

Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia

Paras 1 to 17

N.B. As per the **disclaimer**, neither the ICRC nor the authors can be identified with the opinions expressed in the **Cases and Documents**. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Human Rights Watch, "Up in Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia", Report, 2009; available online at www.hrw.org. Footnotes omitted.]

[**N.B.:** This case refers to the same facts as Case No. 291, Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia, but does not cover the same legal issues.]

Human Rights Watch

Up In Flames

January 23, 2009

[...]

Overview

[...]

1. South Ossetia is a breakaway region of Georgia that shares a border and has very close ties with Russia. The armed conflict, in the making since spring 2008, started August 7 with Georgia's military assault in South Ossetia and Russia's military response the following day, and lasted until a ceasefire

on August 15, with Georgian forces in retreat and Russian forces occupying South Ossetia and, temporarily, undisputed parts of Georgia [1].

[...]

1. By August 16, President Saakashvili and his Russian counterpart President Dmitry Medvedev had signed a six-point ceasefire agreement brokered by French President Nicolas Sarkozy in his capacity as leading the French European Union presidency. The ceasefire agreement called for cessation of hostilities and the withdrawal of all forces to their pre-August 6 positions, while allowing Russian peacekeeping forces to implement additional security measures until an international monitoring mechanism would be in place.

[...]

PART 1: BACKGROUND

1.1 Background on South Ossetia

1. South Ossetia is located along Georgia's northern frontier in the Caucasus Mountains, bordering North Ossetia, a republic of the Russian Federation. The region is surrounded to the south, east, and west by undisputed Georgian territories. Prior to the August 2008 conflict, South Ossetia's population consisted of ethnic Ossetians and Georgians and numbered some 70,000 people, 20 to 30 percent of whom were ethnic Georgians. South Ossetia's capital, Tskhinvali, had a population of about 30,000. A number of villages in South Ossetia were overwhelmingly populated by ethnic Georgians [...]. With a handful of exceptions in the west of South Ossetia, villages inhabited mainly or exclusively by ethnic Georgians were administered by Tbilisi, while Tskhinvali and Ossetian-inhabited villages were under the administration of the de facto South Ossetian authorities.

[...]

1. The first conflict in South Ossetia culminated in the region's de facto secession from Georgia in 1992. On June 24, 1992, in the Russian city of Sochi, Russian and Georgian leaders Boris Yeltsin and Eduard Shevardnadze signed an agreement that brought about a ceasefire. The Sochi Agreement established the Joint Control Commission (JCC), a body for negotiations composed of Georgian, Russian, North Ossetian, and South Ossetian representatives, and the Joint Peacekeeping Forces (JPKFs), a trilateral peacekeeping force with Georgian, Russian, and Ossetian units. These units operated under a joint command, the JPKF commander being nominated by the Russian Ministry of Defence and appointed by the JCC. Battalion commanders were directly appointed by each side. Although the JPKF were meant as a joint force, in reality they were three separate battalions, deployed in different locations and more loyal to their respective sides than to the JPKF commander.

[...]

The Lead-up to the August 2008 War

1. In the months preceding the August war, tensions in South Ossetia steadily escalated as Georgian and South Ossetian forces engaged in violent attacks and mutual recriminations. [...]
2. Toward the end of July, violent skirmishes between Georgian and South Ossetian forces became more frequent.

[...]

The Fighting and Immediate Political Aftermath

1. Late in the evening of August 7, Georgian forces initiated massive shelling of Tskhinvali and surrounding villages in an attack that is widely considered the start of the war. [...]
2. Throughout the night between August 7 and 8, Georgian forces shelled Tskhinvali, using, among other weapons, BM-21 "Grad," a multiple rocket launcher system capable of firing 40 rockets in 20 seconds. Attacks intensified overnight and into the morning of August 8 as Georgian ground forces moved toward Tskhinvali. Around 8 a.m. Georgian ground forces entered Tskhinvali and street fighting erupted between Georgian forces and groups of South Ossetian forces, mainly militia, who tried to stop the Georgian offensive. In the course of the day, several villages in South Ossetia fell under Georgian forces' control.
3. During the day on August 8, regular Russian ground forces moved through the Roki tunnel toward Tskhinvali while Russian artillery and aircraft subjected Georgian ground forces in Tskhinvali and other places to heavy shelling and bombardment. Georgian forces bombed and shelled Russian military targets as Russian forces moved toward Tskhinvali. By the evening of August 8, Russian authorities declared that units of the 58th Army were deployed in the outskirts of Tskhinvali and that their artillery and combat tanks had suppressed Georgian firing positions in Tskhinvali. At the same time, Georgia's President Saakashvili declared that Georgian forces completely controlled Tskhinvali and other locations.
4. Russian aircraft also attacked several targets in undisputed Georgian territory beginning on August 8. Starting from around 9:30 a.m. on August 8, Russian aircraft attacked targets in several villages in the Gori district, Gori city, and, in the afternoon, Georgian military airports near Tbilisi.
5. Over the next two days, Russian forces continued to move into South Ossetia, eventually numbering by some estimates 10,000 troops with significant artillery force. Georgian armed forces persisted with attempts to take Tskhinvali, twice being forced back by heavy Russian fire and fire from South Ossetian forces, including volunteer militias. Early in the morning of August 10, Georgian Defense Minister Davit Kezerashvili ordered his troops to withdraw from Tskhinvali and fall back to Gori city.
6. Even though the Russian Ministry of Defense announced that Russian forces had ended all combat operations at 3 p.m. on August 12 and that all units had received an order to remain in their positions, Russian armed forces crossed the South Ossetian administrative border on August 12 and moved toward Gori city. The exact time when Russian forces occupied Gori city is disputed. The Russian authorities admitted that they were removing military hardware and ammunition from a depot in the vicinity of Gori on August 13, but denied that there were any tanks in the city itself. Russian tanks blocked roads into Gori city on August 14. By August 15, Russian troops had advanced past Gori city as far as the village of Igoeti, 45 kilometers west of Tbilisi. In a separate operation from the west, moving through Abkhazia, Russian forces occupied the strategically important cities of Poti, Zugdidi, and Senaki

in western Georgia, establishing checkpoints and roadblocks there.

[...]

1.2 International Legal Framework

[...]

International Humanitarian Law Governing Hostilities

[...]

