old woman Luchiko Shubladze into the well... and

⁶²¹ HRW, *Violations of the Laws of War* (1995), *op. cit.*, pp. 41-43. GM, Vol. III, Annex 146.GM, Vol. III, Annex 156.

riddled her from the machine guns”⁶²². The victim detailed how similar “illicit activities”, including violent killings, continued after Russian peacekeepers entered the region: “[A]fter this Gvaramia Taniel was violently killed. He had about 30 injuries, his nails were ripped off and joints were crushed”⁶²³. According to the victim, this incident was carried out by organized Abkhazian “criminal” groups, led by the “head of [the] Gudauta hippodrome”⁶²⁴.

6.30 When ethnic Georgians began attempting to return after the wave of violence had subsided, the Abkhazian forces renewed the ethnic cleansing. In early February 1994, Abkhaz fighters attacked Gali and proceeded to systematically kill and expel the ethnic Georgian population. Over the following ten days, buildings in the villages of Okumi, Mukhumi, Tsarche, Pirveli, Gali, Rechki, Tskhiri, Gumprish, Constitutsia and Kohora were burnt down⁶²⁵.

6.31 As in Gagra, Sukhumi and Ochamchire, the attackers left no doubt as to the ethnic motivation behind their violence. According to one forcibly displaced resident of Gali, Abkhaz forces killed her husband and her parents “just because

⁶²² Declaration of Anatoli Jologua, Victim Interrogation Protocol (5 October 1995). GM, Vol. V, Annex 325.

⁶²³ *Ibid.*

⁶²⁴ *Ibid.*

⁶²⁵ U.N. Economic and Social Council, Commission on Human Rights, *Letter dated 23 February 1994 from the Permanent Representative of Georgia to the United Nations addressed to the Chairman of the fiftieth session of the Commission on Human Rights*, U.N. Doc. E/CN.4/1994/123 (hereinafter *Letter dated 23 February 1994*, U.N. Doc. E/CN.4/1994/123 (1 Mar. 1994)), p. 4. GM, Vol. II, Annex 14.

they were Georgian”⁶²⁶. Another survivor of the Gali violence recalled how his neighbour was burned by Abkhaz once they heard his Georgian surname⁶²⁷.

6.32 According to the UN Secretary-General, the fighting in and around Gali resulted in the displacement of 3,000 people, the deaths of 500 and the burning of 800 homes⁶²⁸. Other reports placed the death toll of ethnic Georgians and other non-Abkhaz as high as 800 and the burning of homes at 4,200⁶²⁹. The scale of the destruction is illustrated by the village of Okumi, where 610 of the 710 Georgian buildings were “ruined” and 65 people killed, 20 of whom were elderly women⁶³⁰.

6.33 Observers confirmed that the ethnic cleansing in Gali occurred in the presence of Russian peacekeepers. According to a contemporaneous report on human rights published by the United States Department of State: “[I]n Abkhazia and the cease-fire zone around Gali, Abkhaz committed egregious human rights

⁶²⁶ Dale, *Dynamics and Challenges of Ethnic Cleansing* (1997), *op. cit.*, pp. 77-89 (quoting from author interviews with IDPs in Gali District). GM, Vol. III, Annex 171.

⁶²⁷ *Ibid.*

⁶²⁸ U.N. Security Council, *Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia*, U.N. Doc. S/1994/253 (3 March 1994), para. 17. GM, Vol. II, Annex 15.

⁶²⁹ U.S. Department of State, *Country Report on Human Rights Practices 1994, Georgia* (30 January 1995) (“Abkhazian separatists reportedly executed as many as 800 Georgians and other non-Abkhaz who remained in the Gali region of Abkhazia.”). GM, Vol. III, Annex 115; Analytical group on Abkhazian issues of the Parliament of Georgia, *Facts of Genocide and Ethnic Cleansing of Georgians in Gali Region by the Abkhazian Separatists*, Digital Caucasus (21 January 2007), p. 1. GM, Vol. III, Annex 176. *See also Letter dated 23 February 1994*, U.N. Doc. E/CN.4/1994/123, *op. cit.* GM, Vol. II, Annex 14.

⁶³⁰ U.N. General Assembly, *Annex, Report on the policy of ethnic cleansing/genocide conducted in the territory of Abkhazia, Georgia, and the necessity of bringing to justice the persons who committed these crimes in accordance with international principles of due process*, U.N. Doc. A/52/116 (16 April 1997), para. 154. GM, Vol. II, Annex 22.

abuses against the remaining Georgians despite the presence of Russian peacekeepers”⁶³¹.

6.34 On 14 May 1994, with the cleansing of ethnic Georgians from Abkhazia all but complete and the vast majority of the region’s territory under separatist control, the parties to the conflict -- Georgia, Russia and the Abkhaz separatists - - signed an “Agreement on a Cease-fire and Separation of Forces”⁶³². The cease-fire was to be overseen by CIS and UN forces. In addition, the CIS was charged with the responsibility to “promote the safe return of refugees and displaced persons, especially to the Gali region”⁶³³. However, Russia did not honour its commitment to promote the return of ethnic Georgian IDPs to their homes in Abkhazia. As Georgia will describe in the next sections, Russia supported both the Abkhaz separatists’ further efforts to expel ethnic Georgians from Gali in 1998 and their corresponding policy of denying ethnic Georgians their right of return.

Section II. Renewed Ethnic Cleansing in Gali, 1998

6.35 Between the 1994 cease-fire agreement and 1998, many ethnic Georgians who had been displaced by the earlier violence spontaneously returned to their

⁶³¹ U.S. Department of State, *Country Report on Human Rights Practices 1994, Georgia* (30 Jan.1995). GM, Vol. III, Annex 115.

⁶³² U.N. Security Council, *Annex I, Agreement on a Cease-Fire and Separation of Forces*, signed in Moscow on 14 May 1994, U.N. Doc. S/1994/583 (14 May 1994) (hereinafter “Agreement on Cease-Fire and Separation of Forces (May 1994)”). GM, Vol. II, Annex 16.

⁶³³ *Ibid.*, Art. 4.

homes in the Gali District. For Russia and the *de facto* authorities, the return of ethnic Georgians became an intolerable challenge to their objective of creating an ethnically homogenous territorial entity. Thus, in the words of the UN Secretary-General's Representative, beginning on or around 19 May 1998, Abkhaz separatist forces and their allies "swept through southern Gali on a path of destruction" aimed at removing the ethnic Georgian population from the area⁶³⁴. In little more than a week, Abkhaz and allied forces burned to the ground an estimated 1,400 ethnic Georgian homes throughout the Gali District⁶³⁵. Many of the destroyed homes had been rebuilt after the 1994 violence with the aid of international humanitarian assistance. In his report to the Security Council on 14 July 1998, the UN Secretary-General observed that:

the international community had to witness how its assistance and efforts literally went up in flames, when houses that had been

⁶³⁴ U.N. Economic and Social Council, Commission on Human Rights, *Report of the Representative of the Secretary General on internally displaced persons, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 2000/53, Addendum: Profiles in Displacement: Georgia*, U.N. Doc. E/CN.4/2001/3/Add.4 (hereinafter U.N. ECOSOC, *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4) (25 Jan. 2001), para. 17. GM, Vol. II, Annex 31. The level of anti-Georgian violence was of such a magnitude that the UN Secretary General's Special Representative on Internal Displaced Persons, Mr. Francis Deng, called for an extraordinary session of the Coordinating Council of the Georgian and Abkhazian sides that had been created in 1997, for 22 May 1998. U.N. Security Council, *Report of the Secretary General Concerning the Situation in Abkhazia, Georgia*, U.N. Doc. S/1998/497 (10 June 1998), para. 3. GM, Vol. II, Annex 25. Nonetheless, the violence intensified and on 24 May the UN determined that separatist and allied forces had launched "a large scale operation". *Ibid.*, para. 3.

⁶³⁵ U.N. Security Council, *Report of the Secretary General Concerning the Situation in Abkhazia, Georgia*, U.N. Doc. S/1998/647 (14 July 1998), para.13, GM, Vol. II, Annex 26. ("UNHCR estimates that the some 1,400 private homes were destroyed including houses recently rebuilt with the assistance of the international community, at a cost of some \$2 million."). In addition to the 1,400 homes, "16 schools that had been reconstructed with international support" were also destroyed. U.N. ECOSOC, *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4, para. 77, *op. cit.* GM, Vol. II, Annex 31.

constructed at a cost of more than \$2 million out of UNHCR funds were deliberately set on fire⁶³⁶.

The Secretary-General continued: “I deplore such reprehensible acts, whose motive appears to be to expel people from their home areas”⁶³⁷.

6.36 By the time this round of ethnic cleansing had ended, many ethnic Georgian civilians had been killed and over 40,000 ethnic Georgians had once again been expelled from Gali⁶³⁸.

6.37 The torching of Georgian homes was thorough and systematic. “Up to ninety percent of the houses in some villages of the Gali district” were

⁶³⁶ U.N. Security Council, *Report of the Secretary General Concerning the Situation in Abkhazia, Georgia*, U.N. Doc. S/1998/647 (14 July 1998), para. 37, *op. cit.* GM, Vol. II, Annex 26.

⁶³⁷ *Ibid.* See also Francis Deng, Representative of the Secretary General, U.N. ECOSOC, *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4, *op. cit.*, para. 17. GM, Vol. II, Annex 31; U.N. Security Council, *Letter dated 26 May 1998 from the Permanent Representative of Georgia to the United Nations addressed the President of the Security Council*, U.N. Doc. S/1998/432 (26 May 1998). GM, Vol. II, Annex 24.

The escalation of anti-Georgian violence in May 1998 was preceded by a broad campaign of propaganda and intimidation campaign. Pamphlets were widely distributed with messages such as:

Death to all Georgians!!! Take your things and go to your motherland,
‘Independent Georgia’ [until] May 26. Those who will not leave will
die. There is no place for you in Abkhazia.

Letter to Mr. A. Baluashvili, (5 July 1998). GM, Vol. IV, Annex 305. These pamphlets echoed the warnings given to ethnic Georgians by Abkhaz police and separatists in the days leading up to the outbreak of hostilities. A resident of the Lekukhona village was told, for instance, “[Y]ou are Georgians and you should leave the territory of Abkhazia... If you don’t leave, we will kill you”. Declaration of Mamuka Chakaberia, Victim Interrogation Protocol (27 May 1998), p. 2. (hereinafter “Declaration of Mamuka Chakaberia (27 May 1998)”). GM, Vol. X Annex 328.

⁶³⁸ U.N. ECOSOC, *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4 (25 Jan. 2001), *op. cit.*, para. 17. GM, Vol. II, Annex 31.

destroyed⁶³⁹. In the Georgian village of Tagiloni, for example, 465 of the 475 homes were burned down⁶⁴⁰. In interviews held shortly after the May 1998 violence, ethnic Georgian civilians from throughout the Gali District described similar patterns of destruction in their villages. One resident of Zemo Berghebi village reported that “Abkhaz *boeviks* [militants]... set fire to the whole village” on 20 May 1998⁶⁴¹. A resident of Kvemo Barghebi reported that “the whole village” had been burned down, including his own two-story house and that of his father⁶⁴². The ethnic Georgian village of Nabakevi suffered a similar fate. A widow who had seen her home in Nabakevi reduced to ashes in 1994, witnessed anti-Georgian forces “set fire to all remaining houses” in her village on 24 May 1998⁶⁴³. Houses were also torched in the Georgian villages of Chuburkhinji⁶⁴⁴, Repi⁶⁴⁵, Sida⁶⁴⁶, Gagida⁶⁴⁷, Pirveli Gali⁶⁴⁸, and Dikhazurga⁶⁴⁹, among others⁶⁵⁰.

⁶³⁹ U.N. Security Council, *Report of the Secretary General Concerning the Situation in Abkhazia, Georgia*, U.N. Doc. S/1998/497 (10 June 1998), para. 6. GM, Vol. II, Annex 25.

⁶⁴⁰ Letter from A. Latsuzbaia, State Advisor of Justice, Prosecutor of the Abkhazian Autonomous Republic and E. Topichiev Chief Advisor of Justice, Head of the Investigation Group, to J. Babilashvili, Prosecutor-General of Georgia, (29 June 1998), p. 4. GM, Vol. V, Annex 304. The Analytical Group on Abkhazian Issues of the Parliament of Georgia reported that, in total, 2100 houses and fourteen villages in the Gali District were “completely ruined and burnt”. The Analytical Group on Abkhazian Issues of the Parliament of Georgia, *Facts of Genocide and Ethnic Cleansing of the Georgians in Gali Region by the Abkhazian Separatists from 20-26 of May 1998 and Later* (21 January 2007), p. 2. GM, Vol. III, Annex 176.

⁶⁴¹ Declaration Patsiko Tsatsua, Victim Interrogation Protocol (4 June 1998). GM, Vol. V, Annex 338.

⁶⁴² Declaration of Murtaz Chakaberia, Witness Interrogation Protocol (1 June 1998). GM, Vol. V, Annex 335; *see also* Declaration of Avalion Kikalia, Witness Interrogation Protocol (3 July 1998), p. 2 (“On 30th of May, I moved to the village Kvemo Barghebi and saw my own brick house burnt down along with other supplementary buildings, furniture and things”). GM, Vol. V, Annex 347.

⁶⁴³ Declaration of Toria Natela, Witness Interrogation Protocol (5 June 1998). GM, Vol. V, Annex 339; *see also* Declaration of Jambuli Chekhuria, Witness Interrogation Protocol (25 August 1998) (resident of Nabakevi village, reporting “they burnt almost all the village... the village hardly exists now”). GM, Vol. V, Annex 348; Declaration of Chichiko Chargazia,

Witness Interrogation Protocol (5 June 1998) (describing torching of his home in Nabakevi). GM, Vol. V, Annex 340.

⁶⁴⁴ Declaration of Mamuka Chakaberia, Victim Interrogation Protocol (27 May 1998). GM, Vol. V, Annex 328.

⁶⁴⁵ Declaration of Tamara Butbaia, Victim Interrogation Protocol (29 June 1998). GM, Vol. V, Annex 345.

⁶⁴⁶ Declaration of Vakhtang Kobalia, Victim Interrogation Protocol (28 May 1998). GM, Vol. V, Annex 331; Declaration of Gogola Khasaia, Victim Interrogation Protocol (7 June 1998). GM, Vol. V, Annex 341.

⁶⁴⁷ Declaration of Nineli Kvashilava, Victim Interrogation Protocol (27 May 1998). GM, Vol. V, Annex 329.

⁶⁴⁸ Declaration of Badri Kvatsabaia, Witness Interrogation Protocol (29 June 1998). GM, Vol. V, Annex 346.

⁶⁴⁹ Declaration of Roin Matkava, Witness Interrogation Protocol (26 May 1998). GM, Vol. V, Annex 327.

⁶⁵⁰ Before ethnic Georgians' homes were burned, they were often looted. A resident of Zemo Barghebi village reported that anti-Georgian forces "entered the houses before setting fire to them and took furniture, TV-sets and other things". Declaration of Lasha Sondzia, Victim Interrogation Protocol (28 May 1998). GM, Vol. V, Annex 332. Similarly, in Gagida village, "heavily armed" fighters "enter[ed] the houses and look[ed] for money, jewelry and clothes". Declaration of Nineli Kvashilava (27 May 1998), *op. cit.* GM, Vol. V, Annex 329.

Arbitrary detentions of ethnic Georgians were also wide-spread during the May 1998 violence. Victims of the detentions "were held as hostages, and/or with a ransom demanded for their release". Amnesty International, *Georgia: Summary of Amnesty International's Concerns*, (August 1998), p. 17. GM, Vol. III, Annex 157. For instance, a resident of Nabakevi village reported that the anti-Georgian forces who raided his village during May 1998 took three residents hostage. Declaration of Chichiko Chargazia, Witness Interrogation Protocol (5 June 1998), *op. cit.* GM, Vol. V, Annex 340; *see also* Declaration of Toria Natela, Witness Interrogation Protocol (5 June 1998). GM, Vol. V, Annex 339. Similarly, a resident of Repi village reported that three of her neighbors were arbitrarily detained. Declaration of Tamara Butbaia, Victim Interrogation Protocol (29 June 1998). GM, Vol. V, Annex 345. Reports indicate that approximately 45 ethnic Georgian villagers were held hostage during May and June 1998. Letter from A. Latsuzbaia, State Advisor of Justice, Prosecutor of the Abkhazian Autonomous Republic and E. Topichiev Chief Advisor of Justice, Head of the Investigation Group, to J. Babilashvili, Prosecutor-General of Georgia, Chief State Advisor of Justice (29 June 1998), p. 7. GM, Vol. V, Annex 304.

6.38 More than 60 Georgian civilians were killed in the Gali District in May and June 1998 alone⁶⁵¹. For example, a witness to the violence in her village stated that:

[Separatist forces] were ruining and burning the houses and kill[ing] the peaceful population. They killed four members of the Arakhamia family in our village, one man in the Papava family, one man in the Gvagvalia family and many others. Separatists burned the families without any threat and killed the peaceful people⁶⁵².

6.39 Similarly, on 23 May 1998, separatist forces attacked another village with machine guns, killing two residents⁶⁵³. Witness Roin Matkava described the scene as he fled:

I moved to Zugdidi with empty hands, as Abkhazians were following us with automatic machines shooting at us. After leaving the village I could see from a distance that houses were on fire there.... I left everything behind as I could not take them with me because Abkhazians were running after us shooting at us from automatic machine guns and we narrowly escaped death⁶⁵⁴.

Many more instances of deliberate killings of ethnic Georgian civilians during May 1998 are detailed in an August 1998 Amnesty International report and in additional witness testimony⁶⁵⁵.

⁶⁵¹ *Ibid.*

⁶⁵² Declaration of Mamuka Chakaberia, Victim Interrogation Protocol (27 May 1998), *op. cit.* GM, Vol. V, Annex 328.

⁶⁵³ Declaration of Roin Matkava, Witness Interrogation Protocol (26 May 1998), *op. cit.* GM, Vol. V, Annex 327.

⁶⁵⁴ *Ibid.*

⁶⁵⁵ Amnesty International, *Georgia: Summary of Amnesty International's Concerns*, (August 1998), *op. cit.*, p. 15. GM, Vol. III, Annex 157. In one incident, "six uniformed and armed Abkhazians" attempted to kill a "55-year-old resident of Otobaia village" by throwing him into a

6.40 During these ethnically-targeted human rights violations, Russian troops at best acquiesced in the violence perpetrated against ethnic Georgians in Gali. Just as often, they took an active part in the atrocities by supplying and aiding the Abkhaz militia, and sometimes even attacking ethnic Georgians directly. In that regard, Russian troops frequently accompanied the Abkhaz militia as they entered and attacked Georgian villages. When Abkhaz militia entered Kvemo Barghebi village on 24 May 1998, for example, they were accompanied by “Russian peacekeepers... with grenade launchers and heavy war equipment”⁶⁵⁶. The entire village was then burned to the ground⁶⁵⁷. Similarly, in Zemo Barghebi village, the “Abkhaz *boeviks* [militants]” that entered the village “were preceded by the heavy war equipment of Russian peacekeepers, namely in tanks or IFVs,” such that there Russian peacekeepers operated “alongside” the “Abkhaz *boeviks*”⁶⁵⁸. A resident of Tagiloni village reported that:

As for Russian peacekeepers, they were supporting the Abkhazians as far as they were involved in same affairs against us. When there were so called ‘clean-ups’ in our village, the

fire made with the villager’s own “linen, bed sheets, and bed.” *Ibid.*, p. 15. In another particularly heinous act, a group comprised of Abkhaz militia and Russian troops kidnapped three Georgians in Pirveli Gali. Declaration of Badri Kvatsabaia, (29 June 1998), *op. cit.* GM, Vol. V, Annex 346. Two of the hostages were ultimately released, but one -- Mr. Rulsan Gogokhia -- was not. Mr. Gogokhia “was tortured, pierced with knives, beaten and then murdered.” *Ibid.* In the same village, these anti-Georgian forces also killed Mr. Napo Jejeia, who was badly beaten before being shot to death, and then burned along with his home. *Ibid.*

⁶⁵⁶ Declaration of Murtaz Chakaberia, Witness Interrogation Protocol (1 June 1998), *op. cit.* GM, Vol. V, Annex 335.

⁶⁵⁷ *Ibid.*

⁶⁵⁸ Declaration of Patulia Butbaia, Victim Interrogation Protocol (28 May 1998). GM, Vol. V, Annex 330.

Russians would lead the Abkhazians, they were killing people, or taking them as hostages who then would pay ransom⁶⁵⁹.

6.41 In addition to accompanying and providing cover for the Abkhaz militia, Russian “peacekeepers” also directly participated in attacks on the ethnic Georgian population⁶⁶⁰. Russian tanks, for instance, fired upon Zemo Barghebi village on 20 May⁶⁶¹. Similarly, “on May 25, an Armored Personnel Carrier (ACP) of the Russian Peacekeeping Forces, with the number 400, opened fire on” residents in Achigvara village⁶⁶². In another incident, also on 25 May 1998, Russian troops observing a struggle between Georgian villagers and Abkhaz militia, opened fire on the villagers when they realized that the Abkhaz militia was being overpowered⁶⁶³.

6.42 Russian troops also participated in the systematic torching of homes described above. One witness reported that she saw:

with [her] own eyes how the representatives of Russian peacekeeping forces were burning the houses of peaceful people in Chuburkhinji.... Representatives of Russian peacekeeping forces not only assisted the Abkhaz separatists and the ones with

⁶⁵⁹ Declaration of Daviti Sharia, Witness Interrogation Protocol (10 June 1998). GM, Vol. V, Annex 342.

⁶⁶⁰ Declaration of Akaki Dgebia, Witness Interrogation Protocol (June 4, 1998). GM, Vol. V, Annex 337.

⁶⁶¹ Declaration of Jeiran Dzandzava, Witness Interrogation Protocol (June 3, 1998). GM, Vol. V, Annex 336.

⁶⁶² Declaration of Dato Kiria, Witness Interrogation Protocol (June 22, 1998). GM, Vol. V, Annex 343; *see also* Declaration of Gocha Buliskiria, Witness Interrogation Protocol (June 28, 1998) (describing the same incident). GM, Vol. V, Annex 344.

⁶⁶³ Declaration of Giorgi Gulordava, Victim Interrogation Protocol (30 May 1998). GM, Vol. V, Annex 334.

other nationalities, but also... they burnt the people's houses themselves⁶⁶⁴.

Another witness similarly witnessed Abkhaz separatists and Russian peacekeepers set fire to his house in Sida village⁶⁶⁵.

6.43 When they were not actively participating in anti-Georgian violence themselves, the Russian troops in the Gali District stood by and did nothing to stop the atrocities inflicted on the ethnic Georgian population. Some Russian troops told Georgian residents that they “should protect themselves”, and that “if Georgians pay us money as the Abkhazians do, then we will force the Abkhazians away to the river Psou”⁶⁶⁶. One witness who observed shootings, kidnappings and looting in the village of Dikhazurga, reported that the “Russian peacekeeping forces saw everything but they were silent and did not pay attention to anything”⁶⁶⁷. Another witness, who was taken hostage by the Abkhaz militia, similarly reported:

[W]hen the Abkhaz *boeviks* captured us, representatives of the so-called Russian Peacekeeping Forces did not interfere in their actions. In general, the so-called Russian peacekeepers do not disturb Abkhaz *boeviks*. The Abkhazians can do whatever they want to do in front of their eyes. Even at night, I saw with my

⁶⁶⁴ Declaration of Mamuka Chakaberia (27 May 1998), *op. cit.* GM, Vol. V, Annex 328.

⁷⁸ The Russian troops in the Gali District also assisted the Abkhaz fighters in kidnappings of ethnic Georgians. In one instance on 24 May 1998, during the attack of Zemo Barghebi village by Abkhaz militia, the village's elderly population approached Russian soldiers for assistance. Rather than providing protection for the elderly villagers, the Russian troops simply “handed them to the Abkhaz separatists as hostages.” Declaration of Lasha Sondzia, Victim Interrogation Protocol (28 May 1998). GM, Vol. V, Annex 332.

⁶⁶⁶ Declaration of Pridoni Odisharia, Victim Interrogation Protocol (27 May 1998). GM, Vol. V, Annex 326.

⁶⁶⁷ Declaration of Roin Matkava, Witness Interrogation Protocol (26 May 1998), *op. cit.* GM, Vol. V, Annex 327.

eyes how the Abkhazians stayed at the Russian's headquarters to overnight there with the security considerations. The Abkhazians were telling the Russian peacekeepers that 'you do your things, and I will do mine'. Besides, the Abkhazians divided the half of the pieces of boiled meat 'brotherly' with the Russian peacekeeping forces⁶⁶⁸.

6.44 The killing and intimidation of ethnic Georgians, combined with the destruction of their villages, resulted in a renewed exodus of Gali residents across the Inguri River to the rest of Georgia. According to the UN Representative on Internally Displaced Persons, Francis Deng, "[s]ome 40,000 people were displaced [from the Gali District] in a mere matter of days"⁶⁶⁹. Mr. Deng was clear that this "displacement appears to have been the very aim" of the violence⁶⁷⁰. The UN Secretary-General himself came to the same conclusion in a July 1998 report in which he stated that the motive for the torching of Georgian houses "appears to be to expel people from their home areas"⁶⁷¹.

⁶⁶⁸ Declaration of Otar Minjoraia, Victim Interrogation Protocol (29 May 1998). GM, Vol. V, Annex 333.

⁶⁶⁹ U.N. Economic and Social Council, Commission on Human Rights, *Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 2000/53, Addendum: Profiles in Displacement: Georgia*, U.N. Doc. E/CN.4/2001/3/Add.4 (25 January 2001) (hereinafter U.N. ECOSOC, *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4), para. 17. GM, Vol. II, Annex 31. See U.S. Department of State, *Country Reports on Human Rights Practices 1999, Georgia* (23 Feb. 2000), p. 1. ("As a result of fighting in May 1998, almost all of the 53,000 Georgian IDP's who returned to the Gali region of Abkhazia fled again.") GM, Vol. III, Annex 130.

⁶⁷⁰ U.N. ECOSOC, *Letter dated 23 February 1994*, U.N. Doc. E/CN.4/1994/123. GM, Vol. II, Annex 14.

⁶⁷¹ U.N. Security Council, *Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia*, U.N. Doc. S/1998/647 (14 July 1998), *op cit.*, para. 37. GM, Vol. II, Annex 26.

6.45 In the same report, the UN Secretary-General noted the thoroughness of the ethnic cleansing that had taken place. He stated: “The rich agricultural land of the Gali district, which used to feed most of Abkhazia and provide products for export, is not being worked, as the district is now virtually depopulated”⁶⁷².

6.46 As described in the following sections, Russia and the *de facto* authorities implemented discriminatory policies designed to ensure that Abkhazia remained depopulated of ethnic Georgians.

Section III. Ethnic Georgians Not Permitted to Return to Abkhazia

A. FORCIBLY DISPLACED ETHNIC GEORGIAN IDPS

6.47 As a result of the ethnic cleansing that took place in Abkhazia in 1992-1994 and again in 1998, more than 200,000 ethnic Georgians were forcibly displaced from their homes⁶⁷³. According to UNHCR, by 1999 the ethnic Georgian population in Abkhazia had been reduced from 45 percent to less than 5 percent⁶⁷⁴. Russia and the separatist authorities cemented this demographic change by adopting the discriminatory practice of refusing to allow ethnic Georgians to return to their homes. Only in Gali District, adjacent to the rest of Georgia, where ethnic Georgians have always composed a large majority of the

⁶⁷² *Ibid.*, para. 33.

⁶⁷³ UNHCR, *Background Paper on Refugees and Asylum Seekers from Georgia*, (October 1999), p. 15. GM, Vol. II, Annex 29; U.N. Economic and Social Council, Commission on Human Rights, *Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Georgia*, U.N. Doc. E/CN.4/2006/71/Add.7 (24 March 2006) (hereinafter *Report by Walter Kälin, Addendum, Mission to Georgia*, U.N. Doc. E/CN.4/2006/71/Add.7), para. 7. GM, Vol. II, Annex 40.

⁶⁷⁴ UNHCR, *Background Paper on Refugees and Asylum Seekers from Georgia* (October 1999), *op. cit.*, p. 15. GM, Vol. II, Annex 29.

local population, did some expelled ethnic Georgians manage to return, but even there Russia and the separatist authorities subjected them to discriminatory policies and treatment based on their ethnicity, and kept thousands of other Georgian IDPs from returning to their homes.⁶⁷⁵

6.48 In April 1994, after the first round of ethnic cleansing and forced expulsions had subsided, Russia signed the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons to Abkhazia. The other signatories were Georgia, UNHCR and the Abkhazian separatists. The Agreement recognized “the right of all citizens to live in and to return to their country of origin”⁶⁷⁶. Russia and the other parties agreed that “[d]isplaced persons/refugees have the right to return voluntarily to their place of origin or residence irrespective of their ethnic, social or political affiliation under conditions of complete safety, freedom and dignity”⁶⁷⁷. The parties committed themselves “to create conditions for the voluntary, safe and dignified return of displaced persons to their permanent places of residence in all regions of Abkhazia”, and undertook to ensure, *inter alia*, that returnees would be protected from harassment, that they would have their expired identity and residence documents extended, and that their lost property would be restituted⁶⁷⁸.

⁶⁷⁵ See *infra*, para. 6.56.

⁶⁷⁶ Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons. GM, Vol. III, Annex 110.

⁶⁷⁷ *Ibid.*, Art. 3(a). The Agreement also ensured that returnees would have the right to return peacefully without risk of arrest, detention or imprisonment, or legal proceedings, except for a narrow group of persons for which there was serious evidence that they committed war crimes or crimes against humanity, or any persons “who have previously taken part in the hostilities and are currently serving in armed formations, preparing to fight in Abkhazia”. *Ibid.*, Art. 3(c).

⁶⁷⁸ *Ibid.*, Preamble & Art. 3.

6.49 Notwithstanding these commitments, Russia refused to permit ethnic Georgians to return to Abkhazia. Russia did so directly, through the Russian “peacekeepers” that manned Abkhazia’s administrative border with the rest of Georgia, using these forces to keep the border closed to displaced ethnic Georgians. Few exceptions were permitted. In one incident, in September 1994, Russia’s Defence Minister, General Pavel Grachev, personally intervened to stop the Russian peacekeepers from facilitating the return of a group of ethnic Georgians to Abkhazia⁶⁷⁹.

6.50 Russia has also prevented ethnic Georgians from returning to Abkhazia indirectly, through its open political support for the discriminatory policies adopted by the separatist regime to keep displaced Georgians out of Abkhazia, and its failure to act, if not overt collaboration, in the face of physical attacks by Abkhazian security forces against ethnic Georgians attempting to return to their homes. In fact, the refusal of the Russian peacekeepers to act “in the face of physical attacks against returning internally displaced persons”, was decried by the UN Secretary-General’s Representative on Internally Displaced Persons, Mr. Francis Deng, because it has deterred IDPs from returning, for fear of physical violence⁶⁸⁰.

6.51 The international community has repeatedly condemned the closure of Abkhazia to ethnic Georgians who wish to return. On an almost annual basis, the UN Security Council has declared that ethnic Georgian IDPs have the inalienable right to return to their homes in Abkhazia, and has insisted that

⁶⁷⁹ “Operation of the Russian peacekeeping forces in Abkhazia, Georgia”, *Infospace* (18 June 2008). GM, Vol. IV, Annex 229.

⁶⁸⁰ U.N. ECOSOC, *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4, Annex, *op. cit.*, para. 85. GM, Vol. II, Annex 31.

efforts to maintain the demographic changes resulting from the conflict in Abkhazia are illegal and unacceptable⁶⁸¹. For example, in 1997, the Security Council “reaffirm[ed] the right of all refugees and displaced persons affected by the conflict to return to their homes in secure conditions in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994 on voluntary return of refugees and displaced persons”⁶⁸². It therefore “condemn[ed] the continued obstruction of that return, and stress[ed] the unacceptability of any linkage of the return of refugees and displaced persons with the question of the political status of Abkhazia, Georgia”⁶⁸³. Similarly, in 2003, the Security Council reaffirmed the “inalienable right of all refugees and internally displaced persons affected by the conflict to return to their homes in secure and dignified conditions, in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994” and “recall[ed] that the Abkhaz side bears a particular responsibility to protect the returnees and to facilitate the return of the remaining displaced population”⁶⁸⁴.

6.52 However, far from fulfilling their obligations to facilitate the return of ethnic Georgian IDPs and to protect them from violent and discriminatory intimidation, theft and other harassment, Russia and the separatist authorities have adopted a policy of obstructing the return of ethnic Georgians to Abkhazia. Indeed, although UNHCR planned an initial repatriation of 80,000 ethnic

⁶⁸¹ See, e.g., U.N. Security Council, Res. 1124, S/RES/1124 (31 July 1997). GM, Vol. II, Annex 23; U.N. Security Council, Res. 1462, S/RES/1462 (30 January 2003). GM, Vol. II, Annex 34; U.N. Security Council, Res. 1524, S/RES/1524 (30 January 2004). GM, Vol. II, Annex 36.

⁶⁸² U.N. Security Council, Res. 1124, S/RES/1124 (31 July 1997), *op. cit.*, para. 11. GM, Vol. II, Annex 23.

⁶⁸³ *Ibid.*

⁶⁸⁴ *Ibid.*, para. 14.

Georgians by the end of October 1994, the Abkhazian authorities only permitted 311 to return before the program was abandoned altogether in November 1994⁶⁸⁵. Russia, despite its commitments under the Quadripartite Agreement, allowed its Abkhazian allies to frustrate the process. In 2000, UNHCR reported that “[s]ome 225,000 displaced persons are still awaiting conditions allowing them to return to their homes in Abkhazia”⁶⁸⁶. In 2002, UNHCR again reported that ethnic Georgian “IDPs were still not able to exercise their right to return to Gali and other places of origin”⁶⁸⁷. In 2007, UNHCR could still report that “[w]ith regard to Abkhazia, spontaneous returns were hampered by the inability of ethnic Georgians to return to areas beyond Gali (the southern part of the Abkhazia region)”⁶⁸⁸.

B. ABKHAZIA’S OFFICIAL POLICY OF PREVENTING THE RETURN OF ETHNIC GEORGIAN IDPS

6.53 Preventing ethnic Georgians from returning to Abkhazia has been official policy. In 2005, for example, *de facto* President Sergei Bagapsh stated that ethnic Georgians could not return to areas other than Gali, stating that “resolution of the issue [of ethnic Georgian IDP return, outside of Gali] is impossible”⁶⁸⁹. The *de facto* Prime Minister Alexander Ankvab, confirmed that

⁶⁸⁵ Council of Europe, Parliament Assembly, *Humanitarian situation of the displaced persons in Georgia*, Doc 7629 (6 September 1996), para. 8. GM, Vol. II, Annex 55.

⁶⁸⁶ UNHCR Global Report, 2000, p. 359. GM, Vol. II, Annex 30.

⁶⁸⁷ UNHCR Global Report, 2002, p. 398. GM, Vol. II, Annex 33.

⁶⁸⁸ UNHCR Global Report, 2007, p. 395. GM, Vol. II, Annex 42.

⁶⁸⁹ Pronin, “Abkhazia will provide Georgians with Autonomy” (18 Apr. 2005), *op. cit.* GM, Vol. IV, Annex 211.

“the Abkhazian nation opposes the return of refugees”⁶⁹⁰. Mr. Bagapsh repeated that this was official policy in July 2007, stating: “we are categorically against people returning anywhere apart from Gali [region]. We do not want those people, who fought with firearms against our nation, to return”⁶⁹¹.

6.54 To deter ethnic Georgians from attempting to return, the authorities laid landmines along the border, a measure that could not have gone unnoticed by the Russian military forces who patrolled Abkhazia’s administrative boundaries. In 2001, these actions compelled the UN Secretary-General’s Representative on Internally Displaced Persons to call upon the Abkhaz authorities to “cease the laying of mines as a deterrent to return”.⁶⁹² In November 2005 two separate landmine explosions resulted in the death of a farm worker and the injury of four others, including a 12 year old boy⁶⁹³. Subsequent investigation by UNOMIG determined that the mines had been laid in order to prevent ethnic Georgians from returning to live and work in Abkhazia⁶⁹⁴.

⁶⁹⁰ *Ibid.*

⁶⁹¹ Alexander Shetinin and Yulia Shatova, “Interview with Sergey Bagapsh”, *Official Site of Sergey Bagapsh, President of Abkhazia* (31 July 2007) (hereinafter Shetinin and Shatova, “Interview with Sergey Bagapsh” (2007)), p. 4. GM, Vol. IV, Annex 224.

⁶⁹² U.N. ECOSOC, *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4, *op. cit.*, para. xi. GM, Vol. II, Annex 31. *See also ibid.*, para. 90 (“there is a particularly high concentration of landmines along the Abkhazia bank of the Inguri river, where new mines reportedly continue to be laid by Abkhaz forces to deter ethnic Georgians from returning”).

⁶⁹³ U.N. Security Council, *Report of the Secretary-General on the situation in Abkhazia, Georgia*, U.N. Doc. S/2006/19 (13 January 2006), para. 16. GM, Vol. II, Annex 39.

