

## Paras 1 to 27

[Source: Independent International Fact-Finding Mission on the Conflict in Georgia, Report, Volume I, p. 1-33, available at [http://www.mpil.de/en/pub/publications/archive/independent\\_international\\_fact.cfm](http://www.mpil.de/en/pub/publications/archive/independent_international_fact.cfm), footnotes omitted]

[N.B.: This case refers to the same facts as Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia, but does not cover the same legal issues.]

## INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA

### REPORT

[...]

1. By its decision of 2 December 2008 the Council of the European Union established an Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG). This is the first time in its history that the European Union has decided to intervene actively in a serious armed conflict. It is also the first time that after having reached a ceasefire agreement the European Union set up a Fact-Finding Mission as a political and diplomatic follow-up to the conflict. [...] The present Report is the result of the mandated inquiry.

[...]

### Introduction

1. On the night of 7 to 8 August 2008, after an extended period of ever-mounting tensions and incidents, heavy fighting erupted in and around the town of Tskhinvali in South Ossetia. The fighting, which soon extended to other parts of Georgia, lasted for five days. In many places throughout the country it caused serious destruction, reaching levels of utter devastation in a number of towns and villages. Human losses were substantial. At the end, the Georgian side claimed losses of 170 servicemen, 14 policemen and 228 civilians killed and 1 747 persons wounded. The Russian side claimed losses of 67 servicemen killed and 283 wounded. The South Ossetians spoke of 365 persons killed, which probably included both servicemen and civilians. Altogether about 850 persons lost their lives, not to mention those who were wounded, who went missing, or the far more than 100 000 civilians who fled their homes. Around 35 000 still have not been able to return to their homes. The fighting did not end the political conflict nor

were any of the issues that lay beneath it resolved. Tensions still continue. The political situation after the end of fighting turned out to be no easier and in some respects even more difficult than before.

[...]

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

[...]

1. On the night of 7 to 8 August 2008, a sustained Georgian artillery attack struck the town of Tskhinvali. Other movements of the Georgian armed forces targeting Tskhinvali and the surrounding areas were under way, and soon the fighting involved Russian, South Ossetian and Abkhaz military units and armed elements. It did not take long, however, before the Georgian advance into South Ossetia was stopped. In a counter-movement, Russian armed forces, covered by air strikes and by elements of its Black Sea fleet, penetrated deep into Georgia [...]. The confrontation developed into a combined inter-state and intra-state conflict, opposing Georgian and Russian forces at one level of confrontation as well as South Ossetians together with Abkhaz fighters and the Georgians at another. [...] After five days of fighting, a ceasefire agreement was negotiated on 12 August 2008 between Russian President Dmitry Medvedev, Georgian President Mikheil Saakashvili and French President Nicolas Sarkozy, the latter acting on behalf of the European Union. An implementation agreement followed on 8 September 2008, again largely due to the persistent efforts of the French President. [...]
2. [...] [T]he conflict has deep roots in the history of the region [...].
3. [...] [On] 9 April 1991, [...] Georgian independence emerged out of a severe crisis, [following] the downfall of [...] [the Soviet Union]. [...] There was one important legacy from the Soviet era, though: the subdivision of Georgia into three political-territorial entities, including the Autonomous Republic of Abkhazia and the Autonomous Oblast' (district) of South Ossetia. Of course there also remained overall Georgia with its capital city Tbilisi, within its internationally recognised borders coinciding with the former "Soviet Socialist Republic of Georgia" [...]. During the period of transition to post-Soviet sovereignty the country's first President, Zviad Gamsakhurdia, then did a lot in terms of nationalism to alienate the two smaller political-territorial entities of Abkhazia and South Ossetia from the Georgian independence project [...]. The fighting that finally broke out between Georgian forces and separatist forces, first in South Ossetia in 1991-1992 and then in Abkhazia 1992-1994 ended with Georgia losing control of large parts of both territories. There was support from Russia for the insurrectionists, yet it seems that the Russian political elite and power structures were divided on the issue and partly involved, and Moscow remained on uneasy terms with Tbilisi at the same time.
4. [...] Russian forces undertook peacekeeping responsibilities both in South Ossetia and later in Abkhazia. An agreement concluded in June 1992 in Sochi between the two leaders Eduard Shevardnadze and Boris Yeltsin established the Joint Peacekeeping Forces (JPKF) for South Ossetia, consisting of one battalion of up to 500 servicemen each of the Russian, Georgian and Ossetian sides, to be commanded by a Russian officer. [...]
5. At the turn of the millennium it became apparent that the unresolved political status of South Ossetia and Abkhazia had become more difficult to manage and that there was no clear-cut solution in sight. [...]