1. Under international humanitarian law, the hostilities that occurred between Russia and Georgia constitute an international armed conflict – a conflict between two states. The law applicable to international armed conflict includes treaty law, primarily the four Geneva Conventions of 1949 and its First Additional Protocol of 1977 – Protocol I – and the Hague Regulations of 1907 regulating the means and methods of warfare, as well as the rules of customary international humanitarian law [See ICRC, Customary International Humanitarian Law]. Both Georgia and Russia are parties to the 1949 Geneva Conventions and Protocol I.
2. Since South Ossetia is recognized as part of Georgia, fighting between the non-state South Ossetian forces and militia and Georgian forces falls under the laws applicable to non-international (internal) armed conflict. Internal armed conflicts are governed by article 3 common to the four Geneva Conventions of 1949 (Common Article 3), the Second Additional Protocol of 1977 to the Geneva Conventions (Protocol II, to which Georgia is a party), as well as customary international humanitarian law.
3. Customary humanitarian law as it relates to the fundamental principles concerning conduct of hostilities is now recognized as largely the same whether it is applied to an international or a non-international armed conflict.

[...]

Law on Occupation and Effective Control

1. Under international humanitarian law territory is considered “occupied” when it is under the control or authority of foreign armed forces, whether partially or entirely, without the consent of the domestic government. This is a factual determination, and the reasons or motives that lead to the occupation or are the basis for continued occupation are irrelevant. Even should the foreign armed forces meet no armed resistance and there is no fighting, once territory comes under their effective control the laws on occupation become applicable.
2. International humanitarian law on occupation applies to Russia as an occupying power wherever Russian forces exercised effective control over an area of Georgian territory, including in South Ossetia or Abkhazia, without the consent or agreement of the Georgian government. Russia also assumed the role of an occupying power in the Kareli and Gori districts of undisputed Georgian territory until the Russian withdrawal from these areas on October 10, 2008, because Russian presence prevented the

Georgian authorities' full and free exercise of sovereignty in these regions.

[...]

Footnotes

- [1] The term 'undisputed' is used to refer to any part of Georgia, except South Ossetia and Abkazia, both areas which are subject to dispute over their sovereignty and have made bids for independence

Paras 18 to 56

PART 2: VIOLATIONS BY GEORGIAN FORCES

[...]

2.2 Indiscriminate Shelling of Tskhinvali and Outlying Villages

[...]

1. [...] Tskhinvali was heavily shelled during daytime hours on August 8. Shelling resumed at a smaller scale on August 9, when Georgian forces were targeting Russian troops who by then had moved into Tskhinvali and other areas of South Ossetia.

[...]

Tskhinvali

1. [...] Georgian authorities later claimed that their military was targeting mostly administrative buildings in these areas. The shells hit and often caused significant damage to multiple civilian objects, including the university, several schools and nursery schools, stores, and numerous apartment buildings and private houses. Such objects are presumed to be civilian objects and as such are protected from targeting under international law; but as described below, at least some of these buildings were used as defense positions or other posts by South Ossetian forces (including volunteer militias), which rendered them legitimate military targets.

[...]

Grad rocket attacks on Tskhinvali and outlying villages

[...]

1. Several villages to the west and east of Tskhinvali were also subjected to Grad shelling and heavy artillery fire by the Georgian forces.
2. In the village of Khetagurovo – especially in its southern part, close to the Georgian artillery positions – Human Rights Watch saw many houses completely destroyed or significantly damaged by the shelling.

For example, one house on Alanskaia Street on the southern outskirts of the village was hit by four Grad rockets and three mortar shells, and the neighboring house was hit by five mortar shells. Human Rights Watch saw the fragments of the rockets and the shell craters in the yards.

[...]

1. According to Georgian authorities, and one Ossetian interviewee we spoke with, Ossetian forces had firing positions in Khetagurovo. While these firing positions were legitimate targets, given the indiscriminate nature of Grad rockets, using them to hit such targets in an area populated by civilians may constitute an indiscriminate attack. Although the Ossetian forces bear responsibility for endangering civilians by locating military objectives near or among populated areas, Georgia is not relieved from its obligation to take into account the risk to civilians when it attacks the targets.

[...]

1. [...] [W]arring parties have a responsibility where possible to give advance warning of an attack that might affect civilians.
2. No such warning was given by the Georgian side. On the contrary, before the shelling started on the night of August 7-8, President Saakashvili said in a televised statement that “Georgia has unilaterally ceased fire in the current fighting with separatist rebels in the region of South Ossetia” and that his government would engage in direct negotiations to end the conflict.
3. A number of witnesses told Human Rights Watch that this announcement influenced their decision to stay in the city, which put them at greater risk.

The positioning of Ossetian combatants

1. The Georgian authorities have claimed that the strikes on Tskhinvali and neighboring villages were legitimate as they targeted Ossetian military positions and not at civilians. [...]
2. Numerous witnesses interviewed by Human Rights Watch, including members of South Ossetian militias, indicated that South Ossetian forces were not only present in Tskhinvali and neighboring villages, but also actively participating in the fighting, including by launching artillery attacks against Georgian forces. The witnesses also made it clear that South Ossetian forces set up defensive positions or headquarters in civilian infrastructure, thus turning them into legitimate military targets.

[...]

1. However it is questionable whether the large-scale shelling carried out by Georgian forces against Tskhinvali and outlying villages could be considered a proportionate attack against Ossetian forces, including volunteer militias present in these areas. In some cases, [...] the very choice of indiscriminate weapons or weapons that cannot be targeted with precision (such as Grad launchers) would make attacks unlawful in populated areas. Even though the presence of the Ossetian forces may have made the area a *prima facie* legitimate target, the Georgian forces were still obliged to calculate whether the risk of harming civilians with the Grad rockets was too high to justify the military advantage sought.
2. It is also not clear to Human Rights Watch to what extent the Georgian command had the necessary

intelligence to establish the exact location of the South Ossetian forces at any given moment, in part because the forces were very mobile. At the same time, Georgian military command was clearly aware of the presence of civilians in Tskhinvali and other areas subjected to artillery strikes.

3. International humanitarian law places clear obligations on warring parties to take all possible steps to minimize harm to civilians and not to attack civilian objects. If any doubt exists as to whether a civilian object is being used for military purposes, "it shall be presumed not to be so used." When a legitimate target exists within a building, the attacking party must still make a proportionality assessment, ensuring that the expected value of destroying the military object outweighs the likely impact of the attack on civilians and civilian infrastructure.

2.3 Attacks by Georgian Forces on Civilians Fleeing the Conflict Zone

1. Many Ossetian civilians who did not manage to leave South Ossetia before the fighting attempted to flee to North Ossetia on August 8-10. Human Rights Watch received a number of disturbing reports of Georgian attacks on civilian vehicles fleeing the conflict zone, resulting in death and injuries. The cases described below indicate that – in these cases at least – the attacks caused excessive civilian loss and that precautions were not taken to protect civilian life.

[...]