⁶⁹⁴ *Ibid.*

6.55 To further prevent ethnic Georgians from returning to Abkhazia, the separatist authorities have enacted discriminatory citizenship laws⁶⁹⁵. In October 2005, Abkhazian authorities adopted a “Law of the Republic of Abkhazia on Citizenship of the Republic of Abkhazia”, which allows dual Russian-Abkhazian citizenship, but prohibits dual Georgian-Abkhazian citizenship⁶⁹⁶. As explained by the UN Secretary-General’s Special Representative on the human rights of IDPs, Mr. Walter Kälin, this law contains provisions that discriminate against ethnic Georgian returnees. In particular, it makes the grant of Abkhazian citizenship conditional upon residence in the territory of Abkhazia during the period after the hostilities of 1992-1994 had ceased⁶⁹⁷. As a result, the more than 200,000 ethnic Georgians who were expelled during the ethnic cleansing of this period, and not allowed back, were precluded from becoming citizens of Abkhazia, even if they so desired. Further, the law forces any Georgians who do manage to return to Abkhazia to relinquish their Georgian passports in order to be able to vote, receive social benefits or travel abroad⁶⁹⁸.

6.56 The *de facto* Abkhazian authorities also sought to prevent ethnic Georgian IDPs from returning by dispossessing them of their homes and other property. In his report to the Security Council, the UN Secretary-General criticized a 15 May 2006 Abkhazian parliamentary decree that permitted the

⁶⁹⁵ U.N. General Assembly, *Note by the Secretary-General, Report of the Representative of the Secretary-General on the human rights of the internally displaced*, U.N. Doc. A/61/276 (21 August 2006), para. 9. GM, Vol. II, Annex 41.

⁶⁹⁶ Report by Walter Kälin, *Addendum, Mission to Georgia*, U.N. Doc. E/CN.4/2006/71/Add.7, *op. cit.*, paras. 20, 41. GM, Vol. II, Annex 40.

⁶⁹⁷ *Ibid.*, para. 41 (citing Art. 5(b) of the law).

⁶⁹⁸ U.S. Department of State, *Country Report on Human Rights Practices 2005, Georgia* (8 March 2006), p. 17. GM, Vol. III, Annex 141.

courts to reject claims by ethnic Georgian owners to repossess their illegally occupied property, which served as a powerful deterrent to the return and reintegration of IDPs⁶⁹⁹.

6.57 In Gali, the only region in Abkhazia in which ethnic Georgian IDPs have not been thoroughly prevented from returning, the security forces of the *de facto* regime, which operate under Russian control, have subjected ethnic Georgians to ethnic cleansing, forced labour, dispossession of property, and other forms of discrimination and intimidation that deter them from returning to their homes⁷⁰⁰. As the UN Secretary-General's Representative on Internally Displaced Persons observed, "[e]ven in the Gali district... it is difficult under the circumstances that have prevailed to date to consider durable return as a real possibility", despite the fact that "[s]pontaneous return to the Gali district nonetheless does occur"⁷⁰¹.

C. RUSSIA'S RESPONSIBILITY FOR PREVENTING THE RETURN OF ETHNIC GEORGIAN IDPS

6.58 Russia is responsible for preventing ethnic Georgian IDPs from returning to their homes in Abkhazia. Not only did Russia enforce the prohibition directly, by means of its military stationed along the administrative border with the rest of

⁶⁹⁹ U.N. Security Council, *Report of the Secretary General on the Situation in Abkhazia, Georgia*, U.N. Doc. S/2007/15 (11 Jan. 2007), para. 31. GM, Vol. II, Annex 44.

⁷⁰⁰ For further discussion on how the prohibition of using Georgian language in schools, forced labor, and violent intimidation obstructed the return of Georgian IDPs to Gali, see *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4, *op. cit.*, para. 80. GM, Vol. II, Annex 31; U.N. Security Council, *Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia*, U.N. Doc. S/2001/713, (19 July 2001). GM, Vol. II, Annex 32; U.S. Department of State, *Country Report on Human Rights Practices 2005, Georgia* (8 Mar. 2006), *op. cit.*, p. 25. GM, Vol. III, Annex 141.

⁷⁰¹ U.N. ECOSOC, *Report of Mr. Francis Deng, pursuant to resolution 2000/53*, U.N. Doc. E/CN.4/2001/3/Add.4, *op. cit.*, paras. 77-78. GM, Vol. II, Annex 31.

Georgia, in the years following the ethnic cleansing of 1992-1994, Russia also dominated the *de facto* Abkhazian administration that barred the return of ethnic Georgian IDPs. Russia's control of and dominance over the separatist forces dates to their inception prior to the dissolution of the Soviet Union.

6.59 From their creation, the separatist authorities received vital support from, and were controlled by, the Soviet and then Russian authorities. As shown in the following paragraphs, Russia came to exert complete dominance over the *de facto* administration. Even as the Soviet Union breathed its last breaths, Moscow began extending substantial assistance to the Abkhaz separatists. On 27 December 1991, Soviet officers “plac[ed] the [former Soviet] military units 5482, 3697, located on the territory of the Republic, under the authority of the Ministry of Internal Affairs of the Abkhazian Republic”⁷⁰². Two days later, units 5482 and 3697 were officially placed under the control of the local *de facto* Abkhaz authorities⁷⁰³. Together, the two units comprised the separatist forces' first regiment⁷⁰⁴.

⁷⁰² Protocol on the re-subordination of military units 5482, 3697... USSR of the internal affairs of the Abkhazian Republic (27 December 1991). GM, Vol. III, Annex 98. *See also* Resolution of the Presidium of the Supreme Soviet of the Abkhazian Autonomous Soviet Socialist Republic (ASSR), on creation of the first regiment of the internal forces of Abkhazia (undated). GM, Vol. III, Annex 91.

⁷⁰³ Ruling of Presidium of the Supreme Soviet of the Abkhazia, V. Ardzinba, On location of military units, border and internal forces, VFM forces and making changes to the order of their functioning on the territory of Abkhazia (29 December 1991). GM, Vol. III, Annex 99.

⁷⁰⁴ Resolution of the Presidium of the Supreme Soviet of the Abkhazian Autonomous Soviet Socialist Republic (ASSR), on creation of the first regiment of the internal forces of Abkhazia (undated) (placing those units under the authority of the council for coordinating military units under the Presidium of the Supreme Soviet of Abkhazia and naming them the first regiment of the internal forces of Abkhazia). GM, Vol. III, Annex 91.

6.60 Abkhazia's separatist leader at the time, Vladislav Ardzinba, was in frequent contact with senior Soviet (and, as of January 1992, Russian) military and political leaders. According to a coded ciphering book retrieved from Mr. Ardzinba's personal office, he was communicating with such officials on a near-daily basis as early as 18 December 1991. These officials included:

- Russian President Boris Yeltsin;
- Vice-President Alexandr Rutskoi;
- General-Colonel V.N. Samsonov, Head of the General Staff;
- E.I. Shaposhnikov, Commander-in-Chief of the CIS Armed Forces;
- G. Burbulis, Secretary of State, the first Vice-Premier of Russia;
- General-Colonel V.P. Patrikeev, Commander-in-Chief of the Trans-Caucasian Region's Armed Forces;
- I.A. Kolinchenko, Chairperson of the Central Naval Command of the Armed Forces of the CIS;
- V.V. Belousov, Head of the High Military Command and Engineering School; and
- M.N. Poltaranin, Minister of the Press and Mass Information⁷⁰⁵.

As one Russian analyst observed: "Ardzinba's correspondence with top officials from the former Ministry of Defence of the USSR is a striking illustration that he was quite at home here"⁷⁰⁶. In fact, Mr. Ardzinba's close ties with Moscow authorities extended back decades. He had lived in the Soviet capital for nearly 20 years in the 1970s and 1980s and developed close ties with many of its leading officials, including Yevgeniy Primakov, a former KGB operative who later became Russia's Foreign Minister and then its Prime Minister⁷⁰⁷.

⁷⁰⁵ Ciphering Book #6, Call log of V. Ardzinba (Started 18 December 1992). GM, Vol. V, Annex 302.

⁷⁰⁶ Chervonnaya, *Conflict in the Caucasus* (1994), *op. cit.*, pp. 94-95. GM, Vol. III, Annex 168.

⁷⁰⁷ *Ibid.*, p. 208.

6.61 Moscow's arms shipments to the separatist forces are documented by, among other things, Mr. Ardzinba's and his deputies' orders of arms and ammunition on behalf of the "internal forces of the Republic of Abkhazia"⁷⁰⁸ and their pursuit of Russian military equipment for use by Abkhazian forces⁷⁰⁹. Their efforts were highly successful⁷¹⁰.

6.62 According to one analyst, Russia's Bombora airport at the Gadauta military base in Abkhazia was "the main source of armament" for the Abkhaz separatists⁷¹¹. This included aerial armament, such as the transfer of two mobile

⁷⁰⁸ Order #64 of the Chairman of the Supreme Soviet of the Abkhazian Autonomous Soviet Socialist Republic (ASSR), V.Ardzinba, to the Commanders of Military Units 74545, 10935, 62329, Col. Ignatov E.N., Col. Petrov, V.G., Vice-Col. Dolgoplov A.A. (13 June 1992). GM, Vol. III, Annex 101.

⁷⁰⁹ Ruling of the Presidium of the Supreme Council of Abkhazia on location of military units, border and internal forces, VFM forces and making changes to the order of their functioning on the territory of Abkhazia (29 December 1991) (making property, equipment, arms, premises, weapons, and other assets of the 5482 and 3697 the property of Abkhazia), *op. cit.* GM, Vol. III, Annex 99. *See also* Resolution of the Presidium of the Supreme Soviet of the Abkhazian Republic (April 1992) (declaring buildings, facilities, and other property located on the territory of military unit 10935 to be the property of Abkhazia.). GM, Vol. III, Annex 100.

⁷¹⁰ For example, in the spring of 1992, a former Admiral in the Soviet Navy facilitated the sale of 500 units of arms to Abkhazian separatists. Payment was arranged by Lieutenant Colonel L.P. Aleksandrovich, a former Soviet officer who was then general of the Abkhazian Guard. Terekhov Nikolayevich, a former member of the Russian Ministry of Defense, carried out similar transactions, including the delivery of aircraft from Russian military plants. Declaration of Mikhail Georgievich Demianov (29 Nov. 1993), *op. cit.*, pp. 3-4. GM, Vol. V, Annex 324.

⁷¹¹ Zhiroknov, "Air Forces in Abkhazia, Patriotic War of Abkhaz, Aviation in Abkhaz-Georgian War 1992-93" (2001), *op. cit.*, p. 2. GM, Vol. III, Annex 179. Russian military aircraft had ready access to Abkhazia via the former Soviet (then Russian) Bombora Airport at the Gudauta military base. Bombora afforded the only runway on Abkhaz territory from which SU-25s, MIG-21s and SU-27s could take off. Declaration of Zurab Mebonia (4 February 2009), p. 3. GM, Vol. V, Annex 373. Russia's use of this facility to assist Abkhazian forces is demonstrated by numerous air assaults. Given the undisputed fact that Abkhazia had no aircraft of its own, these attacks were only possible with Russian aircraft, pilots and crews. HRW, *Violations of the Laws of War* (1995), *op. cit.*, p. 53. GM, Vol. III, Annex 146. Russia's aerial support of Abkhaz forces is evidenced conclusively by the shooting down of Russian aircraft over Georgia. The head of Georgia's Ministry of Defense at the time estimated that his anti-aircraft division shot down three Russian military airplanes and nine helicopters during the war. All of the pilots of

rocket air defence systems to Tkvarcheli in south-eastern Abkhazia⁷¹². The Russian military also supplied the separatists with at least one Russian MI-8 helicopter and an L-39 “Albatross” aircraft⁷¹³. Russia’s use of Bombora to aid the separatists was widely reported in the Russian media, leading journalist Arkadi Popov to ask:

How does the Gudauta military happen to be equipped with modern weapons like fighter helicopters -- M-24 (famous “crocodiles”), anti-aircraft rockets ‘Ossa’, and heavy tanks? Are they bought at the market? From where, if not from the airdrome guarded by Russian units in Bombora near Gudauta (there are no others nearby)⁷¹⁴.

6.63 A 1995 HRW Report noted that the combined increase of arms and personnel from Russia in 1993 was the cause of violent abuses directed at ethnic Georgians:

The role of Russian actors in the conflict became considerably more pronounced during the first six months of 1993. This was precisely at a time when human rights abuses and violations of the laws of war attributable to heavy weapons obtained from Russian sources were becoming more serious. The Russian military took

these aircraft served in the Russian military. On one occasion, the Georgian defence forces downed a Russian helicopter transporting Zurab Labakhua, commander of the Abkhaz Eastern Front, who was carrying a large amount of Russian currency. Declaration of Zurab Mebonia (4 Feb. 2009), *op. cit.*, p. 2. GM, Vol. V, Annex 373.

⁷¹² Zhiroknov, “Air Forces in Abkhazia, Patriotic War of Abkhaz, Aviation in Abkhaz-Georgian War 1992-93” (2001), *op. cit.*, p. 2. GM, Vol. III, Annex 179.

⁷¹³ *Ibid.*, p. 3.

⁷¹⁴ Arkadi Popov, “War in Abkhazia”, *Grajdanskaia Misl* (22 August 1993). GM, Vol. IV, Annex 187.

a direct role in hostilities on several occasions, and appears to have provided logistical support and supplies to the Abkhaz⁷¹⁵.

6.64 In the ensuing years, the consolidation of Russia's domination of Abkhazia continued apace. Russia's dominance of Abkhazia was reflected in the senior Russian government officials who simultaneously served as leaders of the *de facto* regime. Many key governmental posts were actually held not by Abkhazians but by senior officials of the Russian State. Thus, for instance, **Colonel Sultan Sosnaliev** -- a 30 year veteran of the U.S.S.R.'s anti-aircraft forces -- was appointed First Deputy Minister of Defence of the *de facto* regime in 1992 and then Minister of Defence in 1993. Upon leaving the Defence Ministry in 1996, he returned to Russia. Sosnaliev resumed service in Abkhazia

⁷¹⁵ HRW, *Violations of the Laws of War* (1995), *op. cit.*, GM, Vol. III, Annex 146. The sudden sophistication of the separatists' arms left little doubt about the fact that they came from Russia. *Ibid.*, p. 18 ("Abkhaz weapons sources prior to the conflict are harder to identify, although there is little doubt that whatever weapons there were came from Russian or Soviet sources."), and p. 32 (Noting that the increased armament of the separatists in 1992 indicates that Russia was the "likely source" of military support). See also Dailey, *Human Rights and the Russian Armed Forces* (1994.), *op. cit.*, p.14. GM, Vol. III, Annex 169. ("It is highly unlikely that ethnic Abkhaz, who number some 100,000 locally, and who have no formal army or weapons, could maintain sustained military superiority over the Georgian forces, drawn from an ethnic population of about 4 million, without military assistance from Russia."); U.N. Security Council, *Annex, Summary of the report of the goodwill mission to Georgia*, U.N. Doc. S/24633 (8 October 1992), p. 3. GM, Vol. II, Annex 6. (attributing worsening crisis in Abkhazia to presence there of north Caucasian fighters as well as the "easy availability of weapons apparently obtained to a large extent from elements of the Commonwealth of Independent States (CIS) forces stationed there"). At the outbreak of hostilities in 1992, Abkhazians had none of the heavy weapons, such as artillery, that later played a prominent role in their attacks on ethnic Georgians. Human Rights Watch concluded that, "[m]ethods of fighting by the Abkhaz forces upon the immediate outbreak of hostilities appear to bear out this claim for initially few, if any, heavy weapons." HRW, *Violations of the Laws of War* (1995), *op. cit.*, p.18. GM, Vol. III, Annex 146. Yet, by the time Abkhaz forces attacked Gagra in October 1992, they had acquired tanks (including several T-72 tanks) and armored vehicles, as well as heavy and light artillery. *Ibid.*, p. 26. While recognizing the possibility that Abkhazian separatists obtained equipment through unofficial channels, HRW concluded that there is little doubt, given the type of weapons acquired by Abkhazia between October and December 1992, that parties within the Russian forces armed the separatists. *Ibid.*, p. 32.

in 2005, when he once again became Minister of Defence, serving simultaneously as the *de facto* Vice Premier of Abkhazia⁷¹⁶.

6.65 **Lieutenant General Anatoly Zaytsev** is another example. During his long career in the Soviet and then Russian army, Lieutenant General Zaytsev served as Chief Military Advisor in Syria and as Deputy Commander of the Transbaikalia Military Command. In June 2004, he was transferred to Abkhazia, where he became the *de facto* Deputy Minister of Defence. In March 2005, he assumed the position of Chief of the General Staff of the Abkhazian armed forces, as well⁷¹⁷.

6.66 Other senior Russian military officers who were installed in the *de facto* Abkhazian administration included **Colonel Alexander Pavlushko**, who was the Chief of Staff of the Russian peacekeeping force in Abkhazia before becoming the *de facto* Deputy Minister of Defence in April 2008⁷¹⁸.

6.67 The conspicuous hand Moscow played in orchestrating events in Abkhazia is also typified by the events surrounding the region's "Presidential" elections in 2004. Senior Russian officials openly endorsed Raul Khajimba long before the official election campaign had even begun. Nicknamed the "Abkhazian Putin", Mr. Khajimba had served a long career in the old Soviet

⁷¹⁶ Georgian Ministry of Foreign Relations, *Russian Officials in the De Facto Administrations of South Ossetia and Abkhazia* (undated). GM, Vol. V, Annex 409.

⁷¹⁷ *Ibid.*

⁷¹⁸ *Ibid.*

KGB before becoming *de facto* Prime Minister of Abkhazia, and was viewed as a politician who would remain properly deferential to Moscow⁷¹⁹.

6.68 When the Abkhaz “Presidential” election took place on 3 October 2004, the results were surprising. Eight days after the election, Abkhazia’s Central Election Commission declared businessman Sergei Bagapsh the new *de facto* President with 50.8 % of the vote⁷²⁰.

6.69 What might have proved a demonstration of Abkhazia’s freedom from Russian control proved the contrary, however. After Russia’s man, Mr. Khadjimba, challenged the vote, the Abkhaz Supreme Court declared the poll invalid⁷²¹. According to former President Putin’s senior economic advisor from 2000-2005: “Moscow promptly punished the whole province for Bagapsh’s temerity”⁷²². On 1 November 2004, both Mr. Khajimba and Mr. Bagapsh were summoned to Moscow for negotiations but these initial efforts to solve the problem failed⁷²³. On 23 November, the Governor of Russia’s Krasnodar District (bordering Abkhazia) threatened to close the border if “the Abkhaz

⁷¹⁹ *Ibid.*, p. 260. In August 2004, Russia’s then-President Putin warmly received Mr. Khadjimba at his residence in Sochi. Andrei Illarionov, “The Russian Leadership’s Preparation for War, 1999-2008”, *The Guns of August 2008: Russia’s War in Georgia*, Central Asia-Caucasus Institute (2009) (hereinafter Illarionov, *The Russian Leadership’s Preparation for War, 1999-2008*, (2009)), p. 57. GM, Vol. III, Annex 178.

⁷²⁰ “Rival Abkhaz Presidential Candidates Meet in Moscow”, *Radio Free Europe* (3 November 2004). GM, Vol. IV, Annex 200.

⁷²¹ *Ibid.*

⁷²² Illarionov, *The Russian Leadership’s Preparation for War, 1999-2008*, (2009), *op. cit.*, p. 58. GM, Vol. III, Annex 178.

⁷²³ “Rival Abkhaz Presidential Candidates Meet in Moscow”, *Radio Free Europe* (3 Nov. 2004), *op. cit.* GM, Vol. IV, Annex 200.

people do not change their mind and still recognize Bagapsh as President-elect”⁷²⁴. The same threat was repeated a week later⁷²⁵.

6.70 In a similar vein, on 1 December 2004, the Assistant to the Russian Prime Minister, Gennadi Bukaev, threatened to institute economic and military sanctions against Abkhazia “in case of further unconstitutional actions by Sergey Bagapsh”⁷²⁶. The threatened measures included cutting off the railway connection between Abkhazia and Russia; restricting cross-border passage for Abkhaz residents into Russia; banning all Russian imports of Abkhazian citrus fruits (the region’s main official source of revenue); and preparing for a complete blockade⁷²⁷.

6.71 By this time, Abkhazia was completely dependent on Russia commercially and financially. Abkhazia’s sole connection with the outside world was with Russia. In December 2002, for instance, Russia opened the Sochi-Sokhumi railway link between Russia and Abkhazia over Georgia’s

⁷²⁴ “Russia sends mission to Abkhazia”, *Civil Georgia* (1 December 2004). GM, Vol. IV, Annex 205; Jean-Christophe Peuch, “Georgia: Russia steps up pressure on Abkhaz Opposition”, *Radio Free Europe* (1 December 2004). GM, Vol. IV, Annex 204.

⁷²⁵ “Governor of Krasnodor Krai declared he would close the borders of the region in case the situation is exacerbated in Abkhazia and Ukraine”, *News.ru* (30 November 2004). GM, Vol. IV, Annex 201.

⁷²⁶ “Russia Blockades Abkhazia”, *Civil Tbilisi* (1 December 2004). GM, Vol. IV, Annex 203; Vladimir Socor, *Russia Blockading Abkhazia to Overturn Presidential Election*, Eurasia Daily Monitor Vol. 1, No. 138 (1 December 2004) (hereinafter Socor, *Russia Blockading Abkhazia to Overturn Presidential Election* (1 Dec. 2004).) GM, Vol. IV, Annex 202.

⁷²⁷ Socor, *Russia Blockading Abkhazia to Overturn Presidential Election* (1 Dec. 2004). GM, Vol. IV, Annex 202; Jean-Christophe Peuch, “Georgia: Abkhazia Presidential Rivals Strike tentative Last-Minute Deal”, *Radio Free Europe* (6 December 2004) (hereinafter Peuch, “Georgia: Abkhazia Presidential Rivals Strike tentative Last-Minute Deal” (6 Dec. 2004).) GM, Vol. IV, Annex 208.

protests⁷²⁸. And in July 2004, a Russian army brigade began to rehabilitate and repair the Vesioloe-Sokhumi railway line between Russia and Abkhazia, again over Georgia's protests⁷²⁹. In September 2004, Russia began planning two additional railway lines, a Sokhumi-Rostov connection, as well as the Sokhumi-Moscow line⁷³⁰. Russia also opened a new bridge at the River Psoy on the Russian-Abkhaz border in November 2003, and established a bus connection between Sokhumi and Rostov in March 2004⁷³¹. In August 2004, a sea connection between the Black Sea ports of Akhali Atoni in Abkhazia and Sochi in Russia was created⁷³². With these tightening links, Russian investment in Abkhazia grew at a rapid pace.⁷³³

6.72 On 2 December 2004, the day after issuing its threats to decimate the Abkhaz economy if Mr. Bagapsh continued to claim the *de facto* presidency, Russia carried them out. It cut the railway connection between Moscow and

⁷²⁸ "Railway communication between Russian city of Sochi and the capital of Abkhazia Sukhum has been restored", *Aspny Press* (25 December 2002). GM, Vol. IV, Annex 192.

⁷²⁹ "Trains from Abkhazia arrive back to Russia", *Lenta.ru* (7 September 2004) (hereinafter "Trains from Abkhazia arrive back to Russia" (7 Sep. 2004).) GM, Vol. IV, Annex 198.

⁷³⁰ "Trains from Abkhazia arrive back to Russia" (7 Sept. 2004), *op. cit.* GM, Vol. IV, Annex 198.

⁷³¹ "A new bridge is brought into service on the Russian-Abkhaz border at River Psoy", *IA Regnum* (28 November 2003). GM, Vol. IV, Annex 194.

⁷³² "Saakashvili threatens tourists", *Nezavisimaya Gazeta* (6 August 2004). GM, Vol. IV, Annex 197.

⁷³³ In 2005, Abkhazia received \$40 million in Russian investment. Shetinin and Shatova, "Interview with Sergey Bagapsh" (2007), *op. cit.* GM, Vol. IV, Annex 224. By 2006, the number was \$90 million. *Ibid.* By 2007, it was \$200 million. "Oleg Bartsists: Increased investment into Abkhazia's economy are irreversible" (19 January 2007). GM, Vol. IV, Annex 223. "Russian investments to be of much significance for Abkhaz economy - President of Abkhazia", *Official Site of the President of the Republic of Abkhazia* (8 November 2007). GM, Vol. IV, Annex 225.

Sukhumi⁷³⁴ and banned the import of Abkhaz citrus fruits⁷³⁵. As Mr. Bagapsh's inaugural day (6 December) neared, gas shortages emerged, food prices skyrocketed, and the number of armed persons in Sukhumi multiplied⁷³⁶.

6.73 On that date, Mr. Bagapsh capitulated to the Russian pressure. As a result of "negotiations" orchestrated by Russian Deputy Prosecutor-General Vladimir Kolesnikov, Mr. Bagapsh and Mr. Khadjimba agreed to a new election in which they would run on a joint ticket, with Mr. Bagapsh as President and Mr. Khadjimba as Vice-President⁷³⁷. On 12 January 2005, Mr. Bagapsh was elected *de facto* President and Mr. Khadjimba *de facto* Vice-President.

6.74 Abkhazia's new *de facto* President, Mr. Bagapsh, had learned his lesson. In the first year after his election, he visited Moscow no fewer than nine times⁷³⁸. In an interview in May 2005, just three months after Mr. Bagapsh had become "President", Abkhazia's *de facto* Foreign Minister, Sergei Shamba, made the regime's unequivocal alignment with Russia clear:

Abkhazian policy has traditionally been directed towards Russia. We think that Russia not only can't lose the dominant influence in this region, but it should not allow this to happen. The evidence

⁷³⁴ "Russia cut railway connections with Abkhazia" (2 December 2004). GM, Vol. IV, Annex 206; "Railway connection between Moscow and Sokhumi is cut", *RIA Novosti* (2 December 2004). GM, Vol. IV, Annex 207.

⁷³⁵ "Tangerine policy at Kremlin", *Novopol News* (7 December 2004). GM, Vol. IV, Annex 209.

⁷³⁶ *Ibid.*

⁷³⁷ Illarionov, "The Russian Leadership's Preparation for War, 1999-2008" (2009), *op. cit.*, p. 58. GM, Vol. III, Annex 178; Peuch, "Georgia: Abkhazia Presidential Rivals Strike tentative Last-Minute Deal" (6 Dec. 2004), *op. cit.* GM, Vol. IV, Annex 208.

⁷³⁸ "President Sergey Bagapsh leaves for Moscow with working visit", *Apsny Press* (17 April 2006). GM, Vol. IV, Annex 221.

of our position -- is the public attitudes in Abkhazia, 100% pro-Russian. Russia is our neighbor; economic, military and cultural links with it are our priorities, and no other interests can be above this. Abkhazia will be with Russia⁷³⁹.

6.75 In March 2006, Mr. Shamba more bluntly admitted Russia's control over Abkhazia and its *de facto* regime. He stated: "Abkhazia is a Russian protectorate"⁷⁴⁰.

6.76 Russia's embrace of Abkhazia included the Abkhaz people as well as their *de facto* government. The process of granting Russian citizenship and issuing Russian passports to ethnic Abkhaz, which began in the 1990s, accelerated significantly in October 2003 when the Russian government amended its citizenship laws to make it even easier for Abkhazians to acquire Russian passports⁷⁴¹. By 2005, 90 percent of all Abkhaz held dual citizenship⁷⁴².

6.77 In contrast to ethnic Abkhaz, ethnic Georgians remaining in Abkhazia could only acquire Russian citizenship by first becoming Abkhazian citizens; and, under both Russian and Abkhazian citizenship laws, they could not do so

⁷³⁹ "Interview with Sergei Shamba", *Strategema.org* (4 May 2005). GM, Vol. V, Annex 349.

⁷⁴⁰ "Sergey Shamba: Abkhazia is *de facto* under Russian protectorate", *IA Regnum* (24 March 2006). GM, Vol. IV, Annex 219. Mr. Shamba further said that "[t]his is the way to understand statements of Vladimir Putin who said that Russia would take care of its citizens in Abkhazia." *Ibid.*

⁷⁴¹ "Putin corrected law on citizenship", *Lenta.ru* (24 September 2003). GM, Vol. IV, Annex 193.

⁷⁴² "Krasnodar Region has included Abkhaz population in budget", *Lenta.ru* (7 June 2005). GM, Vol. IV, Annex 212.

without first giving up their Georgian nationality⁷⁴³. Those ethnic Georgians who wished to remain Georgian nationals, therefore, were denied the full benefits of citizenship on the basis of their nationality.

6.78 Not only has Russia exerted control over the separatist authorities, Russia itself has chosen to defend, rather than stop, the adoption and implementation of discriminatory policies and practices against ethnic Georgians, which are openly intended to keep IDPs from returning. For example, on 29 May 2008, the UN General Assembly adopted a resolution that expressed deep concern over the “demographic changes resulting from the conflict in Abkhazia, Georgia” and that recognized “the right of return of all refugees and internally displaced persons and their descendants, regardless of ethnicity”⁷⁴⁴. Russia voted against the resolution on the purported ground that it adopted a “political approach to the Georgian-Abkhaz conflict that the Russian Federation cannot support”⁷⁴⁵.

6.79 Russia’s policy of defending the Abkhazian separatists’ refusal to allow the return of displaced ethnic Georgians is further reflected in an exchange of letters between the Presidents of Georgia and Russia. On 23 June 2008, the President of Georgia wrote to his Russian counterpart proposing negotiations over, among other things, the return of Georgian IDPs to Abkhazia.⁷⁴⁶ In his

⁷⁴³ *Report by Walter Kälin, Addendum, Mission to Georgia*, U.N. Doc. E/CN.4/2006/71/Add.7, *op. cit.*, paras. 20, 41. GM, Vol. II, Annex 40.

⁷⁴⁴ Observations of Georgia, Interim Measures, Annex 8.

⁷⁴⁵ U.N. General Assembly, Statement of Mr. Rogachev, Representative of the Russian Federation, 97th Plenary Meeting, Sixty-second Session, U.N. Doc. A/62/Pv.97 (15 May 2008). GM, Vol. II, Annex 45.

⁷⁴⁶ Letter from President Mikheil Saakashvili to President Dmitry Medvedev (24 June 2008). GM, Vol. V, Annex 308.

response of 1 July 2008, Russian President Dmitry Medvedev rejected any such return, declaring that it was “untimely to put the question of return of refugees in such a categorical manner” since, he said, “Abkhazs perceive this as a threat to their national security in the current escalated situation and we have to understand them”⁷⁴⁷.

6.80 This position was reiterated by the Russian Minister of Foreign Affairs, Mr. Sergey Lavrov, who declared on 17 July 2008 that the “[s]igning” of an agreement “on the return of Georgian refugees to Abkhazia is unrealistic at the given moment, since the return of refugees first requires calming down the situation, restoration of trust, and only afterwards the possibility arises to discuss this issue”⁷⁴⁸. In these words, the Foreign Minister made Russia’s policy clear: Georgian refugees will not be permitted to Abkhazia now, or in the foreseeable future.

Section IV. Russia’s Refusal to Allow Ethnic Georgians Displaced in 2008 to Return

6.81 In August 2008, the ethnic Georgians who remained in Abkhazia were subjected to ethnic cleansing and other forms of ethnic discrimination. Of course, by that time, very few ethnic Georgians were left in Abkhazia, given that more than 200,000 were forcibly expelled in the 1990s. Those that remained

⁷⁴⁷ Letter from President Dmitry Medvedev of the Russian Federation to President Mikheil Saakashvili of Georgia (1 July 2008). GM, Vol. V, Annex 365.

⁷⁴⁸ Ministry of Foreign Affairs of the Russian Federation, Information and Press Department, Transcript of Remarks and Response to Media Questions by Minister of Foreign Affairs Sergey Lavrov at Joint Press Conference with Serbian Minister of Foreign Affairs Vuk Jeremic, Moscow, July 17, 2008, *available at*: http://www.un.int/russia/new/MainRoot/docs/off_news/170708/newen1.htm (last visited 20 August 2009).

were concentrated in two areas: the remote Kodori Gorge (under the control of the Georgian government) and the Gali District (beyond the control of the Georgian government). The ethnic Georgian populations of both areas experienced ethnic discrimination, including forced displacements, at the hands of the Russian military and Abkhaz separatist authorities⁷⁴⁹.

6.82 When the Russian army invaded Abkhazia in August 2008, approximately 2,500 ethnic Georgians resided in the Kodori Gorge⁷⁵⁰. Virtually the entire community was evicted when the area came under sustained attack from the Russian military. For instance, a resident of the village of Azhara testified that “Russian planes threw bombs in our village as well as in other villages of the Gorge,” and that as a result, “the population left the villages”⁷⁵¹. She testified that in Azhara, “[t]hose who managed to enter for a limited period of time say that the majority of houses are destroyed and robbed”⁷⁵². Other former residents of Azhara similarly report that “the village is looted and abandoned and that there are Abkhazian and Russia forces in the village”⁷⁵³.

⁷⁴⁹ The displacement of ethnic Georgians from Abkhazia in 2008 was confirmed by objective international observers. For example, a map produced by the UN Office for the Coordination of Humanitarian Affairs, which depicts patterns of displacement as of 25 August 2008, that is, two weeks after the ethnic cleansing began, indicates the displacement of IDPs from the Kodori Gorge as well as from Gali and adjacent areas of Georgia. *Available at* [http://www.reliefweb.int/rw/fullMaps_Sa.nsf/luFullMap/0CBA6DADE11185A3C12574B10021B52D/\\$File/rw_CE_geo080826.pdf?OpenElement](http://www.reliefweb.int/rw/fullMaps_Sa.nsf/luFullMap/0CBA6DADE11185A3C12574B10021B52D/$File/rw_CE_geo080826.pdf?OpenElement) (last visited on 21 August 2009).

⁷⁵⁰ OSCE, Office for Democratic Institutions and Human Rights, *Human Rights in the War-Affected Areas Following the Conflict in Georgia* (27 November 2008), p. 62. GM, Vol. II, Annex 71.

⁷⁵¹ Declaration of Violeta Chopliani (9 July 2009). GM, Vol. V, Annex 378.

⁷⁵² *Ibid.*

⁷⁵³ Declaration of Dali Kvanchiani. GM, Vol. V, Annex 379. *See also* Declaration of Maia Kordzaia (testifying that “the entire village is robbed” and that “Abkhazian and Russian soldiers walk around”). GM, Vol. V, Annex 380.

Indeed, the ethnic cleansing of the Kodori Gorge was so thorough that, as described in paragraph 6.87, the separatist authorities went so far as to expel even the monks residing in a Georgian monastery⁷⁵⁴.

6.83 In Chapter 5, Georgia showed that Russia has discriminated against ethnic Georgians by refusing to permit the victims of ethnic cleansing in South Ossetia in 2008 to return. The same is true with regard to ethnic Georgians expelled from Abkhazia in 2008. Russia and the *de facto* authorities continue to pursue the same policies as in South Ossetia: to maintain the ethnic homogeneity of the two regions by preventing displaced ethnic Georgians from returning to their homes. In October 2008, the Foreign Minister of Abkhazia's *de facto* regime announced that Abkhazia would only accept the return of displaced ethnic Georgians to the Gali District, stating that it was "impossible" to discuss the return of Georgian refugees in other districts of Abkhazia⁷⁵⁵. He reconfirmed this position in February 2009, on the ground that "the rest of the population of Abkhazia is not yet ready for the return of refugees"⁷⁵⁶. To the same end, in

⁷⁵⁴ Beginning in August 2008, the already prevalent discrimination against ethnic Georgians in the Gali District intensified. One witness who was able to maintain contact with members of the ethnic Georgian community in Gali testified that "Georgians in Gali" were "being forced to accept Russian passports if they want to remain in Gali" and "threatened with expulsion if they refuse to accept Russian passports." Witness Declaration of Zaza Gorozia, Observations of Georgia, Interim Measures, Annex 30. Russia and the separatist authorities extended these abuses to adjacent areas in Georgia proper as well. For example, a municipal official from the village of Ganmukhuri testified that the village was "occupied by the Russian military and Abkhaz separatists" on 10 August. Victim Witness Protocol, Joni Mishvelia, Observations of Georgia, Interim Measures, Annex 36. The local population was then told: "Georgian passports were useless and if they wanted to live in their villages, they should accept the passports of Russian citizens." *Ibid.* Those who refused "were forced to leave their families and hide in other villages." *Ibid.*

⁷⁵⁵ "MFA Abkhazia: Georgian refugees may return only to Gali District", *Rosbalt.ru* (20 October 2008). GM, Vol. IV, Annex 267.

⁷⁵⁶ "Shamba: refugees may return only in Gali district" (26 February 2009). GM, Vol. IV, Annex 286.

June 2009, the Chair of the Human Rights Committee of the *de facto* Abkhazian Parliament declared that the displaced ethnic Georgians “will never be able to return”⁷⁵⁷. Although some ethnic Georgians have managed to return to the Gali District in southeast Abkhazia, directly across the administrative boundary with the rest of Georgia, the vast majority of the IDPs have been prevented from doing so, or discouraged by the discriminatory policies implemented by the *de facto* regime. Most significant among these policies is the requirement that IDPs who wish to return to Abkhazia give up their Georgian nationality, and accept Abkhazian and Russian citizenship and passports.

6.84 In contrast to the obstacles placed in the path of returning Georgian IDPs, the *de facto* authorities in Abkhazia have energetically promoted the return of ethnic Abkhaz, including those who have never lived in Abkhazia but are descendants of those who left the region decades ago and resettled in Turkey. Under this program, the *de facto* regime offers citizenship, a year of free housing and five years of financial aid upon resettlement⁷⁵⁸.