## Chapter 7 International Humanitarian Law and Human Rights Law

[...]

### II. Applicable international law

[...]

#### A. International Humanitarian Law

1. [...] Georgia and the Russian Federation are parties to the main IHL treaties, including the four Geneva Conventions of 1949 and the two additional protocols of 1977, together with the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Russian Federation is also a party to the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land. Furthermore, it is well recognised that the rules contained in this latter instrument have become part of customary international humanitarian law.

[...]

1. The question remains whether, when the cease-fire occurred on 12 August 2008, IHL ceased to apply in relation to the August 2008 conflict. While it could be said that it is fairly easy to determine when IHL starts to apply, it seems more difficult to identify the moment when its application ends, mainly owing to the different formulas used in conventional law. Geneva Convention IV, for example, speaks about the “general close of military operations” (Article 6(2)), whereas Additional Protocol II uses the expression “end of the armed conflict” (Article 2(2)). The International Criminal Tribunal for the former Yugoslavia (ICTY), in its decision of 2 October 1995 in the Tadic case, tried to clarify this point by indicating that: “International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved.” The ICTY thus rejected the factual criteria that signify the cessation of hostilities. This implies that a cease-fire – whether temporary or definitive – or even an armistice cannot be enough to suspend or to limit the application of IHL. Relevant conventional instruments stipulate that a number of provisions continue to apply until the emergence of a factual situation completely independent of the concluding of a peace treaty. Thus, to quote only some examples, the protection provided for people interned as a result of the conflict (in particular, prisoners of war and civilian prisoners) applies until their final release and repatriation or their establishment in the country of their choice.

#### a) IHL of international and non-international armed conflict

1. The hostilities between Georgia and the Russian Federation constitute an international armed conflict between two states as defined by Common Article 2 of the 1949 Geneva Conventions [...]. This was asserted by both the Russian Federation and Georgia. Consequently, IHL applicable to this category of

armed conflict is relevant.

2. The hostilities between South Ossetia and Abkhazia on the one hand, and Georgia on the other, are governed by the IHL applicable to non-international armed conflict, since both are recognised internationally as being part of Georgia and, at the time of the 2008 conflicts, this was undisputed. The Russian Federation also reached this conclusion. However Georgia seems to classify it overall as an international armed conflict: “in relation to the period from 7 to 12 August 2008, objective evidence shows that there was resort to armed force by the separatists, the Russian Federation and the Republic of Georgia. Therefore, it is beyond doubt that there was an international armed conflict in existence from 7 to 12 August 2008.” This could be the case if one considers that Russia exercises sufficient control over the Abkhaz/South Ossetian forces, as will be discussed later.
3. Given the organised and responsible command of South Ossetian and Abkhaz armed forces, as well as the territorial control exercised by the authorities, the criteria set out in Additional Protocol II for its application are met. Common Article 3 of the Geneva Conventions and Additional Protocol II both apply in the current situation, in addition to relevant customary law.

**b) IHL of international armed conflict because of Russia’s control over Abkhaz/South Ossetian forces**

1. An armed conflict between a State and an armed group may be qualified as international if this group, under certain conditions, is under the control of another State, i.e., a second State. Georgia and the Russian Federation hold opposing views on whether the latter exercised control over the Abkhaz and Ossetian forces. [...]

[See ICJ, *Nicaragua v. United States*, ICTY, *The Prosecutor v. Tadic*, Part C., Appeals Chamber, Merits, paras 98-145, and Part D., ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro*, paras 396-407]

1. Georgia and the Russian Federation have two completely opposing views on the question of control. While Georgia claims that the Russian Federation acted through the separatist South Ossetian and Abkhaz forces under its direction and control, the Russian Federation has stated that “the conduct of the South Ossetian and Abkhaz authorities is not conducted by organs of the Russian Federation.” [...]
2. The composition of the Abkhaz and South Ossetian forces remains unclear. [...] Various testimonies contain accounts of foreign volunteers such as Chechens operating in the territory of South Ossetia. The presence of 300 volunteers from the Russian Federation was mentioned by the representatives of the Georgian Ministry of Internal Affairs when meeting with the IFFMCG experts in June 2009. De facto authorities from South Ossetia confirmed to the IFFMCG in June that volunteers had fought with South Ossetian military forces. The regular armed forces of the de facto South Ossetian authorities unquestionably constitute “an organised and hierarchically structured group”, while the Abkhaz army is described as being made up of “regular” forces and a “well-trained reservist component” with “a command hierarchy.” On the other hand, the situation may be different for isolated armed groups or individuals who acted on their own during the hostilities. In the former case, “overall control” would need to be established in order to render the armed conflict between Georgia and the Abkhaz and South Ossetian armed forces international.