Attacks on civilian cars on the Dzara road

1. A number of interviewees told Human Rights Watch that they tried to flee north out of Tskhinvali along the Dzara road, hoping to get to safety in North Ossetia, when they came under Georgian fire.
2. Petr Petaev, a resident of Tskhinvali, was trying to flee the city with his wife and son on August 9. A grenade hit Petaev's car, killing his wife and injuring Petaev and his son. [...]

[...] My wife was killed by the very first shot. My son and I just sat in the car next to her dead body for another half-hour or so. And they just continued shooting! My son got wounded in the head and I was wounded in my leg. Before we reached that place where we got shot at we saw 10 burning cars.

1. Another civilian killed during evacuation along the Dzara road was 54-year-old Diana Kodjaeva, who tried to flee Tskhinvali with her neighbors on the night of August 7-8. Kodjaeva's cousin [...] told Human Rights Watch that the car in which they had been traveling came under heavy fire on the Dzara road and "burnt to ashes." [...]
2. Another interviewee recounted to Human Rights Watch how his brother tried to evacuate his wife and eight-year-old son from Tskhinvali on the night of August 7. He said,

On the detour [Dzara] road, the car came under heavy fire from the Georgian troops. My brother first pushed his wife and son out of the car and they hid in a ditch on the side of the road. He drove further, trying to lead the fire away from his family. Then he jumped out of the car, and managed to crawl back to where he left his wife and child. Georgians continued to fire at the car, and it burnt almost completely. [...]

[...]

Attacks on vehicles and international humanitarian law

[...]

1. At least two factors suggest the presence of legitimate military targets. First, starting early on the evening of August 8, Russian forces and armaments were moving south from the Roki tunnel on the Dzara road: In a letter to Human Rights Watch, the Georgian government stated that its forces “fired on armor and other military equipment rolling from the Roki Tunnel along the Dzara Road, not at civilian vehicles.” Second, as one witness recounted to Human Rights Watch, Ossetian forces had an artillery storage facility and firing position on a hill about one kilometer from the Dzara road.
2. Both Russian forces moving south on the Dzara road and the Ossetian firing position were legitimate military targets. But in carrying out these attacks Georgian forces had a duty to take precautions to minimize civilian harm and to ensure these attacks conformed to the principle of proportionality.
3. The Georgian government has said that “during movement of military columns, particularly during combat, all movement of civilian vehicles was halted. Consequently, there were no civilian vehicles present during [Georgian armed forces] fire against the mouth of the Roki Tunnel and along the Dzara Road.” It appears, however, that Russian columns moving south did not preclude civilian vehicles’ moving north. Indeed, Georgian forces should have been fully aware that in the first days of the conflict the Dzara road was the only way out of Tskhinvali that civilians could use.
4. Information collected by Human Rights Watch suggests that many of the cars were driven by South Ossetian militiamen who were trying to get their families, neighbors, and friends out of the conflict zone. A militia fighter is a combatant and a legitimate target when he or she is directly participating in hostilities.
5. It is not inconceivable that some of the militia fighters driving civilians to safety were wearing camouflage, were armed, or in other ways appeared to pose a legitimate threat to Georgian forces. But it was the responsibility of the Georgian troops to determine in each case whether the vehicle was a civilian object or not, and if it was believed to be a legitimate military target, whether the anticipated military advantage gained from an attack on such vehicles would outweigh the expected harm to civilians.

2.4 Georgian Forces’ Ground Offensive

1. In the early hours of August 8, Georgian ground troops, including tank columns and infantry, entered South Ossetian villages to the west of Tskhinvali and then proceeded into the city. While in some villages and in parts of Tskhinvali South Ossetian militias seemed to put up armed resistance and defend their positions, by the afternoon of August 8, Georgian authorities claimed to have complete control of the city. In Tskhinvali the exchange of fire between Georgian forces and South Ossetian forces supported by the Russian army and air force continued until August 10, when the Georgian command ordered withdrawal of troops from South Ossetia.
2. [...] Armed with automatic weapons, the militias targeted Georgian military vehicles and infantry moving through the city. Numerous witnesses confirmed to Human Rights Watch that virtually all able-bodied males joined the volunteer militias, often after moving their families to safety in North Ossetia.
3. Human Rights Watch believes that, particularly during the attempt to take Tskhinvali, on a number of occasions Georgian troops acted with disregard to the protection of civilians by launching attacks where

militias were positioned that may have predictably caused excessive civilian loss compared to the anticipated military gain. Some of the Georgian soldiers interviewed by Human Rights Watch confirmed that while they were targeting Ossetian fighters who were shooting at them from apartment buildings, they were fully aware of the presence of civilians in these buildings. [...]

4. Human Rights Watch researchers saw multiple apartment buildings in Tskhinvali hit by tank fire. In some cases, it was clear that the tanks and infantry fighting vehicles fired at close range into basements of buildings. [...]

[...]

1. Even when the presence of Ossetian militias meant that apartment buildings could be legitimate targets, it was not apparent from the evidence of the aftermath of the attack that the Georgian military had taken all feasible precautions to minimize the harm to civilians. It is clear, however, that the military tactics they used caused civilian casualties and significant damage to civilian property.
2. For example, residents of Tselinnikov Street in Tskhinvali told Human Rights Watch that at around 3:30 p.m. on August 8 a Georgian tank opened fire at their apartment building, after a group of Ossetian militia started withdrawing through the neighborhood. Six tank shells hit the building, destroying five apartments, and killing an elderly man. [...]
3. Neighborhood residents told Human Rights Watch that the attack did not result in any casualties among the militia, with whom they were all acquainted.

[...]

2.5 Georgia's Use of Cluster Munitions

1. The Georgian military attacked Russian forces with cluster munitions to stop their forward advance into South Ossetia. [...]
2. Human Rights Watch did find that M85 cluster munitions hit nine villages in undisputed Georgian territory, which killed at least four people and injured eight. In addition, unexploded M85s have prevented civilians from tending or harvesting their crops, causing them to lose a source of income and subsistence. Human Rights Watch has concluded that these cluster munitions were fired by Georgian forces. Several factors suggest that Georgian forces did not target these villages, but rather that the submunitions landed on these villages due to a massive failure of the weapons system. [...]
3. Cluster munitions are large, ground-launched or air-dropped weapons that eject, depending on their type, dozens or hundreds of bomblets, or submunitions, and spread them over a large area. Because cluster munitions cannot be directed at specific fighters or weapons, civilian casualties are virtually guaranteed if cluster munitions are used in populated areas. Cluster munitions also threaten civilians after conflict: because many submunitions fail to explode on impact as designed, a cluster munitions strike often leaves a high number of hazardous unexploded submunitions – known as duds – that can easily be set off upon contact.

[...]