6.85 These general policies of Russia and the Abkhazian *de facto* authorities are applicable with equal force to IDPs who were displaced from the Kodori Gorge⁷⁵⁹. They have been prevented from returning by the Russian military

⁷⁵⁷ “Abkhazia and the Perils of ‘Independence’”, *Radio Free Europe* (19 June 2009), p. 3. GM, Vol. IV, Annex 296.

⁷⁵⁸ Ellen Barry, “Abkhazia Lures its Expatriates, Welcoming Them One by One”, *New York Times* (8 May 2009). GM, Vol. IV, Annex 295.

⁷⁵⁹ U.N. Security Council, *Report of the Secretary-General on the Situation in Abkhazia, Georgia, Pursuant to Security Council Resolution 1839 (2008)*, UN Doc. S/2009/69 (3 February 2009) (hereinafter *Report of the Secretary-General on the Situation in Abkhazia, Georgia, Pursuant to Security Council Resolution 1839 (2008)*, UN Doc. S/2009/69), para. 41. GM, Vol. II, Annex 52.

forces that occupy and control this region. In May 2009, the UN Secretary-General reported that:

The Russian Federation forces in the upper Kodori valley are deployed mostly between Gentsvish village, where they maintain their headquarters, and the Khida and Kalamri-Sukhi passes, which provide access to the valley from the Georgian controlled side. Reportedly, the Russian Federation forces maintain checkpoints at the Khida and Kalamri-Sukhi passes alongside Abkhaz posts⁷⁶⁰.

6.86 Thus, the Rapporteur of the Council of Europe's Parliamentary Committee on Migration, Refugees, and Population has recommended that the "return of the persons who fled should be a priority [and] pressure should be put on the *de facto* Abkhaz authorities and the Russian authorities to ensure that this return takes place in safety and in dignity"⁷⁶¹. The OSCE High Commissioner on National Minorities agreed that it "is of the utmost importance to insist on the right of return" of the ethnic Georgians displaced from Kodori⁷⁶². Nevertheless, despite its international obligations, Russian forces continue to implement the policy of the *de facto* Abkhazian authorities in conditioning the return of ethnic

⁷⁶⁰ U.N. Security Council, *Report of the Secretary-General pursuant to Security Council resolutions 1808 (2008), 1839 (2008) and 1866 (2009)*, UN Doc. S/2009/254 (18 May 2009), para. 39. GM, Vol. II, Annex 54.

⁷⁶¹ Council of Europe, Parliament Assembly, Committee on Migration, Refugees, and Population, *Report, The humanitarian consequences of the war between Georgia and Russia*, Doc. 11789 (12 January 2009), paras. 24-25. GM, Vol. II, Annex 59.

⁷⁶² Letter from the OSCE High Commissioner on Minorities, Knut Vollebaek, to the OSCE Chairman, Minister Alexander Stubb (27 November 2008), p. 2. GM, Vol. V, Annex 312.

Georgians on their renunciation of Georgian nationality and citizenship, and their obtaining an Abkhazian “passport”⁷⁶³.

6.87 Russian and Abkhazian forces have not only prevented ethnic Georgians from returning to the Kodori Gorge; they have actively sought to remove all vestiges of the ethnic Georgian presence from that region. In April 2009, Georgian Orthodox monks and nuns were forcibly expelled from their church in the Kodori Gorge. As explained by the *de facto* Defense Minister of Abkhazia, “I took the decision to expel them. We’ll kick out anyone who prevents the population of Abkhazia from living calmly... They don’t recognise our independent state or our Orthodox leader Fr. Vissarion”⁷⁶⁴. Leaving little room for misinterpretation, Abkhazia’s *de facto* Deputy Foreign Minister declared, “We don’t have the Georgian Church in Abkhazia”⁷⁶⁵. It is this policy of deliberate exclusion of ethnic Georgians from Abkhazia, and denial of the right of Georgian IDPs to return to their homes, that Russian military forces stationed in Abkhazia continue to enforce.

* * *

6.88 In this Chapter, Georgia has demonstrated Russia’s responsibility for the wholesale denial of ethnic Georgian IDPs’ right to return to their homes of origin in Abkhazia. More than 200,000 ethnic Georgians were expelled from their

⁷⁶³ *Report of the Secretary-General on the Situation in Abkhazia, Georgia, Pursuant to Security Council Resolution 1839 (2008)*, UN Doc. S/2009/69, *op. cit.*, para. 41. GM, Vol. II, Annex 52.

⁷⁶⁴ Felix Corley, “Abkhazia: ‘We’ll kick out anyone,’” *Forum 18 News* (7 April 2009). GM, Vol. IV, Annex 293.

⁷⁶⁵ *Ibid.*

homes in Abkhazia during the ethnic conflicts of the early 1990s. Some who spontaneously returned to the Gali District in the mid-1990s were again forced to flee by renewed ethnically-targeted violence in 1998. As shown in the preceding sections, these waves of ethnic cleansing were made possible only by Russia's active collaboration with and control over Abkhaz militants.

6.89 In the years since, including in the period after August 2008, Russia and the Abkhazian *de facto* authorities have worked together to prevent ethnic Georgian victims of ethnic cleansing from returning to Abkhazia. The plight of the ethnic Georgian IDPs has repeatedly been recognized by the international community, as has their undeniable right to return to their homes of origin. Nonetheless, the policies of Russia have made return impossible. Indeed, Russia has literally had front-line responsibility for enforcing this exclusionary policy; its military serves as Abkhazia's *de facto* border guard and determines who is and is not permitted to enter Abkhazian territory. For the reasons set forth in Chapter 9 concerning the applicable law, Russia's conduct as described above is much more than sufficient to trigger its international responsibility under the 1965 Convention.

PART D.

DISCRIMINATION AFTER THE PROVISIONAL MEASURES ORDER

CHAPTER VII.

**RUSSIA'S ONGOING DISCRIMINATION AGAINST ETHNIC
GEORGIANS FOLLOWING THE ISSUANCE OF THE COURT'S
ORDER ON PROVISIONAL MEASURES**

7.1 This Chapter describes ethnic discrimination against Georgians who have continued to live in or have sought to return to South Ossetia or Abkhazia since 15 October 2008, the date the Court issued its Order on Provisional Measures. The evidence shows that the discrimination described in the preceding Chapters of this *Memorial* – practiced by Russia and the entities and groups it controls within South Ossetia and Abkhazia – has continued unabated since the issuance of the Court’s Order.

7.2 In its Order of 15 October 2008, the Court indicated the following provisional measures, in paragraph 149, sections A through D:

- A. Both Parties, within South Ossetia and Abkhazia and adjacent areas in Georgia, shall
 - (1) refrain from any act of racial discrimination against persons, groups of persons or institutions;
 - (2) abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations;
 - (3) do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin,
 - (i) security of persons;
 - (ii) the right of persons to freedom of movement and residence within the border of the State;
 - (iii) the protection of the property of displaced persons and of refugees;
 - (4) do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions;
- B. Both Parties shall facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International

Convention on the Elimination of All Forms of Racial Discrimination;

- C. Each Party shall refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;
- D. Each Party shall inform the Court as to its compliance with the above provisional measures⁷⁶⁶.

Section I. Russia's Continuing Control in South Ossetia and Abkhazia

7.3 Notwithstanding the provisions of the Court's Order, Russia has continued its practice of discrimination against ethnic Georgians still living in South Ossetia and Abkhazia, and against those seeking to return to those territories. Russia has carried out its discrimination against ethnic Georgians both directly, and through the *de facto* administrative organs of South Ossetia and Abkhazia over which it has continued to exercise control. If anything, Russia's control over these separatist entities has increased since 15 October 2008.

7.4 In particular, the Russian army has deepened and extended its military control within South Ossetia and Abkhazia. On 19 November 2008, Russian President Dmitri Medvedev announced that Russia would place bases in the newly independent "states" of South Ossetia and Abkhazia and build relations with the two countries⁷⁶⁷. President Medvedev explained that "[w]e're coming

⁷⁶⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Request for the Indication of Provisional Measures, Order (15 October 2008), para. 149(A)-(D).

⁷⁶⁷ "Russia to put military bases in South Ossetia and Abkhazia", *Russia Today* (19 November 2008). GM, Vol. IV, Annex 274.

from a point where these two countries are friendly, and we should admit, are very dependent on us”, and that “[w]e will proceed from here, starting with the establishment of diplomatic relations and finishing with the guarantee of their safety and the placement of military bases”⁷⁶⁸. The same day, the Chief of the Russian General Staff, General Nikolai Makarov, stated that the “Russian military bases” in Abkhazia and South Ossetia “already have full contingents of 3,700 personnel each”, and that Russian troops, deployed at the bases, would be patrolling the entire territory of the two disputed regions⁷⁶⁹. Later in November 2008, a senior Russian Defence Ministry official reported that Russia plans to spend 10-12 billion rubles (US\$430 million) building and equipping military bases in South Ossetia and Abkhazia⁷⁷⁰. In February 2009, the Head of the Joint Staff of the Armed Forces of the Russian Federation announced that the improvement and equipping of Russian military bases in South Ossetia and Abkhazia was well under way, and would be completed by the end of the year⁷⁷¹. Independent sources, including the UN Secretary-General, have reported that: “Heavy military equipment and military personnel have remained in the [United Nations] Mission’s area of responsibility”⁷⁷².

⁷⁶⁸ *Ibid.*

⁷⁶⁹ “Russia fully staffs bases in Abkhazia, S. Ossetia”, *RIA Novosti* (19 November 2008). GM, Vol. IV, Annex 275.

⁷⁷⁰ “What the Russian papers say”, *RIA Novosti* (28 November 2008). GM, Vol. IV, Annex 276.

⁷⁷¹ “Equipment of Russian Military Bases in Abkhazia and South Ossetia will be finished by the end of the year”, *APSNY Online* (2 February 2009). GM, Vol. IV, Annex 285.

⁷⁷² UN Security Council, *Report of the Secretary-General pursuant to Security Council resolutions 1808 (2008), 1839 (2008) and 1866 (2009)*, UN Doc. S/2009/254 (18 May 2009), (hereinafter *Report of the Secretary-General pursuant to Security Council resolutions 1808 (2008), 1839 (2008) and 1866 (2009)* UN Doc. S/2009/254 (2009)), para. 62. GM, Vol.II, Annex 54.

7.5 In April 2009, Russia formally extended its military control in South Ossetia and Abkhazia by signing agreements with the *de facto* authorities in both regions to serve as the official State Border Guards, who patrol the administrative boundaries of the two territories with the rest of Georgia, and exercise direct control over all persons entering or exiting South Ossetia and Abkhazia⁷⁷³. As described by Russia in its Report to the Court of 9 July 2009, these agreements, dated 30 April 2009, “provide for the establishment, in each of the Republics, of a Border Guard Directorate operated by the Border Guard Service of the Federal Security Service of the Russian Federation. The Directorates have now been deployed, staffed by approximately 900 servicemen in Abkhazia and 700 in South Ossetia”⁷⁷⁴. Consequently, Russian servicemen, responsible to their senior officers in the Russian armed forces, determine whether ethnic Georgians displaced from South Ossetia and Abkhazia in the various waves of ethnic cleansing described in Chapters 3 through 6, may exercise their right of return.

7.6 Russia has maintained its control in South Ossetia and Abkhazia, especially through continuing its practice of appointing Russian civilian and military officials, directly responsible to Moscow, to senior leadership positions in the *de facto* separatist administrations. This means of exercising control, as

⁷⁷³ Agreement between the Russian Federation and the Republic of Abkhazia on joint efforts in protection of the state border of the Republic of Abkhazia (30 April 2009). GM, Vol. III, Annex 144; Agreement between the Russian Federation and the Republic of South Ossetia on joint efforts in protection of the state border of the Republic of South Ossetia (30 April 2009). GM, Vol. III, Annex 143.

⁷⁷⁴ *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Report of the Russian Federation on Compliance with the Provisional Measures Indicated by the Order of the Court of 15 October 2008 (8 July 2009), p. 12.

employed between the early 1990s and August/September 2008, was described in Chapters 4 and 6, at paragraphs 4.23 to 4.25, and 6.63 *et seq.*

7.7 Russia's domination of South Ossetia's political sphere continued with the appointment of a Russian State official, **Mr. Aslanbek Bulatsev**, as the *de facto* Prime Minister of South Ossetia in October 2008. Immediately prior to his appointment, Mr. Bulatsev served as Head of the Russian Federal Tax Service in North Ossetia; he had previously worked for the KGB⁷⁷⁵. According to the Russian newspaper *Kommersant*, his "main task" was to "control" the "huge amounts of funds that Russia promised to allocate for the restoration of South Ossetia"⁷⁷⁶. Mr. Bulatsev was replaced as the *de facto* Prime Minister in August 2009 by yet another Russian with no prior connection to South Ossetia, **Mr. Vadim Brovtsev**. From 1996 to 2006, Mr. Brovtsev served as a Deputy of the State Council of Deputies of Ozersk in Russia's Chelyabinsk District. *Kommersant* was told by individuals in the "leadership of South Ossetia" that Mr. Brovtsev is the "creation (protégé) of the Minister of Regional Development of the Russian Federation", which is the Russian State agency responsible for "supervising the restoration of South Ossetia"⁷⁷⁷.

7.8 Another Russian official, **Mr. Alexander Mikhail Bolshakov**, was appointed on 31 October 2008 as the Head of the Presidential Administration of *de facto* President Kokoity. His most recent prior position was Deputy Head of

⁷⁷⁵ "Russian tax inspector became the Chairman of South Ossetian Government", *Vremya Novostey* (23 October 2008). GM, Vol. IV, Annex 269.

⁷⁷⁶ "The Prime Minister of South Ossetia has been elected", *Kommersant*, No. 192 (4009) (22 October 2008). GM, Vol. IV, Annex 268.

⁷⁷⁷ "South Ossetia introduced the new Prime Minister: Vadim Brovtsev appointed as the Head of the Government", *Kommersant*, No. 142 (6 August 2009). GM, Vol. IV, Annex 298.

the Government of Russia's Ulyanovsk Oblast⁷⁷⁸. Mr. Bolshakov was assisted by a "political technologist", **Mr. Lev Pavluchkov**, who was transferred from his prior position of Advisor to the Governor of Ulyanovsk, to serve as Mr. Bolshakov's Deputy for mass media issues⁷⁷⁹. The Finance Ministry was also put in Russian hands. **Mr. Aleksey Panteleev**, who was appointed the new *de facto* Finance Minister, formerly exercised similar responsibilities within the Russian Government, managing the finances of the Ulyanovsk region. He was later replaced as the *de facto* Finance Minister by another Russian official, **Mr. Inal Pukhaev**, who had previously worked as the Deputy Head of the unit responsible for monitoring the effectiveness of budgetary expenditures in the Ministry of Finance of North Ossetia⁷⁸⁰.

7.9 Russian officers have also continued to hold, and be appointed to, the most senior defence, public security and intelligence positions in the separatist administrations. In that regard, Russia's control of South Ossetia's armed forces was perpetuated by the appointment of a Russian General Officer as the *de facto* Minister of Defence, **Major General Yuri Tanaev**. Prior to coming to South

⁷⁷⁸ "The 'soldier of the party' has been sent to South Ossetia", *Kommersant*, No. 201 (4018) (6 November 2008).

⁷⁷⁹ "The Government of South Ossetia is mixed with SOK", *Kommersant*, No. 207 (4024), 14 November 2008). GM, Vol. IV, Annex 273.

⁷⁸⁰ Olga Allenova and Sergey Titov, "There are more and more Ex-es in South Ossetia: The Minister of Finances worked in the Republic only for a week", *Kommersant*, No. 222 (5 December 2008). GM, Vol. IV, Annex 278.

Ossetia, General Tanaev served as the Head of the Intelligence Service of the Staff of the Urals Military Region⁷⁸¹.

7.10 In addition to its political and military control, Russia also controls the South Ossetian and Abkhazian *de facto* administrations through their complete reliance on Russia's financial support. On 17 March 2009, Russia signed an agreement with the *de facto* South Ossetian and Abkhazian authorities, arranging for Russia to provide over 5.1 billion rubles to the *de facto* administrations⁷⁸². Russia's Ministry of Finances announced that Russia's economic assistance was provided for "the socio-economic development and the balanced budget of the Republics"⁷⁸³. According to the Russian Ministry press release, part of this financial support will pay for civil servant salaries, child allowances, pensions, scholarships, nutrition, medication, restoring infrastructure and supporting *de facto* governmental budget institutions⁷⁸⁴. South Ossetia's *de facto* Minister of Finance, Mr. Pukhaev, confirmed: "These are budgetary sources, and they will totally go to the budget. This money will be directed in accordance with the provisions of the budget towards the ministries and institutions. It is expected that salaries will be paid from these sources"⁷⁸⁵. *De facto* Minister Pukhaev then

⁷⁸¹ Andrei Illarionov, "The Russian Leadership's Preparation for War, 1999-2008", *The Guns of August 2008: Russia's War in Georgia*, Central Asia-Caucasus Institute (2009), p. 82. GM, Vol. III, Annex 178.

⁷⁸² Ministry of Finances of the Russian Federation, Press Release, "On the Signing of Agreements between the Ministry of Finances of the Russian Federation and the Ministry of Finances of Abkhazia and the Ministry of Finances of South Ossetia on 17 March 2009" (16 March 2009). GM, Vol. III, Annex 142.

⁷⁸³ *Ibid.*

⁷⁸⁴ *Ibid.*

⁷⁸⁵ "Tskhinval will report on the money allocated by Russia – Ministry of Finance of South Ossetia", *South Ossetian Information Agency OSInform* (17 March 2009). GM, Vol. IV, Annex 288.

noted that, prior to Russia's support, the South Ossetian *de facto* administration had been unable to pay its government salaries⁷⁸⁶. South Ossetia's financial dependence on Russia continues to grow. The Russian Deputy Minister of Finances, Anton Sulianov, confirmed that the total amount of funds promised to South Ossetia from Russia's state budget amounts to approximately 12.8 billion rubles – nearly five times the amount already paid⁷⁸⁷.

7.11 The extent of Russia's economic control in Abkhazia is demonstrated by Russia's March 2009 financial agreement with the *de facto* Abkhaz administration, by which the latter was able to secure 2.36 billion rubles for its 2009 budget⁷⁸⁸. Abkhazia's "state" budget reportedly amounts to 3.874 billion rubles⁷⁸⁹. Thus, according to these figures, the Abkhaz *de facto* government currently depends on Russia for approximately two-thirds of its budget. Abkhazia's own *de facto* President Bagapsh confirmed the extent and consequences of Russia's financial control over Abkhazia, which he linked to the *de facto* administration's decision not to allow ethnic Georgian IDPs to return to their homes. He declared that the time when "Abkhazians and Georgians" could live together had "passed, seemingly, irrevocably". Now, Mr. Bagapsh said,

⁷⁸⁶ *Ibid.*

⁷⁸⁷ "Putin: Spending of funds on restoration of South Ossetia is to be controlled", *RIA: Novosti* (16 September 2008). GM, Vol. IV, Annex 264.

⁷⁸⁸ "In Abkhazia they hope that economic crisis will not effect financial support from Russia", *Apsny Online* (10 March 2009). GM, Vol. IV, Annex 287.

⁷⁸⁹ *Ibid.*

Abkhazia was “under” the “wing of Moscow” and that Russia was paying for “half of the Abkhazian budget”⁷⁹⁰.

7.12 While it has continued to expand and consolidate its control over South Ossetia and Abkhazia subsequent to 15 October 2008, Russia has continued to discriminate against ethnic Georgians in these territories, both directly and through the abuses committed by separatist forces under its command and control, notwithstanding the Court’s Order on Provisional Measures. Sections II and III of this Chapter describe Russia’s ongoing violations of the obligations set forth in Paragraph 149(A) of the Order on Provisional Measures in South Ossetia and Abkhazia, respectively. Section IV addresses Russia’s continued obstruction of ethnic Georgians’ right of return to both regions, also in violation of Paragraph 149(A) of the Court’s Order. Finally, Section V describes Russia’s violation of Paragraphs 149(B) and 149(C) of the Order through its obstruction of the provision of humanitarian assistance within the occupied territories, and its denial of access to international monitors, throughout the occupied territories, increasing ethnic Georgians’ vulnerability to continued discrimination in those territories.

Section II. Ongoing Discrimination against Ethnic Georgians in South Ossetia

7.13 Independent human rights and international organisations have issued reports detailing the discrimination perpetrated against ethnic Georgians in South Ossetia since 15 October 2008, which includes killings, beatings, threats, burning of homes, looting of property and other serious abuses. The same

⁷⁹⁰ “Sergey Bagapsh: Russian money goes on the arrangement of vocational places of Russians”, *Vesti* (21 March 2009). GM, Vol. IV, Annex 290.

organisations have attributed responsibility for these activities to Russia, as well as to the South Ossetian *de facto* security forces that operate under Russia's control. In its November 2008 report, Amnesty International documented "unlawful killings, beatings, threats, arson and looting perpetrated by armed groups associated with the South Ossetian side and acting with the apparent acquiescence of Russian armed forces"⁷⁹¹. In January 2009, Human Rights Watch also concluded that

as an occupying power in Georgia, Russia failed overwhelmingly in its duty under international humanitarian law to ensure, as far as possible, public order and safety in areas under its effective control, instead allowing South Ossetian forces, including volunteer militias, to engage in wanton and widescale pillage and burning of Georgian homes and to kill, beat, rape, and threaten civilians⁷⁹².

7.14 Numerous reports by representatives of the Council of Europe make the same point. According to the Council's Monitoring Body, in its April 2009 report: "[t]he villages of South Ossetia, previously under Georgian control, have been razed to the ground with the exception of a handful of houses. The intention to cleanse the area of ethnic Georgians is clear"⁷⁹³. The Council's Rapporteur agreed that "the systematic destruction" was to "ensure that no Georgians can return to these villages, and supports the accusation that these

⁷⁹¹ Amnesty International, *Civilians in the Line of Fire: The Georgia-Russia Conflict* (November 2008), p. 39. GM, Vol. III, Annex 158.

⁷⁹² Human Rights Watch, *Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia* (January 2009) (hereinafter HRW, *Up in Flames* (2009).), p. 3. GM, Vol. III, Annex 156.

⁷⁹³ Council of Europe, Parliamentary Assembly, *Humanitarian Consequences of the War between Georgia and Russia: Follow-Up Given to Resolution 1648 (2009)*, Resolution 1664 (29 April 2009) (hereinafter *Humanitarian Consequences of the War between Georgia and Russia: Follow Up Given to Resolution 1648 (2009)*, Res. 1664 (2009)), para. 8. GM, Vol. II, Annex 65.

villages have been ‘ethnically cleansed’ of Georgians”⁷⁹⁴. The Council’s Rapporteur concluded: “this is not damage caused mainly by the war, it is damage after the war, and the *de facto* South Ossetian authorities and Russian authorities must take responsibility for this”⁷⁹⁵. Thus, the Parliament of the Council of Europe adopted a Resolution stating that it “calls upon Russia and the *de facto* authorities of South Ossetia to ensure that there are no more acts of ethnic cleansing and other human rights violations, which continue to occur in South Ossetia, and bring the perpetrators promptly to justice”⁷⁹⁶. Russia has ignored this plea. The Council’s Parliamentary Assembly confirmed:

The Investigative Committee of the General Prosecutor’s Office of Russia launched an investigation into genocide committed by Georgian troops against Russian citizens (ethnic Ossetians) in South Ossetia. In addition, it opened an investigation into crimes committed by Georgia against the Russian military. *It would seem that there is no intention to investigate possible violations of human rights and humanitarian law committed by Russian forces and forces under the control of the de facto South Ossetian authorities. Indeed, the special Investigation Committee reportedly closed its investigations on the ground in South Ossetia in mid-September, at a time when credible reports indicated that looting, pillaging, as well as acts of ethnic cleaning*

⁷⁹⁴ Council of Europe, Parliamentary Assembly, Committee on Migration, Refugees and Population, *Report: The Humanitarian Consequences of the War between Georgia and Russia: Follow-Up given to Resolution 1648 (2009)*, Doc. 11859 (9 April 2009) (hereinafter *Report: The Humanitarian Consequences of the War between Georgia and Russia: Follow-Up given to Resolution 1648 (2009)*, Doc. 11859 (2009).), para. 29. GM, Vol. II, Annex 62.

⁷⁹⁵ Council of Europe, Parliamentary Assembly, Press Release, “Corien Jonker: ‘Humanitarian scars of South Ossetian conflict run deep’” (16 March 2009). GM, Vol. II, Annex 61.

⁷⁹⁶ Council of Europe, Parliamentary Assembly, *Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia*, Res. 1647 (28 January 2009), para. 9.9.

were taking place on a daily basis in the areas under Russian control, including in the so-called “buffer zone”⁷⁹⁷.

7.15 Since 15 October 2008, Russia’s discrimination against ethnic Georgians in South Ossetia has taken place mainly in the Akhagori District, which abuts the rest of Georgia and is the only remaining location under Russian and South Ossetian control that has a significant ethnic Georgian population, which is currently estimated at approximately 1,000, down from approximately 7,800⁷⁹⁸. Historically, Akhagori has always had a majority-Georgian population. After the ethnic cleansing in 2008, the ethnic Georgian population of Akhagori was reduced to its present level. As documented by human rights and international organizations, this population is subject to ongoing acts of ethnic discrimination, including violent attacks against their persons, destruction of their property, denial and restriction of their civil and political rights and other abuses.

7.16 As reported by Human Rights Watch, based on its mission to Akhagori on 20-21 November 2008, over a month after the Court indicated Provisional Measures: “South Ossetian militias are running wild attacking ethnic Georgians in Akhagori”⁷⁹⁹. HRW observers personally witnessed the violence to which ethnic Georgians are subjected, including an incident where “several armed men

⁷⁹⁷ Council of Europe, Parliamentary Assembly, *The implementation of Resolution 1633 (2009) on the consequences of the war between Georgia and Russia*, Doc. 11800 (26 January 2009) (hereinafter *The implementation of Resolution 1633 (2009) on the consequences of the war between Georgia and Russia*, Doc. 11800 (2009)), para. 50. (emphasis added). GM, Vol. II, Annex 60.

⁷⁹⁸ Amnesty International, *Civilians in the Aftermath of War: The Georgia-Russia Conflict One Year On* (August 2009), p. 18. GM, Vol. III, Annex 159.

⁷⁹⁹ Human Rights Watch, *Russia: Protect Civilians in Occupied Georgia, Fear of Ethnic Violence, Isolation in South Ossetian District* (25 November 2008) (hereinafter HRW, *Russia: Protect Civilians in Occupied Georgia* (2008)). GM, Vol. III, Annex 155.

in camouflage” brutally beat an elderly resident of Kanchaveti village who died from his injuries, which included “multiple bruises, severe damage to his genitals, and a fractured arm”⁸⁰⁰. The militia returned the day after the assault and threatened to shoot one of his relatives. While HRW researchers were meeting with the victim’s relatives and neighbors on their way to his wake, “armed militia members arrived in a military truck” and:

[t]hree men jumped out and ran towards the funeral procession. One stood, with his submachine gun, between the relatives and the Human Rights Watch researchers, while the others forced the relatives to leave. The militias later threatened the Human Rights Watch researchers, demanding to know whether the local residents had told the researchers that [the dead man] had been killed by Ossetians⁸⁰¹.

7.17 HRW’s 25 November 2008 report called upon the “Russian authorities” to “take immediate steps to stop South Ossetian militias from attacking ethnic Georgians in Akhalkori”. It declared: “[i]t is high time for Russia to step up to its responsibilities as an occupying power in South Ossetia and rein them in”⁸⁰².

7.18 The International Crisis Group reported at the same time that: “Ossetian militia harassment has continued in Akhalkori while the area has been under effective Russian control and OSCE monitors denied access. Today five out of every seven ethnic Georgians who lived in the district before the conflict have fled”⁸⁰³. The same findings were reported by the OSCE human rights

⁸⁰⁰ *Ibid.*

⁸⁰¹ *Ibid.*

⁸⁰² *Ibid.*

⁸⁰³ International Crisis Group, *Georgia: The Risks of Winter*, Europe Briefing No. 51 (26 November 2008), p. 5. GM, Vol. III, Annex 164.

investigators that visited Akhagori in November 2008, who concluded: “[s]ince the new South Ossetian *de facto* administration has taken over in the Akhagori area, many people have left the region. More than 5,100 individuals had left Akhagori by the end of October”⁸⁰⁴. According to the OSCE: “the security situation has deteriorated since the end of the conflict, as have economic and social conditions. Ethnic Georgians continue to leave the area”⁸⁰⁵. The OSCE further reported that “the influx of increased military personnel and equipment since October had left the population in a state of fear and apprehension. Local residents complained that military personnel enter shops, cafés and farms and require the proprietors to provide them with food and supplies without offering compensation”⁸⁰⁶.

7.19 Conditions did not improve. In April 2009, the Council of Europe found that there was:

extensive evidence that systematic looting, pillaging, hostage taking and attacks on ethnic Georgians by South Ossetian militias continue to take place in the Akhagori district of South Ossetia and that the Russian forces have done nothing to stop them⁸⁰⁷.

7.20 The Council found further that “[a]s a result of the continuing attacks on ethnic Georgians, many of them have fled the Akhagori district out of safety concerns. In addition, many more have left due to fears that the administrative

⁸⁰⁴ OSCE, Office for Democratic Institutions and Human Rights, *Human Rights in the War-Affected Areas Following the Conflict in Georgia* (27 November 2008) (hereinafter OSCE, *Human Rights in the War-Affected Areas* (2008)), p. 50. GM, Vol. II, Annex 71.

⁸⁰⁵ *Ibid.*, p. 73.

⁸⁰⁶ *Ibid.*

⁸⁰⁷ *The implementation of Resolution 1633 (2009) on the consequences of the war between Georgia and Russia* (2009), *op. cit.*, para. 63. GM, Vol. II, Annex 60.

border with Georgia will be closed or because they are obliged to accept the South Ossetian nationality”⁸⁰⁸. These findings led the Council to issue the following statement:

We strongly condemn the ethnic cleansing in the Akhagori district by South Ossetian militia, as well as *Russia’s unwillingness to stop this from happening or to bring its perpetrators to justice*. We would like to reiterate that, under international law, *Russia bears full responsibility* for violations of human rights and humanitarian law committed in the areas under its *de facto* control, including those committed at the behest of the *de facto* authorities in Tskhinvali⁸⁰⁹.

7.21 To remain in Akhagori, and to exercise their fundamental civil and political rights, ethnic Georgians are now required to give up their Georgian nationality and citizenship, and accept Ossetian nationality and Russian citizenship. To this end, the *de facto* President of South Ossetia, Mr. Kokoity, created a specialized group of deputy ministers and sent them to Akhagori (now renamed “Leningor” by the separatist authorities) “to ensure passportization”⁸¹⁰, and to stay in Leningor “until *all residents* are given passports”⁸¹¹. According to the Ossetian district leader, South Ossetian passports would be given to all residents, and “[f]ollowing that, they will be also given Russian citizenship”⁸¹². Acceptance of South Ossetian and Russian citizenship was made mandatory for anyone wishing to remain in Akhagori (or elsewhere in South Ossetia).

⁸⁰⁸ *Ibid.*, para. 64.

⁸⁰⁹ *Ibid.*, para. 63 (emphasis added).

⁸¹⁰ “The population of Leningori District of South Ossetia is being passportized”, *South Ossetian Information Agency OSINFORM* (7 April 2009). GM, Vol. IV, Annex 294.

⁸¹¹ *Ibid.* (emphasis added).

⁸¹² HRW, *Up in Flames: (2009), op. cit.*, p. 150. GM, Vol. III, Annex 156.

7.22 Both the OSCE and the Council of Europe expressed concern about this policy, and its discriminatory impact on ethnic Georgians. The OSCE's High Commissioner on National Minorities stated that

[t]he situation in the District of Akhgori is particularly worrying in view of recent statements by those exercising jurisdiction over population and territory that the inhabitants have to acquire South Ossetian/Russian passports or leave their homes. This could lead to further deterioration of the situation in the region and another wave of IDPs⁸¹³.

The Council of Europe, through its Parliamentary Assembly, called on Russia to ensure that the population is not forced "to take South Ossetian passports"⁸¹⁴. The Council identified this as one of many forms of discrimination against ethnic Georgians which "unless addressed, will lead to a further exodus from this region"⁸¹⁵.

7.23 South Ossetia's policy, now enforced by the Russian military forces who formally constitute the State Border Guards, of denying or restricting freedom of movement across the administrative boundary between Akhgori and the rest of Georgia, has also caused hardship to ethnic Georgians and contributed to their displacement from Akhgori. Human Rights Watch has reported that ethnic Georgians see the closing of the administrative border as "the end of us", because "[f]or the residents of Akhgori, Tbilisi has always been a second

⁸¹³ Letter from the OSCE High Commissioner on Minorities, Knut Vollebaek, to the OSCE Chairman, Minister Alexander Stubb (27 November 2008) (hereinafter "Letter from Knut Vollebaek to Minister Alexander Stubb" (2008)), p. 2. GM, Vol. V, Annex 312.

⁸¹⁴ *The Humanitarian Consequences of the War between Georgia and Russia: Follow Up Given to Resolution 1648 (2009)*, Res. 1664 (2009), *op. cit.*, paras. 16.4.4 & 17.4. GM, Vol. II, Annex 65.

⁸¹⁵ *Ibid.*, para. 10.

home. If we're cut off from it we just cannot stay"⁸¹⁶. The OSCE has expressed similar concern: "[i]f the *de facto* authorities proceed with plans to restrict access to this area from the south, it may create significant human rights issues and problems of a humanitarian nature including the supply of basic necessities"⁸¹⁷. In this regard, the OSCE found:

The population of the region has very strong links with Gori, where many people work and study. Ethnic Georgians fear that the decision to close the administrative boundary will isolate them from family and others. Some people may opt to leave the region in order to preserve their culture and identity, as well as their links with their relatives across the administrative boundary⁸¹⁸.

Section III. Ongoing Discrimination against Ethnic Georgians in Abkhazia

7.24 Despite the massive ethnic cleansing against ethnic Georgians during the 1990s and again in 2008, a substantial ethnic Georgian population still lives in the Gali District of Abkhazia, just across the administrative boundary with the rest of Georgia. It is currently estimated that more than 40,000 Georgians live in Gali. This is now the only ethnic Georgian community remaining in Abkhazia. However, it remains subject to discriminatory measures imposed and implemented by Russian and Abkhaz authorities, with the goal of forcing them either to abandon their Georgian nationality and citizenship or leave Abkhazia altogether.

7.25 As demonstrated previously, Russia exercises control in Abkhazia. Particularly in Gali, there is an especially strong Russian military presence. In

⁸¹⁶ HRW, *Russia: Protect Civilians in Occupied Georgia* (2008), *op. cit.* GM, Vol. III, Annex 155.

⁸¹⁷ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 7. GM, Vol. II, Annex 71.

⁸¹⁸ *Ibid.*, p. 50.

December 2008, at least twenty-six Russian tanks were deployed to the Gali District. Twelve of these tanks were stationed in low zone villages while the other fourteen were deployed to high zone villages⁸¹⁹. Television news programs showed images of the Russian tanks and reported that “the whole perimeter of Enguri [village was] blocked, including the central bridge. Any movement or travelling within the village [was] limited even for peaceful civilians”⁸²⁰. As previously stated, as per the 30 April 2009 agreement between Russia and the *de facto* Abkhazian regime, Russian military forces became the State Border Guards of Abkhazia, responsible for patrolling the administrative border with the rest of Georgia, and controlling the entry and exit of all persons⁸²¹.

7.26 The increased Russian military presence in Gali, and Russian control of the administrative border with the rest of Georgia, have coincided with a period of intense discrimination against ethnic Georgians. As the OSCE reported in November 2008: “[t]he situation for ethnic Georgians in Abkhazia is increasingly precarious”⁸²². The Director of the OSCE’s Office of Democratic Institutions and Human Rights has found that the “[e]thnic Georgian communities in the Gali region of Abkhazia do not enjoy all rights guaranteed to them by OSCE commitments”⁸²³. The OSCE High Commissioner on National

⁸¹⁹ “Russian occupants, separatist Abkhazians dispatch military equipment and live force on the territory of Abkhazia”, *1st Channel* (14 December 2008). GM, Vol. IV, Annex 279.

⁸²⁰ *Ibid.*

⁸²¹ Agreement between the Russian Federation and the Republic of Abkhazia on joint efforts in protection of the state border of the Republic of Abkhazia (30 April 2009). GM, Vol. III, Annex 144.

⁸²² OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 7. GM, Vol. II, Annex 71.

⁸²³ Letter from Amb. Janez Lenarčič, Director, OSCE Office of Democratic Institutions and Human Rights, to H.E. Alexander Stubb, OSCE Chairman-in-Office (27 November 2008)

Minorities came to the same conclusion: for the “Georgian population in the Gali District” life is “very difficult as they are deprived of several of their basic human rights”⁸²⁴. The basic rights denied to ethnic Georgians living in Gali are succinctly stated in Resolution 1644, enacted by the Parliament of the Council of Europe in April 2009:

The situation in Abkhazia also remains tense. The issues of restricted crossings at the administrative border south of the Gali district; rights, in particular the right to education in the mother tongue, of ethnic Georgians living in a *de facto* minority situation in the Gali district and the process of forcing persons to take Abkhaz passports, are particularly worrying⁸²⁵.