[...]

1. The statements made by the Russian Federation and the de facto Abkhaz authorities reject any allegation of overall control. The Russian Federation has declared that “prior to the conflict in August one could only speak of cooperation between the Russian peacekeeping contingent and South Ossetian and Abkhaz military units wherever peacekeeping forces may be present within parameters commonly accepted in similar situations in other countries. These relations were governed by the mandate of the peacekeeping force.” While strong economic, cultural and social ties exist between the Russian Federation and the authorities of Abkhazia, those authorities have stated that, in the course of the operation in the Kodori Valley, “the Abkhaz army, while remaining in contact with Russian forces acting from Abkhaz territory, operated independently.” Further aspects of the assistance and the military structure and command linking the Russian Federation and those entities would need to be substantiated in order to establish such control. According to Georgia, “the Abkhaz and South Ossetian military formations did not independently control, direct or implement the military operations during either the armed conflict or the occupation periods. Rather, these military formations acted as agents or de facto organs of the Respondent State and as such constituted a simple continuation of the Russian Federation’s armed forces.”
2. In factual terms, one may have to draw a distinction with regard to the nature of the relationship between Russia and South Ossetia on the one hand, and between Russia and Abkhazia on the other. In the former, ties seem to be stronger. During the meeting between the IFFMCG experts and the representatives of the Ministry of Internal Affairs of Georgia, the representatives stressed the political and economic links between Russia and South Ossetia. They also claimed that Russia exercises control over South Ossetia through various channels ranging from financial help to the presence of Russian officials in key military positions in the South Ossetian forces.
3. At this point it is appropriate to underline that although the classification of an armed conflict as international or non-international is important in terms of the responsibilities of the various parties involved, when it comes to the effective protection by IHL of the persons and objects affected by the conflict it does not make much difference. Indeed, it is generally recognised that the same IHL customary law rules generally apply to all types of armed conflicts.

### **c) IHL of military occupation**

1. Under IHL, the law of military occupation primarily includes the 1907 Hague Regulations concerning the Laws and Customs of War on Land and Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, as well as some provisions of Additional Protocol I. As Geneva Convention IV does not provide a definition of what constitutes an occupation, it is necessary to rely on the Hague Regulations. A territory is considered “occupied” when it is under the control or authority of the forces of the opposing State, without the consent of the government concerned. More specifically, according to Sassòli and Bouvier, “the rules of IHL on occupied territories apply whenever a territory comes, during an armed conflict, under the control of the enemy of the power previously controlling that territory, as well as in every case of belligerent occupation, even when it does not encounter armed resistance and there is therefore no armed conflict.” In the former case, pursuant to Article 42 of these Regulations, a “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” For the second situation, Geneva Convention IV provides that “the Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the

said occupation meets with no armed resistance.”