Civilian Casualties from M85s

1. M85 submunitions are Dual Purpose Improved Conventional Munitions (DPICM) whose purpose is to injure or kill persons and pierce armor. It is an unguided weapon that poses grave danger to civilians in part because of its inaccuracy and wide dispersal pattern. These submunitions are cylinder-shaped; civilians often describe them as resembling batteries or light sockets. [...]

[...]

2.8 Georgian Detentions and Ill-Treatment of Ossetians

1. The Georgian military during active combat in South Ossetia detained at least 32 Ossetians. [...]
2. Human Rights Watch interviewed five of the 32, whom the Georgian military had detained on August 8 and 9. All five detainees reported having been beaten by Georgian soldiers at the moment of their detention, and receiving poor and inadequate food while in detention.
3. The Georgian government maintains that all 32 Ossetians were militia fighters and were detained for their participation in hostilities. Human Rights Watch cannot definitively determine whether the Ossetians detained by the Georgian military were civilians or were participating in hostilities. The Georgian authorities have not presented evidence that all of the Ossetians whom they detained were in fact combatants. At least one case investigated by Human Rights Watch, that of an elderly man who said he was a pacifist on religious grounds, calls into question the Georgian government's blanket determination about those whom its forces detained. One interviewee, however, made no effort to conceal that he was a combatant – he told Human Rights Watch that he was from North Ossetia and traveled to South Ossetia to join the militia forces as a volunteer immediately before the Georgian military attacked Tskhinvali.
4. Under the Fourth Geneva Convention, civilians are considered to be protected persons. The Convention requires that “persons taking no active part in the hostilities, ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.” During hostilities and occupation, the Fourth Geneva Convention permits the internment or assigned residence of protected persons for “imperative reasons of security.” In the case of detention of civilians on reasonable security grounds, detentions must be carried out in accordance with a regular procedure permissible under international humanitarian law. Those detained have a right to appeal their internment and have their case reviewed every six months. The Fourth Geneva Convention provides detailed regulations for the humane treatment of internees. The International Committee of the Red Cross (ICRC) must be given access to all protected persons, wherever they are, whether or not they are deprived of their liberty.
5. Under international humanitarian law Ossetians who were not members of any regular forces, but members of militias or otherwise took up arms against the Georgian military, are not entitled to POW status, but are detained as non-privileged combatants, and should be treated in accordance with the protections guaranteed to civilians under the Fourth Geneva Convention.

[...]

Paras 57 to 78

PART 3: VIOLATIONS BY RUSSIAN FORCES

[...]

3.2 Aerial Bombardments, Shelling, and Artillery Attacks

[...]

Attacks in Undisputed Georgian Territory

Gori city

1. Gori city is the administrative center for the Gori district. Gori's military base and Georgian military reservists located in one part of the city became targets of Russian air strikes. Also, [...] in mid-July 2008 Georgia concentrated its entire artillery brigade in Gori city. As a result of the air strikes and advancing Russian and Ossetian forces, civilians began to flee Gori around August 11.

[...]

Attack on School No. 7

1. At about 11 a.m. on August 9, Russian aircraft made several strikes on and near School No. 7 in Gori city. According to one eyewitness, Givi Melanashvili, 60, who was at the school when the bombing took place, about one hundred Georgian military reservists were in the yard of the school when it was attacked. To his knowledge none of the reservists was injured. The reservists as combatants were a legitimate target, and it is possible that the school was deemed as being used for military purposes. In such circumstances, it would lose its status as a protected civilian object. In the attack, one strike hit an apartment building next to the school, killing at least five civilians and wounding at least 18, and another hit a second building adjacent to the school causing damage, but no civilian casualties.
2. There were civilians also taking shelter in the school, as Melanashvili, who was looking for temporary shelter in Gori having had fled South Ossetia a day earlier, told Human Rights Watch,

I was told that I could find shelter in School No. 7. My wife and I went there in the morning. I got there around 11 a.m. and saw that there were Georgian reservist forces in the yard. Suddenly a bomb hit the building next to the school. There was a loud explosion and complete chaos. A large part of the building was destroyed. The school building was damaged.

1. While the reservists' presence in the school yard rendered it a legitimate target for the Russian forces, questions may be raised as to the proportionality of the attack. Where an object, which is by its nature normally civilian, becomes used for military purposes, it can be attacked, but only by means that will avoid or minimize harm to civilians and damage to civilian objects. All feasible measures should be taken to cancel or suspend an attack if it becomes apparent that the expected civilian casualties would outweigh the importance of the military objective.

Attack on Gori Military Hospital

1. By August 12, many of Gori's inhabitants had fled the city. Staff at the Gori Military Hospital remained in the city to take care of the hospital's remaining patients.
2. At around 2 a.m. on August 13 a Russian military helicopter fired a rocket toward a group of hospital staff members who were on break in the hospital yard. The rocket hit Giorgi Abramishvili, an emergency room physician in his forties [who] died from head injuries.
3. Human Rights Watch researchers saw that the roof of the hospital building is clearly marked with a red cross, the "distinctive emblem" indicating medical personnel or facilities and entitled to specific protection under the Geneva Conventions.
4. This attack was a serious violation of international humanitarian law. Hospitals, even military hospitals such as the one in Gori, are not legitimate military targets. The wounded and sick, and medical personnel, even if they are members of the armed forces, are protected persons and attacks directed against them are war crimes.

[...]

3.3 Russia's Use of Cluster Munitions

1. [65] [...] Human Rights Watch researchers found that Russian forces used cluster munitions against targets in populated areas in the Gori and Kareli districts just south of the South Ossetian administrative border, killing at least 12 civilians and injuring at least 46 at the time of attack. [...]
2. Because cluster munitions cannot be directed at specific fighters or weapons and because cluster duds will likely injure or kill whoever disturbs them, combatant or civilian, using cluster munitions in populated areas, as Russia did, should be presumed to be indiscriminate attack, which is a violation of international humanitarian law.
3. The lawfulness of a military strike may also be determined by whether the effects on civilians are excessive in relation to any direct military advantage gained. [...] [A] cluster strike will be an unlawfully disproportionate attack if the expected civilian harm outweighs anticipated military advantage. The expected civilian harm is not limited to immediate civilian losses, but also encompasses casualties over time. There is greatly increased likelihood that the loss will be excessive in relation to the military advantage when taking into account both strike and post-strike civilian harm, especially if an attack occurred in a populated area or an area to which people might return. Based on its field research in the former Yugoslavia, Afghanistan, Iraq, and Lebanon, as well as in Georgia, Human Rights Watch believes that when cluster munitions are used in any type of populated area, there should be a strong, if rebuttable, presumption that the attack is disproportionate.
4. Finally, parties to a conflict are under the obligation to take "all feasible precautions in the choice of means and methods" of warfare so as to avoid and in any event minimize "incidental loss of civilian life, injury to civilians and damage to civilian objects." The indiscriminate nature of cluster munitions makes it impossible for a party using cluster munitions in populated areas to observe this principle.