7.27 The OSCE High Commissioner on Nationalities observed that ethnic Georgians’ “situation has been aggravated further when it comes to their security and future prospects for preserving their identity, language and culture”⁸²⁶. While visiting Sukhumi in January 2009, the Commissioner conveyed his concerns to the *de facto* Abkhaz authorities when he “noticed increasing pressure being put on the Georgian population through the curtailing of their education rights, compulsory ‘passportization’, forced conscription into the Abkhaz military forces and restrictions on their freedom of movement”⁸²⁷. He therefore

(hereinafter Letter from Amb. Lenarčič (2008), as included in OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, pp. 4-5. GM, Vol. II, Annex 71.

⁸²⁴ Letter from Knut Vollebaek to Minister Alexander Stubb (2008), *op. cit.*, p. 2. GM, Vol. V, Annex 312.

⁸²⁵ *The Humanitarian Consequences of the War between Georgia and Russia: Follow Up Given to Resolution 1648 (2009)*, Res. 1664 (2009), *op. cit.*, para. 12. GM, Vol. II, Annex 65.

⁸²⁶ Letter from Knut Vollebaek to Minister Alexander Stubb (2008), *op. cit.*, p. 2. GM, Vol. V, Annex 312.

⁸²⁷ Statement of Knut Vollebaek, OSCE High Commissioner on National Minorities to the 765th Plenary Meeting of the OSCE Permanent Council (18 June 2009), p. 4. GM, Vol. II, Annex 73.

“urged the *de facto* authorities to put an end to this pressurization” and expressed his “concern that such coercive practices, which violate international law, may further destabilize the already fragile inter-ethnic situation in the region and force many Georgians to leave”⁸²⁸. Unfortunately, since the *de facto* authorities failed to respond to his concerns, the Commissioner had to reiterate them in a public statement on 14 April 2009, where he again urged the “*de facto* authorities to put an end to the pressure being exercised on the Georgian population in the Gali District through the limitation of their education rights, compulsory ‘passportization’, forced conscription into the Abkhaz military forces and restrictions on their freedom of movement”⁸²⁹.

7.28 Regarding limitations on education rights, in early 2009, separatist officials banned Georgian-language materials from schools⁸³⁰. In a meeting with the OSCE High Commissioner on National Minorities, Abkhazia’s *de facto* Prime Minister stated that the separatist authorities were “categorically against allowing Georgian textbooks to be used for the education of Georgian children”⁸³¹. Instead, Russian language schoolbooks, supplied by Russia, have

⁸²⁸ *Ibid.*

⁸²⁹ OSCE, Press Release, “OSCE High Commissioner on National Minorities deeply concerned by recent developments in Abkhazia” (14 April 2009) (hereinafter OSCE High Commissioner on National Minorities deeply concerned by recent developments in Abkhazia (2009)). GM, Vol. II, Annex 72. See also *Report: The humanitarian consequences of the war between Georgia and Russia: Follow-up given to Resolution 1648*, Doc. 11859 (2009), *op. cit.*, para. 84 (The Council of Europe’s “rapporteur... considers that the main concerns raised in her earlier report, notably restrictions on movement across the administrative, border rights protection, including education rights for ethnic Georgians in the Gali region, and passport and citizenship issues, remain relevant and in need of urgent attention”). GM, Vol. II, Annex 62.

⁸³⁰ “Russian Language ‘Pressed’ on Georgian Teachers in Abkhazia”, *Radio Free Europe* (24 March 2009). GM, Vol. IV, Annex 291.

⁸³¹ Council of Europe, Secretary-General, *Report on the human rights situation in the areas affected by the conflict in Georgia*, First report, SG/Inf(2009)7 (16 April 2009) (hereinafter

been distributed to schoolteachers in the Gali District. The OSCE High Commissioner reacted by urging “the *de facto* authorities to respect the education rights of Georgians residing there and to allow Georgian students in the region to study in the Georgian language”⁸³². His plea went unheeded. Meanwhile, Russian school books, many provided by the Mayor of Moscow, are continuing to arrive in Georgian schools in Gali, where the Council of Europe’s Commissioner for Human Rights reported that teachers are teaching in Georgian “at their own risk”⁸³³. In February 2009, the UN Secretary-General registered his concern regarding discrimination against Georgian education, noting that “the number of academic hours allocated to studying Georgian language was reduced for the 2008-2009 school year”⁸³⁴.

7.29 Discriminatory restrictions on teaching in the Georgian language are a particularly harmful denial of a fundamental human right. As recognized by the Council of Europe’s Commissioner for Human Rights: “In multiethnic societies

Report on the human rights situation in the areas affected by the conflict in Georgia, First report, SG/Inf(2009)7 (2009)), Appendix. GM, Vol. II, Annex 63.

⁸³² “OSCE High Commissioner on National Minorities deeply concerned by recent developments in Abkhazia” (2009), *op. cit.* GM, Vol. II, Annex 72.

⁸³³ Council of Europe, Commissioner for Human Rights, Thomas Hammarberg, *Report on Human Rights Issues Following the August 2008 Armed Conflict*, CommDH(2009)22 (15 May 2009) (hereinafter Hammarberg, *Report on Human Rights Issues Following the August 2008 Armed Conflict*, CommDH(2009)22 (2009)), para. 68. GM, Vol. II, Annex 66.

⁸³⁴ UN Security Council, *Report of the Secretary-General on the Situation in Abkhazia, Georgia, Pursuant to Security Council Resolution 1839 (2008)*, UN Doc. S/2009/69 (3 February 2009) (hereinafter *Report of the Secretary-General on the Situation in Abkhazia, Georgia, Pursuant to Security Council Resolution 1839 (2008)*, UN Doc. S/2009/69 (2009)), para. 25. GM, Vol. II, Annex 52.

with minority communities, language education plays a key role. It is one of the ways for parents to pass on their culture to future generations”⁸³⁵.

7.30 This, in fact, appears to be the point of the discriminatory restrictions of the rights of ethnic Georgians in Abkhazia: to prevent not only the Georgian culture but all forms of Georgian identity from being passed along to future generations. The OSCE found that “[i]n the Gali district, ethnic Georgians are becoming increasingly concerned not only about their security, but also about their future prospects for preserving their identity, language and culture, as well as maintaining links with Tbilisi. In this regard, the question of passports and citizenship is one of the current issues most troubling to them”⁸³⁶.

7.31 The *de facto* Abkhaz Foreign Minister publicly announced that ethnic Georgians in Gali had until 20 March 2009 to renounce their Georgian citizenship and receive new Abkhaz passports⁸³⁷. On 20 March 2009, the *de facto* President of Abkhazia announced that Georgians would be given one more month to accept Abkhaz citizenship. If they did not accept the new nationality they would be fined or imprisoned for three days; upon the second refusal, they would be expelled by force from Abkhazia⁸³⁸. Other penalties for not becoming an Abkhaz citizen include the inability to vote in elections, to receive a salary or

⁸³⁵ Hammarberg, *Report on Human Rights Issues Following the August 2008 Armed Conflict*, CommDH(2009)22 (2009), *op. cit.*, para. 69. GM, Vol. II, Annex 66.

⁸³⁶ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 68. GM, Vol. II, Annex 71.

⁸³⁷ Eka Kevanishvili, “Eurasia Insight: Teachers In Abkhazia's Gali District Under Pressure to Give Up Georgian Language”, *Eurasia Insight* (29 March 2009). GM, Vol. IV, Annex 292.

⁸³⁸ “Bagapsh gave Georgians one more month to acquire Abkhaz passports”, *Rosbalt Caucasus* (20 March 2009). GM, Vol. IV, Annex 289.

pension, and to buy or sell real estate⁸³⁹. This policy motivated the OSCE High Commissioner on National Minorities to warn that if the *de facto* authorities “go forward with the so-called ‘passportization’ issue (imposing the Abkhazian/Russian citizenship on Georgians)”, it could “lead to a situation when Georgian citizens will be forced to leave Abkhazia”⁸⁴⁰. In April 2009, the OSCE Commissioner again urged “the *de facto* authorities to desist from all intimidation and the imposition of Abkhazian ‘citizenship’”⁸⁴¹. This appeal was ignored. Under new Abkhaz laws and agreements with Russia, dual citizenship is permitted between Russia and Abkhazia, but it is not permitted between Georgia and Abkhazia; thus, the separatist authorities now force ethnic Georgians in Gali to either keep their Georgian citizenship, thereby sacrificing fundamental rights whose enjoyment has been conditioned on Abkhaz citizenship, or renounce their Georgian identity⁸⁴². The OSCE described the consequences that ethnic Georgians face if they refuse to renounce their Georgian nationality:

[C]onditions are being created that will make it impossible for many of the residents of Gali to live normally without an Abkhaz passport. For example, according to two separate interlocutors, beginning next year an Abkhaz passport will be required for all

⁸³⁹ Council of Europe, Secretary-General, *Report on the human rights situation in the areas affected by the conflict in Georgia*, Second report, April – June 2009, SG/Inf(2009)9 (30 June 2009), paras. 51-52. GM, Vol. II, Annex 67; *Report on the human rights situation in the areas affected by the conflict in Georgia*, First report, SG/Inf(2009)7 (2009), *op. cit.*, para. 31. GM, Vol. II, Annex 63.

⁸⁴⁰ Letter from Knut Vollebaek to Minister Alexander Stubb (2008), *op. cit.*, p. 2. GM, Vol. V, Annex 312.

⁸⁴¹ “OSCE High Commissioner on National Minorities deeply concerned by recent developments in Abkhazia” (2009), *op. cit.* GM, Vol. II, Annex 72.

⁸⁴² Hammarberg, *Report on Human Rights Issues Following the August 2008 Armed Conflict*, CommDH(2009)22 (15 May 2009), *op. cit.*, paras. 59-62. GM, Vol. II, Annex 66; *Report on the human rights situation in the areas affected by the conflict in Georgia*, First report, SG/Inf(2009)7 (2009), *op. cit.*, para. 31. GM, Vol. II, Annex 63.

employees of the local administration, including doctors and teachers; a passport will also be needed to transact business or for other legal activities. Another NGO told the [Human Rights Assessment Mission] that it feared that without Abkhaz passports, ethnic Georgians will not be able to send their children to school, effect a contract, or even draw up a will. A doctor in Gali said she did not want to apply for an Abkhaz passport but ‘we have to apply.’ Many members of the population already feel they will have no choice but to obtain Abkhaz citizenship or to leave Gali⁸⁴³.

7.32 In its November 2008 report the OSCE mission expressed “deep concern” that “if conditions are created under which the residents of Gali cannot make a living because of their legal status and if they are not granted freedom of movement, this combination of circumstances could create a humanitarian disaster”⁸⁴⁴. In fact, the right to freedom of movement has been denied them.

7.33 Russian and Abkhazian military forces have continued to restrict the freedom of movement on which ethnic Georgian residents in Gali rely for the daily survival of their families and the long-term survival of their culture. Ethnic Georgians have been prohibited from crossing the administrative border. The checkpoints along the border are guarded by Russian troops, who arrest or sanction those who attempt to cross. In October and November 2008, Russian and separatist military units took specific measures to prevent movement of ethnic Georgians from across the administrative border by destroying the only railway and pedestrian bridges connecting Gali with the rest of Georgia. Worse,

⁸⁴³ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, pp. 68-69. GM, Vol. II, Annex 71.

⁸⁴⁴ *Ibid.*

Russia placed landmines around the pedestrian river crossings used by the local population⁸⁴⁵.

7.34 As explained by the OSCE's fact-finding mission, restrictions on movement between the Gali District and the rest of Georgia have had a serious impact on the ethnic Georgians who live in Gali:

the closure of the administrative boundary has severely restricted freedom of movement for residents of the Gali district and is causing serious social dislocations. Families with members on each side of the administrative boundary, for example, can no longer visit each other. Health workers are also blocked from passage and residents of Gali can no longer visit medical facilities in Zugdidi [across the administrative border]. A health worker in Gali recounted how a man had died after he was refused permission to cross the administrative boundary to seek medical care in Zugdidi⁸⁴⁶.

7.35 According to the OSCE High Commissioner on National Minorities: “such coercive practices, which violate international law, may further destabilize the already fragile inter-ethnic situation in the region and force many Georgians to leave”⁸⁴⁷.

⁸⁴⁵ “Russians Mining Abkhaz Administrative Border”, *Rustavi 2* (2 November 2008). GM, Vol. IV, Annex 272.

⁸⁴⁶ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 64. GM, Vol. II, Annex 71.

⁸⁴⁷ “OSCE High Commissioner on National Minorities deeply concerned by recent developments in Abkhazia” (2009), *op. cit.* GM, Vol. II, Annex 72.

Section IV. Ongoing Prevention of the Return of Displaced Ethnic Georgians to South Ossetia and Abkhazia

7.36 Russia and the *de facto* regimes in South Ossetia and Abkhazia are discriminating against ethnic Georgians by continuing to prevent IDPs from returning to their homes in the two occupied territories. As described above, in Chapter 5, paragraphs 5.4 to 5.8, and Chapter 6, paragraphs 6.6 to 6.33, over 200,000 ethnic Georgians were ethnically cleansed from South Ossetia in 1991-1992 and again in 2008, and from Abkhazia in 1992-1994 and again in 2008. All but a small handful have been prevented from returning, and continue to be prevented from returning, by the combined efforts of Russia and the *de facto* authorities. As reported by the Monitoring Body of the Parliament of the Council of Europe on 14 April 2009, eight months after the issuance of the Court's Order on Provisional Measures, "Russia and the *de facto* authorities continue severely to restrict the freedom of movement between the break-away regions and the rest of Georgia, including with respect to humanitarian aid and the right to return of IDPs"⁸⁴⁸.

7.37 Since the issuance of the Court's Order on 15 October 2008, each *de facto* regime has adopted and implemented policies expressly intended to prevent displaced ethnic Georgians from returning. These discriminatory policies have been enforced by Russian military forces, which formally serve as the official State Border Guards of South Ossetia and Abkhazia. These Russian soldiers police the administrative borders of both occupied territories, and physically prevent ethnic Georgians from crossing into them. Russia admits this. In its Report to the Court of 9 July 2009, Russia states that: "even if the Abkhaz and

⁸⁴⁸ Council of Europe, Parliamentary Assembly, *Follow-up given by Georgia and Russia to Resolution 1647 (2009)*, Doc. 11876 (28 April 2009), para. 35. GM, Vol. II, Annex 64.

South Ossetian authorities might have imposed some restrictions on the crossing of their borders with Georgia, the Russian Federation is not in a position to interfere with such decisions of the respective authorities. The Russian border guards in Abkhazia and South Ossetia are obliged to act in accordance with the relevant Republic's national regulations"⁸⁴⁹.

7.38 Georgia takes a different view. It believes the Russian border guards in South Ossetia and Abkhazia are obliged not to act in accordance with the discriminatory policies of the *de facto* regimes, but in accordance with the Order on Provisional Measures issued by the Court; and in view of the Court's Order, neither the Russian guards nor Russia itself can hide behind the discriminatory "laws" passed by the *de facto* regimes that, in any event, Russia controls.

7.39 This is the view that has been adopted by the international organisations that have sent missions to South Ossetia and Abkhazia in the period following the issuance of the Court's Order, and that have investigated the situation regarding the return of ethnic Georgian IDPs to those territories. In particular, the OSCE mission reached the following conclusions:

It is clear that the *de facto* authorities in South Ossetia and Abkhazia, including Russian military authorities, have not taken steps to facilitate and ensure that these persons can return voluntarily to their former places of residence in safety and dignity. On the contrary, their actions impede the return of displaced persons, in contravention of OSCE commitments and

⁸⁴⁹ *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Report of the Russian Federation on Compliance with the Provisional Measures Indicated by the Order of the Court of 15 October 2008 (8 July 2009), p. 20.

other international obligations, including the recent order of the International Court of Justice⁸⁵⁰.

7.40 Similarly, the OSCE's High Commissioner on National Minorities reported that Russia and the *de facto* authorities are acting:

contrary to international standards and obligations, as well as the provisional measures ordered by the International Court of Justice on 15 October this year, which requires the parties to '*do all in their power, wherever and whenever possible, to ensure, without distinction as to national or ethnic origin ... the right of persons to freedom of movement and residence...*'⁸⁵¹.

A. THE PREVENTION OF RETURN TO SOUTH OSSETIA

7.41 Senior officials of the *de facto* South Ossetian regime have publicly proclaimed a policy prohibiting the return of ethnic Georgian IDPs who were ethnically cleansed from that territory. The *de facto* Minister of the Interior, a Russian General Officer, Mikhail Mindzaev, announced that 4,000 ethnic Georgians would be prosecuted if they attempted to return to South Ossetia; the remaining ethnic Georgians "would only be allowed to return if they renounce their Georgian citizenship"⁸⁵². South Ossetia's *de facto* Deputy Prime Minister told the OSCE fact-finding mission: "If a Georgian who decides to remain in South Ossetia does not meet our expectations, they will be expelled... I don't want Georgians to return... and they won't be able to"⁸⁵³. Not surprisingly,

⁸⁵⁰ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 71. GM, Vol. II, Annex 71.

⁸⁵¹ Letter from Knut Vollebaek, to Minister Alexander Stubb (2008), *op. cit.*, p. 2. (emphasis in original). GM, Vol. V, Annex 312.

⁸⁵² OSCE, *Human Rights in the War-Affected Areas Following the Conflict in Georgia* (2008), *op. cit.*, p. 48. GM, Vol. II, Annex 71.

⁸⁵³ *Ibid.*

Human Rights Watch reported that it “is not aware of any steps taken by the Ossetian authorities to enable the displaced to return”⁸⁵⁴.

7.42 The discriminatory nature of these policies is underscored by the treatment given to ethnic Ossetian refugees who, in contrast with ethnic Georgians, have been allowed to return to South Ossetia unimpeded⁸⁵⁵. By April 2009, more than 95 percent of those who fled to North Ossetia in August 2008 had returned to their homes in South Ossetia⁸⁵⁶. As confirmed by the Commissioner for Human Rights of the Council of Europe, “The great majority of those who fled to Russia have returned”; in contrast, “[e]thnic Georgians who fled southwards have not been able to move back”⁸⁵⁷. The OSCE investigative team likewise concluded that “[t]he ethnic Georgians who fled have been prevented by the Russian and South Ossetian forces from returning”⁸⁵⁸. The OSCE Mission reported that there were ethnic Georgians who “have not been able to return to their house[s] because police stop people from entering that area”⁸⁵⁹. One “displaced person from Disevi village”, for example, who “tried to

⁸⁵⁴ HRW, *Up in Flames* (2009), *op. cit.*, p. 153. GM, Vol. III, Annex 156.

⁸⁵⁵ *Report: The humanitarian consequences of the war between Georgia and Russia: Follow-up given to Resolution 1648*, Doc. 11859 (2009), *op. cit.*, para. 34. GM, Vol. II, Annex 62.

⁸⁵⁶ *Ibid.*, para. 2.

⁸⁵⁷ Council of Europe, Commissioner for Human Rights, Thomas Hammarberg, *Special Follow-Up Mission to the Areas Affected by the South Ossetia Conflict: Implementation of the Commissioner's six principles for urgent human rights and humanitarian protection*, CommDH92008)37 (16 December 2008), p. 2. GM, Vol. II, Annex 58..

⁸⁵⁸ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 33. GM, Vol. II, Annex 71.

⁸⁵⁹ *Ibid.*, p. 48.

return to Disevi” was “prevented from doing so by Russian soldiers”⁸⁶⁰. Another “was turned back at a checkpoint after being told he should apply for a Russian passport and citizenship if he wanted to return to the village”⁸⁶¹. For ethnic Georgians, the OSCE concluded, “it is impossible to get through the Russian-Ossetian check points”⁸⁶².

7.43 Human Rights Watch found that ethnic Georgians were further discouraged from returning to their homes in South Ossetia by the failure of the Russian and Ossetian authorities to protect them against ongoing violence and looting:

[N]o effective measures were taken to stop the looting. Moreover, neither Ossetian nor Russian authorities have taken concrete measures to hold accountable those who intentionally destroyed the Georgian villages in the republic⁸⁶³.

7.44 Similarly, in its report of January 2009, the Parliamentary Assembly of the Council of Europe concluded that:

The return of IDPs to ethnic Georgian villages in South Ossetia and Abkhazia is considerably more difficult, if not outright impossible. Amidst continuing reports of acts of ethnic cleansing, most IDPs fear for their safety if they return, especially in the absence of independent international monitors from the EU and OSCE. In addition, most ethnic Georgian villages in South Ossetia have been looted and razed.

The return of ethnic Georgian IDPs to the break-away region of South Ossetia is further complicated by the insistence of the *de*

⁸⁶⁰ *Ibid.*

⁸⁶¹ *Ibid.*, pp. 48-49.

⁸⁶² *Ibid.*, p. 48.

⁸⁶³ HRW, *Up in Flames* (2009), *op. cit.*, p. 153. GM, Vol. III, Annex 156.

facto authorities that IDPs returning to it accept the South Ossetian “nationality” and rescind the Georgian one⁸⁶⁴.

7.45 In these circumstances, Human Rights Watch issued an urgent call to Russia, which “exercises effective control over South Ossetia”, that “[e]thnic Georgians displaced from South Ossetia should be allowed to voluntarily return”:

The permanent forced displacement of thousands of people cannot be countenanced. As it exercises effective control over South Ossetia, Russia has an obligation to provide security to all persons living there, regardless of ethnicity; this is especially urgent in Akhalkgori district. Ethnic Georgians displaced from South Ossetia should be allowed to voluntarily return. Russia should publicly promote and implement the right of all persons displaced by the conflict, without regard to their ethnic background or imputed political affiliations, to return and live in their homes in South Ossetia in safety and dignity⁸⁶⁵.

7.46 Human Rights Watch thus called upon Russia to do what it was already obligated to do under Articles 2, 3 and 5 of the 1965 Convention and the Court’s Order on Provisional Measures (Paragraph 149(A)(3)): to implement the right of all displaced persons to return and live in their homes in South Ossetia (and Abkhazia) in safety and dignity, without regard to their ethnic background. The evidence shows that, rather than implement this right of return, Russia has deliberately frustrated its exercise, and continues to do so as of the date of this *Memorial*.

⁸⁶⁴ *The implementation of Resolution 1633 (2009) on the consequences of the war between Georgia and Russia*, Doc. 11800 (2009), *op. cit.*, paras. 59-60 (emphasis added). GM, Vol. II, Annex 60.

⁸⁶⁵ HRW, *Up in Flames* (2009), *op. cit.*, p. 5. GM, Vol. III, Annex 156.

B. THE PREVENTION OF RETURN TO ABKHAZIA

7.47 The same is true with regard to Abkhazia. Russia and the *de facto* authorities continue to pursue the same policies as in South Ossetia that prevent displaced ethnic Georgians from returning to their homes. Public statements by senior Abkhazian officials are similar to those of their South Ossetian counterparts. Following the issuance of the Court's Order on Provisional Measures, the Foreign Minister of Abkhazia's *de facto* regime announced that Abkhazia would only accept the return of displaced ethnic Georgians to the Gali District, stating "discussion of the possibility of return of Georgian refugees to other regions of Abkhazia is impossible"⁸⁶⁶. He reconfirmed this position in February 2009, on the ground that "the rest of the population of Abkhazia is not yet ready for the return of refugees"⁸⁶⁷. To the same end, in June 2009, the Chair of the Human Rights Committee of the *de facto* Abkhazian Parliament declared that the displaced ethnic Georgians "will never be able to return"⁸⁶⁸. Although some ethnic Georgians have been allowed to return to the Gali District in south-east Abkhazia, directly across the administrative boundary with the rest of Georgia, many of these IDPs have been prevented from doing so, or discouraged by the discriminatory policies implemented by the *de facto* regime. Most significant among these policies is the requirement that IDPs who wish to return to Abkhazia give up their Georgian nationality, and accept Abkhazian and Russian citizenship and passports. This policy was described in Chapter 5 and 6,

⁸⁶⁶ "Minister of Foreign Affairs of Abkhazia: Georgian refugees may return only to Gali District", *Rosbalt.ru* (20 October 2008). GM, Vol. IV, Annex 267.

⁸⁶⁷ "Shamba: Refugees Can Return Only to Gali District", *IA Regnum* (26 February 2009). GM, Vol. IV, Annex 286.

⁸⁶⁸ Brian Whitmore, "Abkhazia and the Perils of 'Independence'", *Radio Free Europe* (19 June 2009). GM, Vol. IV, Annex 296.

at paragraphs 5.15 to 5.24, 6.54, and 6.83 to 6.84. It has remained in force up to the filing of this *Memorial*.

7.48 In contrast to the obstacles placed in the path of returning ethnic Georgian IDPs, the *de facto* authorities in Abkhazia have energetically promoted the return of ethnic Abkhaz, including those who have never lived in Abkhazia but are descendants of those who left the region decades ago and resettled in Turkey. Under this program, the *de facto* regime offers citizenship, a year of free housing and five years of financial aid upon resettlement⁸⁶⁹.

7.49 Events in the Kodori Gorge, in north-east Abkhazia, illustrate both the ongoing nature of the discriminatory denial of the right of return of ethnic Georgian IDPs, and Russia's responsibility. Nearly all of the approximately 2,500 ethnic Georgian residents of the area were forcibly displaced in August 2008, and have been prevented from returning home⁸⁷⁰. They have been prevented from doing so by the Russian military forces that occupy and control this region. In May 2009, the UN Secretary-General reported that:

The Russian Federation forces in the upper Kodori valley are deployed mostly between Gentsvish village, where they maintain their headquarters, and the Khida and Kalamri-Sukhi passes, which provide access to the valley from the Georgian controlled side. Reportedly, the Russian Federation forces maintain

⁸⁶⁹ Ellen Bary, "Abkhazia Lures its Expatriates, Welcoming Them One by One", *N.Y. Times* (8 May 2009). GM, Vol. IV, Annex 295.

⁸⁷⁰ *Report of the Secretary-General on the Situation in Abkhazia, Georgia, Pursuant to Security Council Resolution 1839 (2008)*, UN Doc. S/2009/69 (2009), *op. cit.*, para. 41. GM, Vol. II, Annex 52.

checkpoints at the Khida and Kalamri-Sukhi passes alongside Abkhaz posts⁸⁷¹.

7.50 Thus, the Rapporteur of the Council of Europe's Parliamentary Committee on Migration, Refugees, and Population has recommended that the "return of the persons who fled should be a priority... [and] pressure should be put on the *de facto* Abkhaz authorities and the Russian authorities to ensure that this return takes place in safety and in dignity"⁸⁷². The OSCE High Commissioner on National Minorities agreed that it is of the "utmost importance to insist on [the] right of return" of the ethnic Georgians displaced from the Kodori Gorge.⁸⁷³ Nevertheless, despite Russia's international obligations, its military forces continue to implement the policy of the *de facto* Abkhazian authorities in conditioning the return of ethnic Georgians on their renunciation of Georgian nationality and citizenship, and their obtaining an Abkhazian "passport"⁸⁷⁴.

7.51 Russian and Abkhazian forces have not only prevented ethnic Georgians from returning to the Kodori Gorge in the period since the issuance of the Court's Order on Provisional Measures, they have actively sought to remove all vestiges of the ethnic Georgian presence from the region. In April 2009,

⁸⁷¹ *Report of the Secretary-General pursuant to Security Council resolutions 1808 (2008), 1839 (2008) and 1866 (2009)*, UN Doc. S/2009/254 (2009), *op. cit.*, para. 39. GM, Vol. II, Annex 54.

⁸⁷² Council of Europe, Parliament Assembly, Committee on Migration, Refugees and Population, *The humanitarian consequences of the war between Georgia and Russia*, Doc. 11789 (12 January 2009), para. 25. GM, Vol. II, Annex 59.

⁸⁷³ Letter from Knut Vollebaek to Minister Alexander Stubb (2008), *op. cit.*, p. 2. GM, Vol. V, Annex 312.

⁸⁷⁴ *Report of the Secretary-General on the Situation in Abkhazia, Georgia, Pursuant to Security Council Resolution 1839 (2008)*, UN Doc. S/2009/69 (2009), *op. cit.*, para. 41. GM, Vol. II, Annex 52.

Georgian Orthodox monks and nuns were forcibly expelled from their church in the Kodori Gorge. As explained by the *de facto* Defence Minister of Abkhazia, “I took the decision to expel them. We’ll kick out anyone who prevents the population of Abkhazia from living calmly... They don’t recognise our independent state or our Orthodox leader Fr. Vissarion”⁸⁷⁵. Leaving little room for misinterpretation, Abkhazia’s *de facto* Deputy Foreign Minister declared, “We don’t have the Georgian Church in Abkhazia”⁸⁷⁶.

Section V. Ongoing Obstruction of Access to Humanitarian Assistance and International Monitoring

7.52 International and non-governmental organizations have reported that Russia is obstructing the delivery of essential humanitarian aid to ethnic Georgians in South Ossetia and Abkhazia. As the OSCE mission found: “International and national humanitarian organizations face unreasonable restrictions on their access to South Ossetia and Abkhazia”⁸⁷⁷. The OSCE especially criticized the “insistence by the *de facto* South Ossetian authorities that international access to the territory must be through the Russian Federation”, which “aggravates the situation of the local population and hampers the work of humanitarian organizations”⁸⁷⁸. The OSCE mission likewise reported that

⁸⁷⁵ Felix Corley, “Abkhazia: ‘We’ll kick out anyone’”, *Forum 18 News Service* (7 April 2009). GM, Vol. IV, Annex 293.

⁸⁷⁶ *Ibid.*

⁸⁷⁷ OSCE, *Human Rights in the War-Affected Areas* (2008), *op. cit.*, p. 8. GM, Vol. II, Annex 71.

⁸⁷⁸ *Ibid.*

several international humanitarian organizations have been prevented from entering the Gali District of Abkhazia⁸⁷⁹.

7.53 The OSCE expressed the view that Russia's obstruction of humanitarian assistance to ethnic Georgians in Gali and Akhalkgori violates the Court's Order of 15 October 2008. It stated that the *de facto* authorities and the "Russian military authorities" are "impeding international humanitarian organizations from crossing administrative boundaries", which is "contrary to OSCE commitments and other international obligations" including the Court's provisional measure requiring "the parties to refrain from placing any impediment to humanitarian assistance"⁸⁸⁰.

7.54 Equally disturbing is Russia's banishment of international monitoring organisations and agencies from South Ossetia and Abkhazia. Acting in collaboration with the *de facto* South Ossetian and Abkhazian authorities, Russia has refused access to international monitors from the UN, the EU and the OSCE. Under Paragraph 149(C) of the Court's Order of 15 October 2008, the parties are obligated to "refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve".⁸⁸¹ In the view of the Parliamentary Assembly of the Council of Europe, Russia's restrictions on entry of international monitoring organisations into the occupied territories, following the Provisional Measures

⁸⁷⁹ *Ibid.*, p. 64.

⁸⁸⁰ *Ibid.*, pp. 50, 72.

⁸⁸¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Request for the Indication of Provisional Measures, Order (15 October 2008), para. 149(C).

Order, “has, *inter alia*, hindered the investigation of reports of violence along the administrative borders, the improvement of the security situation in zones along the administrative borders of these two regions, as well as the return of IDPs to South Ossetia and Abkhazia”⁸⁸². Thus, Russia’s denial of access by international monitoring agencies has exposed ethnic Georgians remaining in South Ossetia and Abkhazia to further ethnic discrimination and abuses, and hampered the ability of ethnic Georgian IDPs to return to their homes in those territories, contrary to the Court’s Order.

7.55 The OSCE is one of the international monitoring organisations that Russia no longer allows into the occupied territories. The OSCE had been working in South Ossetia for 14 years. Its mandate in Georgia covered both South Ossetia and Abkhazia, and broadly included “promot[ing] respect of human rights and fundamental freedoms and assist[ing] in the development of legal and democratic institutions and processes”⁸⁸³. Russia eviscerated this mandate on 13 May 2009, by vetoing the OSCE Chairman’s proposal to extend the OSCE presence beyond its expiration date of 30 June 2009. Since then, the OSCE has not been able to carry out monitoring activities in either of the occupied territories.

7.56 The European Union Monitoring Mission (“EUMM”) has suffered the same fate. The EUMM was established to monitor the implementation of the 12 August ceasefire agreement. As explained by the EUMM itself, its work:

⁸⁸² *The implementation of Resolution 1633 (2009) on the consequences of the war between Georgia and Russia*, Doc. 11800 (2009), *op. cit.*, para. 31. GM, Vol. II, Annex 60.

⁸⁸³ OSCE Mission to Georgia, *Mandate*, (Adopted: 13 December 1992 – Closed: 30 June 2009). GM, Vol. II, Annex 74.

goes beyond the mere implementation of the peace agreements. Its presence in Georgia is to help normalize and stabilize the situation on the ground. EUMM reports on the human rights situation, the respect of international humanitarian law, rule of law and security situation, as well as the return of internally displaced persons and refugees⁸⁸⁴.

Since the mission's inception, Russia has directly prevented the EUMM from carrying out this mandate within South Ossetia and Abkhazia⁸⁸⁵. It is thus limited to patrolling Georgian-controlled territory along the administrative border and ensuring the protection of ethnic Georgians living outside the occupied territories.

7.57 With the departure of the OSCE and the EUMM, the only major international monitoring presence left in the occupied territories was the UN Mission in Georgia ("UNOMIG"). UNOMIG had been monitoring the area for 16 years. Its mandate included monitoring the safe and orderly return of refugees and displaced persons. Soon after sending its military forces into South Ossetia and Abkhazia in August 2008, Russia and the *de facto* authorities began to restrict UNOMIG's movements. By February 2009, the UN Secretary-General confirmed that:

on a number of occasions, the Mission's freedom of movement was restricted by Abkhaz personnel. There were also incidents of shooting in the air by Abkhaz *de facto* law enforcement personnel in the presence of United Nations patrols and of pointing weapons at United Nations patrolling vehicles, and a number of instances

⁸⁸⁴ European Union Monitoring of Mission in Georgia, *Mandate*, (11 August 2008). GM, Vol. II, Annex 86.

⁸⁸⁵ "EU observers will not monitor Abkhazia, S. Ossetia: Russia's Lavrov", *Reuters* (11 September 2008). GM, Vol. IV, Annex 263.

when Abkhaz personnel exhibited an aggressive attitude towards the patrols⁸⁸⁶.

On 4 March 2009, Russian forces denied a UN patrol access through a Russian position in the security zone⁸⁸⁷. A Russian liaison officer later informed the Mission that the Russian Government would not allow UN patrols to use segments of the roads that pass through the positions of Russian Federation forces⁸⁸⁸.

7.58 Russia ultimately decided to terminate UNOMIG's presence in the occupied territories altogether when it voted against UNOMIG's continuation in the UN Security Council on 15 June 2009. After 16 years of operation, the last UNOMIG monitors exited their posts in Abkhazia on 15 July 2009, leaving both occupied territories devoid of international monitoring⁸⁸⁹. As reported by the International Crisis Group, "[t]he demise of the UN mission may contribute to a feeling of insecurity among the estimated 40,000 ethnic Georgians and Megrelians living in the Gali region of Abkhazia and prompt many to flee to the rest of Georgia, prompting another destabilizing IDP crisis"⁸⁹⁰.

⁸⁸⁶ *Report of the Secretary-General on the Situation in Abkhazia, Georgia, Pursuant to Security Council Resolution 1839 (2008)*, UN Doc. S/2009/69 (3 Feb. 2009), *op. cit.*, para. 16. GM, Vol. II, Annex 52.

⁸⁸⁷ *Report of the Secretary-General pursuant to Security Council resolutions 1808 (2008), 1839 (2008) and 1866 (2009)*, UN Doc. S/2009/254 (2009), *op. cit.*, para. 21. GM, Vol. II, Annex 54.

⁸⁸⁸ *Ibid.*

⁸⁸⁹ Tom Esslemont, "UN Monitors to Leave Georgia", *BBC News* (15 July 2009). GM, Vol. IV, Annex 297.

⁸⁹⁰ International Crisis Group, *Georgia-Russia: Still Insecure and Dangerous*, Europe Briefing No. 53 (22 June 2009), p. 5. GM, Vol. III, Annex 165.

7.59 In sum, Russia's conduct has violated the Court's Order of 15 October 2008 indicating Provisional Measures. The legal basis for that conclusion is discussed in Chapter 10.

PART E.

LAW

CHAPTER VIII.

JURISDICTION AND PROCEDURAL REQUIREMENTS

8.1 This Chapter sets out Georgia’s submissions on preliminary issues relating to jurisdiction and the procedural requirements for submitting a dispute to the Court pursuant to Article 22 of the 1965 Convention⁸⁹¹. These issues were addressed in a summary fashion, during the proceedings on Georgia’s Request for Provisional Measures and in application of the standard applied by the Court pursuant to Article 41 of the Statute of the International Court of Justice.

Section I. Jurisdiction

A. THE TITLE OF JURISDICTION

8.2 In its *Application*, Georgia invoked Article 22 of the 1965 Convention as the basis of jurisdiction. Article 22 provides:

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

8.3 Neither Georgia nor Russia maintains any reservation to Article 22 of the 1965 Convention.

⁸⁹¹ International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (21 December 1965), (entered into force 4 January 1969) (hereinafter “1965 Convention”), Art. 22. GM, Vol. II, Annex 3.

B. JURISDICTION OVER THE PARTIES

8.4 Georgia was admitted to the United Nations on 31 July 1992 and is a party to the Statute of the Court. Georgia deposited an instrument of accession to the 1965 Convention on 2 June 1999.

8.5 The Russian Federation is an original member of the United Nations by virtue of its continuation of the State personality of the USSR⁸⁹², and it is a party to the Statute of the Court. In 1991, the Russian Federation also affirmed that it would continue the rights and responsibilities of the USSR under all other international treaties, including the 1965 Convention, which was ratified by the USSR on 6 March 1969.