2. As stressed by the ICJ in the case of the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, “to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an “occupying Power” in the meaning of the term as understood in the jus in bello, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question.” [See ICJ, *Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo*, para. 173] Ascertaining the existence of a state of occupation is a determination based on facts. The critical question is the degree and extent of the control or authority required in order to conclude that a territory is occupied.
3. Two perceptions exist in this regard, which are not mutually exclusive but rather constitute two stages in the application of the law on occupation. These two stages reflect growing control by the occupying power. This means that, for a part of the law of occupation to apply, it is not necessary for the military forces of a given State to administer a territory fully.
4. The Commentary on the Geneva Conventions states the following with respect to Article 2(2) of Geneva Convention IV: “the word ‘occupation’ has a wider meaning than it has in Article 42 of the Regulations annexed to the Fourth Hague Convention of 1907. So far as individuals are concerned, the application of the Fourth Geneva Convention does not depend upon the existence of a state of occupation within the meaning of the Article 42 referred to above. [...] There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable regime of occupation. Even a patrol which penetrates into enemy territory without any intention of staying there must respect the Conventions in its dealings with the civilians it meets.” While this stage does not of course entail a full application of the law of occupation under Geneva Convention IV, the mere fact that some degree of authority is exercised on the civilian population triggers the relevant conventional provisions of the law of occupation on the treatment of persons. In a further stage, the full application of the law on occupation comes into play, when a stronger degree of control is exercised. [...]
5. The determination must be made on a case-by-case basis. [...]
6. First, [...] Georgia asserted that the territories of South Ossetia and Abkhazia, including the upper Kodori Valley, were occupied by Russian forces. On 23 October, the Parliament of Georgia adopted a law declaring Abkhazia and South Ossetia “occupied territories” and the Russian Federation a “military occupier.” This claim was reiterated [...] In describing the “current occupation” Georgia also stated: “the western part of the former ‘buffer zone’ (the village of Perevi in the Sachkhere District) remains under Russian occupation.” In addition to those territories that are still occupied by Russian forces at the time of writing this report, according to Georgia the following territories were occupied in the aftermath of the conflict: “In Eastern Georgia South of the conflict zone Russian forces occupied most parts of the Gori District, including the City of Gori; South-west of the conflict zone Russian forces occupied part of the Kareli District; West of the conflict zone Russian forces occupied part of the Sachkhere District; in Western Georgia they occupied the cities of Zugdidi, Senaki and Poti. Following the Russian withdrawal from the City of Gori on 22 August 2008, Russian forces still occupied the northern part of the Gori District right up to the southern administrative boundary of South Ossetia. This territory constituted part of the ‘buffer zone’ that was created by Russian Forces around the territory of South Ossetia and absorbed territories that used to be under the control of the Georgian central Government. [...]
7. The Russian Federation, on the contrary, holds that it does not at present, nor will it in the future,



exercise effective control over South Ossetia or Abkhazia; and that it was not an occupying power. [...]

It further explained that “the presence of an armed force in the territory of another state is not always construed as occupation” [...]. According to the Russian Federation, “the determining factor in international law necessary to recognise a military presence as an occupation regime is whether the invading state has established effective control over the territory of the country in question and its population.” In its replies to the questionnaire submitted by the IIFMCG, it presented a threefold argument to reject such control. First, “the Russian Armed Forces never replaced the lawful governments of Georgia or South Ossetia.” Second, “no regulatory acts mandatory for the local populations have been adopted by them.” Finally, “the number of Russian troops stationed in South Ossetia and Abkhazia (3,700 and 3,750 servicemen respectively) does not allow Russia in practice to establish effective control over these territories which total 12 500 sq. kilometers in size. To draw a parallel: effective control over a much smaller territory of Northern Cyprus (3 400 sq. kilometers) requires the presence of 30,000 Turkish troops. During the active phase of the military conflict the maximum size of the Russian contingent in South Ossetia and Abkhazia reached 12,000 personnel. However, all of these forces were engaged in a military operation and not in establishing effective control.” It concluded that “based on the foregoing, there are no sufficient grounds for maintaining that the Russian side exercised effective control over the territory of South Ossetia or Georgia during the Georgian-South Ossetian conflict or that an occupation regime was established in the sense contemplated in IHL.”

[...]

1. If [...] Russia’s military intervention cannot be justified under international law, and if neither Abkhazia nor South Ossetia is a recognised independent state, IHL – and in particular the rules concerning the protection of the civilian population (mainly Geneva Convention IV) and occupation – was and may still be applicable. This applies to all the areas where Russian military actions had an impact on protected persons and goods. However, the extent of the control and authority exercised by Russian forces may differ from one geographical area to another. [...]
2. [...] [Moreover, the Russian Federation noted] that while “South Ossetia had and still has its own government and local authorities that exercise effective control in this country, maintain the rule of law and protect human rights, (...) the Russian military contingent called upon to carry out purely military tasks in the territory of South Ossetia, to the best of their abilities tried to maintain law and order and prevent any offences in the areas of their deployment including Georgia proper, where due to the flight of Georgian government authorities an apparent vacuum of police presence ensued.” [...]

## **Paras 28 to 73**

### **III. Main facts and related legal assessment**

[...]

[28] Under IHL, the exact figure of casualties is not relevant in itself and does not entail legal implications. What matters is rather the nature of the victims and the circumstances in which such casualties occurred. [...]

## **A. Conduct of hostilities**

[...]

[29] While the conventional rules of IHL on the conduct of hostilities were applicable mainly to international armed conflicts, the recent decisions of the international criminal tribunals, as well as the consolidation of the customary nature of IHL rules, demonstrate the exponential development of the applicable customary law in non-international armed conflicts.