[...]

Gori city-Iskander SS-26 missile with submunitions

1. [69] On the morning of August 12 several dozen civilians gathered on the main square in Gori city,

anticipating food distribution from local officials in the Gori municipal administration building located on the square. A car accident on the square attracted even more civilian onlookers, and a group of journalists had stopped on the square to ask for directions. One victim estimates that there were at least 40 civilians on the square when the cluster munitions attack took place.

2. According to Paata Kharabadze, chief doctor of the Gori civilian hospital, six people were killed during the attack. [...] The Gudushauri National Medical Center of Tbilisi admitted 24 civilians from Gori that day, many of them injured in the morning's attack.
3. Victims of the attack described to Human Rights Watch how they saw numerous small explosions within seconds before they fell to the ground. [...]
4. The Gori city square is a large open space [...]. On one side of the square is the municipal administration building, and on the other sides are apartment buildings with shops on the ground floor. Even though the main command center for the Georgian military operation in South Ossetia was located in Gori, all Georgian troops had left the city by the evening of August 11, according to witnesses. All witnesses said that there were no military forces on the square when it was attacked.
5. One of those killed in the August 12 cluster munitions strike on Gori's main square was Stan Storimans, a cameraman for the Dutch television station RTL. On August 29 the Dutch Ministry of Foreign Affairs dispatched an investigative commission consisting of military and diplomatic experts to Gori to investigate Storimans's death. The commission writes in its report,

During the on-site investigation, the mission was able to establish that the entire square and several nearby streets had been hit in the same manner. An area of about 300 by 500 metres was struck by small metal bullets [fragments] measuring about 5 mm. It was deduced from the entry holes that the bullets were from multiple explosions, both on the ground and in the air.

1. [...] [T]he commission concluded that "the square and surrounding area were hit by about 20 explosions at around 10:45 a.m., and that each explosion scattered a large number of bullets. The explosions can be seen to occur both in the air and on the ground." Based on visual characteristics, the serial numbers found on the missile pieces and the nature of the strike, the commission concluded that Russian forces had hit the square with an Iskander SS-26 missile carrying cluster munitions.

[...]

3.6 Pillaging, Destruction, Violence, and Threats against Civilians

1. [...] 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. While some civilians described the conduct of Russian ground forces as disciplined, Human Rights Watch documented several cases in which Russian forces, together with Ossetian militias, used or threatened violence against civilians or looted and destroyed civilian property. [...] Acts of pillage are prohibited under customary international law and violate article 33 of the Fourth Geneva Convention relating to the protection of civilians in armed conflict. Pillaging is a grave breach of the Geneva Conventions and a war crime. The cases involve villages in South Ossetia and in undisputed Georgian territory.

[...]

3.7 Russia's Responsibility as Occupying Power

1. When Russian forces entered Georgia, including South Ossetia and Abkhazia, which are *de jure* parts of Georgia, they did so without the consent or agreement of Georgia. International humanitarian law on occupation therefore applied to Russia as an occupying power as it gained effective control over areas of Georgian territory [...]. Tskhinvali and the rest of South Ossetia must be considered under Russian control from August 10, when Georgian forces officially retreated, through the present. Villages in Gori district fell under Russian control as Russian forces moved through them on August 12. Gori city must be considered under effective Russian control at least from August 12 or 13 until August 22, when Russian troops pulled back further north toward South Ossetia. Russia's occupation of the area adjacent to South Ossetia ended when its forces withdrew to the South Ossetia administrative border on October 10.
2. [...] [O]verall, Russian authorities did not take measures to stop the widespread campaign of destruction and violence against civilians in villages in South Ossetia [...] and in the buffer zone in undisputed Georgian territory. They allowed these areas to become a virtual no-man's land where individuals were able to commit war crimes – to kill, loot, and burn homes – with impunity. [...] Russian forces therefore violated their obligation as an occupying power to “ensure public order and safety” and to provide security to the civilian population in the territory under its control. This is a serious violation of international humanitarian law.
3. Russia bore responsibility but took no discernable measures on behalf of protected individuals, including prisoners of war, at least several of whom were executed or tortured, ill-treated, or subjected to degrading treatment by South Ossetian forces, at times with the participation of Russian forces.

[...]

Paras 79 to 101

PART 4. VIOLATIONS BY SOUTH OSSETIAN FORCES

[...]

4.2 Attacks on Georgian Civilians and Their Villages in South Ossetia

Looting and Burning of Villages

Basic chronology

[...]

1. Beginning August 10, after Russian ground forces had begun to fully occupy South Ossetia and were moving onward into undisputed Georgian territory, Ossetian forces followed closely behind them and entered the ethnic Georgian villages. Upon entering these villages, Ossetian forces immediately began going into houses, searching for Georgian military personnel, looting property, and burning homes. They also physically attacked many of the remaining residents of these villages, and detained dozens of them. [...] In most cases, Russian forces had moved through the Georgian villages by the time South

Ossetian forces arrived. In other cases, Russian forces appeared to give cover to South Ossetian forces while they were committing these offenses.

2. By August 11, the attacks intensified and became widespread. Looting and torching of most of these villages continued intermittently through September, and in some through October and November.

Extent and deliberate nature of the destruction as investigated by Human Rights Watch

1. [...] Human Rights Watch's observations on the ground [...] have led us to conclude that the South Ossetian forces sought to ethnically cleanse these villages: that is, 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 return.
2. International humanitarian law prohibits collective punishment, acts of reprisal against civilians, pillage, and deliberate destruction of civilian property. Violations of these prohibitions are grave breaches of the Fourth Geneva Convention, or war crimes.
3. The interviews and ground observations by Human Rights Watch indicate that these villages were looted and burned by Ossetian militias and common criminals. With a few exceptions of looting and beatings of civilians, Russian forces did not participate directly in the destruction of villages and attacks on civilians but, aside from a brief period in mid-August, did not interfere to stop them [...].

[...]

Position of de facto South Ossetian Officials toward Looting and House Burning

1. The *de facto* South Ossetian authorities were unrepentant about the destruction of ethnic Georgian villages and took no effective steps to prevent their destruction, protect civilians, and hold perpetrators accountable. [...]

[...]

The Displaced Georgian Population's Right to Return

1. As many as 20,000 ethnic Georgians cannot return to their homes in South Ossetia.
2. In mid-August 2008 Kokoity said that Ossetian authorities did not intend to let the Georgians return to the destroyed villages. By the end of August 2008, he changed his position and assured the UN High Commissioner for Refugees that the displaced Georgians willing to return to South Ossetia would face no discrimination and have their security fully guaranteed. [...]