C. JURISDICTION OVER THE SUBJECT MATTER OF THE DISPUTE

8.6 Article 22 of the 1965 Convention defines the scope of this Court's jurisdiction *ratione materiae* as extending to "any dispute... with respect to the interpretation or application of this Convention".

8.7 The Court's jurisdiction is thus stipulated in broad terms. Article 22 refers to "*any* dispute" that concerns either the "interpretation or application" of the Convention. This juxtaposition is significant: it gives the Court jurisdiction to pronounce on the scope of the rights and responsibilities set out in the 1965 Convention and also upon the consequences of a breach of those rights and responsibilities. As the Permanent Court of International Justice confirmed in the *Case Concerning the Factory at Chorzów*, a dispute concerning the

⁸⁹² Letter of President of the Russian Federation to the United Nations Secretary-General of 24 December 1991, UN Doc. 1991/RUSSIA, 31 ILM 138, Appendix (24 December 1991).

“application” of treaty obligations to a State party entails the adjudication of its international responsibility for any breach of that treaty⁸⁹³.

8.8 Each of Georgia’s claims is founded upon a breach of Russia’s obligations in Articles 2, 3 and 5 of the 1965 Convention. Georgia’s claims give rise to a “dispute . . . with respect to the interpretation or application” of the 1965 Convention⁸⁹⁴. It is Georgia’s case that Russia, by the acts of its officials and by the acts of the *de facto* governmental authorities and militias in South Ossetia and Abkhazia, has violated Articles 2, 3 and 5 of the Convention by systematically discriminating against ethnic Georgians in those regions of Georgia, as well as those who were expelled from those regions and were frustrated in exercising their right of return. The threshold for the Court to confirm its jurisdiction *ratione materiae* is clearly satisfied in this case.

8.9 Each of Georgia’s claims set out in its submissions in Part F of this *Memorial* relate to violations of the 1965 Convention that occurred after Georgia’s accession to the Convention in June 1999. In respect of certain claims, such as Russia’s frustration of the right of return of ethnic Georgian IDPs, the events of the early 1990s, including the mass expulsion of ethnic Georgians from South Ossetia and Abkhazia, are important, *inter alia*, for establishing the continuing violation of the rights of the ethnic Georgian IDPs by Russia.

⁸⁹³ *Case Concerning the Factory at Chorzów, Jurisdiction, 1927, PCIJ Series A, No. 9, pp. 20-21.*

⁸⁹⁴ 1965 Convention, *op. cit.*, Art. 22.

D. THE SPATIAL SCOPE OF RUSSIA'S OBLIGATIONS UNDER CERD

I. Introduction

8.10 The 1965 Convention does not contain a general provision imposing a spatial limitation upon the obligations it creates. In this respect the 1965 Convention may be contrasted with some other international human rights instruments negotiated within the United Nations system.

8.11 For example, the International Covenant on Civil and Political Rights, which was being drafted at the same time as the 1965 Convention and was opened for signature only one year after it, provides in Article 2, paragraph 1 that: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognised in the present Covenant..."⁸⁹⁵ The United Nations Human Rights Committee has interpreted this provision in its General Comment No. 31:

This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party⁸⁹⁶.

8.12 The language in Article 2, paragraph 1 of the International Covenant on Civil and Political Rights recalls that of Article 1 of the European Convention of Human Rights and Fundamental Freedoms, which uses the formula "...to

⁸⁹⁵ International Covenant on Civil and Political Rights, 999 UNTS 302 (1966) (entered into force 23 March 1976), Art. 2 (emphasis added).

⁸⁹⁶ U.N. Office of the High Commissioner for Human Rights, CERD, *General Comment No. 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 (26 May 2004). GM, Vol. II, Annex 37.

everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”⁸⁹⁷.

8.13 By contrast with these international human rights instruments, the 1965 Convention contains no general provision limiting the spatial scope of its obligations. Rather, it defines the spatial scope of only two of the obligations set out in the Convention: Articles 3 and 6. This approach has been adopted in other human rights treaties⁸⁹⁸.

8.14 Article 3 provides: “State Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”. This is a far-reaching obligation to “eradicate all practices” of racial segregation and apartheid. The Committee on the Elimination of Racial Discrimination (the “CERD Committee”) has, by General Recommendation No. 19 on Article 3, interpreted this obligation to apply to the eradication of “the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State”⁸⁹⁹. For a State Party to be in a position to meet the burden of this obligation, it must have effective control over the territory in which racial segregation or apartheid is or has been practised. The drafters were

⁸⁹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 221 (1950) (entered into force 3 September 1953).

⁸⁹⁸ See Inter-American Convention to Prevent and Punish Torture (1985), Arts. 6(1), 6(3), 8(1), 8(2), 12 and 14; Inter-American Convention on Forced Disappearance of Persons (1994), Arts. I, IV and VI; International Convention for the Protection of All Persons from Enforced Disappearance (2006), Arts. 9, 11, 31 and 34.

⁸⁹⁹ U.N. Office of the High Commissioner for Human Rights, CERD, *General Recommendation No. 19, Prevention, Prohibition and Eradication of Racial Segregation and Apartheid*, Forty-seventh session, U.N. Doc. A/50/18 (1995). GM, Vol. II, Annex 18.

careful to place a territorial limitation upon the obligation to “eradicate all practices” of apartheid in Article 3, otherwise it might have been interpreted as calling for positive intervention in South Africa.

8.15 A similar limitation is found in Article 6, which obliges States Parties to provide effective remedies and protection against acts of racial discrimination to everyone “within their jurisdiction”. Article 6 refers specifically to competent national tribunals for that purpose. Once again, it is not surprising that there is a spatial limitation upon this obligation because its omission in Article 6 might be interpreted as a legal basis for the assertion of universal jurisdiction by the national tribunals of States Parties.

8.16 In contrast with Articles 3 and 6, the other obligations in Part I of the 1965 Convention are not premised upon the State’s exercise of effective control over the area where the alleged victims are present. For instance, Article 2(a) provides: “Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation”. This obligation is capable of being applied by the State in respect of any persons over which a State organ or agent exercises power, whether or not the State has effective control over the area in which those persons are present.

8.17 The spatial scope of Russia’s obligations under the 1965 Convention are to be distinguished from questions concerning attribution. The spatial scope of the obligations in human rights treaties depends upon the State’s relationship towards the *victims* of human rights violations. The State must be in a position to exercise power or control over such victims for the obligations in the 1965

Convention to be engaged. The concepts of “jurisdiction” or “territory” are employed by many human rights treaties to define the requisite degree of the State’s power or control in this sense⁹⁰⁰. Attribution depends upon the State’s relationship to the *perpetrators* of human rights violations. Once again, this is essentially a question of the State’s power or control over the organs or individuals alleged to have committed the violations. Attribution is dealt with separately in Chapter 9 of this *Memorial*.

2. *The Practice of the CERD Committee*

8.18 The practice of the CERD Committee confirms that the obligations in Part I of the 1965 Convention apply to the conduct of the States Parties outside their national territories.

8.19 The clearest expression of the CERD Committee’s interpretation of the spatial scope of the 1965 Convention is in respect of Israel’s reports and the Occupied Palestinian Territories⁹⁰¹.

8.20 It has been Israel’s consistent position in submitting its reports pursuant to Article 9 of the Convention that the Convention obligations do not apply to the Occupied Territories. Thus, according to Israel’s representative at the CERD Committee’s meetings in 1991:

In the areas under military administration, where Israeli law did not apply, the military administration complied strictly with the rules of international humanitarian law, as applicable to armed

⁹⁰⁰ See, e.g., Convention for the Protection of Human Rights and Fundamental Freedoms, Arts. 1 & 62; International Covenant on Civil and Political Rights, Art. 2.

⁹⁰¹ The Convention was signed by Israel on 7 March 1966 and ratified on 3 January 1979.

conflicts. Israel accepted the fourth Geneva Convention, but claimed the right to do so de facto, not de jure⁹⁰².

8.21 In accordance with that position, Israel had declined to submit information concerning its compliance with the Convention in the Occupied Territories in its first six reports to the CERD Committee. The Committee rejected this position. In its 1991 Report to the General Assembly, the Committee stated:

The Committee reiterated that the Government of Israel had implemented in the occupied territories neither the Geneva Convention Relative to the Protection of Civilian Persons in Time of War nor the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee expressed great concern about the situation in the occupied territories.

The Committee urged the Government of Israel to answer, in its seventh periodic report, all the questions asked and concerns raised during the consideration of its sixth and earlier reports⁹⁰³.

8.22 Following the killings of Palestinians at the Tomb of the Patriarchs in Hebron on 25 February 1994, the Committee requested an urgent report from the Government of Israel pursuant to Article 9(1) of the Convention⁹⁰⁴. In its concluding observations, the Committee reiterated its interpretation of the spatial scope of Israel's obligations under the Convention in respect of the Occupied Territories:

⁹⁰² *Report of the Committee on the Elimination of Racial Discrimination*, General Assembly, Official Records: Forty-Sixth Session, Supplement No. 18 (A/46/18) (1992), para. 378. GM, Vol. II, Annex 4.

⁹⁰³ *Ibid.*, paras. 387-388.

⁹⁰⁴ *Report of the Committee on the Elimination of Racial Discrimination*, General Assembly, Forty-Ninth Session, Official Records, Supplement No. 18 (A/49/18) (1995), paras. 73-76. GM, Vol. II, Annex 19.

The Committee reaffirms its position of principle that, since Israel is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee is competent to examine the manner in which Israel is fulfilling its obligations under the Convention with respect to everyone falling under the jurisdiction of Israel, including all persons living in the territories occupied by Israel.

[...]

The Committee reaffirms that all persons, without distinction as to race, or ethnic or national origin, are entitled to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution. Consequently, Israel is obliged to protect fully the life and security of the Palestinian civilians in the occupied territories⁹⁰⁵.

8.23 The CERD Committee has since taken forward this reasoning following the Advisory Opinion in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In its 2007 Report, the CERD Committee adopted the reasoning of the Court with respect to the application of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child in the Occupied Territories in relation to the application of the 1965 Convention:

The Committee reiterates its concern at the position of the State party to the effect that the Convention does not apply in the Occupied Palestinian Territories and the Golan Heights. Such a position cannot be sustained under the letter and spirit of the Convention, or under international law, as also affirmed by the International Court of Justice. The Committee is concerned at the State party's assertion that it can legitimately distinguish between Israelis and Palestinians in the Occupied Palestinian Territories on

⁹⁰⁵*Ibid.*, paras. 83 & 86.

the basis of citizenship. It reiterates that the Israeli settlements are illegal under international law.

The Committee recommends that the State party review its approach and interpret its obligations under the Convention in good faith, in accordance with the ordinary meaning to be given to its terms in their context, and in the light of its object and purpose. The Committee also recommends that the State party ensures that Palestinians enjoy full rights under the Convention without discrimination based on citizenship and national origin⁹⁰⁶.

3. Conclusion

8.24 The spatial scope of the obligations in Articles 2 and 5 of the Convention extends to Russia's conduct in respect of ethnic Georgians in South Ossetia and Abkhazia, as well as adjacent areas of Georgia to the extent that such areas have been under Russian control. It is submitted that these areas are also "territories under the jurisdiction" of Russia for the purposes of Article 3 of the Convention. In that regard, Russia exercised control over South Ossetia and Abkhazia before 8 August 2008 through its control of the *de facto* authorities in those areas. This had its genesis in Russia's military intervention and support of the *de facto* authorities during the period 1991-1994, and subsequently grew to include control of the *de facto* governmental administrations, finances and military and police services, manifested most conspicuously by Russia's installation of Russian State officers in key *de facto* leadership positions. After 8 August 2008, Russia additionally controlled South Ossetia and Abkhazia through its military occupation by thousands of Russian soldiers, including those assigned responsibility for serving as the official State Border Guards of the *de facto* authorities.

⁹⁰⁶ *Report of the Committee on the Elimination of Racial Discrimination*, General Assembly, Sixty-Second Session, Official Records, Supplement No. 18 (A/62/18) (2007), para. 225. GM, Vol. II, Annex 43.

Section II. Procedural Requirements for the Submission of the Dispute to the Court

A. THE TEST FOR COMPLIANCE WITH PROCEDURAL REQUIREMENTS

8.25 Article 22 of the 1965 Convention reads:

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, *which is not settled by negotiation or by the procedures expressly provided for in this Convention*, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

8.26 For the Court to have jurisdiction, the Applicant State must show only that the dispute in question has not been resolved, either by negotiations or the procedures provided for in the Convention. Whether this condition is satisfied is a simple question of fact: has the dispute been “settled by negotiation or by the procedures expressly provided for in this Convention”? If the answer is “no”, then the Court has jurisdiction. In his separate opinion in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judge Sir Robert Jennings expressed the point with characteristic lucidity:

In the present case, the United States claims that Nicaragua has made no attempt to settle the matters, the subject of the application, by diplomacy. But the qualifying clause in question merely requires that the dispute be one ‘not satisfactorily adjusted by diplomacy’. Expressed thus, in a purely negative form, it is not an exigent requirement. It seems indeed to be cogently arguable that all that is required is, as the clause precisely States, that the claims have not in fact already been ‘adjusted’ by diplomacy. In short it appears to be intended to do no more than

to ensure that disputes that have already been adequately dealt with by diplomacy, should not be reopened before the Court⁹⁰⁷.

8.27 Thus, under Article 22 of the 1965 Convention, there is no affirmative obligation for the Parties to have attempted to resolve the dispute through negotiations (or through the procedures established by the Convention). All that is required is that, as a matter of fact, the dispute has not been so resolved.

8.28 Article 22 of the Convention stands in contrast to clauses found in other treaties that require a mandatory condition precedent as a jurisdictional requirement. An example of this type of compromissory clause was addressed in *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*⁹⁰⁸. In contrast to Article 22 of the 1965 Convention, Article 14(1) of the Montreal Convention contains a condition precedent requiring the submission of the dispute to arbitration prior to resorting to the Court:

Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months of the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

⁹⁰⁷*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility Separate Opinion of Judge Sir Robert Jennings*, *I.C.J. Reports 1984*, pp. 533, 556.

⁹⁰⁸*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United States of America)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 1998*, p. 115.

8.29 This provision envisages that if a dispute cannot be settled by negotiation then it “*shall*”, at the request of one of the Contracting States, be submitted to arbitration. Under Article 14(1) of the Montreal Convention, the Court is merely a default option if for any reason the parties cannot agree on arbitration within six months. By contrast, under Article 22 of the 1965 Convention, the Court is at all stages seen as the relevant jurisdictional instance for unresolved disputes. The only stipulation in this regard is that the dispute in fact remains unresolved.

8.30 In fact, even in the context of Article 14(1) of the Montreal Convention, the Court held that its jurisdiction was readily triggered. In *Aerial Incident at Lockerbie*, the Court found on the facts of this case that Libya had proposed arbitration to the United States, but that no response was forthcoming to this proposal. Accordingly:

... the refusal of the Respondent to enter into arbitration to resolve that dispute absolved Libya from any obligation under Article 14, paragraph 1, of the Convention to observe a six-month period starting from the request for arbitration, before seizing the Court⁹⁰⁹.

8.31 Because Article 22 of the 1965 Convention contains no language analogous to Article 14(1) of the Montreal Convention mandating what the Parties “*shall*” do prior to referring the dispute to the Court, there is no requirement that the Parties engage in negotiations or attempt to use the procedures established by the 1965 Convention prior to submitting the dispute to the Court.

⁹⁰⁹ *Ibid.* at p. 122, para. 20. The ICJ came to the same decision in the case submitted against the United Kingdom: *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, *I.C.J. Reports 1998*, p. 9, 17, para. 21.

B. EVIDENCE OF NEGOTIATIONS IN RESPECT OF THE PRESENT DISPUTE

8.32 Although it is not necessary for Georgia to demonstrate that it engaged in negotiations with Russia prior to submitting its *Application* to the Court, the evidence establishes that there were, in fact, extensive negotiations between Georgia and Russia concerning the subject matter of Georgia's claims under the 1965 Convention.

8.33 Before this evidence is examined, it is useful to refer to the Court's guidance in *Nicaragua* as to the type of negotiations that conform to the common requirement in compromissory clauses. The Court has adopted a sensible and pragmatic position by not insisting upon reference to the particular treaty that provides the title of jurisdiction for the submitted case:

In the view of the Court, it does not necessarily follow that, because a State has not expressly referred in negotiations with another State to a particular treaty as having been violated by conduct of that other State, it is debarred from invoking a compromissory clause in that treaty. The United States was well aware that Nicaragua alleged that its conduct was a breach of international obligations before the present case was instituted; and it is now aware that specific articles of the 1956 Treaty are alleged to have been violated. It would make no sense to require Nicaragua now to institute fresh proceedings based on the Treaty, which it would be fully entitled to do⁹¹⁰.

8.34 In the present case, the negotiations involving delegations from Georgia and Russia concerning the subject matter of the present dispute have progressed, unsuccessfully, in numerous *fora*, including but not limited to: (i) the United Nations Geneva Process and the Coordinating Council for Georgia and

⁹¹⁰ *Nicaragua v. United State, Jurisdiction and Admissibility, Judgment*, p. 392, para. 83.

Abkhazia, and the Group of Friends of Georgia; (ii) the Joint Control Commission for the Georgian-Ossetian Conflict Settlement; (iii) the Organisation for Security and Cooperation in Europe; and (iv) the Council of the Heads of State of the Commonwealth of Independent States. The fundamental issue of the return of the ethnic Georgian IDPs was prominent on the agenda for negotiations in these fora. The right of return is guaranteed under Article 5 of the Convention and the subject of a General Recommendation by the CERD Committee⁹¹¹. An account of the mandate of each of these institutions and their activities is provided below, preceded by a chronological survey of the high level bilateral negotiations between Georgia and Russia relating to various aspects of the present dispute.

1. Chronology of Bilateral Negotiations

8.35 An account of the lengthy but unsuccessful bilateral consultations and negotiations between Russia and Georgia begins with the meeting between the Chairman of the Supreme Council of the RSFSR, Boris Yeltsin, and the Chairman of the Supreme Council of the Republic of Georgia, Zviad Gamsakhurdia, on 23 March 1991, in relation to the conflict in South Ossetia. According to the minutes of the meeting⁹¹², Russia and Georgia, together with representatives of South Ossetia, undertook to establish the conditions necessary for the return of refugees to the places of their permanent residence. Shortly afterwards, on 24 April 1991, representatives of the “Inter-Parliamentary Commission” from the Supreme Soviets of the USSR, the RSFSR and Georgia, called upon each State to “institute legal proceedings against persons who were

⁹¹¹ See *supra* paras. 2.39 and 5.2 (citing CERD, *General Recommendation No. 22*).

⁹¹² Protocol of the Negotiations between the Chairman of the Supreme Council of the RSFSR and the Chairman of the Supreme Council of the Republic of Georgia, 23 March 1991, *Vestnik Gruzii*, #42 (28 March 1991). GM, Vol. III, Annex 96.

engaged in violence, robberies and arsons, also those guilty of inflaming the ethnic conflict”⁹¹³. An “Agreement on Principles of Settlement of the Georgian-Ossetian Conflict” was then signed by President Boris Yeltsin and President Eduard Shevardnadze on 10 June 1992⁹¹⁴.

8.36 In relation to the conflict in Abkhazia, the Presidents of Russia and Georgia met on 3 September 1992 and agreed to the “Final Document of the Moscow Meeting”⁹¹⁵. A ceasefire was announced in respect of the military confrontation between the Georgian armed forces and the militias in Abkhazia. The Final Document made clear reference to the protection of the rights of minorities and was signed by the Heads of State of Russia and Georgia. Article 5 of the Agreement annexed to the Final Documents reads:

The conditions for the return of refugees to the places of their permanent residence are being secured. They shall receive the adequate assistance and aid.

8.37 This was supplemented with an explicit obligation imposed upon the parties by Article 8:

The Sides confirm the necessity of observing the international norms in the sphere of human rights and minority rights, inadmissibility of discrimination of the rights of citizens with regards to ethnicity, language or religion, and the securing of free democratic elections.

⁹¹³ Protocol of the Inter-Parliamentary Commission established under the Resolution of the USSR Supreme Soviet’s Council of Nationalities of 24 April 1991 “On proposals aimed at normalization of the situation in the south Ossetia and its neighboring area”, *Sakartvelo*, special edition 1995 (31 May 1991). GM, Vol. III, Annex 97.

⁹¹⁴ Agreement on Principles of Settlement of the Georgian-Ossetian Conflict, Sochi, 24 June 1992, *Svobodnaya Gruzia*, #82 (27 June 1992). GM, Vol. III, Annex 102.

⁹¹⁵ Final Document of the Moscow Meeting (3 September 1992). GM, Vol. III, Annex 106.

8.38 Thus, as early as in 1991-1992, Georgia and Russia had recognized the problem of ethnic discrimination as being at the heart of the conflicts in South Ossetia and Abkhazia.

8.39 A “Protocol of Negotiations between the Governmental Delegations of the Republic of Georgia and the Russian Federation” was then signed on 9 April 1993 in Sochi by the Russian Minister of Defence, Pavel Grachev and the Georgian Prime Minister, Tengiz Sigua⁹¹⁶. A “Commission for Control and Inspection in Abkhazia was established, *inter alia*, to “address the issues related to the return and accommodation of refugees and internally displaced persons”⁹¹⁷. The Protocol called for “measures aimed at...the protection of human rights of ethnic minorities...in full conformity with international law”⁹¹⁸.

8.40 The next step involved the wider international community, reflected in the conclusion of a “Memorandum of Understanding” between Georgia and the Abkhaz *de facto* government, with the participation of Russia, the United Nations and the CSCE on 1 December 1993⁹¹⁹. This was the start of the “Geneva negotiations”, in which Russia was described as a “facilitator”. This agreement mandated the following action from the parties:

The parties consider it their duty to find an urgent solution to the problem of the refugees and displaced persons. They undertake to create conditions for the voluntary, safe and speedy return of

⁹¹⁶ Protocol of Negotiations between the Governmental Delegations of the Republic of Georgia and the Russian Federation (9 April 1993). GM, Vol. III, Annex 105.

⁹¹⁷ *Ibid.*, para. 3.

⁹¹⁸ *Ibid.*, para. 7.

⁹¹⁹ Memorandum of Understanding between the Georgian and Abkhaz sides at the negotiations in Geneva (1 December 1993). GM, Vol. III, Annex 108.

refugees to the places of their permanent residence in all regions of Abkhazia. The apartments, houses, plots of land and property which they left shall be returned to all those refugees who return⁹²⁰.

8.41 The human tragedy underlying the present case before the Court is that the right of return guaranteed by Article 5 of the Convention and endorsed in the official documents signed by the Presidents of Russia and Georgia at the start of negotiations some fifteen years ago has proven to be illusory, as a result of Russia's conduct throughout this time.

8.42 On 3 February 1994, the "Agreement between Georgia and the Russian Federation on Friendship, Good Neighborhood and Cooperation", known as the "Framework Agreement", was signed by both parties⁹²¹. It was seen as the legal basis for any kind of relations, and although some progress was made at various stages and working commissions were established, it was never ratified by the Russian Federation.

8.43 The "Quadripartite Agreement on the Voluntary Return of Refugees and Displaced Persons" was then concluded on 4 April 1994 in Moscow between Georgia, Russia, representatives of Abkhazia and the UN High Commissioner for Refugees⁹²². A "Commission" was established pursuant to the Agreement "to formulate, discuss and approve plans to implement programmes for the safe, orderly and voluntary repatriation of the refugees and displaced persons to

⁹²⁰ *Ibid.*, para. 4.

⁹²¹ Agreement between Georgia and the Russian Federation on Friendship, Good Neighborhood and Cooperation (3 February 1994). GM, Vol. III, Annex 109.

⁹²² Quadripartite Agreement on the Voluntary Return of Refugees and Displaced Persons (4 April 1994). GM, Vol. III, Annex 110.

Abkhazia from Georgia, the Russian Federation and within Abkhazia for their successful reintegration”⁹²³. The Commission met on 4 April 1994 and 27 April 1994⁹²⁴.

8.44 On 24 July 1995, the Parties to the Quadripartite Agreement signed a protocol referring to the following steps for the return of IDPs:

The working group shall start its activities beginning from August 1995 and within two weeks, and in accordance with an action plan adopted by the working group, the process of organized return of refugees to places of their permanent residence, first of all to the Gali region, shall commence⁹²⁵.

8.45 A number of meetings were held at the Presidential level to discuss the situations in Abkhazia and South Ossetia. On 6-7 March 2003, a meeting was held in Sochi between President Vladimir Putin and President Eduard Shevardnadze⁹²⁶. According to the Respondent, the resulting “Sochi Agreements” made the Geneva Process redundant, despite the latter involving the wider international community. A solution to the plight of the IDPs was high on the agenda for this meeting, where it was emphasised that the first priority must be the return of ethnic Georgian IDPs to the Gali region of Abkhazia. A working group was established to secure that objective. But when the working

⁹²³ *Ibid.*, paras. 4 & 5.

⁹²⁴ See Declaration on the results of the First Meeting of the Quadripartite Commission on the issues of voluntary return of refugees and displaced persons, Sochi, 9 April 1994, *Svobodnaia Gruzia*, #57 (12 April 1994). GM, Vol. III, Annex 111; Declaration of the Second Meeting, Sochi, 27 April 1994, *Svobodnaia Gruzia*, #71 (4 May 1994). GM, Vol. III, Annex 112.

⁹²⁵ Protocol on Georgian-Abkhaz conflict settlement (24 July 1995), para. 6. GM, Vol. III, Annex 116.

⁹²⁶ See Concluding Statement on the meetings between President of the Russian Federation, Mr. Vladimir Putin, and President of Georgia, Mr. Eduard Shevardnadze, *Svobodnaya Gruzia*, #60 (12 March 2003). GM, Vol. III, Annex 136.

group met on 16 June 2003 and 31 July 2003, the Russian side rejected the Georgian proposal for a Joint Provisional Administration under the auspices of the United Nations in Gali to secure the dignified and safe return of the IDPs⁹²⁷; Russia defended its rejection on the ground that Abkhaz representatives were against such a JPA being established. The Russian side then insisted that the return of the IDPs should only occur on the basis of the conditions presented by the Abkhaz *de facto* government. The working group met again on 26-27 April 2004 at the Russian Ministry of Foreign Affairs⁹²⁸. The UN Special Representative in Georgia, Heidi Tagliavini, noted that they had elaborated the main parameters for the return of IDPs together with the UNHCR⁹²⁹. But, the Abkhaz representatives had refused to sign the resultant “Intentions Document”. Another meeting of the working group took place on 20 July 2004⁹³⁰. Once again the “Intentions Document” was circulated calling for the return of IDPs to the Gali region as a first step and in recognition of the fact that “fundamental principles” relating to “the return of refugees and IDPs” require “the establishment of security conditions and protection of human rights enshrined in

⁹²⁷ Information Paper prepared by the Ministry of Foreign Affairs of Georgia (16 June 2003), referencing Meeting of the Group on the Return of IDPs established under the Sochi agreement, note prepared by the Department for the relations with the Russian Federation (31 July 2003). GM, Vol. III, Annex 137.

⁹²⁸ Information Note of the Ministry of Foreign Affairs of Georgia, prepared by Advisor G. Kajaia: Meeting of the Working Group on the Issues of Return of Refugees to Gali district, Moscow (26-27 April 2004). GM, Vol. III, Annex 139.

⁹²⁹ *Ibid.*, p. 2.

⁹³⁰ Ministry of Foreign Affairs of Russian Federation Department of Information and Print “Final Document”: Meeting of the Working Group on the Issues of Return of Refugees within the framework of the Georgian-Abkhaz Conflict Resolution (21 July 2004). GM, Vol. III, Annex 140.

[the] Universal Declaration of Human Rights of 1948, as well as in other major Human Rights treaties”⁹³¹. The working group met again on 15-16 June 2005⁹³².

8.46 The new President of Georgia, Mikhail Saakashvili, wrote to President Putin on 26 July 2004 in order to draw attention to the lack of any real progress in resolving the conflicts in South Ossetia and Abkhazia⁹³³. President Putin responded on 14 August 2004⁹³⁴. In relation to South Ossetia, he expressed the following assessment:

I would like to emphasize that the most important aspect of the resolution of Georgian-Ossetian conflict should be the ensuring of protection of rights and interests of the population of South Ossetia the majority of which are Russian citizens. Taking into consideration the above-mentioned we will continue purposeful mediatory work for a peaceful settlement of the conflict⁹³⁵.

8.47 In relation to Abkhazia, President Putin wrote:

To my belief the main line direction of the work for solving problems with Abkhazia should be the practical and coherent realization of Sochi agreements⁹³⁶.

⁹³¹ Letter of intentions attached to the letter of State Minister of Georgia to Minister of Foreign Affairs of Georgia, Gela Bejhuashvili (9 June 2006). GM, Vol. V, Annex 307.

⁹³² Information Note of the Embassy of Georgia in Russian Federation concerning the activities undertaken by the Embassy in 2005 (undated). GM, Vol. III, Annex 92.

⁹³³ Letter of President Saakashvili of Georgia to President Putin of the Russian Federation (26 July 2004). GM, Vol. V, Annex 309.

⁹³⁴ Letter of President Putin of the Russian Federation to President Saakashvili of Georgia (14 August 2004). GM, Vol. V, Annex 310.

⁹³⁵ *Ibid.*, p. 2.

⁹³⁶ *Ibid.*

8.48 Once again, the President of Georgia initiated correspondence with the new Russian President Dmitri Medvedev in June 2008⁹³⁷. He raised the problem of the return of IDPs to Abkhazia. President Medvedev's response of 1 July 2008 was as follows:⁹³⁸

It is also apparently untimely to put the question of return of refugees in such a categorical manner. Abkhazs perceive this as a threat to their national survival in the current escalated situation and we have to understand them.

8.49 The Russian President's characterisation of the question of the return of the IDPs to Abkhazia as "untimely and categorical" in July 2008 stands in contrast to the Memorandum of Understanding signed by Russia in December 1993, which committed the parties to finding an "urgent solution to the problem of the refugees and displaced persons"⁹³⁹. This makes clear that in 2008 the parties were plainly in dispute on the issue of protections needed for ethnic Georgians against discrimination and exclusion. On 15 May 2008 Russia voted against UN General Assembly resolution GA/10708 which focused on the right of return of all refugees and IDPs to Abkhazia, and recognised that there had been attempts to alter the pre-conflict demographic composition.

8.50 In sum, despite numerous bilateral meetings and discussions between Georgia and Russia, and notwithstanding several agreements reached and commitments made regarding non-discrimination against ethnic Georgians and

⁹³⁷ Letter of President Mikheil Saakashvili of Georgia to President Dmitry Medvedev of the Russian Federation (24 June 2008). GM, Vol. V, Annex 308.

⁹³⁸ Letter of President Dmitry Medvedev of the Russian Federation to President Mikheil Saakashvili of Georgia (1 July 2008). GM, Vol. V, Annex 311.

⁹³⁹ Memorandum of Understanding between the Georgian and Abkhaz sides at the negotiations in Geneva (1 December 1993). GM, Vol. III, Annex 108.

facilitation of the return of Georgian IDPs to South Ossetia and Abkhazia, the situation in the two territories remained fundamentally unchanged for the ethnic Georgians living there or seeking to return. The extensive negotiations that were held over more than 15 years failed to resolve the dispute between the Parties.

2. *The Joint Control Commission for the Georgian-Ossetian Conflict Settlement*

8.51 The Joint Control Commission (“JCC”) was created by *the Dagomisi (Sochi) Agreement of June 24, 1992 on Principles of Settlement of the Georgian-Ossetian Conflict* concluded between Georgia and the Russian Federation⁹⁴⁰. Its mandate was reviewed on 31 October 1994 in Moscow, where a Regulation was drawn up to set out its objectives in clear terms⁹⁴¹. The overarching aim of the JCC had been “to exercise control over the implementation of a cease-fire, withdrawal of armed formations, disbandment of forces of self-defense and to maintain the regime of security in the region”⁹⁴². The Regulation provided for the JCC to become the permanent mechanism for coordination of the conflict resolution process. It was quadripartite, consisting of representatives of all parties participating in the work of the Commission: Georgia, Russia, South Ossetia and North Ossetia. The OSCE was also a participant. Meetings of the

⁹⁴⁰ Agreement on Principles of the Settlement of the Georgian-Ossetian Conflict between the Republic of Georgia and the Russian Federation (the “Sochi Agreement”) (24 June 1992) (hereinafter “Sochi Agreement (1992)”). GM, Vol. III, Annex 102.

⁹⁴¹ Regulation on the JCC for the settlement of the Georgian-Ossetian Conflict (31 October 1994). GM, Vol. III, Annex 113.

⁹⁴² “Sochi Agreement” (1992), *op. cit.*, Art. 3.1. GM, Vol. III, Annex 102.

JCC were generally chaired by a Deputy Minister of the Russian Federation. Decisions were taken on a consensus basis⁹⁴³.

8.52 Under Article 4 of the Sochi Agreement, the parties undertook to start negotiations immediately on economic restoration of the regions located in the conflict zone and the return and settlement of refugees and IDPs. The 1994 Regulations then assigned detailed specified tasks to the JCC, including, *inter alia*:

- (a) *working out and implementation of measures for creating conditions for the resolution of political, military (peacekeeping), law enforcement, economic, humanitarian, informational, and other problems;*
- (b) *participation in elaborating and realizing complex measures, affirmed by the parties, for the return, reception, and reestablishment of refugees (forcibly resettled persons) with the collaboration of the Office of the UN High Commissioner for Refugees;*
- (c) *organisation of supervision concerning the observation of human rights and national minorities in the zone of conflict*⁹⁴⁴.

8.53 In practice, the JCC's work has tended to be carried out through three working groups: military and security matters, economic rehabilitation of the conflict zone and establishing conditions for the return of refugees and IDPs.

8.54 Paragraph 9 of the Regulation also gave the JCC the task of coordinating the activities of the Joint Peacekeeping Forces and designated observers. Those

⁹⁴³ Regulation on the JCC for the settlement of the Georgian-Ossetian Conflict, *op. cit.*, para. 16. GM, Vol. III, Annex 113.

⁹⁴⁴ *Ibid.*, para. 5.

forces were similarly created by the Sochi agreement of 24 June 1992, and were tripartite, consisting of peacekeeping battalions from Georgia, Russia and North Ossetia, all under Russian command. The JCC was to maintain a permanent link with those forces and make decisions concerning their future use⁹⁴⁵. It was to appoint the commander of the joint forces on recommendation of the Ministry of Defence of the Russian Federation.

8.55 Thirty-two meetings of the JCC took place between 1992 and 2007⁹⁴⁶.

8.56 Occasional informal meetings between certain of the parties were also organised on the initiative of the JCC. One such meeting was on 5 November 2004 between representatives of Georgia and South Ossetia, mediated by the Russian Federation. At various points, memoranda and protocols were issued by the JCC. On 16 May 1996, the JCC agreed that: “The Parties shall undertake all necessary measures aimed at prevention and cutting short any illegal actions that may violate human rights on the ground of ethnic origin”⁹⁴⁷.

⁹⁴⁵ *Ibid.*, para. 9.

⁹⁴⁶ The meetings took place on the following dates: 6 July 1992, 1 November 1994, 6 December 1994, 19-20 July 1995, 30 October 1995, 23-24 July 1996, 27 August 1996, 13 - 14 February 1997, 4-5 March 1997, 25-27 September 1997, 20 June 1998, 23 July 1999, 21 April 2001, 3 July 2001, 2 August 2001, 16 May 2002, 3-4 October 2002, 2-29 October 2002, 23-26 June 2003, 16 April 2004, 14 May 2004, 14 July 2004, 12-18 August 2004, 19-20 November 2004, 23 December 2004, 24-25 October 2005, 15-16 November 2005, 27-28 December 2005, 27-29 March 2006, 11-13 May 2006, 17-18 August 2006 and 23-24 October 2007.

⁹⁴⁷ Memorandum on Necessary Measures to be undertaken in order to Ensure Security and Strengthening of Mutual Trust Between the Parties to the Georgian-Ossetian Conflict (16 May 1996), para. 2. GM, Vol. III, Annex 118.

8.57 Agreements between Georgia and Russia on the return of refugees were signed on 23 July 1999⁹⁴⁸ and 23 December 2000⁹⁴⁹. At the meeting on 23-26 June 2003 in Moscow, a draft “Inter-State Russian-Georgian Program on the Return, Accommodation, Integration and Reintegration of Refugees and IDPs” was approved;⁹⁵⁰ it was then elaborated upon on 16 April 2004⁹⁵¹.

8.58 A “Special Ad Hoc Committee on the Facilitation of the Voluntary Return of Refugees and IDPs to the Places of Former Residence” was established by the JCC on 13 February 1997⁹⁵² following a preparatory meeting on 6-7 February 1997. The OSCE and UNHCR also participated in the Committee⁹⁵³. The regulations for this Ad Hoc Committee were adopted on 26 September 1997⁹⁵⁴. It was to organise and coordinate measures on practical

⁹⁴⁸ Archive of the Staff of the State Minister of Georgia for Conflict Resolution Issues, Protocol #10 of the Session of JCC for the Georgian-Ossetian Conflict Settlement, 23 July 1999, Settlement of Tsinandali approving Decision of the JCC at Annex 3. GM, Vol. III, Annex 129.