[...]

### **a) Targets attacked**

[...]

[30] A distinction on the conduct of hostilities derived from IHL, the distinction between persons and objects, will be used to structure the analysis of the targets attacked.

### **(i) Alleged Attacks on Peacekeepers**

[31] Alleged attacks on peacekeepers occurred both prior to the conflict, fuelling the tension between the parties, and during it. [...]

[32] Under IHL, the protection afforded to peacekeepers is closely linked to the general protection of civilians. As stated in the ICRC Customary Law Study [See ICRC, Customary International Humanitarian Law], customary IHL prohibits “directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law.” The use of force for strictly self-defence purposes or for the defence, within their peacekeeping mandate, of civilians or civilian objects would not be qualified as participation in hostilities. In this context they could not be regarded as a lawful target as they are not pursuing any military action. It is important to stress that, in both international and non-international armed conflict, the Rome Statute of the ICC regards it as a war crime intentionally to direct attacks against peacekeepers and related installations “as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.”

[33] During the conflict, according to Russian peacekeepers, posts manned by Russian and/or Ossetian forces were attacked by Georgian forces. The Russian Federation claims that the peacekeepers were deliberately killed. [...] When meeting with the IIFFMCG’s experts in Moscow in July 2009, the representatives of the Investigative Committee of the General Prosecutor’s Office of Russia indicated that 10



Russian peacekeepers had been killed.

[...]

[34] HRW [Human Rights Watch] [...] noted that it was unable to corroborate any of the serious allegations of attacks on or by peacekeepers from Russia and Georgia.

[35] Nor was the IIFFMCG able to corroborate such claims, or the claim that Georgian forces had attacked Russian peacekeepers' bases, with information from sources other than the sides. Even if these claims were to be confirmed, the lack of more precise information would make the establishment of relevant facts and their legal assessment problematic, as the Mission would find itself with two contradictory assertions. When considering direct attacks against peacekeepers, the conclusion depends on whether or not, at the time of the attacks, the peacekeepers and peacekeeping installations had lost their protection. On the other hand, peacekeepers may have been killed or injured as a result of an indiscriminate attack, not specifically directed against them.

[36] The Mission was unable to establish whether, at the time of the alleged attacks on Russian peacekeepers' bases, the peacekeepers had lost their protection owing to their participation in the hostilities. The Mission is consequently unable to reach a definite legal conclusion on these facts.

## **(ii) Objects**

### **1. Administrative buildings**

[37] In March 2009 the IIFFMCG was shown by the de facto South Ossetian authorities several administrative buildings, such as those of the Parliament and the de facto Ministry of Foreign Affairs, which they alleged had been hit by Georgian forces. It witnessed the damage caused by these attacks. [...] Human Rights Watch also referred to administrative buildings hit by the Georgian artillery, such as the Ossetian parliament building.

[38] [...] [T]he Georgian authorities later claimed that their military had targeted mostly administrative buildings in these areas because these buildings were harbouring Ossetian militias. Similarly, in his testimony to the parliamentary commission studying the August war, Zaza Gogava, Chief of Staff of the Georgian Armed Forces, said that "Georgian forces used precision targeting ground weapons only against several administrative buildings, where headquarters of militias were located; these strikes did not cause any destruction of civilian houses." [...]

[39] The Mission was unable to assess each specific attack on administrative and public buildings in Tskhinvali but notes that, although not in themselves lawful military objectives, such buildings may be turned

into a legitimate target if used by combatants.

This would, however, not relieve the attacker of certain obligations under IHL (e.g. precautions, proportionality).

## 2. Schools

[40] Under IHL, schools are by nature civilian objects that are immune from attack. Several cases of damage caused to schools in the course of the hostilities call for specific attention. Referring to the shelling of Tskhinvali by Georgian forces, Human Rights Watch noted that “the shells hit and often caused significant damage to multiple civilian objects, including the university, several schools and nursery schools, [...] some of these buildings were used as defence positions or other posts by South Ossetian forces (including volunteer militias), which rendered them legitimate military targets.” For example, witnesses told Human Rights Watch that militias had taken up positions in School No. 12 in the southern part of Tskhinvali, which was seriously damaged by Georgian fire.