4.3 South Ossetian Abuses in Undisputed Georgian Territory

Rape

1. Human Rights Watch received numerous reports of rape of ethnic Georgian women during the August 2008 war. The Fourth Geneva Convention obliges parties to a conflict to protect women from "attacks on their honour, especially rape, and rape is considered an act of "willfully causing great suffering or

serious injury to body or health” that is a grave breach of the Geneva Conventions, and a war crime.

2. [...] Human Rights Watch was able to document two cases of rape in undisputed areas of Georgia under Russian control. Several factors suggest that the perpetrators were members of South Ossetian forces or militia. In both cases, the perpetrators wore military uniforms and white armbands, usually worn by South Ossetian forces to identify them to the Russian army as friendly forces. In both cases, the perpetrators spoke Ossetian. In one case, the perpetrators handed the victim over to the South Ossetian police in Tskhinvali, who later included her with other detainees in a prisoner exchange with Georgian authorities.

[...]

Abductions

1. Human Rights Watch documented many incidents of unlawful detention by Ossetian forces in which the victims were taken into Ossetian police custody [...]; we also received reports of Georgians who were abducted by Ossetians and not handed over to the police. Abductions violate the ban, contained in article 147 of the Fourth Geneva Convention, on unlawful confinement of a protected person and are considered grave breaches, or war crimes.

[...]

4.4. Execution, Illegal Detentions, Ill-Treatment, and Degrading Conditions of Detention by Ossetian Forces, at times with Russian Forces

[...]

1. As Russian and Ossetian forces entered Georgian villages in South Ossetia and the Gori district, they detained at least 159 people, primarily ethnic Georgians as well as at least one Ossetian and one ethnic Russian married to an ethnic Georgian. Forty-five of the detained were women. At least 76 were age 60 or older, and at least 17 were age 80 or older. There was one child, a boy, about eight years old. Human Rights Watch interviewed 29 of the detained, all post-release. Many detainees described ill-treatment during detention, during transfer to custody, and in custody. Most detainees were held in the basement of the South Ossetian Ministry of Interior building in Tskhinvali for approximately two weeks in conditions that amounted to degrading treatment. Some of these detainees were forced to work clearing the Tskhinvali streets of decomposing bodies of Georgian soldiers, and debris. At least one man was executed while in Ossetian custody during his transfer to the Ministry of Interior. All of these actions are grave breaches of the Geneva Conventions and amount to war crimes. To the extent that Russia exercised effective control in the territory where these detentions took place, the Russian government is liable for these acts [...].
2. In some instances, Russian forces directly participated in the detention of ethnic Georgians, and detainees held in the Ministry of Interior reported being interrogated by people who introduced themselves as members of Russian forces. [...]

Legal Status of and Protections for Individuals Detained by Ossetian and Russian Forces

1. All of those detained by Ossetian and Russian forces and interviewed by Human Rights Watch stated that they were civilians not participating in the hostilities and had not taken up arms against Ossetian and Russian forces. Under the Fourth Geneva Convention, which defines the protections afforded to civilians during wartime, civilians are considered to be protected persons. The Convention requires that persons “taking no active part in the hostilities, ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.” Grave breaches of the Fourth Geneva Convention, including willful killing, torture and inhuman treatment, and willfully causing great suffering or serious injury to body or health, are war crimes.

[...]

1. During hostilities and occupation, the Fourth Geneva Convention permits the internment or assigned residence of protected persons such as civilians for “imperative reasons of security.” However, unlawful confinement of a protected person is a war crime.
2. Human Rights Watch has not been presented with evidence that there were reasonable security grounds for the detention of the 159 persons detained by Ossetian and Russian forces. Many of those detained were very elderly, and one was a small child. Most were detained in circumstances that strongly suggest that they were not taking up arms, not participating in hostilities, and not otherwise posing a security threat [...].
3. If, among the detained, there were Georgians who participated in hostilities against Ossetian or Russian forces, but who were not members of the Georgian military, under international humanitarian law such persons would be considered non-privileged combatants. Georgians who took up arms to defend their lives or property from advancing Ossetian or Russian forces would be considered armed civilians. In both cases, detention of such persons would be considered reasonable on security grounds. Such persons are entitled to the protections guaranteed to civilians under the Fourth Geneva Convention. Detentions must be carried out in accordance with a regular procedure permissible under international humanitarian law. Those detained have a right to appeal their internment and have their case reviewed every six months. The Fourth Geneva Convention provides detailed regulations for the humane treatment of internees. The International Committee of the Red Cross must be given access to all protected persons, wherever they are, whether or not they are deprived of their liberty.

[...]

1. Ossetian President Eduard Kokoity has stated that “ethnic Georgians were detained for their personal safety” [...]. While the Geneva Conventions allow for internment in order to provide for the security of civilians, Human Rights Watch has not found evidence that the detentions by Russians and Ossetians had this purpose or were justified on these grounds. The fact that the majority of individuals were detained as Georgian soldiers were retreating and in areas in which Russian and Ossetians exercised effective control suggests that in most cases civilians were not likely to be threatened by armed combat. Furthermore, Russian and Ossetian forces apprehended most individuals in a violent and threatening manner and subjected them to inhuman and degrading treatment and conditions of detention, and forced labor, reflecting no intent on the part of these forces to provide for the personal safety and well-being of those detained.

[...]

Forced labor

1. Ossetian forces forced many of the male detainees to work, which included recovering decomposing bodies from the streets of Tskhinvali, digging graves, and burying bodies, as well as clearing the streets of building debris from the hostilities. Two detainees interviewed by Human Rights Watch stated that they volunteered to work on some days in order to be out of the overcrowded cells for a few hours. None of the workers received any compensation for this work. Under the Fourth Geneva Convention, adults (individuals age 18 or older) may be required to work as is necessary to maintain public utilities, and to meet needs of the army and humanitarian needs, such as activities related to feeding, sheltering, clothing, and health care of the civilian population. People must be appropriately compensated for their work, and there can be no obligation to work based on any form of discrimination. Unpaid or abusive forced labor, or work that amounts to partaking in military operations, is strictly prohibited.

[...]

Release of civilian detainees

1. Ossetian forces released one group of 61 detainees, including most of the elderly and all of the women, on August 21, in exchange for eight detainees whom the Georgian Ministry of Defense described as militia fighters. Other civilians were released on subsequent days, including a final group of 81 civilians on August 27, who, according to the Georgian Ministry of Defense, were exchanged for four people detained during active fighting and described as “militants,” as well as nine Ossetians previously convicted for crimes and serving sentences in Georgian prisons. While prisoner exchanges are a recognized and legitimate process to facilitate repatriation of prisoners who are in the hands of the enemy, it is prohibited to use the mechanism of prisoner exchanges as a means of effecting population transfer. It is also prohibited to use prisoners as hostages – that would be to unlawfully detain persons with the intent of using them to compel the enemy to do or abstain from doing something as a condition of their release.