⁹⁴⁹ Agreement between the Government of Georgia and the Government of the Russian Federation on Cooperation in Restoration of Economy in the Georgian-Ossetian Conflict Zone and Return of Refugees, Tbilisi (23 December 2000). GM, Vol. III, Annex 131.

⁹⁵⁰ Protocol #28, Meetings of Co-Chairmen of the JCC for Georgian-Ossetian Conflict settlement (23-26 June 2003).

⁹⁵¹ Protocol #30, Meetings of Co-Chairmen of the JCC for Georgian-Ossetian Conflict settlement, Tskhinvali (16 April 2004). GM, Vol. III, Annex 138.

⁹⁵² Protocol #7, Meeting of the JCC for the Georgian-Ossetian Conflict Settlement, Vladikavaz (13 February 1997). GM, Vol. III, Annex 119.

⁹⁵³ Regulation on the JCC, *Ad Hoc* Committee for Facilitation of Voluntary Return of Refugees and IDPs as a Result of the Georgian-Ossetian Conflict, Annex No.2, signed in Java (26 September 1997). GM, Vol. III, Annex 124.

⁹⁵⁴ Decision of the JCC, for the Georgian-Ossetian Conflict Settlement, on the process of implementation of the Procedure on Voluntary Return of Refugees and IDPs (26 September 1997). GM, Vol. III, Annex 123.

implementation, and to meet at least monthly⁹⁵⁵. The Committee met thirteen times between 1997 and 2002⁹⁵⁶.

3. *The United Nations Geneva Process and the Group of Friends of Georgia*

8.59 A process for resolving the conflict in Abkhazia was launched in Geneva on 17-19 November 1997 under the auspices of the UN Secretary-General. Russia was described as a “facilitator” in that process. Both the Organisation for Security and Cooperation in Europe and the “Group of Friends of Georgia”⁹⁵⁷ were observers. At the November 1997 meeting, representatives of the UNHCR and the UN Department of Humanitarian Affairs also took part in discussing issues of interest to them⁹⁵⁸. The parties to the Geneva Process agreed to try to achieve the speediest possible resolution of the conflict, with particular attention given to the issue of return of refugees and displaced persons⁹⁵⁹.

8.60 A programme of action and mechanism for its implementation was drawn up. That mechanism was the “Coordination Council of the Georgian and Abkhazian Parties”, created to put into action any decisions made in the Geneva Process. The Council was chaired by the Special Representative of the UN

⁹⁵⁵ *Ibid.*, Art. 1. The same document established a secretariat to undertake all organisational tasks.

⁹⁵⁶ The meetings took place on 17-18 April 1997, 21 October 1997, 25 November 1997, 7 April 1998, 30 September 1998, 17 December 1998, 30 March 1999, 22 July 1999, 20-21 April 2001, 14-15 May 2002, 7 June 2002, 8-9 June 2002 and 18 October 2002.

⁹⁵⁷ Final statement on the outcome of the resumed meeting held between the Georgian and Abkhaz parties held in Georgia (17-19 November 1997). GM, Vol. III, Annex 125.

⁹⁵⁸ *Ibid.*, para. 2.

⁹⁵⁹ *Ibid.*, para. 12.

Secretary-General for Georgia and consisted of two representatives of Georgia and Abkhazia, as well as representatives from Russia as facilitator, and the OSCE and the Group of Friends.

8.61 The Group of Friends of Georgia was established in 1994 by the UN Secretary-General. It consists of France, Germany, the United Kingdom, the United States and the Russian Federation. They may participate in meetings and make statements and proposals on various aspects of the process, but are not a party to the Geneva Negotiations as such, and are not invited to sign documents agreed upon during the negotiations by the parties⁹⁶⁰.

8.62 Three working groups were established within the framework of the Coordination Council: the first on security issues, the second on issues surrounding the return of IDPs and the third on social-economic cooperation. During the first meeting of the Coordination Council, a common investigation group was also established, to study with the parties any crimes in the conflict zone and any ethnic or political motive for such crimes⁹⁶¹.

8.63 The second meeting under the Geneva Process took place in Istanbul on 7-9 June 1999⁹⁶². The parties agreed:

To convene within one week Working Group II for the consideration and agreement of urgent measures regarding the

⁹⁶⁰ *Ibid.*, para. 3.

⁹⁶¹ The Coordination Council functioned from 1997 to 2001, during which period twelve sessions were held. The Council did not function thereafter, until its activities resumed in May 2006.

⁹⁶² Istanbul Statement of the Georgian and Abkhaz Sides on Confidence Building Measures (7-9 June 1999). GM, Vol. III, Annex 128.

issue of the return of refugees and displaced persons, and the establishment of conditions for their safety⁹⁶³.

8.64 At the third Meeting under the Geneva Process in Yalta on 15-16 March 2001, the issue of IDPs was raised once again⁹⁶⁴. The Yalta Declaration obliged the parties “to intensify efforts to create the necessary conditions for the voluntary and safe return of refugees to their permanent residences in the first phase to the Gali district within the old borders”⁹⁶⁵.

8.65 The Group of Friends of Georgia met separately on 23 October 2002⁹⁶⁶, 14 November 2002⁹⁶⁷ and 18 December 2002⁹⁶⁸ to facilitate agreement to the “Boden Document”⁹⁶⁹.

⁹⁶³ *Ibid.* at para. 3.

⁹⁶⁴ Yalta Declaration of the Georgian and Abkhaz sides (15-16 March 2001). GM, Vol. III, Annex 132.

⁹⁶⁵ *Ibid.*, para 2.

⁹⁶⁶ See Letter presented to the President of Georgia by Mr. Adamia, as copied to Minister of Foreign Affairs, Mr. Mengarishvili (23 October 2002). GM, Vol. V, Annex 306.

⁹⁶⁷ Minutes of the Meeting of the Deputy Minister of Foreign Affairs of Georgia, Mr. S. Dogonadze and Ambassadors of the “Group of Friends” accredited in Georgia, recorded by Z. Dvalishvili, annexed to letter from Deputy Minister M. Antadze to Ambassador of Georgia to Russia, Mr. Abashidze (14 November 2002). GM, Vol. III, Annex 134.

⁹⁶⁸ Letter of Embassy of Georgia in Russian Federation sent to the Ministry of Foreign Affairs of Georgia (23 December 2002). GM, Vol. III, Annex 135.

⁹⁶⁹ So named after the Secretary-General’s Special Representative for Georgia, Dieter Boden, who was primarily responsible for drafting the document in 2002. It was aimed at promoting negotiations and peaceful resolution of the conflict. Its title when submitted to the United Nations was “The Principles of Division of Competences between Tblisi and Sukhumi”. The document expressly recognised the principle of the territorial integrity of Georgia. It was opposed by the Abkhaz side. Russia purported early on to be persuading them to accept it, but on 26 January 2006 ruled out reference to the document in the Security Council and rejected it as a basis for the peace plan.

8.66 The UN Under-Secretary-General for Peacekeeping chaired the fourth meeting, which took place in Geneva on 19-20 February 2003⁹⁷⁰. At this meeting, a working plan was drafted with a concrete set of proposals to resolve the conflict, including the problem of the return of the Georgian IDPs.

8.67 On 7-8 April 2005, there was a high-level meeting of the Group of Friends of Georgia to review the Georgian-Abkhaz peace process⁹⁷¹. The UNHCR took part in the discussions and proposed strategies for resolving the problem of the return of refugees and IDPs to Abkhazia⁹⁷².

8.68 The next high-level meeting of the Group of Friends occurred on 2-3 February 2006 in Geneva. In the Chairman's statement⁹⁷³, it was recorded that:

The Abkhaz side should address seriously the issue of return, and security and human rights concerns of returnees; publicly reassure the local population, in particular in the Gali district, that their residency rights and identity will be respected; and move without further delay on implementing past commitments relating to UN police advisers, human rights sub-office and the language of instruction⁹⁷⁴.

⁹⁷⁰ First Geneva Meeting of the Groups of Friends of the Secretary-General; *see* United Nations Press Release, "UN Renews Efforts for Georgian-Abkhaz Peace" (20 February 2003). GM, Vol. II, Annex 35.

⁹⁷¹ Statement by the Chairman, High-Level Meeting of the Group of Friends of the Secretary-General, Geneva (7-8 April 2005). GM, Vol. II, Annex 78.

⁹⁷² *Ibid.*, p.1.

⁹⁷³ Statement of the Chairman, High-Level Meeting of the Group of Friends of the Secretary-General, Geneva (2-3 February 2006). GM, Vol. II, Annex 80.

⁹⁷⁴ *Ibid.*, p.2.

8.69 The fate of the IDPs and the treatment of ethnic minorities featured prominently in the discussions at the next high-level meeting on 12-13 February 2007 in Geneva.⁹⁷⁵

The Friends reaffirmed the right to return of IDPs and refugees to Abkhazia, Georgia; and encouraged the sides to focus on practical steps to improve conditions for returns, in the first instance to Gali.⁹⁷⁶

8.70 Notwithstanding the efforts made by and through the Geneva Process and the Group of Friends, no significant amelioration was achieved in the discrimination suffered by ethnic Georgians in or seeking to return to South Ossetia or Abkhazia. The dispute over the ethnic discrimination imposed on these populations remained unresolved.

4. *The Organisation for Security and Cooperation in Europe*

8.71 On several occasions Georgia has attempted to raise the subject matter of this dispute with the Russian Federation and to make progress in resolving the conflict within the forum of the OSCE Permanent Council. The OSCE itself has been involved in monitoring the conflict zone since 1994⁹⁷⁷.

8.72 On 7 May 1998 Georgia alerted the OSCE to the ethnic cleansing “still in progress” in the region. On 29 April 2001, Georgia then voiced its concerns as to the introduction by the Russian Federation of border policies which could not

⁹⁷⁵ See Statement of the Chairman, High-Level Meeting of the Group of Friends of the Secretary-General, Geneva (12-13 February 2007). GM, Vol. II, Annex 82.

⁹⁷⁶ *Ibid.*, p.1.

⁹⁷⁷ OSCE Mission to Georgia, *Mandate*, (Adopted: 13 December 1992- Closed: 30 June 2009). GM, Vol. II, Annex 74.

“be viewed otherwise than discriminatory” and the “integration of separatist regimes into the Russian Federation”⁹⁷⁸. Statements were made in the Permanent Council concerning refugees and IDPs, human rights violations and ethnic discrimination on twelve separate occasions between 2003 and 2008⁹⁷⁹. On 24 April 2008, Georgia again expressed concerns as to the staffing of the “so-called south Ossetian government...with Russian citizens” and the granting of Russian citizenship to the population⁹⁸⁰. In a separate Special Meeting of 27 October 2005, Georgia presented its conflict resolution plan, which included the need to “reinforce Ossetian cultural and ethnic heritage”⁹⁸¹.

8.73 On 22 January 2004, Georgia placed responsibility for certain rising tensions and deaths “exclusively with the Russian Federation”⁹⁸². On 2 March 2006, Georgia reiterated in the Permanent Council its “readiness...to continue constructive dialogue at all levels” and referred to detailed recent

⁹⁷⁸ Statement by the Minister of Special Affairs of Georgia at the Permanent Council of the OSCE, PC.DEL/207/01 (30 March 2001). GM, Vol. II, Annex 75.

⁹⁷⁹ Statements were made on the following dates: 6 February 2003, 1 April 2004, 21 October 2004, 16 June 2005, 13 October 2005, 9 February 2006, 6 April 2006, 18 May 2006, 19 October 2006, 27 October 2006, 14 December 2006 and 17 April 2008. Further statements were made by Georgia to the Permanent Council on the need to resolve the conflict and on the progress and setbacks occurring within the JCC on 24 October 2002, 23 January 2003 and 30 January 2003.

⁹⁸⁰ Statement by Minister of Foreign Affairs of Georgia, H.E. Bezhuashvili, U.N. Doc. PC.DEL_0101_06 (9 February 2006). GM, Vol. II, Annex 81.

⁹⁸¹ Presentation, “South Ossetia Conflict Resolution Plan” by the Prime Minister of Georgia, H. E. Zurab Nogaideli, 575th Special Meeting of the Permanent Council, PC.DEL/106005 (27 October 2005), slide 11. GM, Vol. II, Annex 85.

⁹⁸² Statement by Deputy Head of Mission, PC.DEL/34/09 (23 January 2009). GM, Vol. II, Annex 84. Further statements were made on conflict resolution on 17 March 2004, 6 August 2004, 18 August 2004, 3 February 2005, and 21 July 2005.

communications “initiated by the Georgian side” with Russia⁹⁸³. A statement was also made by Georgia on the situation in Tskhinvali on 12 July 2004 in a Special Permanent Council meeting convened on that topic⁹⁸⁴. That statement included the expression of concern at the ineffectiveness of the JCC format and the desire to “reinvigorate other existing negotiating mechanisms”.

8.74 The Russian Federation also made use of the OSCE forum and made over thirty statements concerning the subject matter of the dispute⁹⁸⁵.

8.75 The Ministers of the OSCE made statements on the situation in various reports and meetings. On 21 July 2005, the EU members in the Permanent Council welcomed “the initiative of the Georgian government in hosting the international conference in Batumi on 10 July 2005 to continue active cooperation in the interest of political settlement of the Georgian-South Ossetian conflict”⁹⁸⁶. On 23 January 2003, the United States member expressed concern at the “unilateral actions” of the Russian Federation, including “activities that

⁹⁸³ It continued to raise the issue on 27 March 2006, 13 July 2006, 27 July 2006, 16 November 2006, 24 April 2007, 14 June 2007, 17 July 2007, 6 September 2007, 30 October 2007, 30 April 2008 and 10 July 2008.

⁹⁸⁴ Statement of the Georgian Delegation, Special Permanent Council, UN Doc. PC.DEL/654/04 (13 July 2004). GM, Vol. II, Annex 77.

⁹⁸⁵ Statements which concerned the subject matter of the present dispute were made on 2 January 2003, 27 October 2005, 23 March 2006 and 13 March 2008. Further statements were made on the conflict and measures being taken to reach a resolution on 12 July 2004, 22 July 2004, 10 March 2005, 2 June 2005, 16 February 2006, 2 March 2006, 18 May 2006, 29 June 2006, 18 July 2006, 7 September 2006, 14 September 2006, 19 October 2006, 27 October 2006, 8 March 2007, 15 March 2007, 22 March 2007, 17 May 2007, 14 June 2007, 21 June 2007, 13 July 2007, 30 October 2007, 1 November 2007, 17 April 2008, 24 April 2008, 19 June 2008, 10 July 2008 and 14 July 2008.

⁹⁸⁶ EU Statement on Georgia and the Batumi Conference, UN Doc. PC.DEL/776/05 (21 July 2005). GM, Vol. II, Annex 79.

appear to enhance the separate status of Abkhazia”⁹⁸⁷. On 17 April 2008 the United States representative reiterated the concern that Russia was openly siding with the *de facto* regimes⁹⁸⁸.

8.76 Despite these attempts, no significant progress was made or resolution achieved in the OSCE forum.

5. *Commonwealth of Independent States*

8.77 On 17 October 1996, the Council of the Heads of States of the Commonwealth of Independent States (CIS) resolved to establish the “conditions for return of refugees and displaced persons in the Gali region”. This decision was affirmed by the Council on 28 March 1997⁹⁸⁹. The Council of the Inter-Parliamentary Assembly of the Member States of the CIS decided on 28 February 1998:

To call upon the Parties to achieve substantive progress without further delay towards a comprehensive settlement, first of all in the organized and secure return of refugees and displaced persons to their places of residence and the definition of the political

⁹⁸⁷ Statement of Response by the U.S. Mission to the OSCE, UN Doc. PC.DEL/49/03 (24 January 2003). GM, Vol. II, Annex 76.

⁹⁸⁸ Statement of the U.S. Mission to the OSCE, UN Doc. PC.DEL/303/08 (17 April 2008). GM, Vol. II, Annex 83.

⁹⁸⁹ Decision taken by the Council of the Heads of States of the CIS on support to the Peacekeeping Operations in the conflict Zone of Abkhazia, Georgia (28 March 1997). GM, Vol. III, Annex 121.

status of Abkhazia, Georgia, with the facilitation of the Russian Federation⁹⁹⁰.

8.78 The Council of the Heads of States expressed their frustration over the lack of any progress on the return of the IDPs to Abkhazia in its decision of 2 April 1999 in strong terms by deciding:

To consider inadmissible the further procrastination of the organized return of refugees and displaced persons in the whole territory of Abkhazia, Georgia, first of all in the Gali region (within the old frontiers) in a safe condition⁹⁹¹.

8.79 The Council of the Heads of States adopted a further decision calling for the “elaboration of additional security measures for the return of refugees and IDPs to their dwellings”⁹⁹². The decision was signed by President Putin on 8 February 2002 and President Shevardnadze on 1 March 2002. In the same year, the Council of the Heads of States requested that “the Council of Foreign Ministers of the CIS shall submit its proposals on further steps for the development of additional measures for the safe return of IDPs and refugees to the places of their former residence”⁹⁹³. The decision was signed by President Putin on 2 October 2002 and President Shevardnadze on 26 July 2002.

⁹⁹⁰ Decision taken by the Council of the Inter-Parliamentary Assembly of the Member-States of the CIS on the situation of conflict settlement in Abkhazia, Georgia (28 February 1998). GM, Vol. III, Annex 126.

⁹⁹¹ Decision taken by the Council of the Heads of States of the CIS on further steps towards the settlement of the conflict on Abkhazia, Georgia (2 April 1999). GM, Vol. III, Annex 127.

⁹⁹² Decision of the Council of the CIS Head of States on the presence of Collective Peace Keeping Forces in the Conflict Zone of Abkhazia, Georgia (signed by Georgia 1 March 2002, signed by Russian Federation 8 February 2002). GM, Vol. III, Annex 117.

⁹⁹³ Decision of the Council of Heads of States of the CIS on prolongation of the peacekeeping operation in the conflict zone in Abkhazia, Georgia (2 October 2002). GM, Vol. III, Annex 133.

8.80 Despite these measures, the situation of the Georgian IDPs expelled from South Ossetia and Abkhazia did not improve. They remained unable to exercise their right of return to their former homes in these territories. The dispute over their enjoyment of this right remains unresolved.

Section III. Conclusions

8.81 To summarise, the Court has jurisdiction *ratione personae*, *ratione materiae* and *ratione tempore* in respect of each of Georgia's claims as described in its submissions in Part F of this *Memorial*. The procedural requirements in Article 22 of the 1965 Convention are fully satisfied. In any event, negotiations over the subject matter of the present dispute have been held and failed to resolve it. There are no grounds for the Court to refrain from exercising its jurisdiction over Georgia's claims

CHAPTER IX.

**RUSSIA'S RESPONSIBILITY FOR VIOLATIONS OF
THE 1965 CONVENTION**

9.1 In this Chapter, Russia's responsibility for its involvement in, and support of, the ethnic cleansing of Georgians, the consolidation of that ethnic cleansing by the creation and recognition of ethnically homogenous enclaves within Georgia's national borders, the destruction of Georgian culture and identity, and the frustration of the right of ethnic Georgian IDPs to return to their homes in South Ossetia and Abkhazia, is assessed by reference to Russia's obligations under Articles 2, 3 and 5 of the 1965 Convention⁹⁹⁴.

9.2 The Chapter begins with a short introduction to the 1965 Convention and the concept of racial discrimination that it employs. The substantive law on the obligations in Articles 2, 3 and 5 of the 1965 Convention is then examined together with the particular test for attribution that applies to each of these obligations. In respect of each of Russia's violations of Articles 2, 3 and 5 of the 1965 Convention, cross-references are made to the evidence supporting such violations in Parts B, C and D of the *Memorial*.

Section I. Introduction to the 1965 Convention

9.3 The 1965 Convention is divided into three parts. Part I contains the definition of "racial discrimination" and the substantive obligations upon States Parties to refrain from any practices of racial discrimination themselves and also to take measures within their power to prevent, prohibit, eliminate and condemn racial discrimination by others. Part II establishes the Committee on the Elimination of Racial Discrimination (the "CERD Committee") and the various responsibilities and working methods of that Committee. The principal function of the CERD Committee is the consideration of biannual reports by the

⁹⁹⁴ International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (21 December 1965). GM, Vol. II, Annex 3.

individual States Parties on the legislative, judicial, administrative or other measures adopted by them to give effect to the obligations in Part I of the 1965 Convention and to make recommendations to the General Assembly on the basis of such reports. Part III contains miscellaneous final provisions on the modalities for signature, ratification and coming into force of the 1965 Convention and reservations thereto, and includes Article 22 on the jurisdiction of the Court in respect of disputes between the States Parties.

9.4 Against the background of events in South Africa⁹⁹⁵, it is not surprising that the particular consideration of apartheid was emphasized both in the preamble and in the text of the 1965 Convention itself. Apartheid can be defined as the coercive suppression of a racial or ethnic group as such, and their forced ejection as members of their society on grounds of their race or ethnicity⁹⁹⁶. It includes ethnically-motivated violence exercised by the State against a group defined in terms of race or ethnicity and aimed at their suppression or virtual expulsion. In the case of South Africa, that expulsion eventually took the form of the Bantustans -- ethnically constructed pseudo-States which the world refused to recognise⁹⁹⁷. Although the 1965 Convention is directed at eliminating racial discrimination in “all its forms and manifestations”, a primary focus was racial discrimination in the construction of the State itself, and of the territorial community it represents.

⁹⁹⁵ The slaughter of sixty-nine peaceful protesters by the South African police in Sharpeville in 1960 gave urgency to combating the scourge of racial and ethnic discrimination.

⁹⁹⁶ International Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 UNTS 243, (18 July 1976), Art. II.

⁹⁹⁷ See James Crawford, *The Creation of States in International Law* (2nd ed., 2006), pp. 338 *et seq.*

9.5 The scourge of racist governance imposed by colonial rule has now given way to the problem of ethnic violence between communities that has been provoked by a resurgence of nationalism in central and eastern Europe, and exacerbated by the collapse of communist rule in the USSR and its satellite States. The new paradigm of violent ethnic discrimination sweeping across Eastern Europe in the early 1990s was described with great perception by the Chairman of the CERD Committee, Luis Valencia Rodriguez, in his letter of transmittal enclosing the Committee's 1993 Report to His Excellency Boutros Boutros-Ghali, then Secretary-General of the United Nations, and is worthy of extensive quotation:

The period 1992-1993 has been besmirched by new evidence of horrific human rights abuses stimulated by racial and ethnic hatred. These new abuses are further examples of racial discrimination as this is defined in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination. Yet they are abuses of a different kind from those envisaged when the Convention was adopted in 1965. The Committee believes it important to call attention to some of the major changes it has observed, not least because some resolutions adopted by United Nations bodies continue to employ phrases that were appropriate in the resolutions of the 1960s and to use the concepts of that era even when they are not the most relevant for addressing the new circumstances.

The forms of racial discrimination which in the 1960s were regarded as most abhorrent were those of discrimination by whites against blacks. Racial discrimination was frequently described as caused by the dissemination of doctrines of racial superiority by the institutions of colonial rule and by the policies of racist regimes. The international community could counter these abuses by political means and in this way racial discrimination could be eliminated.

In 1993 we contemplate the success of policies initiated in the 1960s. The struggle against colonial rule and racist regimes has been successful even if the consequences of apartheid will continue to give trouble for a long time.

New challenges started to emerge at the end of the 1980s with the disintegration of some of the larger political structures, particularly in Eastern Europe, and the weakening of some structures in other regions. It is worth recalling that in the last census in the former Yugoslavia over 1 million persons did not register their membership in any national minority but counted themselves as simply Yugoslavs. Since that time, many of them have been forced by considerations of personal security to align themselves ethnically.

With the dissolution of the Soviet Union and other structures, some wider solidarities have been gravely weakened, exposing ethnic minorities to pressure from narrow nationalistic campaigns. Political movements have revived old claims to territory and incited ethnic hatred against persons of different origin. Rapid population growth, coinciding with a recession in world trade and the introduction of new technology, has changed the balance between the supply of labour and the demand for it. Increased competition for employment generates ethnic tensions in some regions, while elsewhere the weakening of public order has had comparable effects. As a result, racial or ethnic conflicts are appearing in areas previously characterized by tolerance. These forms of discrimination spring not from any belief in racial superiority but from a sense of difference. When a conflict becomes acute it is only with members of their own ethnic group that people feel secure.

Many of these confrontations have led to massive human rights violations...⁹⁹⁸

9.6 This description of the new paradigm of ethnic discrimination is especially relevant to the genesis of the present dispute, which were the civil conflicts in Georgia that followed the dissolution of the USSR, specifically the conflict of 1991-1992 in South Ossetia and the conflict of 1993-1994 in Abkhazia.

⁹⁹⁸ *Report of the Committee on the Elimination of Racial Discrimination, General Assembly, Forty-Eighth Session, Official Records, Supplement No. 18 (A/48/18) 1994, Letter of Transmittal from Chairman of CERD to Secretary-General of UN. GM, Vol. II, Annex 13.*

9.7 The CERD Committee played an active role in relation to the ethnic conflicts in the former Yugoslavia, and it did not balk from making strong recommendations to the General Assembly in relation to States Parties that instigated ethnic hatred and violence. For instance, the Committee made the following comment and recommendation in relation to the report submitted by the Federal Republic of Yugoslavia (Serbia and Montenegro) in 1993:

The Committee also noted with great concern that links existed between the Federal Republic of Yugoslavia (Serbia and Montenegro) and Serbian militias and paramilitary groups responsible for massive, gross and systematic violations of human rights in Bosnia and Herzegovina and in Croatian territories controlled by Serbs⁹⁹⁹.

[...]

The Committee urged the Federal Republic of Yugoslavia (Serbia and Montenegro) to undertake all measures at its disposal with a view to bringing to an end the massive, gross and systematic human rights violations currently occurring in those areas of Croatia and Bosnia and Herzegovina controlled by Serbs¹⁰⁰⁰.

9.8 The Committee also took a strong stance against the violent acts of ethnic discrimination occurring in areas of Bosnia and Herzegovina controlled by Croats:

The Committee urged the Government of Croatia to undertake all measures at its disposal with a view to bringing to an end the massive, gross and systematic human rights violations occurring in those areas of Bosnia and Herzegovina controlled by Croats¹⁰⁰¹.

⁹⁹⁹ *Report of the Committee on the Elimination of Racial Discrimination, General Assembly, Forty-Eighth Session, Official Records, Supplement No. 18 (A/48/18) 1994, para. 537 (hereinafter CERD Report, 48th Session, Supp. No. 18). GM, Vol. V, Annex 412.*

¹⁰⁰⁰ *Ibid.*, para. 545.

¹⁰⁰¹ *Ibid.*, para. 506.

9.9 To conclude, the 1965 Convention is particularly concerned with collective discrimination against ethnic groups and with fundamental issues relating to the composition of territorial communities, including the granting and withholding of nationality. Where collective discrimination has been accompanied with the use of force, the CERD Committee has been vigilant in identifying the illegality of the means and the ends of campaigns involving ethnically-motivated violence. As it expressed in relation to Kosovo:

The Committee is concerned that disproportionate use of force by law enforcement agencies and the military against the Albanian population in the province of Kosovo and Metohija has resulted in numerous violations of the right to life, destruction of property and displacement.

[...]

Any attempt to change or to uphold a changed demographic composition of an area against the will of the original inhabitants, by whatever means, is a violation of international human rights and humanitarian law...¹⁰⁰²

Section II. The Definition of Racial Discrimination in Article 1 of the 1965 Convention

9.10 The prohibition of racial discrimination has attained the status of a peremptory norm of international law¹⁰⁰³. Racism, according to one commentator, operates along at least “three axes”:

¹⁰⁰² *Report of the Committee on the Elimination of Racial Discrimination, General Assembly, Official Records, Fifty-Third Session, Supplement No. 18, U.N. Doc. A/53/18 Supple. 18 (10 September 1998), para. 203. GM, Vol. II, Annex 27.*

¹⁰⁰³ *See e.g., Barcelona Traction, Light and Power Company, Limited, Judgment, ICJ Reports 1970, p. 3, 32, para. 34; US (Third) Restatement of the Foreign Relations Law, § 702, n. 11 (1986).*

[F]irst, that of denigratory stereotyping, hatred and violence; secondly, that of a cycle of disadvantage; and thirdly, the negation and even obliteration of culture, religion, or language¹⁰⁰⁴.

9.11 Article 1(1) of the 1965 Convention defines “racial discrimination” in broad terms:

In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

9.12 The CERD Committee has elaborated upon this definition in its practice, and in particular in two General Recommendations.

9.13 In General Recommendation No. 8, adopted in 1990, the CERD Committee interpreted the 1965 Convention to clarify the means for identifying whether or not individuals are members of a particular racial or ethnic group. According to the Committee: “[S]uch identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned”¹⁰⁰⁵. A group’s consciousness of its own separate identity on racial or ethnic grounds is thus highly significant for purposes of Article 1 of the 1965 Convention. In the present case, there can be no doubt that ethnic Georgians living in South Ossetia and Abkhazia identify themselves as belonging to a

¹⁰⁰⁴Sandra Fredman, “Combating Racism with Human Rights: the Right to Equality”, *Discrimination and Human Rights: The Case of Racism* (2001), p. 13.

¹⁰⁰⁵ CERD, *General Recommendation No. 8: Identification with a particular racial or ethnic group* (Art. 1, para. 1 & 4), A/45/18 (22 August 1990).

distinct group on ethnic grounds. This self-identification accords with objective characteristics of Georgian ethnicity (language, culture, descent).

9.14 In General Recommendation No. 14, adopted in 1993, the CERD Committee affirmed that “Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic principle in the protection of human rights”¹⁰⁰⁶. Actions of a State Party having either “the purpose *or* the effect of impairing particular rights and freedoms” is contrary to the 1965 Convention¹⁰⁰⁷. According to the Committee:

In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin¹⁰⁰⁸.

9.15 The test for discriminatory impact upon a racial or ethnic group echoes the seminal treatment of discrimination by Judge Tanaka in his Dissenting Opinion in *South West Africa*. Judge Tanaka’s analysis of unlawful discrimination in international law has had a profound influence on the doctrine developed by international and domestic courts and tribunals. His conclusions on the legality of South Africa’s installation of an apartheid regime in South West Africa as the Mandatory for that region were as follows:

1. The principle of equality before the law requires that what are equal are to be treated equally and what are different are to be treated differently. The question arises: what is equal and what is different.

¹⁰⁰⁶ CERD, *General Recommendation No. 14: Definition of discrimination* (Art. 1, para. 1), A/48/18 (22 March 1993), para. 1. GM, Vol. II, Annex 7.

¹⁰⁰⁷ *Ibid.* (emphasis added).

¹⁰⁰⁸ *Ibid.*, para. 2.

2. All human beings, notwithstanding the differences in their appearance and other minor points, are equal in their dignity as persons. Accordingly, from the point of view of human rights and fundamental freedoms, they must be treated equally.

3. The principle of equality does not mean absolute equality, but recognizes relative equality, namely different treatment proportionate to concrete individual circumstances. Different treatment must not be given arbitrarily; it requires reasonableness, or must be in conformity with justice, as in the treatment of minorities, different treatment of the sexes regarding public conveniences, etc. In these cases, the differentiation is aimed at the protection of those concerned, and it is not detrimental and therefore not against their will.

4. Discrimination according to the criterion of “race, colour, national or tribal origin” in establishing the rights and duties of the inhabitants of the territory is not considered reasonable and just. Race, colour, etc., do not constitute in themselves factors which can influence the rights and duties of the inhabitants as in the case of sex, age, language, religion, etc. If differentiation be required, it would be derived from the difference of language, religion, custom, etc., not from the racial difference itself. In the policy of apartheid the necessary logical and material link between difference itself and different treatment, which can justify such treatment in the case of sex, minorities, etc., does not exist.

We cannot imagine in what case the distinction between Natives and Whites, namely racial distinction apart from linguistic, cultural or other differences, may necessarily have an influence on the establishment of the rights and duties of the inhabitants of the territory.

5. Consequently, the practice of apartheid is fundamentally unreasonable and unjust. The unreasonableness and injustice do not depend upon the intention or motive of the Mandatory, namely its *mala fides*. Distinction on a racial basis is in itself contrary to the principle of equality which is of the character of natural law, and accordingly illegal.

The above-mentioned contention of the Respondent that the policy of apartheid has a neutral character, as a tool to attain a

particular end, is not right. If the policy of apartheid is a means, the axiom that the end cannot justify the means can be applied to this policy¹⁰⁰⁹.

9.16 This analysis has been adopted in substance by the national courts of several countries in the context of interpreting a constitutional prohibition of unfair discrimination. For instance, the leading judgment of the Constitutional Court of South Africa on the right to equality before the law¹⁰¹⁰ sets out the following test:

(a) Does the provision differentiate between people or categories of people? If so, does the differentiation bear a rational connection to a legitimate government purpose? If it does not then there is a violation of section 8(1). Even if it does bear a rational connection, it might nevertheless amount to discrimination.

¹⁰⁰⁹ *South West Africa, Second Phase, Judgment, Dissenting Opinion of Judge Tanaka, ICJ Reports 1966*, pp. 313-314.

¹⁰¹⁰ Section 9 of the Constitution of South Africa provides:

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

(b) Does the differentiation amount to unfair discrimination? This requires a two stage analysis:

(b)(i) Firstly, does the differentiation amount to “discrimination”? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner¹⁰¹¹.

(b)(ii) If the differentiation amounts to “discrimination”, does it amount to “unfair discrimination”? If it has been found to have been on a specified ground, then unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation. If, at the end of this stage of the enquiry, the differentiation is found not to be unfair, then there will be no violation of section 8(2).

(c) If the discrimination is found to be unfair then a determination will have to be made as to whether the provision can be justified under the limitations clause...¹⁰¹²

9.17 The present dispute centres upon the confrontation of various ethnic groups within the national borders of Georgia. The *de facto* authorities and militias in South Ossetia and Abkhazia, in concert with Russia, have succeeded, over a period of approximately 15 years, in cleansing the territories under their *de facto* control of the vast majority of ethnic Georgians. This has been the avowed policy of the *de facto* authorities throughout that period, and it has been

¹⁰¹¹ *Harksen v. Lane NO* 1998 (1) SA 300 (CC), para. 53. This case was decided on the basis of section 8 of the Interim Constitution of South Africa (1993) but the analysis is equally applicable to section 9 of the present Constitution of South Africa (1996).

¹⁰¹² *Ibid.*

devastating in its human effect and on the lives of a great number of people. There is no question that these acts amount to “racial discrimination” pursuant to Article 1 of the 1965 Convention. The issue in the present case is a narrower one, namely the extent of Russia’s responsibility in respect of the construction, maintenance and consolidation of ethnically homogenous enclaves in South Ossetia and Abkhazia.

Section III. Russia’s Breach of Article 2(1)(A) and Article 5 of the 1965 Convention

A. THE LEGAL TEST FOR BREACH OF ARTICLE 2(1)(A) AND ARTICLE 5 OF THE 1965 CONVENTION AND ATTRIBUTION

9.18 Article 2(1)(a) of the 1965 Convention provides:

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

a. Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation[.]

9.19 Article 2(1)(a) of the 1965 Convention creates a core obligation for the States Parties to refrain from all acts of racial discrimination as defined in Article 1. This implies direct responsibility for all relevant acts and omissions of organs and agents, *i.e.*, of persons whose conduct is attributable to the State Party, in contrast to the “accessory” form of responsibility under subsection 1(b) of Article 2.

9.20 Article 5 of the 1965 Convention provides, in relevant part:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections -- to vote and to stand for election -- on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

- (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

9.21 The list of rights and freedoms referred to in Article 5 is not exhaustive¹⁰¹³. The CERD Committee has interpreted Article 5 as not creating

¹⁰¹³ CERD, *General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms (Art. 5)*, U.N. Doc. A/51/18 (1996) (hereinafter “General Recommendation No. 20”), para. 1. GM, Vol. II, Annex 20. *See also* Commission on Human Rights, Report on the Twentieth Session, Economic and Social Council, Official Records, Thirty-Seventh Session, Supplement No. 8, E/3873, E/CN.4/874. (17 February – 18 March 1964). para. 200 (“It was emphasized that many of the rights proclaimed in the Universal Declaration of Human Rights had been left out but that the word ‘notably’ preceding the list of rights implied that there had been a selection of the rights to which special attention should be accorded.”). GM, Vol. II, Annex 2.

the enumerated rights but instead imposing an obligation upon States Parties to prohibit and eliminate racial discrimination in the enjoyment of such rights¹⁰¹⁴. In this respect it is important to note that the rights and freedoms invoked by Georgia as *parens patriae* of its citizens are secured for the populations of South Ossetia and Abkhazia by virtue of the application of the European Convention on Human Rights and the International Covenant on Civil and Political Rights, both of which have been ratified by Russia and Georgia.

9.22 The CERD Committee has given particular prominence to the rights and freedoms of refugees and displaced persons under Article 5 by its General Recommendation No. 22¹⁰¹⁵. The Recommendation commences with the following preambular statement that is apposite for the present case:

Conscious of the fact that foreign military, non-military and/or ethnic conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria in many parts of the world[.]¹⁰¹⁶

9.23 The Committee then “reiterates that the Convention obliges States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights and freedoms”¹⁰¹⁷. The specific obligations upon States Parties under Article 5 in relation to refugees and displaced persons are then enumerated by the Committee:

¹⁰¹⁴ General Recommendation No. 20, *op. cit.*, para. 1. GM, Vol. II, Annex 20.