[...]

4.5 Execution, Torture, and Other Degrading Treatment of Georgian Prisoners of War by Ossetian Forces, at times with Russian Forces

1. Russian and Ossetian forces detained at least 13 Georgian military servicemen during active fighting. All these detainees were entitled to prisoner of war (POW) status and should have been treated as such. [...] All four Georgian military servicemen were held in informal places of detention, including a dormitory and schools, for several days, and were then transferred to Ossetian police. [...] Georgian soldiers reported that they had been subjected to severe torture and ill-treatment throughout their detention by Ossetian forces. Human Rights Watch documented the execution of three Georgian servicemen while in the custody of Ossetian forces.
2. Ossetian forces eventually transferred 13 Georgian prisoners of war to Russian forces, and Russian

authorities exchanged them for five Russian prisoners of war on August 19.

3. Russian forces had or ought to have had full knowledge that Ossetians detained Georgian servicemen. They apparently participated in the execution of two Georgian soldiers, as well as in interrogations of Georgian POWs in Ossetian custody. Furthermore, the Georgian soldiers were held in Tskhinvali, over which Russia exercised effective control from August 9, and therefore are to be regarded as having fallen into Russia's power. Russia was therefore obligated to afford them POW status and to treat them in conformity with the protections of the Third Geneva Convention, which include absolute prohibitions on ill-treatment and require POWs to be treated humanely and kept in good health. The execution, torture, and ill-treatment of prisoners of war are grave breaches of the Third Geneva Convention and constitute war crimes. [...]

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Discussion

A. Qualification of the conflict and applicable law

Paras [7]-[15]

1. How do you qualify the conflict? How does Human Rights Watch (HRW) qualify it? Do you think that one should regard the situation as encompassing several parallel conflicts which should be analysed separately? In such situations, do you think that one should apply a different body of law for each conflict, even though they occur simultaneously? According to HRW, what law applies? What law is actually cited in the substantive part of its report? (GC I- IV, Art. 2; P I, Art. 1; P II, Art. 1)
2. If you consider the conflicts separately, how do you qualify the fighting between Georgian forces and South Ossetian forces? Between Georgian forces and volunteer militias? Between Georgian forces and North Ossetian voluntary fighters? Does it matter whether the fighting occurred in disputed or in undisputed Georgian territory? (GC I-IV, Art. 2; P I, Art. 1; P II, Art. 1)
3. How could the IHL of international armed conflicts apply to the fighting between Georgian and South Ossetian forces even if this fighting is classified separately?
4. (*Paras [84] and [92]*)
 - a. Do you agree with HRW that Art. 3 common to the Conventions applies to everyone? Do you think that common Art. 3 also applies during international armed conflicts? [See United States, Hamdan v. Rumsfeld]
 - b. Is a violation of Art. 3 a grave breach of the Geneva Conventions? [See ICJ, Nicaragua v. United States; ICTY, The Prosecutor v. Tadic]
 - c. If the IHL of non-international armed conflicts applies, does it matter for the application of common Art. 3 that the persons detained by Russian and South Ossetian forces had not participated in the hostilities and had not taken up arms against Russian and Ossetian forces?

B. Qualification of the territory

1. (*Paras [16]-[17] and [76]*) What is the test used by HRW to determine which parts of Georgian territory were occupied by Russia? Should one consider South Ossetia as part of Georgia's territory? How do you define occupation? Does HRW give a definition of occupation? (HR, Art. 42)
2. (*Paras [17] and [76]*) Do you agree with HRW that the situation was one of occupation because the

Russian Federation did not have the “consent or agreement of Georgia”? Does the mere fact that a State agrees to the presence of foreign troops on its own territory preclude the qualification of the situation as one of occupation? Even though the foreign forces exercise effective control over that part of the territory?

3. (*Paras [1], [3]-[4], [17] and [76]*) Can South Ossetia be considered an occupied territory even though Georgia agreed to the presence of Russian troops in the Sochi agreement and in the August 16 ceasefire?

C. Qualification of the persons

1. Were the Russian peace-keepers in South Ossetia legitimate targets of Georgian attacks? What additional information would you need to answer? [**See** The International Criminal Court, Part A., The Statute, Arts 8(2)(b)(iii) and 8(2)(e)(iii)]
2. (*Paras [7]-[15] and [42]*) How do you qualify the groups of South Ossetian forces fighting the Georgian forces? According to IHL, under what circumstances would they be entitled to combatant status? Are they allowed to resist the Georgian forces? Is any South Ossetian civilian allowed to resist the Georgian forces? What law applies to South Ossetian civilians taking up arms?
3. How do you qualify the North Ossetian voluntary fighters who joined South Ossetian militias? What law applies to them?
4. (*Paras [52]-[56]*) Do you agree with HRW that Convention IV applies to South Ossetian detainees? Are they protected persons? If one applies the nationality requirement of Art. 4 of Convention IV? If one applies the allegiance criterion of the Tadic case [**See** ICTY, *The Prosecutor v. Tadic*]? Is the application of Convention IV consistent with HRW’s assertion (para. [14]) that the conflict between Georgian forces and South Ossetian forces was of a non-international character? According to you, what law should apply here? What rules should apply to the South Ossetian detainees mentioned in the report? Are they entitled to all the rights mentioned in para. [55]? Does it matter for the legality of the treatment of those detainees described in the report whether they were protected by Convention III, Convention IV or Protocol II?
5.
 - a. (*Para. [56]*) Do you agree with HRW that South Ossetian militia fighters are “non-privileged combatants”? What does such a status entail? Is it recognized by IHL? When are members of militias POWs? In what circumstances could the members of the South Ossetian militias be considered POWs? Is this qualification by HRW consistent with its assertion in para. [14] that the conflict between Georgian forces and South Ossetian militias was a non-international armed conflict? According to you, what law applies here? What is the status of the militia fighters detained by Georgian forces? According to which rules should they be treated?
 - b. (*Para. [95]*) How does HRW differentiate between “non-privileged combatants” and “armed civilians”? Do those statuses exist in IHL? Is it possible to draw a line between civilians taking up arms to fight and civilians taking up arms to defend their property? Does it depend on what the latter defend their property against? Should they be treated differently if detained?
6. (*Para. [92]*) According to you, what was the status of the Georgian civilians detained by Ossetian and Russian forces? Does it make a difference that the Russian forces were also involved in their detention? Would the status of the Georgian civilians have changed if they had been detained by Ossetian forces only?

7. (*Paras [99]-[101]*) How do you qualify Georgian military servicemen detained by Ossetian forces? How does HRW justify their qualification as POWs? Do you agree? Were they already POWs before their transfer to Russian forces? If they had been detained only by Ossetian forces, would they have been granted POW status only because they were being detained in a territory occupied by Russia?

D. Conduct of hostilities

1.
 - a. (*Paras [20]-[22]*) Was the village of Khetagurovo a military target? Why? If yes, did that turn every house located in the village into a military target? (P I, Arts 51(5)(a) and 52(2))
 - b. (*Paras [58]-[60]*) Was School No. 7, which was attacked by Russian forces, a military target? Can such a building become a military target? If yes, in what circumstances? Are there indications that the principle of proportionality was not respected during the attack? (P I, Art. 52; CIHL, Rules 8-10)
 - c. (*Paras [39]-[40]*) Were the South Ossetian militiamen driving the cars legitimate targets? If they were only trying to flee or to get their relatives out of the conflict zone? Even if they were wearing uniforms or camouflage? Could the mere fact that they belonged to an armed group fighting against Georgia make them legitimate targets? [**See** Israel, *The Targeted Killings Case*] (GC I-IV, Art. 3; P I, Art. 50; P II, Art. 13(3))
 - d. (*Paras [61]-[64]*) Was Gori Military Hospital a military target? Does it make a difference whether a hospital is taking care of both civilians and wounded combatants or only of combatants? What protection do hospitals enjoy under IHL? Can they become military targets? If yes, under what conditions? (GC I, Arts 19 and 21; GC IV, Arts 18 and 19; P I, Arts 12 and 13; P II, Art. 11; CIHL, Rule 28)
2. (*Paras [21]-[22]*) Were the attacks on Khetagurovo by the Georgian forces indiscriminate? What constitutes an indiscriminate attack? (P I, Art. 51(4))
3.
 - a. (*Paras [28] and [30]*) Do you agree with HRW that the attacks in Tskhinvali may have been disproportionate? How do you measure proportionality? Should the proportionality test be applied to the overall attack against Tskhinvali or to every single building attacked? (P I, Art. 51(5))
 - b. (*Paras [41]-[47]*) Is it necessarily disproportionate to fire at buildings harbouring fighters when the buildings are also sheltering civilians? What are the elements to take into account? Do you think that the attacks by Georgian ground forces against buildings in Tskhinvali were disproportionate? (P I, Art. 51(5))
4.
 - a. (*Paras [18]-[25]*) What were Georgia's obligations regarding the precautions to be taken against the effects of attacks in the present case? (P I, Art. 58; CIHL, Rule 23) Is it always possible to avoid locating military targets in populated areas? Is this a strict obligation under IHL?
 - b. (*Paras [18]-[25]*) What were the South Ossetian forces' obligations regarding precautions in attack? What kind of warning could have been given? (P I, Art. 57; CIHL, Rules 15-21)
5.
 - a. (*Paras [8], [20]-[22] and [28]*) Do you think that Grad rocket launchers are lawful weapons? What rules are they subject to? Is it necessarily prohibited to use them in densely populated areas? (P I, Arts 35, 51(4) and 57(2)(a)(ii); CIHL, Rule 17)
 - b. (*Paras [48]-[51] and [65]-[74]*) Were cluster munitions prohibited during the conflict? Under what circumstances may a State use cluster munitions? Do you agree with HRW that the expected civilian harm caused by an attack also encompasses casualties and harm over time (Para. [67])? Why should the use of cluster munitions lead to a presumption that an attack is disproportionate? Should there not rather be a presumption that all feasible precautions in the choice of means and

methods have not been taken? (P I, Arts 35, 51(5)(b) and 57(2)(a)(ii); CIHL, Rule 17)

6. Which of the attacks mentioned in the report can be qualified as war crimes? Can any of them be qualified as grave breaches? (GC I-IV, Arts 50/51/130/147 respectively; P I, Arts 11(4), 85(3) and (4))

E. Protection of persons

1. (*Paras [75] and [79]*) What does IHL say about pillaging and destruction of private property? To whom do the prohibitions apply? Do they apply to South Ossetian forces in the same way as they apply to common criminals or Russian forces? (HR, Arts 28 and 47; GC IV, Art. 33(2); CIHL, Rule 52)
2. (*Para. [81]*) Does IHL prohibit ethnic cleansing as such? Which rules of IHL could the South Ossetian forces be said to have violated if HRW's allegations of ethnic cleansing were well-founded?
3. (*Paras [82]-[83] and [87]-[89]*) Does Convention IV apply to the acts of pillage committed by South Ossetian militia members? Does it apply if, as HRW asserts, Russian forces did not take part in their commission, but did not try to stop them either? Similarly, does Convention IV apply to the acts of rape and abductions committed by South Ossetian forces and militias? What law should apply to these acts?
4. (*Paras [85]-[86]*) What does IHL say about the return of civilians to their homes after the end of hostilities? When should they be allowed to return? (GC IV, Art. 49)
5. (*Paras [90]-[98]*)
 - a. When may a State party to a conflict detain civilians? In the present case, do you think that the civilians detained by South Ossetian and Russian forces were lawfully detained? What grounds did the parties invoke to justify the detentions? Do they seem valid? (GC IV, Arts 43 and 78)
 - b. What are the rules governing the conditions of detention of civilians? Regarding the place of detention? Regarding working conditions? (GC IV, Arts 43 and 78)
 - c. Are "prisoner exchanges a recognized and legitimate process to facilitate repatriation" or is there a unilateral obligation to repatriate detainees at the end of active hostilities? What does IHL say about the release of civil internees? When should they have been released? (GC IV, Arts 45(2), 132(2) and 134)
 - d. Is the Russian Federation responsible for every incident of ill-treatment of detainees in territories it occupies?
6. (*Paras [98]-[101]*) What are the rules governing the conditions of detention of POWs and their treatment during detention? Which rules of IHL seem to have been violated here? Can the Russian Federation allow South Ossetian forces to detain a Georgian POW who fell into Russian hands? (GC III, Arts 12-16 and 22)

F. State responsibility

1.
 - a. (*Paras [76]-[78] and [84]*) What are the obligations of an Occupying Power regarding public order? What does the obligation "to ensure (...) public order and safety" mean? (HR, Art. 43)
 - b. (*Paras [76]-[78]*) Can the Russian Federation be held accountable for the violations of IHL committed by the South Ossetian forces? Do we have enough information to conclude that the Russian Federation was exercising a level of control over the South Ossetian forces sufficient to engage its responsibility? Can the Russian Federation be held accountable for South Ossetian acts merely on the grounds that it was occupying the territory where the violations occurred and therefore was exercising some control over it?