¹⁰¹⁵ U.N. Office of the High Commissioner for Human Rights, CERD, *General Recommendation No. 22: Art. 5 and refugees and displaced persons*, Forty-ninth Session, U.N. Doc. A/51/18 (1996). GM, Vol. II, Annex 21.

¹⁰¹⁶ *Ibid.*, preamble.

¹⁰¹⁷ *Ibid.*, para. 1.

1. All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;
2. States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees;
3. All such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void;
4. All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance¹⁰¹⁸.

9.24 In its practice, the CERD Committee has condemned large-scale violations of Article 5 in Bosnia and Herzegovina and, in particular, the practice of “ethnic cleansing”, massacres, forced population transfers, the blockading of international humanitarian aid, the detention of civilians, torture and killing of

¹⁰¹⁸ *Ibid.*, para. 2.

prisoners and rape and other sexual abuses. The Committee adjudged these acts to be clear breaches of both Articles 3 and 5 of the Convention¹⁰¹⁹. In this context, the CERD Committee commented on the dangers inherent in the construction of ethnically homogenous territorial units:

The Committee was profoundly concerned that the human rights violations occurring in Bosnia and Herzegovina were being committed on the basis of “ethnic identity” for the purpose of attempting to create ethnically pure States. The Committee emphasized that such attempts were completely contrary to the spirit and the principles of the Convention. Furthermore, the Committee was concerned that partition along ethnic lines in Bosnia and Herzegovina could encourage groups elsewhere who were unwilling to respect the territorial integrity of States¹⁰²⁰.

9.25 In addition to requesting Bosnia and Herzegovina and all other parties concerned to take immediate measures to bring an end to the “massive, gross and systematic human rights violations”, the CERD Committee also recommended that “effective action should be taken to ensure that refugees and other displaced persons were allowed to return to their homes, all detainees were released immediately into conditions of safety and adequate reparation was given to the victims”¹⁰²¹.

9.26 The CERD Committee has characterized other conduct by States Parties as breaches of Articles 2 and 5, including: forced assimilation through measures

¹⁰¹⁹ CERD Report, 48th Session, Supp. No. 18, *op. cit.*, paras. 455, 460, 467. GM, Vol. V, Annex 412.

¹⁰²⁰ *Ibid.*, para. 468. *See also ibid.*, paras. 25, 219, 221.

¹⁰²¹ *Ibid.*, para. 470.

in the field of employment, education and political life¹⁰²²; forcibly displacing populations¹⁰²³; and the closure of schools teaching in minority languages¹⁰²⁴. The imposition of restrictions on the freedom of movement targeting a particular national or ethnic group through the establishment of checkpoints, restricted roads and a permit system was deemed by the Committee to contravene Articles 2, 3 and 5¹⁰²⁵.

9.27 The obligations imposed on the States Parties by Articles 2, 3 and 5 of the 1965 Convention carry with them a corresponding obligation not to recognize as lawful a situation created by breaches of those Articles. In the *Namibia* Advisory Opinion, the Court held that the illegality of South Africa's conduct "is opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law"¹⁰²⁶. Similarly, Article 41(2) of the International Law Commission's Articles on State Responsibility provides in relevant part that: "No State shall recognize as lawful a situation created by a serious breach [of peremptory norms of general international law], nor render aid or assistance in maintaining that situation". In

¹⁰²² In relation to Turkmenistan's policy of "Turkmenization", see Report of the Committee on the Elimination of Racial Discrimination, General Assembly, Sixtieth Session, Official Records, Supplement No. 18 (A/60/18) (2005), para. 318 (hereinafter CERD Report, 60th Session, Supp. No. 18). GM, Vol. II, Annex 38.

¹⁰²³ In relation to Turkmenistan's policy concerning ethnic Uzbeks, see *ibid.*, para. 320.

¹⁰²⁴ In relation to Turkmenistan's policy concerning schools teaching in Uzbek, Russian, Kazakh and Armenian, see *ibid.*, para. 321.

¹⁰²⁵ In relation to Israel's policy in the Occupied Palestinian Territories, see *Report of the Committee on the Elimination of Racial Discrimination*, General Assembly, Sixty-Second Session, Official Records, Supplement No. 18 (A/62/18) (2007), para. 227. GM, Vol. II, Annex 43.

¹⁰²⁶ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 56, para. 126.

the present case, Russia (and Georgia) are therefore under an obligation not to recognize as lawful, for example, the situation created by the discriminatory forced displacement of ethnic Georgians and the denial of their right of return to their homes in violation of Articles 2, 3 and 5 of the 1965 Convention.

9.28 In the present case, in order to establish a breach of Articles 2, 3 and 5 of the Convention, Georgia must show that Russia, by its organs or agents, engaged in acts or practices of discrimination against ethnic Georgians. Georgia has already made this showing in Chapters 3, 5, 6 and 7 in the form of overwhelming evidence of Russia's direct participation in discrimination against ethnic Georgians. In relation to the acts and practices of discrimination by the separatist authorities and militias in South Ossetia and Abkhazia, Georgia has to show, in addition, that the acts of such authorities and militias are attributable to Russia. Georgia has made this showing, as well, by presenting abundant evidence in Chapters 4, 5 6 and 7 of Russia's command and control over the two *de facto* regimes and their military and paramilitary forces. The remaining part of this section addresses the legal standard for attribution. The section that then follows briefly summarizes the evidence presented in the prior Chapters of this *Memorial*, which plainly shows Russia's responsibility for breaches of Article 2(1)(a) and Article 5 of the Convention by its own organs and agents, and by acts of separatist forces in South Ossetia and Abkhazia that are attributable to Russia.

B. THE *DE FACTO* AUTHORITIES AND MILITIAS IN SOUTH OSSETIA AND
ABKHAZIA ARE *DE FACTO* ORGANS OF RUSSIA

9.29 The conduct of the separatist authorities and militias operating in South Ossetia and Abkhazia is attributable to Russia because they are *de facto* organs of the Russian State. The rule of customary international law on attribution on

the basis of the conduct of the organs of a State is, as the Court has ruled, “reflected” in Article 4 of the ILC’s Articles on State Responsibility:

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.
2. An organ includes any person or entity which has that status in accordance with the internal law of the State¹⁰²⁷.

9.30 A person or entity can be an organ for the purposes of Article 4(1) of the ILC’s Articles even if such person or entity is not considered to be an organ of the State in accordance with the internal law of that State. The ILC explained the position as follows:

[A] State cannot avoid responsibility for the conduct of a body which does in truth act as one of its organs merely by denying it that status under its own law. This result is achieved by the use of the word ‘includes’ in paragraph 2¹⁰²⁸.

9.31 The circumstances in which a person or entity that does not have the status of an organ under the internal law of the State but is nevertheless accorded such status by customary international law were elaborated upon by the Court in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. The Court

¹⁰²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 138, para. 385.

¹⁰²⁸ International Law Commission, *Articles on State Responsibility of State for Internationally Wrongful Acts*, Yearbook of the International Law Commission, with Commentaries, Vol. II, Part Two (2001).

endorsed the concept of *de facto* State organs in this context¹⁰²⁹. After referring to its previous judgment in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the Court said:

[A]ccording to the Court's jurisprudence, persons, groups of persons or entities may, for purposes of international responsibility, be equated with State organs even if that status does not follow from internal law, provided that in fact the persons, groups or entities act in "complete dependence" on the State, of which they are ultimately merely the instrument. In such a case, it is appropriate to look beyond legal status alone, in order to grasp the reality of the relationship between the person taking action, and the State to which he is so closely attached as to appear to be nothing more than its agent: any other solution would allow States to escape their international responsibility by choosing to act through persons or entities whose supposed independence would be purely fictitious¹⁰³⁰.

9.32 The situation in the present case is different in several important respects from that addressed by the Court in *Nicaragua v. United States*. The *contras* were armed groups operating from neighbouring Honduras and Costa Rica whose objective was the overthrow of the Sandinista Government in Nicaragua. They were not exercising governmental authority, or purporting to do so; their objective was to exercise governmental authority in the future. Critical to the Court's decision that the *contras* were not an organ of the United States was its finding that the United States had not created the *contras*:

Despite the large quantity of documentary evidence and testimony which it has examined, the Court has not been able to satisfy itself that the respondent State 'created' the *contra* force in Nicaragua. It seems certain that members of the former Somoza National Guard, together with civilian opponents to the Sandinista régime,

¹⁰²⁹ *Bosnia and Herzegovina v. Serbia and Montenegro, Judgment*, p. 142, para. 397.

¹⁰³⁰ *Ibid.*, pp. 140-141, para. 392.

withdrew from Nicaragua soon after that régime was installed in Managua, and sought to continue their struggle against it, even if in a disorganized way and with limited and ineffectual resources, before the Respondent took advantage of the existence of these opponents and incorporated this fact into its policies vis-à-vis the régime of the Applicant¹⁰³¹.

9.33 Similarly, in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*¹⁰³², the fact that Uganda had not created the Congo Liberation Movement (*Mouvement de libération du Congo*, MLC), a rebel group operating within the territory of the Congo, was critical to the Court's finding that the acts of the MLC were not attributable to Uganda:

[T]here is no credible evidence to suggest that Uganda *created* the MLC. Uganda had acknowledged giving training and military support and there is evidence to that effect. The Court has not received probative evidence that Uganda controlled, or could control, the manner in which Mr. Bemba put such assistance to use. In the view of the Court, the conduct of the MLC was not that of 'an organ' of Uganda (Article 4, International Law Commission Draft Articles on Responsibility of States for international wrongful acts, 2001) [...]¹⁰³³

9.34 The separatist authorities in South Ossetia and Abkhazia, are, in contradistinction, entities that were originally created by the USSR as the South Ossetian Autonomous District and the Autonomous Soviet Socialist Republic of Abkhazia within the Soviet Socialist Republic of Georgia, which in turn was a constituent unit of the USSR. The separatist authorities in South Ossetia and

¹⁰³¹ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Judgment, ICJ Reports 1986, pp. 61-62, para. 108 (emphasis added).

¹⁰³² *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, ICJ Reports 2005, p. 168.

¹⁰³³ *Ibid.*, p. 55-56, para. 160.

Abkhazia are the *de facto* successors to organs exercising *de jure* governmental authority within the federal structure of the USSR. When Georgia declared independence from the USSR in 1991, its territory was internationally recognised to include South Ossetia and Abkhazia. Georgia has never been in a position to exercise effective control over South Ossetia and Abkhazia since its independence due to Russia's continuation of the USSR's control over the *de facto* authorities in those territories. But for Russia's exercise of control over the *de facto* authorities through its essential financial and military support, these authorities could not maintain their *de facto* independence from Georgia.

9.35 In the present case, entities exercising governmental authority are operating in areas that straddle the international border between Georgia and Russia. Those areas do not constitute territories of internationally recognised States; instead they form part of the internationally recognised territory of Georgia. Either those entities are organs of the Russian State or the Georgian State, or such entities are unregulated by international law because their conduct cannot be attributed to any State. Those entities exercising governmental authority in South Ossetia and Abkhazia were completely dependent upon the central authorities in Moscow for several decades prior to the independence of Georgia and then were in a position to assert and maintain *de facto* independence from Georgia after its independence in circumstances where there is compelling evidence that Russia continued to support those entities by financial, military and political means. Those entities are therefore organs of the Russian State for the purposes of attribution.

9.36 The closest analogy to the present case in the jurisprudence of international courts and tribunals is the European Court of Human Rights'

judgment in *Ilaşcu v. Moldova and Russia*¹⁰³⁴. The European Court found that the conduct of the separatist governmental authorities of the “Moldavian Republic of Transdniestria” (the MRT) was attributable to Russia. The region of Transdniestria is within the internationally recognised borders of Moldova. The European Court, like this Court in *Nicaragua v. United States*, focused particular attention on whether Russia could be said to have “created” the separatist governmental authorities of the MRT. This answer was in the affirmative:

[T]he Court considers that the Russian Federation’s responsibility is engaged in respect of the unlawful acts committed by the Transdniestrian separatists, regard being had to the military and political support it gave them to help them set up the separatist regime and the participation of its military personnel in the fighting. In acting thus, the authorities of the Russian Federation contributed both militarily and politically to the *creation* of a separatist regime in the region of Transdniestria, which is part of the territory of the Republic of Moldova.

The Court also notes that even after the ceasefire agreement of 21 July 1992 the Russian Federation continued to provide military, political and economic support to the separatist regime... thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy *vis-à-vis* Moldova.

[...]

All of the above proves that the “MRT”, *set up* in 1991-92 with the support of the Russian Federation, vested with organs of power and its own administration, remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation¹⁰³⁵.

¹⁰³⁴ *Ilaşcu v. Moldova and Russia*, no. 48787/99, Eur. Ct. H.R. (Dec. 2004).

¹⁰³⁵ *Ibid.*, paras. 382, 392.

9.37 In *Ilaşcu v. Moldova and Russia*, four Moldovan nationals brought applications for various violations of the European Convention on Human Rights (the ECHR) against Moldova and Russia in respect of acts committed by the MRT, which proclaimed its independence in 1991 but has never been recognised by the international community. Prior to its independence, Moldova was a constituent unit of the USSR (the Moldavian Soviet Socialist Republic¹⁰³⁶) and thus was subject to a high degree of centralised control from Moscow. Upon the dissolution of the USSR, the European Court found that Russia's control over the governmental authorities in Transdniestria¹⁰³⁷ continued by the following means:

-- Russia maintained a military presence in Transdniestria (the 14th Army of the USSR) following Moldova's independence. The commanding officers of the 14th Army then became the commanding officers of the armed forces of the separatist authorities in Transdniestria¹⁰³⁸ which were supplied with weapons from the 14th Army's ammunition stores located in Transdniestria¹⁰³⁹.

¹⁰³⁶ The Moldavian Soviet Socialist Republic (the MSSR) was formed in 1940 from two areas. The first was a part of Bessarabia taken from Romania in 1940 following the Molotov-Ribbentrop Pact between the USSR and Germany, where the majority of the population consisted of Romanian speakers. The second was a strip of land on the left bank of the Dniester in Ukraine, Transdniestria, which was transferred to it in 1940. Its linguistic composition in 1989 was 40% Moldavian, 28% Ukrainian, 24% Russian and 8% others. Russian became the MSSR's official language. *Ibid.*, para. 28. This was to change to Moldavian in 1989. *Ibid.*, para. 29. In 1990 the MSSR proclaimed its sovereignty and in 1991 it became the "Republic of Moldova". Shortly after the proclamation of sovereignty by the MSSR, the MRT also proclaimed its sovereignty and, in 1991, its independence from the Republic of Moldova. *Ibid.*, para. 30.

¹⁰³⁷ The Court conducted an "on-the-spot" investigation of this issue by sending a delegation of Judges, who interviewed forty-three witnesses. All the facts included in the following summary of Russia's actions in respect of the MRT were among the findings of the Court, which were made according to the criminal standard of proof "beyond reasonable doubt".

¹⁰³⁸ On 1 April 1992, the Russian President placed the military formations of the USSR stationed in Moldova (including in Transdniestria) under Russia's jurisdiction so that the 14th Army became the "Russian Operational Group in the Transdniestrian Region of Moldova". *Ibid.*, para.

-- Russia also intervened directly in clashes between the Moldovan authorities and the Transdniestrian separatists during the critical years after Moldova's declaration of independence on the side of the separatists¹⁰⁴⁰.

-- Russia actively encouraged and supported the recruitment of Russian Cossacks to fight along side the Transdniestrian separatists¹⁰⁴¹.

70. In December 1991, Mr. Igor Smirnov was elected the "President of the MRT". *Ibid.*, para. 47. He immediately decreed to place the units of the Soviet armed forces in the territory of Transdniestria under the command of the head of the "National Defence and Security Department of the Moldavian Republic of Transdniestria". The head of that Department was none other than the commander of the 14th Army of the USSR, Lieutenant-General Gennady I. Iakovlev. *Ibid.*, para. 48. Furthermore, the Court found that: "The 14th Army's Parcani sapper battalion, under the orders of General Butkevich, had gone over to the separatist side. That information has been confirmed by the Russian Government." *Ibid.*, para. 59.

¹⁰³⁹ It was one of the largest ammunition stores in Europe. *Ibid.*, paras. 32-33. Lieutenant-General Gennady I. Iakovlev was later arrested by the Moldovan authorities in Ukrainian territory and charged with supplying the Transdniestrian separatists with weapons stocks from the 14th Army. The Court found that authorities of the Russian Federation interceded with the Moldovan authorities to obtain the release of Lieutenant-General Iakovlev. *Ibid.*, para. 50. The Court held: "[T]he Court considers it to have been established beyond a reasonable doubt that Transdniestrian separatists were able to arm themselves with weapons taken from the stores of the 14th Army stationed in Transdniestria. The 14th Army troops chose not to oppose the separatists who had come to help themselves from the Army's stores; on the contrary, in many cases they helped the separatists equip themselves by handing over weapons and by opening up the ammunition stores to them..." *Ibid.*, para. 57.

¹⁰⁴⁰ On 19 May 1991, following clashes between the Moldovan police and Transdniestrian separatists, it was reported that the USSR's Minister of Defence had ordered the commander of the 14th Army to prepare for combat in the following terms: "Given that Transdniestria is Russian territory and that the situation there has deteriorated, we must defend it by all means possible". General Lebed, later the third placed candidate in the Russian Presidential elections in 1996, established the Russo-Transdniestrian joint defence headquarters to combat the Moldovan "enemy". *Ibid.*, para. 61.

¹⁰⁴¹ The Court found that large numbers of Russian Cossacks had marched to Transdniestria from Russia with the support of the 14th Army to fight alongside the Transdniestrian separatists. Prior to the conflict there had been no Cossacks on Moldovan territory and today it is estimated that 10,000 are now living in Transdniestria. *Ibid.*, para. 60.

- High level Russian politicians publicly expressed their support for the independence of Transdnistria¹⁰⁴².
- The economy of Transdnistria is completely dependent upon the support of the Russian Government and prominent Russian State monopolies¹⁰⁴³.
- Senior officials of the separatist governmental authorities in Transdnistria were granted Russian citizenship¹⁰⁴⁴.

9.38 The evidence set forth in Chapters 4 and 6, and summarized below, shows that all these modalities of control by Russia are plainly established in respect of the separatist regimes in South Ossetia and Abkhazia.

¹⁰⁴² On 5 April 1992, the Vice-President of the Russian Federation, Alexander Rutskoy, went to Tiraspol, the principal city in Transdnistria, and addressed a rally of 5,000 people together with Mr. Smirnov. According to the Court: “Mr Rutskoy declared that Mr. Snegur did not wish to engage in dialogue and that the best solution would be a confederation in which Moldovans and Russians would live together on an equal footing. Lastly, he said that the 14th Army should act as a buffer between the combatants so that the Transdnistrian people could obtain their independence and their sovereignty and work in peace.” *Ibid.*, para. 75. The Court also referred to other uncontested statements by the Vice-President and President of Russia. The former was reported to have said that he recognized the “legitimacy of the entity created on the left bank of the Dniester” and it was noted that President Boris Yeltsin had said that “Russia has lent, is lending and will continue to lend its economic and political support to the Transdnistrian region”. *Ibid.*, para. 138.

¹⁰⁴³ One of the “pillars” of the Transdnistrian economy is the arms industry that has been supported with funds and orders from Russian arms companies and the ROG. *Ibid.*, paras. 150-151. The Russian State gas monopoly, Gazprom, has direct contract for the supply of gas to Transdnistria on more favourable terms than for supplies to the rest of Moldova. *Ibid.*, para. 156. The Russian Government wrote off US\$100 million of debt owed by the MRT to Gazprom. *Ibid.*, para. 128. Russian companies have participated extensively in privatizations in Transdnistria. *Ibid.*, para. 160.

¹⁰⁴⁴ These included: the President, Mr. Smirnov (*ibid.*, para. 149); the President of the Supreme Soviet of the MRT, Mr. Mărăcuță (*ibid.*, para. 147); one of the senior MRT leaders, Mr. Caraman (*ibid.*, para. 148); and the commander of the military forces, Lieutenant-General Iakovlev (*ibid.*, para. 146).

9.39 Another parallel can be drawn with the European Court's judgment in *Loizidou v. Turkey*. Following Turkey's invasion and occupation of northern Cyprus in 1974, the Turkish Cypriots exercised their alleged right of external self-determination in 1983 by proclaiming the Turkish Republic of Northern Cyprus (the TRNC). This purported secession was deplored by the UN Security Council and no State other than Turkey has recognised it. Unlike the *contras* in *Nicaragua v. United States*, the TRNC was undoubtedly exercising governmental authority within the territory proclaimed as the TRNC at the relevant time. The European Court found in substance that the organs of the TRNC were the *de facto* organs of Turkey for purposes of attribution:

It is not necessary to determine whether... Turkey actually exercises detailed control over the policies and actions of the authorities of the 'TRNC'. It is obvious from the large number of troops engaged in active duties in northern Cyprus... that her army exercises effective overall control over that part of the island. Such control... entails her responsibility for the policies and actions of the 'TRNC'¹⁰⁴⁵.

9.40 In *Loizidou v. Turkey*, the European Court thus recognised that where a State is in a position to control an area outside its own national territory, the acts of organs exercising governmental authority in that area may be attributable to the State:

[T]he responsibility of a Contracting Party could also arise when as a consequence of military action — whether lawful or unlawful — it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such

¹⁰⁴⁵ *Loizidou v. Turkey*, no. 15318/89, Eur. Ct. H.R. (Dec. 1996), para. 56.

control whether it be exercised directly through its armed forces,
*or through a subordinate local administration...*¹⁰⁴⁶

9.41 In summary, there are close parallels in respect of the attribution of the acts of the separatist entities exercising governmental authority in South Ossetia and Abkhazia as *de facto* organs of Russia to the situations in *Ilaşcu v. Moldova and Russia* and *Loizidou v. Turkey*. These entities were created under the Soviet regime and, upon Georgia's independence, were able to resist subordination to the constitutional authority of Georgia's central government only by virtue of Russia's financial, military and political support. Moreover, the fact that such entities have subsisted over time and purport to exercise governmental authority -- as a result of Russia's direct and ongoing support -- distinguishes them from the *contras* in *Nicaragua v. United States* and the Congo Liberation Movement in *Democratic Republic of the Congo v. Uganda*. These entities must be adjudged to be *de facto* organs of the Russian State. A contrary finding would have deleterious consequences for the law of State responsibility. International law would be taken to acknowledge the existence of an intermediate form of State or "quasi-State", which exhibits most of the usual features of an internationally recognized State (permanent population, defined territory, existence of effective government) but, owing to its dependence upon another State and lack of recognition by the international community, cannot be held accountable in international law.

1. *The Conduct of the De Facto Authorities and Militias as Conduct Directed or Controlled by Russia*

9.42 Even if the conduct of the separatist authorities and militias in South Ossetia and Abkhazia were held not to be attributable to the Respondent on the

¹⁰⁴⁶ *Ibid.*, para. 52 (emphasis added).

basis that they are its *de facto* organs, the conduct of those entities would be attributable to the Respondent in so far as such conduct was carried out under its direction or control.

9.43 The Court endorsed and relied upon Article 8 of the ILC's Articles on State Responsibility as the applicable rule in customary international law in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*:

Article 8. Conduct directed or controlled by a State

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

9.44 The distinction between the grounds for attribution reflected in Articles 4 and 8 of the ILC's Articles on State Responsibility was also clarified. The Court reasoned that the question of attribution on the basis of direction or control:

is different from the question whether the persons who committed the acts of genocide had the status of organs of the Respondent under its internal law; nor however, and despite some appearance to the contrary, is it the same as the question whether those persons should be equated with State organs *de facto*, even though not enjoying that status under internal law. The answer to the latter question depends... on whether those persons were in a relationship of such complete dependence on the State that they cannot be considered otherwise than as organs of the State, so that all their actions performed in such capacity would be attributable to the State for purposes of international responsibility. Having answered that question in the negative, the Court now addresses a completely separate issue: whether, in the specific circumstances surrounding the events at Srebrenica the perpetrators of genocide were acting on the Respondent's instructions, or under its direction or control. An affirmative answer to this question would

in no way imply that the perpetrators should be characterized as organs of the FRY, or equated with such organs. It would merely mean that the FRY's international responsibility would be incurred owing to the conduct of those of its own organs which gave the instructions or exercised the control resulting in the commission of acts in breach of its international obligations. In other words, it is no longer a question of ascertaining whether the persons who directly committed the genocide were acting as organs of the FRY, or could be equated with those organs this question having already been answered in the negative. What must be determined is whether FRY organs incontestably having that status under the FRY's internal law originated the genocide by issuing instructions to the perpetrators or exercising direction or control, and whether, as a result, the conduct of organs of the Respondent, having been the cause of the commission of acts in breach of its international obligations, constituted a violation of those obligations¹⁰⁴⁷.

9.45 Article 8 does not lay down a single test to determine the circumstances in which a person or group is acting "under the direction or control of" a State. To the contrary, in its commentary to Article 8, the ILC emphasizes that "it is a matter for appreciation in each case whether particular conduct was or was not carried out under the control of a State, to such an extent that the conduct controlled should be attributed to it"¹⁰⁴⁸.

9.46 The requisite threshold for control in any particular case is thus fact-sensitive and requires a careful analysis of the relationship between the persons or groups and the State in question and the extent to which control was exercised by virtue of that relationship with regards to the conduct said to have breached

¹⁰⁴⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007, p. 142, para. 397.

¹⁰⁴⁸ International Law Commission, *Draft Articles on State Responsibility*, p. 112.

the State's international obligations. Of particular importance in the present case is the fact that the persons and groups in South Ossetia and Abkhazia who committed violations of Article 2(1)(a) and Article 5 of the 1965 Convention are organised as entities exercising governmental authority in those regions, and operate under the direction and control of governmental ministers who are in fact senior-level, active duty Russian Federation military and intelligence officials who have been seconded to serve in leadership positions in the *de facto* regimes. Moreover, the persons and groups who committed violations of the 1965 Convention in South Ossetia and Abkhazia receive critical financial and military support from Russia, and consist of many individuals who have been employed in the Russian Government and armed forces and have been conferred Russian citizenship. The evidence supporting these propositions is set out in Chapters 4 and 6, as summarized in the next section.

C. THE EVIDENCE SUPPORTING THE BREACH AND ATTRIBUTION

9.47 There is overwhelming evidence that Russia breached its obligations under Article 2(1)(a) and Article 5 of the 1965 Convention not to “engage” in any “act or practice of racial discrimination against persons, groups or persons or institutions” and “to ensure that all public authorities and public institutions... act in conformity with this obligation”, as well as its corollary obligation not to recognize as lawful a situation created by the violation (including its own violation) of those Articles. Russia breached these obligations by, *inter alia*, using its State institutions, including its armed forces, to physically abuse and expel tens of thousands of ethnic Georgian civilians from their homes; to detain ethnic Georgians solely because of their ethnicity; to prevent ethnic Georgian victims of ethnic cleansing from returning to their homes; and to recognize the legality of entities created through ethnic cleansing and render aid and assistance

to them in consolidation and perpetuation of their ongoing discriminatory practices.

9.48 In particular, as was demonstrated in Chapter 3, the Russian army directly participated in the ethnic cleansing of ethnic Georgians from South Ossetia and adjoining areas to the south¹⁰⁴⁹. Indeed, nearly every ethnic Georgian village that came under Russian military occupation was comprehensively looted and burned, largely *after* hostilities had ended and behind Russian lines. As the OSCE’s human rights fact-finding mission concluded, the “advancing Russian and Ossetian forces” caused ethnic Georgians to flee “out of fear for their lives”, and that the few who remained were “forced out violently or under threat of violence” and their homes “systematically destroyed by arson”¹⁰⁵⁰. The OSCE investigative team specifically “identified the perpetrators” as including “Russian soldiers”¹⁰⁵¹. Similar conclusions were reached by many other independent observers. For instance, HRW extensively documented how “Russian forces played a role in the widespread looting of Georgian homes by Ossetian forces”, determining that “Russian forces facilitated and participated in these crimes”¹⁰⁵².

9.49 These determinations that, in the words of HRW, “Russian forces” were “active participants” in the ethnic cleansing, are corroborated by independently collected and mutually re-enforcing evidence. For example, numerous witnesses testified that Russian soldiers directly participated in the looting and burning of

¹⁰⁴⁹ See *supra*, Chapter 3, para. 3.17-3.41.

¹⁰⁵⁰ See *supra*, Chapter 3, para. 3.18.

¹⁰⁵¹ See *supra*, Chapter 3, para. 3.19.

¹⁰⁵² See *supra*, Chapter 3, para. 3.26.

ethnic Georgian homes in South Ossetia and adjacent areas, or looked on as it was happening¹⁰⁵³. Such discriminatory acts by Russia's armed forces are illustrated by the abuses they perpetrated in representative villages in all areas of South Ossetia that were populated by ethnic Georgians. For instance, in Kurta Municipality, not only did many victims of ethnically-motivated abuses testify about the active participation of Russian troops, but the Russian army was photographed in these villages at the very times that ethnic Georgian homes were plundered and set afire and their inhabitants murdered, physically abused and expelled¹⁰⁵⁴. Similarly, in Eredvi Municipality, eyewitnesses reported how Russian soldiers poured kerosene on houses before setting them on fire, a fact confirmed by a recording of a conversation between Russian and Ossetian military officers discussing the need to "prepare bottles of kerosene"¹⁰⁵⁵. When Amnesty International visited Eredvi village, they encountered Russian soldiers amidst the burning homes; asked why they were taking no action to stop the arson, a Russian army officer admitted: "that's the policy"¹⁰⁵⁶. In Tigva Municipality, the OSCE reported that "Russian armed forces and 'Ossetians' were looting together and that the village of Nuli had been "systematically burned" by "Russian troops" that were "accompanying Ossetians and helping them to set the fires"¹⁰⁵⁷. Likewise, in many other villages, eyewitnesses testified to seeing Russian army personnel, wearing military uniforms and

¹⁰⁵³ See, e.g., *supra* Chapter 3, paras. 3.15, 3.30-3.34, 3.46-3.47, 3.59-3.60, 3.63, 3.69, 3.71, 3.74, 3.83, 3.85-3.86, 3.90, 3.92, 3.97-3.98, 3.100-3.105.

¹⁰⁵⁴ See *supra*, Chapter 3, para. 3.54, 3.55, 3.66.

¹⁰⁵⁵ See *supra*, Chapter 3, para. 3.74-3.75.

¹⁰⁵⁶ See *supra*, Chapter 3, para. 3.78.

¹⁰⁵⁷ See *supra*, Chapter 3, para. 3.96.

arriving on tanks and armoured vehicles that bore the Russian flag, looting and burning ethnic Georgian homes¹⁰⁵⁸.

9.50 Russian troops also engaged in discriminatory violence, in breach of Article 2(1)(a) and Article 5, by searching out and detaining the few, mainly infirm and elderly, ethnic Georgians (including large numbers of women) who either had not fled, or could not flee from the advancing Russian army. As with the widespread campaign to loot and burn ethnic Georgian homes, there is ample evidence that the Russian armed forces directly participated in both the capture of these ethnic Georgians as well as their confinement at the *de facto* Interior Ministry building in Tskhinvali. For example, HRW’s researchers determined that “Russian forces directly participated in the detention of ethnic Georgians” and that these detainees were often captured by “Russian forces”¹⁰⁵⁹. Similarly, there is abundant evidence that Russian military forces were present at, and supervised, the detention of these ethnic Georgians, including conducting their interrogations. Further, Russian forces engaged in unlawful discrimination by forcibly deporting ethnic Georgians from South Ossetia to Russian-occupied Gori, to the south of the South Ossetian administrative boundary. As *The Telegraph* of London reported, “Russian military trucks dumped weeping Georgian civilians forcibly removed from their devastated homes onto the tarmac” outside Gori¹⁰⁶⁰.

¹⁰⁵⁸ See, e.g., *supra* Chapter 3, paras. 3.15, 3.31, 3.32, 3.46, 3.59, 3.60, 3.74, 3.85, 3.86, 3.90, 3.98, 3.101, 3.103, 3.104.

¹⁰⁵⁹ See *supra*, Chapter 3, para. 3.108.

¹⁰⁶⁰ See *supra*, Chapter 3, para. 3.116.

9.51 To complete and consolidate this effort to render South Ossetia ethnically homogenous, Russian troops guarded the administrative borders of the region and stopped ethnic Georgians attempting to return. Indeed, the Russian military has been assigned this responsibility under agreements entered into between the *de facto* authorities and Russia that make the Russian army the official State Border Guards of the *de facto* regimes¹⁰⁶¹. As set forth in Chapters 5 and 6, Russia has also prevented ethnic Georgians who were displaced from South Ossetia in 1991-1992 and from Abkhazia in 1992-1994 from returning as well, also in breach of its obligations under Article 2(1)(a) and Article 5.

9.52 To be sure, some acts of discrimination were perpetrated not by the Russian army, but by the military and police forces of the *de facto* regimes. However, the evidence establishes Russia's international responsibility for the acts of these individuals and groups as well, because their "complete dependence" upon Russia renders them *de facto* organs of the Russian State. Russia's responsibility is similarly engaged because the separatist regimes, including their military and police forces, are directed and controlled by Russia. In that regard, not only were the *de facto* authorities created by Russia, but they are dependent upon the Respondent State for nearly their entire budgets and military resources¹⁰⁶². Moreover, all key military, intelligence, security and police leadership positions are occupied by Russian General Officers, answerable to their superiors in Russia. It is these Russian Generals, acting as Ministers of State of South Ossetia, who exercised direct command and control over the Ossetian military and paramilitary forces that perpetrated ethnically-motivated abuses against the ethnic Georgian population, often with the direct

¹⁰⁶¹ See *supra* Chapter 7, para. 7.5

¹⁰⁶² See *supra* Chapter 4, paras. 4.17-4.27, 6.60, 6.70-6.74.

participation of Russian army units, sometimes in the presence of those Russian units and under their protection, and other times in their absence – but always in the chain-of-command headed by Russian military and intelligence officers.

9.53 Russia is therefore responsible not only for the acts of violent discrimination perpetrated by the *de facto* authorities, it is also responsible for the discriminatory policies and practices they have adopted concerning Georgian culture and identity. In that regard, the *de facto* authorities have discriminated against the few ethnic Georgians who remain in areas under Russian occupation, mainly in Akhalkalaki and Gali, by placing them under intense pressure to relinquish their Georgian citizenship in favour of accepting passports from Russia and the separatist regimes¹⁰⁶³. Further, as a means of attempting to extinguish their cultural identity (and to induce them to leave) the *de facto* authorities have prohibited Georgian education, which has been replaced by education in Russian. Since the separatist authorities are, in fact, *de facto* organs of Russia and their conduct is otherwise directed and controlled by the Respondent, Russia is responsible for these acts of discrimination as well.

Section IV. Russia's Breach of Article 2(1)(b) of the 1965 Convention

A. THE LEGAL TEST FOR BREACH OF ARTICLE 2(1)(B) OF THE 1965 CONVENTION AND ATTRIBUTION

9.54 Article 2(1)(b) of the 1965 Convention provides:

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of

¹⁰⁶³ See *supra* Chapter 7, paras. 7.15-7.23, 7.26-7.35.

eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

b. Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations[.]

9.55 Article 2(1)(b) of the 1965 Convention creates a form of accessory liability for a State Party's support of persons, groups or organizations that engage in practices of racial discrimination. It is not the acts of racial discrimination for which the responsibility of the State Party is engaged; it is rather the support for those persons, groups or organizations that have committed the acts of racial discrimination that gives rise to international responsibility.

9.56 A claim based upon Article 2(1)(b) of the 1965 Convention thus has the following elements:

1. The State has "sponsored, defended or supported"
2. "racial discrimination" as defined in Article 1 of the Convention
3. "by any persons or organizations".

9.57 Proof that the persons or organizations in question have committed acts of racial discrimination as defined by Article 1 of the 1965 Convention is an essential element of the cause of action. But it is not necessary that the acts of racial discrimination committed by "*any* persons or organizations" are attributable to the State Party. To the contrary, the State Party's responsibility arises because its own organs and agents engage in the "sponsoring, defending or supporting" of third-parties that have committed acts of racial discrimination. It is for this reason that responsibility can be described as "accessory" in respect of the acts of racial discrimination in question. Responsibility for acts of racial

discrimination committed by the organs or agents of a State Party is already imposed by Article 2(1)(a):

Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

9.58 In relation to this obligation, it is essential that the “act or practice of racial discrimination” be committed by an organ or agent of the State Party; indeed the text of Article 2(1)(a) refers expressly to “public authorities and public institutions”.

9.59 In contradistinction, for the purposes of Article 2(1)(b) of the 1965 Convention, it must be demonstrated the acts of “sponsoring, defending or supporting” the racial discrimination practiced by the third-parties are attributable to the State Party. An analogy can be made with the accessory liability arising under the Genocide Convention. In *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, the Court said that “it is clear that acts of complicity in genocide can be attributed to a State to which no act of genocide could be attributed under the rules of State responsibility”¹⁰⁶⁴. A further analogy can be drawn with other cases decided by the Court in relation to the use of force. In its judgment in *Democratic Republic of Congo v. Uganda*, the Court found that the conduct of the Congo Liberation Movement was not attributable to Uganda¹⁰⁶⁵. Uganda could not, therefore, be responsible in

¹⁰⁶⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, p. 136, para. 381.

¹⁰⁶⁵ *Democratic Republic of the Congo v. Uganda*, pp. 55-56, para. 160.

international law for the breaches of humanitarian and human rights law that were alleged to have been committed by that organization. Uganda was adjudged, however, to have breached the obligation of non-intervention by providing training and military support to the military wing of the Congo Liberation Movement¹⁰⁶⁶. This finding of liability obviously was not premised upon the attribution of the conduct of the Congo Liberation Movement to Uganda. The Court relied upon its previous judgment in *Nicaragua v. United States*. In that case, the finding of the Court was similar: the conduct of the *contras* in Nicaragua was not attributable to the United States¹⁰⁶⁷ but the United States was found to have breached the principle of non-intervention through its support of the *contras*¹⁰⁶⁸.

9.60 In the present case, it is for Georgia to prove that Russia, by its organs or agents, “sponsored, defended or supported” the acts of discrimination committed by the separatist authorities and militias in South Ossetia and Abkhazia against the ethnic Georgians in those regions. The evidence establishes that Russia has so acted.

B. THE EVIDENCE SUPPORTING THE BREACH AND ATTRIBUTION

9.61 The evidence establishes that Russia has breached its obligations “not to sponsor, defend or support racial discrimination by any persons or organizations”. In that regard, there is overwhelming evidence that military forces associated with the *de facto* authorities have engaged in discriminatory

¹⁰⁶⁶ *Ibid.* at pp. 56-57, paras. 163-165.

¹⁰⁶⁷ *Nicaragua v. United States*, pp. 62-65, paras. 109-115.

¹⁰⁶⁸ *Ibid.* at pp. 108-110, paras. 206-209.

conduct, including looting and burning ethnic Georgian villages, taking ethnic Georgian civilians as hostages and preventing forcibly displaced ethnic Georgians from returning to their homes. The evidence is equally unimpeachable that Russia, including its armed forces, has “sponsor[ed], defend[ed] or support[ed]” these discriminatory acts. In that regard, the Russian army has provided essential support to military units of the *de facto* regimes that were engaged in violent discrimination. Not only were these separatist military forces funded, armed, supplied and commanded by Russia and Russian General Officers, they received essential support from Russian military units. For example, HRW’s on-the-ground investigators observed that “in many cases the perpetrators belonged to South Ossetian forces operating in close coordination with Russian forces¹⁰⁶⁹. The perpetrators often arrived in villages together with or shortly after Russian forces passed through them” and the “perpetrators seem to have freely passed through checkpoints manned by Russia... forces”¹⁰⁷⁰. HRW further found that the Russian army “provid[ed]” “militias” responsible for looting and burning ethnic Georgian homes “with transport into villages”¹⁰⁷¹.

9.62 Russia has also sponsored, defended and supported impermissible ethnic discrimination by, *inter alia*, using its armed forces to give effect to discriminatory policies and practices adopted by the *de facto* authorities, including by enforcing their prohibition on the return of ethnic Georgians. In that regard, the longstanding use of the Russian army in this manner was formalized on 30 April 2008 when, pursuant to agreements with the *de facto* regimes, Russia seconded its army to serve as the State Border Guards of South

¹⁰⁶⁹ See *supra* Chapter 3, paras. 3.26

¹⁰⁷⁰ *Ibid.*

¹⁰⁷¹ See *supra* Chapter 3, paras. 3.27.

Ossetia and Abkhazia. As Russia explained in its report on compliance with the Provisional Measures indicated by the Court, under these agreements, Russian troops are obligated to enforce the separatists' regulations regarding IDPs, which forbid the return of ethnic Georgians. As the Abkhaz *de facto* Prime Minister, Mr. Alexander Ankvab, declared: "the Abkhazian nation opposes the return of refugees"¹⁰⁷². His counterpart in South Ossetia adopted the same position. When Mr. Eduard Kokoity was asked whether "Georgian civilians" would "be allowed to return", he responded: "We do not intend to let anybody in here anymore"¹⁰⁷³. That prohibition, the OSCE's human rights fact-finding mission found, was given effect by the Russian army: "[t]he administrative boundary is now guarded by Russian troops who strictly enforce the closure"¹⁰⁷⁴.

Section V. Russia's Breach of Article 2(1)(d) and Article 3 of the 1965 Convention

A. THE TEST FOR BREACH OF ARTICLE 2(1)(D) AND ARTICLE 3 OF THE 1965 CONVENTION AND ATTRIBUTION

9.63 Article 2(1)(d) of the 1965 Convention provides:

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

¹⁰⁷² German Pronin, "Abkhazia will provide Georgians with Autonomy", *Utro.ru* (18 Apr. 2005). GM, Vol. IV, Annex 211.

¹⁰⁷³ Republic of South Ossetia New Agency, Press conference conducted in the International Press Centre of Tskhinvali (26 Aug. 2008). Observations of Georgia, Interim Measures, Annex 40.

¹⁰⁷⁴ OSCE, *Human Rights in the War Affected Areas* (2008), *op. cit.*, p. 63. GM, Vol. II, Annex 71.

d. Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization[.]

9.64 Article 2(1)(d) imposes an obligation of due diligence upon the State Party to identify “racial discrimination by any person, group or organization” and to take “all appropriate means” to bring that racial discrimination “to an end”. What constitutes “appropriate means” depends upon the circumstances of the particular case.

9.65 An example of Article 2(1)(d) being engaged was in respect of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro)’s failure to give effective protection, through its police force, to violence directed at minorities. The CERD Committee reported that it was “particularly disturbed over reports of *complacency* on the part of law enforcement officials regarding campaigns of terror and intimidation directed against minorities by paramilitary groups”¹⁰⁷⁵.

The Committee recommended that, in conformity with articles 2 and 4 of the Convention, the Government should prohibit racial discrimination and should urgently take vigorous steps to ban racist activities and propaganda. In that connection it was vital that paramilitary groups be disbanded, reports of ethnically motivated attacks, including allegations of arbitrary arrests, disappearance and torture, promptly investigated and those responsible punished¹⁰⁷⁶.

¹⁰⁷⁵ CERD Report, 48th Session, Supp. No. 18, *op. cit.*, para. 520 (emphasis added). GM, Vol. V, Annex 412.

¹⁰⁷⁶ *Ibid.*, para. 543.

9.66 The test for attribution in respect of Article 2(1)(d) of the Convention is in substance the same as for Article 2(1)(b). It is not the acts of racial discrimination that must be attributed to the State Party but rather the *failure* of the State Party's organs or agents "to prohibit and bring to an end" racial discrimination practiced by "any persons, group or organization". The relationship between the State Party's organs or agents and the third parties engaged in the practice of racial discrimination is nonetheless important to determine what means should have been employed by the State Party to bring the racial discrimination to an end. It is only if the State Party has failed to adopt "appropriate means" that its responsibility arises under Article 2(1)(d). If the State Party has no means at its disposal to influence the conduct of the "persons, group or organization" in question, then it cannot be liable under Article 2(1)(d) of the 1965 Convention. Such would be the case, for instance, if a State has lost all control over an area of its national territory to a separatist group.

9.67 Thus, it is necessary to determine what means are appropriate by reference to the capacity of the State Party to cause the persons, group or organization to cease their practices of racial discrimination. Where the persons, group or organization are located outside the national territory of the State Party, the enactment of legislation is not an "appropriate means" for the elimination of the practice of racial discrimination in question unless there is a proper basis for prescriptive jurisdiction in international law. Such a basis would exist if the persons or individuals comprising the "group" or "organization" are nationals of the State Party.

9.68 In summary, a cause of action based upon Article 2(1)(d) of the 1965 Convention has the following elements:

1. Racial discrimination by any persons, group or organization as defined by Article 1 of the Convention, where:
2. A State Party has the capacity to cause such persons, group or organization to cease such discrimination by adopting appropriate means,
3. But has failed to adopt such means.

9.69 In the present case, it is for Georgia to prove that Russia had appropriate means available through its organs and agents to cause the separatist authorities and militias in South Ossetia and Abkhazia to cease their acts of discrimination against the ethnic Georgians in those regions and that Russia failed to adopt those means.

9.70 Article 3 of the Convention imposes the following obligation:

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

9.71 It is clear from the *travaux préparatoires* for the 1965 Convention that the inclusion of Article 3 was primarily the result of the States Parties' desire to express their abhorrence of the apartheid regime in South Africa at the time. Nonetheless, the broader term "racial segregation" appears in the text of Article 3 and leaves no doubt that the obligation contained therein extends beyond the now historical example of this heinous form of racial discrimination. By its General Recommendation No. 19 on "Racial segregation and apartheid", the CERD Committee confirmed that: "The reference to apartheid may have been

directed exclusively to South Africa, but the article as adopted prohibits all forms of racial segregation in all countries”¹⁰⁷⁷.

9.72 The CERD Committee has thus found a violation of Article 3 in the context of the ethnic conflicts in the Balkans. In its consideration of the report of Bosnia and Herzegovina, the Committee condemned the practice of “ethnic cleansing”, massacres, forced population transfers, the blockading of international humanitarian aid, the detention of civilians, torture and killing of prisoners and rape and other sexual abuses as clear breaches of Articles 3 and 5 of the Convention¹⁰⁷⁸. In this context, the Committee commented on the dangers inherent in the construction of ethnically homogenous territorial units:

The Committee was profoundly concerned that the human rights violations occurring in Bosnia and Herzegovina were being committed on the basis of ‘ethnic identity’ for the purpose of attempting to create ethnically pure States. The Committee emphasized that such attempts were completely contrary to the spirit and the principles of the Convention. Furthermore, the Committee was concerned that partition along ethnic lines in Bosnia and Herzegovina could encourage groups elsewhere who were unwilling to respect the territorial integrity of States¹⁰⁷⁹.

9.73 In particular, the Committee condemned restrictions on the freedom of movement targeting a particular national or ethnic group through the

¹⁰⁷⁷ CERD, *General Recommendation No. 19, Prevention, Prohibition and Eradication of Racial Segregation and Apartheid*, Forty-seventh session, U.N. Doc. A/50/18 (1995), para. 1. GM, Vol. II, Annex 18.

¹⁰⁷⁸ CERD Report, *48th Session, Supplement No. 18, op. cit.*, paras. 455, 460, 467. GM, Vol. V, Annex 412.

¹⁰⁷⁹ *Ibid.*, para. 468. See also Report of the Committee on the Elimination of Racial Discrimination, General Assembly, Fiftieth Session, Official Records, Supplement No. 18 (A/50/18) 1998, paras. 25, 219, 221.

establishment of checkpoints, restricted roads and a permit system as a breach of Articles 2, 3 and 5¹⁰⁸⁰.

9.74 The obligation upon States Parties in Article 3 of the 1965 Convention is onerous: States must “prevent, prohibit and eradicate all practices” of the nature of racial segregation. It is a form of accessory responsibility in the sense that the acts and omissions that have resulted in a situation of racial segregation need not have been committed by persons or groups whose conduct is attributable to the State. Moreover, the responsibility of a State Party under Article 3 can only arise if a situation of racial segregation has actually occurred in a territory under the jurisdiction of the State Party. This makes Article 3 of the Convention similar in respect of the requirement of a predicate violation (racial segregation) to Article 1 of the Genocide Convention, for which responsibility can only apply if genocide was actually committed¹⁰⁸¹. This does not mean that the duty to prevent is only engaged once the predicate violation has been committed. As the Court said in respect of Article 1 of the Genocide Convention in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*:

[A] State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of

¹⁰⁸⁰ In relation to Israel’s policy in the Occupied Palestinian Territories, see *Report of the Committee on the Elimination of Racial Discrimination*, General Assembly, Sixty-Second Session, Official Records, Supplement No. 18 (A/62/18) (2007), para. 227. GM, Vol. II, Annex 43.

¹⁰⁸¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, para. 431.

harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit. However, if neither genocide nor any of the other acts listed in Article III of the Convention are ultimately carried out, then a State that omitted to act when it could have done so cannot be held responsible *a posteriori*, since the event did not happen which, under the rule set out above, must occur for there to be a violation of the obligation to prevent.

9.75 This applies, *mutatis mutandis*, to the duty to prevent racial segregation in Article 3 of the Convention. Article 3, however, goes much further than Article 1 of the Genocide Convention by incorporating an obligation of result: the State Party must take all necessary steps to “eradicate” the practice of racial segregation if found to exist. In contradistinction, the obligation to “prevent” genocide in Article 1 of the Genocide Convention is limited to an obligation of conduct or a “due diligence” obligation, as explained by the Court in *Bosnia and Herzegovina v. Serbia and Montenegro*:

[I]t is clear that the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of “due diligence”, which calls for an assessment *in concreto*, is of critical importance¹⁰⁸².

¹⁰⁸² *Ibid.*, p. 154, para. 430.

9.76 Under Article 3 of the 1965 Convention, a State Party *is* “under an obligation to succeed, whatever the circumstances”, in *eradicating* the commission of racial segregation.

9.77 Hence the elements of the cause of action in relation to the eradication of racial segregation in Article 3 are as follows:

1. The existence of racial segregation;
2. In a territory under the jurisdiction of a State Party;
3. Which has not been eradicated by that State Party?

9.78 Russia has breached Article 3 of the 1965 Convention by failing to eradicate the practice of racial segregation in South Ossetia and Abkhazia, which is manifested by the refusal of the *de facto* authorities to permit the return of ethnic Georgians who were displaced as a result of ethnic violence, following the mass expulsions from South Ossetia in 1991-1992 and 2008, and from Abkhazia in 1992-1994 and 2008. As a result, South Ossetia and Abkhazia have become ethnically homogenous enclaves for the ethnic Ossetians and Abkhaz.

9.79 South Ossetia and Abkhazia are territories under the jurisdiction of Russia for the purposes of Article 3 of the Convention. Russia has exercised jurisdiction over those territories by different means corresponding to two distinct periods:

1. From 8 August 2008 until the present, Russia has exercised effective control over South Ossetia and Abkhazia by virtue of its military occupation of those areas within the national territory of Georgia, including its exercise, through its military forces, of the responsibilities of “State Border Guards” responsible for policing the two

regions' administrative boundaries with the rest of Georgia and controlling all entry into the regions.

2. Since before 8 August 2008, Russia has exercised effective control over South Ossetia and Abkhazia by virtue of its control over the *de facto* authorities in those areas within the national territory of Georgia. This control was established as a result of Russia's military intervention in support of the *de facto* authorities in the period 1991-1994, and it has grown to include control over the *de facto* governmental administrations, finances and public order in the two regions.

B. EVIDENCE SUPPORTING THE BREACH AND ATTRIBUTION

9.80 Russia's international responsibility is engaged for breaching its obligations under Article 2(1)(d) to "prohibit and bring to an end... racial discrimination by any persons, group or organization". As discussed above, there is clear evidence that forces associated with the *de facto* authorities engaged in violent discrimination against the ethnic Georgian population. The evidence is equally clear that Russia took no action to prevent such discriminatory acts, despite having the dominant military force in the South Ossetia and Abkhazia, which was fully capable of taking appropriate steps to protect ethnic Georgians and their property.

9.81 In that regard, independent fact-finders and eye-witnesses both reported that the Russian army failed to take action to stop the abuse of ethnic Georgians and the destruction of their property, even when such discriminatory acts were being perpetrated in the Russian army's presence. For instance, Amnesty

International determined that the “Russian armed forces failed to ensure and protect the human rights of the ethnic Georgian populations” and that “Russian military forces did not uphold their obligation to maintain law and order and prevent looting by South Ossetian militia groups in areas under their control”. HRW likewise found that “Ossetian militias” had “arrive[d] in villages together with Russian forces, and the latter at the very least provided cover for the burning and looting of homes”.¹⁰⁸³ An example of this failure to stop violent discrimination occurred in the ethnic Georgian enclave north of Tskhinvali, where HRW observed Ossetian forces looting and burning literally “next to Russian tanks and personnel carriers”.¹⁰⁸⁴ The OSCE’s human rights investigative mission found evidence of similar conduct by Russia, reporting that “Russian troops and tanks stood by while ‘Ossetians’ set fire to most houses in the village”.¹⁰⁸⁵ Similarly, the UN Secretary-General’s Representative on the Human Rights of the Internally Displaced concluded, following a fact-finding mission, that there was a “failure by Russian forces to respond and carry out their duty to protect”.¹⁰⁸⁶

9.82 The same evidence demonstrates that Russia breached its obligation under Article 3 to “undertake to prohibit and eradicate all practices” of “racial segregation”. In that regard, Russia failed to take any action to prevent the armed forces of the *de facto* authorities from ethnically cleansing the Georgian population from South Ossetia, the intent of which was to segregate ethnic Georgians from ethnic Ossetians. Further, Russia has failed to undertake to

¹⁰⁸³ See *supra* Chapter 3, para. 3.35.

¹⁰⁸⁴ See *supra* Chapter 3, para. 3.36.

¹⁰⁸⁵ *Ibid.*

¹⁰⁸⁶ See *supra* Chapter 3, para. 3.24.

prohibit and eradicate this practice of racial segregation -- and, in fact, has contributed to its consolidation -- by refusing to permit ethnic Georgians to return to their homes in South Ossetia and Abkhazia, and agreeing to have the Russian army serve as the official State Border Guards of the *de facto* regimes, and to carry out their discriminatory policies designed to prevent ethnic Georgian IDPs from returning to their homes¹⁰⁸⁷.

9.83 Nor has Russia undertaken any effort to prosecute or punish the perpetrators of acts intended to create racial segregation, even when committed by its own armed forces. As the Council of Europe determined after assessing the activities of the General Prosecutor's Office of Russia, "[i]t would seem that there is no intention to investigate possible violations of human rights and humanitarian law committed by Russian forces and forces under the control of the *de facto* South Ossetian authorities"¹⁰⁸⁸. In fact, the Council of Europe found that the Special Investigation Committee of the Russian prosecution service that was responsible for the investigation and prosecution of criminal acts committed in South Ossetia had reportedly "closed its investigations on the ground in South Ossetia in mid-September, at a time when credible reports indicated that looting, pillaging, as well as acts of ethnic cleaning were taking place on a daily basis in the areas under Russian control"¹⁰⁸⁹.

¹⁰⁸⁷ See *supra* Chapters 5 and 6.

¹⁰⁸⁸ Council of Europe, Parliament Assembly, *The implementation of Resolution 1633 (2009) on the consequences of the war between Georgia and Russia*, Doc. 11800 (26 January 2009), para. 50 (emphasis added). GM, Vol. II, Annex 60.

¹⁰⁸⁹ *Ibid.*

9.84 In sum, Russia is internationally responsible for breaching Articles 2(1)(a), 2(1)(b), 2(1)(d), 3 and 5 of the 1965 Convention. Russia's further responsibility for breaches of the Court's Order of 15 October 2008 on Provisional Measures is addressed in the next Chapter.

CHAPTER X.

**RUSSIA'S RESPONSIBILITY FOR FAILURE TO COMPLY WITH
THE COURT'S ORDER ON PROVISIONAL MEASURES**

Section I. The Court’s Provisional Measures Order Creates Binding Obligations

10.1 The Court affirmed in its decision in *LaGrand* that its “orders on provisional measures under Article 41 [of the Statute] have binding effect”¹⁰⁹⁰. The purpose of provisional measures is to protect the rights of either party, pending the determination of the merits of the case. The Court’s Order of 15 October 2008 on Provisional Measures thus created freestanding legal obligations which both parties were required to comply with.

10.2 In three recent judgments at the merits stage of the proceedings, the Court found that the respondent State had breached its order on provisional measures. In *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, the Court declared in the operative part of its judgment on the merits that Serbia and Montenegro had failed to comply with the Court’s order indicating provisional measures by failing to take all measures within its power to prevent genocide in Srebrenica in July 1995¹⁰⁹¹. Likewise, in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court found that Uganda had failed to comply with each of the three provisional measures indicated by the Court by reason of the violations of humanitarian and human rights law by its military forces after those measures were indicated¹⁰⁹². Most

¹⁰⁹⁰ *La Grand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 506, para. 109.

¹⁰⁹¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 167, para. 469.

¹⁰⁹² *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 83, para. 264.

recently, in *Avena and Other Mexican Nationals*, the Court affirmed that the United States of America had breached the Court's order of provisional measures by executing Mr. José Ernesto Medellín Rojas before the Court delivered its judgment on the merits¹⁰⁹³.

Section II. The Evidence Supporting the Breach of the Court's Order

10.3 In its Order of 15 October 2008, the Court indicated the following provisional measures:

- A. Both Parties, within South Ossetia and Abkhazia and adjacent areas in Georgia, shall
 - (1) refrain from any act of racial discrimination against persons, groups of persons or institutions;
 - (2) abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations,
 - (3) do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin,
 - (i) security of persons;
 - (ii) the right of persons to freedom of movement and residence within the border of the State;
 - (iii) the protection of the property of displaced persons and of refugees;
 - (4) do all in their power to ensure that public authorities and public institutions under their control or influence do

¹⁰⁹³ *Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2009, p. 16, para. 53.

not engage in acts of racial discrimination against persons, groups of persons or institutions;

- B. Both Parties shall facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination;
- C. Each Party shall refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

10.4 As set forth in detail in Chapter 7, Russia has breached the Provisional Measures that the Court indicated in its Order of 15 October 2008. Because the facts that support Russia's breach of that Order were set out in full in Chapter 7, Georgia will not recapitulate them here, other than to summarize their salient features.

10.5 Since the Order of 15 October 2008, the few remaining ethnic Georgians in South Ossetia, principally in Akhalkgori, continue to be subject to ethnically-targeted human rights abuses¹⁰⁹⁴. For example, the OSCE's High Commissioner on National Minorities reported in late November 2008 that "the situation in the District of Akhalkgori is particularly worrying in view of recent statements by those exercising jurisdiction over population and territory that the inhabitants have to acquire South Ossetian/Russian passports or leave their homes".¹⁰⁹⁵ Further, Russian and *de facto* forces continue to loot and burn the homes of ethnic Georgians who have been expelled. As the Council of Europe reported in April 2009, six months after the Court indicated provisional measures, "[t]he

¹⁰⁹⁴ See *supra* Chapter 7, para. 7.15 *et seq.*

¹⁰⁹⁵ See *supra* Chapter 7, para. 7.22.

villages of South Ossetia previously under Georgia's control have been razed to the ground with the exceptions of a handful of houses. The intention to cleanse the area of ethnic Georgians is clear”¹⁰⁹⁶.

10.6 Similarly, Russia is responsible for ongoing discrimination in the Gali District of Abkhazia, again in breach of the Court's Order on Provisional Measures. As the OSCE High Commissioner on National Minorities concluded, for the “Georgian population in the Gali District” life is “very difficult as they are deprived of several of their basic human rights.”¹⁰⁹⁷ These include fundamental rights related to citizenship, identity and education¹⁰⁹⁸.

10.7 Further, in both South Ossetia and Abkhazia, Russia and the *de facto* authorities prevent the return of ethnically cleansed Georgians, also in breach of the Court's Order indicating Provisional Measures. This prohibition is enforced by the Russian army, which pursuant to agreements between the Respondent State and the *de facto* authorities, has assumed responsibility for patrolling the administrative boundaries of South Ossetia and Abkhazia as their official State Border Guards¹⁰⁹⁹. The ban on returning ethnic Georgians is given additional force by discriminatory measures adopted by the *de facto* regimes, and enforced by the Russian Federation border guards, that are intended to deter ethnic Georgians from attempting to return, including forced passportization and a prohibition on Georgian education¹¹⁰⁰. The discriminatory impact of these

¹⁰⁹⁶ See *supra* Chapter 7, para. 7.14.

¹⁰⁹⁷ See *supra* Chapter 7, para. 7.26.

¹⁰⁹⁸ See *supra* Chapter 7, para. 7.27.

¹⁰⁹⁹ See *supra* Chapter 7, para. 7.5.

¹¹⁰⁰ See *supra* Chapter 7, para. 7.27.

measures is compounded by the ongoing refusal of Russia and the *de facto* regimes to permit adequate access to humanitarian and relief agencies and the corresponding denial of independent and impartial international monitoring¹¹⁰¹.

10.8 These facts, as well as those set forth in Chapter 7, make clear that Russia has breached the Provisional Measures indicated by the Court in its Order of 15 October 2008.

¹¹⁰¹ See *supra* Chapter 7, para. 7.52 *et seq.*

CHAPTER XI.

REMEDIES

Section I. Introduction

11.1 The specific remedies requested by Georgia are set out in the Submissions to this *Memorial*. In this Chapter, the legal basis and authority for these remedies is analyzed with references to judgments of the Court and the ILC's Articles on State Responsibility.

11.2 Georgia seeks a declaration from the Court that the Respondent by its conduct described in this *Memorial* has violated and continues to violate its obligations under the 1965 Convention. The Court is also requested by Georgia to order the Respondent to cease its ongoing violations of the 1965 Convention and to take immediate and effective steps to ensure full compliance with its obligations. In addition, Georgia requests certain orders to restore the *status quo ante* in South Ossetia and Abkhazia in respect of the right of ethnic Georgians to reside in their homes in those areas of Georgia. Finally, compensation is sought from the Respondent for the expenses that Georgia has incurred in dealing with the humanitarian crisis caused by the massive internal displacement of ethnic Georgians from South Ossetia and Abkhazia since 1991.

11.3 Each of these remedies will be discussed in turn after a brief analysis of the law applicable to the secondary consequences for breach of the obligations in Part I of the 1965 Convention.

Section II. Applicable Law

11.4 The 1965 Convention does not purport to regulate the consequences for a breach of the obligations in Part I by the States Parties. The norms of general international law concerning state responsibility therefore apply. As the Permanent Court of International Justice established in *Factory at Chorzów*:

It is a principle of international law that the breach of an engagement involves an obligation to make reparation in adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself. Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application¹¹⁰².

11.5 More recently, the International Court of Justice has affirmed the application of the law of state responsibility to a cause of action based upon an international treaty in *Gabcíkovo-Nagymaros Project*:

[A]n evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of State responsibility... It is moreover well established that, when a State has committed an internationally wrongful act, its international responsibility is likely to be involved whatever the nature of the obligation it has failed to respect...¹¹⁰³

11.6 The ILC's Articles on State Responsibility have been referred to by the Court in its recent judgments and are relied on by Georgia as an accurate codification of the relevant rules of customary international law.

Section III. Declaration of the Court

11.7 In its submissions in Part F of its *Memorial*, Georgia has requested the Court to adjudge and declare that the Respondent by its conduct has violated

¹¹⁰² *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J. Series A, No. 9, p. 21.*

¹¹⁰³ *Gabcíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, para. 47.*

and, in some respects, continues to violate its obligations under Part I of the 1965 Convention.

11.8 As the Court has jurisdiction over the present dispute by virtue of Article 22 of the 1965 Convention, it clearly has the authority to determine the lawfulness of the Respondent's conduct and to make a declaration of its findings. Indeed, this is the most common form of relief granted by the Court. For instance, in *Corfu Channel*, the Court found that Britain had conducted an unlawful mine-sweeping operation and held:

[T]o ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty¹¹⁰⁴.

11.9 A declaration from the Court as to the wrongfulness of the Respondent's conduct is essential to ensure that any future conduct by the Respondent in South Ossetia and Abkhazia is grounded in respect for the rights of ethnic Georgians and is consistent with the fundamental prohibition of all forms of ethnic discrimination.

Section IV. Duty of Cessation and Non-Repetition

11.10 In *Construction of a Wall*, the Court affirmed the duty of cessation as part of general international law in line with its previous jurisprudence:

The Court observes that Israel also has an obligation to put an end to the violation of its international obligations flowing from the construction of the wall in the Occupied Palestinian Territory. The obligation of a State responsible for an internationally

¹¹⁰⁴ *Corfu Chanel (United Kingdom of Great Britain v. Albania)*, Judgment of April 9th, 1949, *I.C.J. Reports 1949*, p. 35.

wrongful act to put an end to that act is well established in general international law, and the Court has on a number of occasions confirmed the existence of that obligation (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 145); *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 44, para. 95; *Haya de la Torre, Judgment, I.C.J. Reports 1951*, p. 82)¹¹⁰⁵.

11.11 The duties under consideration are reflected in Article 30 of the ILC's Articles:

The State responsible for the internationally wrongful act is under an obligation:

3. to cease that act, if it is continuing;
4. to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

11.12 By persisting with its illegal conduct in respect of South Ossetia and Abkhazia, Russia is challenging the fundamental interests protected by the 1965 Convention not only to the detriment of Georgia and its nationals but also to the detriment of the other States Parties to the 1965 Convention, all of which have a stake in safeguarding the continued validity and effectiveness of the infringed obligations. Georgia therefore respectfully requests the Court to order the Respondent to cease all acts in contravention of its obligations under the 1965 Convention and to provide appropriate assurances and guarantees that it will refrain from all such acts in the future. Such assurances and guarantees are appropriate in the present case given that Russia has failed to comply with the

¹¹⁰⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 197, para. 150.

Order of the Court on Provisional Measures dated 15 October 2008 and continues to be in default, thus giving rise to a real risk that Russia will continue to breach its obligations under the 1965 Convention following the Court's judgment on the merits.

11.13 Russia is continuing to violate the 1965 Convention and the Court's Order on Provisional Measures by continuing to prevent the return of internally displaced ethnic Georgians by, among other means, its formal recognition of South Ossetia and Abkhazia as "independent states". By this recognition, Russia has contributed to consolidation of the effects of ethnic cleansing in these territories in breach of its obligation "not to sponsor, defend or support racial discrimination by any persons or organizations" in Article 2(1)(b) of the 1965 Convention. As described in Chapters 5 and 6, the *de facto* regimes have promulgated policies and enacted laws with the effect of denying the right of ethnic Georgian IDPs to return to their homes. Russia, by formally recognising those separatist entities and then entering into bilateral agreements with each of them as if they were sovereign states, has, *inter alia*, assumed direct responsibility, exercised on the ground by Russian military forces, for serving as their "state border guards", policing their borders with the rest of Georgia, and enforcing their ethnically discriminatory policies against ethnic Georgian IDPs seeking to enjoy their right of return. In Russia's own words, "[t]he Russian border guards in Abkhazia and South Ossetia are obliged to act in accordance with the relevant Republic's national regulations"¹¹⁰⁶. Thus, the formal recognition of South Ossetian and Abkhazian sovereignty has been used by

¹¹⁰⁶ *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Report of the Russian Federation on Compliance with the Provisional Measures Indicated by the Order of the Court of 15 October 2008 (8 July 2009), p. 12.

Russia as a justification for its own ongoing acts of discrimination against ethnic Georgians. In these circumstances, Russia's recognition of the two *de facto* entities constitutes both an acceptance and a perpetuation of an unlawful situation, and as such constitutes an ongoing violation of the 1965 Convention and the Court's Order on Provisional Measures.

Section V. Duty to Make Full Reparation

11.14 The classic statement on the content of the obligation of reparation in international law is to be found in the Permanent Court of International Justice's decision on the merits in *Factory at Chorzów*:

The essential principle contained in the actual notion of an illegal act — a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals — is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it — such are the principles which should serve to determine the amount of compensation due for an act contrary to international law¹¹⁰⁷.

11.15 The duty to make full reparation is reflected in Article 31 of the ILC's Articles.

11.16 It is Georgia's submission that, in order to "wipe out all the consequences" of Russia's breaches of its obligations under the Convention,

¹¹⁰⁷ *Factory at Chorzów*, p. 47.

Russia is under a duty to adopt certain measures to restore that *status quo ante* and to pay compensation for part of the direct damage caused to Georgia by reason of such breaches. Restitution in kind and compensation are the two forms of reparation identified in the Permanent Court's statement of principle in *Factory at Chorzów* and are also included in Article 34 of the ILC's Articles. Each will be considered separately below.

A. RESTITUTION IN KIND

11.17 According to Article 35 of the ILC's Articles:

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(a) is not materially impossible;

(b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

11.18 In the present case, it is clearly impossible to re-establish comprehensively the *status quo ante*. Nonetheless, it is possible for Russia to take measures to facilitate the return of ethnic Georgians who have been forced to abandon their homes in South Ossetia and Abkhazia following the campaign of ethnically motivated violence that has been waged against them. The dependence of the *de facto* authorities in South Ossetia and Abkhazia upon Russia has already been documented in this *Memorial*. Russia is in a position to exercise decisive influence over these authorities to secure the return of the internally displaced ethnic Georgians and accordingly should be compelled by the Court to adopt appropriate measures towards this end.

B. COMPENSATION

11.19 The Court stated in *Gabcikovo-Nagymaros Project*:

It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it¹¹⁰⁸.

11.20 The relevant principles of international law on compensation are set out in Article 36 of the ILC's Articles:

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

11.21 Although Georgia is entitled to claim full compensation to “wipe out the consequences” of Russia’s breaches of the 1965 Convention, it would be difficult to quantify with precision the separate instances of damage caused to Georgia and its nationals by breaches of the 1965 Convention attributable to the Respondent. Georgia has therefore elected to seek partial compensation for a head of damage that is readily quantifiable and for which the causal connection to a particular violation is self-evident. But for Russia’s direct participation in the expulsion of ethnic Georgians from South Ossetia and Abkhazia in violation of its obligations in Articles 2(a)(1) and 5, as well as Russia’s breaches of Article 2(1)(b)’s obligation “not to sponsor, defend or support racial discrimination” by the *de facto* authorities and Articles 2(1)(d) and 3’s obligations to “prohibit and

¹¹⁰⁸ *Gabcikovo-Nagymaros Project*, p. 81, para. 152.

bring to an end... racial discrimination” and to “prevent, prohibit and eradicate all practices” of “racial segregation”, the vast majority of ethnic Georgians IDPs would not have been expelled from these territories and/or would have been able to return. As a result of those expulsions and the corresponding humanitarian crisis, Georgia has been required to expend significant resources over the entire period of this dispute to provide basic humanitarian aid to the Georgian IDPs. Georgia respectfully requests the Court to order Russia to pay compensation in an amount reflecting these expenses incurred by Georgia as a direct result of Russia’s breach of Articles 2, 3 and 5 of the 1965 Convention together with interest to be assessed in accordance with the principles set out in Article 38 of the ILC’s Articles.

11.22 It is submitted that the precise quantification of such compensation could be reserved to a short separate phase on damages following the Court’s judgment on the merits. As was stated by the Court in *Fisheries Jurisdiction*:

It is possible to request a general declaration establishing the principle that compensation is due, provided the claimant asks the Court to receive evidence to determine, in a subsequent phase of the same proceedings, the amount of damage to be assessed¹¹⁰⁹.

11.23 The Court has adopted this approach in several cases¹¹¹⁰. As the Court acknowledged recently in *Democratic Republic of the Congo v. Uganda*, this has the advantage of allowing the Parties to enter into negotiations to arrive at a joint

¹¹⁰⁹ *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 204, para. 76.

¹¹¹⁰ *Corfu Channel*, p. 26; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Merits, Judgment, I.C.J. Reports 1980*, p. 46, para. 95; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 142-143, 149, paras. 284, 292.

assessment of the appropriate compensation before resorting to the Court if no agreement is forthcoming¹¹¹¹.

¹¹¹¹ *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 82, paras. 260-261.

PART F.
SUBMISSIONS

SUBMISSIONS

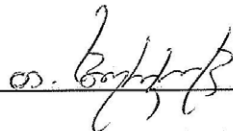
On the basis of the evidence and legal argument presented in this *Memorial*, Georgia requests the Court to adjudge and declare:

1. that the Russian Federation, through its State organs, State agents and other persons and entities exercising governmental authority, and through the *de facto* governmental authorities in South Ossetia and Abkhazia and militias operating in those areas, is responsible for violations of Articles 2(1)(a), 2(1)(b), 2(1)(d), 3 and 5 of the 1965 Convention by the following actions: (i) the ethnic cleansing of Georgians in South Ossetia; (ii) the frustration of the right of return of Georgians to their homes in South Ossetia and Abkhazia; and (iii) the destruction of Georgian culture and identity in South Ossetia and Abkhazia;
2. that the Russian Federation is responsible for the violation of the Court's Order on Provisional Measures of 15 October 2008 by the following actions: (i) acts of discrimination, including by violence, against Georgians in South Ossetia and Abkhazia; (ii) the frustration of the right of return of Georgians to their homes in South Ossetia and Abkhazia; (iii) the destruction of Georgian culture and identity in South Ossetia and Abkhazia; and (iv) the obstruction of access to humanitarian assistance;
3. that the Russian Federation is under an obligation to cease all actions in contravention of its obligations under Articles 2(1)(a), 2(1)(b), 2(1)(d), 3 and 5 of the 1965 Convention and the Court's Order on Provisional Measures, including all acts of discrimination as well as all support, defence, sponsorship of, or efforts to consolidate, such discrimination, and to provide appropriate assurances and guarantees that it will refrain from all such acts in the future;

4. that the Russian Federation is under an obligation to re-establish the situation that existed before its violations of Articles 2(1)(a), 2(1)(b), 2(1)(d), 3 and 5 of the 1965 Convention, in particular by taking prompt and effective measures to secure the return of the internally displaced Georgians to their homes in South Ossetia and Abkhazia;
5. that the Russian Federation is under an obligation to compensate for the damage caused by its violations of Articles 2(1)(a), 2(1)(b), 2(1)(d), 3 and 5 of the 1965 Convention and of the Court's Order on Provisional Measures with such compensation to be quantified in a separate phase of these proceedings.

Georgia reserves its rights to amend these submissions in the course of the proceedings.

2 September 2009,

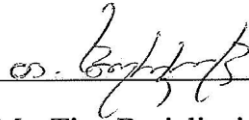


Ms. Tina Burjaliani

Agent of Georgia

Certification

I certify that the annexes are true copies of the documents referred to and that the translations provided are accurate.

A handwritten signature in black ink, appearing to read 'Tina Burjaliani', is written over a horizontal line.

Ms. Tina Burjaliani

Agent of Georgia

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