[41] The attack on School No. 7 in Gori on 9 August also exemplifies the need to pay particular attention to the circumstances of an attack. According to Human Rights Watch, relying on one eyewitness: “Russian aircraft made several strikes on and near School No. 7 in Gori city. (...) [A]bout one hundred Georgian military reservists were in the yard of the school when it was attacked. (...) 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. There were civilians also taking shelter in the school.” In this regard, following the overview of specific objects that were attacked or hit, in this section an assessment will later be undertaken to determine whether the principle of proportionality was respected and whether precautions had been taken to minimise the death of civilians and damage to civilian buildings.

[42] The Mission has no information indicating that schools not used for military purposes were deliberately attacked.

## 3. Hospitals

[43] Under IHL hospitals, apart from the protection they benefit from as civilian objects, enjoy special protective status.

[44] Damage caused to hospitals in the course of a conflict does not in itself amount to a direct attack against such an object. While it may be so if the hospitals have lost their protection because they have been “used to

commit, outside their humanitarian duties, acts harmful to the enemy,” damage can also be collateral, caused by an attack on a legitimate military target.

[45] According to Human Rights Watch, one of the civilian objects hit by GRAD rockets in Tskhinvali when the Georgian forces attacked was the South Ossetian Central Republican Hospital (Tskhinvali hospital), the only medical facility in the city that was assisting the wounded, both civilians and combatants, in the first days of the fighting. According to this organisation, the rocket severely damaged treatment rooms on the second and third floors.

[...]

[46] Human Rights Watch also documented the attack at around 2 a.m. on 13 August by a Russian military helicopter, which fired a rocket towards a group of hospital staff members who were on a break in the hospital yard [of Gori military hospital]. The rocket killed Giorgi Abramishvili, an emergency-room physician. Human Rights Watch reported that its researchers saw that the roof of the hospital building was clearly marked with a red cross. This attack contradicts the claim by the Russian Federation that its forces fired “upon clearly identified targets only” during the conflict and that “all kill fire was monitored.”

[47] While the damage caused to hospitals by GRAD rockets or artillery shelling resulted from the use of inaccurate means of warfare, the helicopter fire at the hospital in Gori seems to indicate a deliberate targeting of this protected object. This may amount to a war crime.

## 4. Vehicles

[48] Under IHL, civilian vehicles are immune from attack owing to their civilian character. In the context of the August 2008 conflict, two circumstances may explain the damage caused to civilian vehicles and may have legal implications for whether such damage could amount to a violation of IHL: either a legitimate military target was in the vicinity of the vehicle when it was damaged, or armed militia fighters were in the vehicle when it was attacked. In this latter case, a militia fighter is a legitimate military target if he or she participates directly in hostilities. This is significant as in the course of the conflict many persons reported that South Ossetian militia fighters stole cars and used them for different purposes. [...]

[49] Testimonies collected by Human Rights Watch refer to attacks by Georgian forces on civilians fleeing the conflict zone, mainly on the Dzara road. The Georgian authorities stated in a letter to this organisation that their forces “fired on armor and other military equipment travelling from the Roki Tunnel along the Dzara Road, not at civilian vehicles.” A witness told Human Rights Watch that Ossetian forces had an artillery storage facility and firing position on a hill about one kilometre from the Dzara road. While both Russian forces and Ossetian military equipment constitute legitimate targets, accounts of vehicles being hit by Georgian weaponry raise questions about either the civilian nature of those vehicles or inaccurate targeting

or collateral damage or deliberate attacks. According to the Georgian government, the movement of civilian transport vehicles was stopped during the combat. From information it collected, however, Human Rights Watch has suggested that “many cars were driven by South Ossetian militiamen who were trying to get their families, neighbours and friends out of the conflict zone.”

[...]

[50] There are also cases of aerial attacks on civilian convoys fleeing South Ossetia near Eredvi, more than likely carried out by Russian forces according to Human Rights Watch which interviewed residents who had fled. As stressed by this organisation, there appeared to be no Ossetian or Russian military positions in that area that would have been targeted by the Georgian army.

[...]

[51] The Mission was unable to reach a definite conclusion as to whether the attacks on vehicles by Georgian forces were contrary to IHL. Only deliberate Georgian attacks on civilian vehicles would amount to a war crime.

Similarly, circumstances surrounding the attacks on civilian convoys fleeing the area of conflict, possibly by Russian planes, are difficult to ascertain. If confirmed, such attacks would amount to a war crime.

[...]

## **6. Cultural objects, monuments, museums and churches**

[52] The basic principle is to be found in Article 4 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict [See Document No. 10, Conventions on the Protection of Cultural Property], applicable in both international and non-international armed conflict. It states that, as long as cultural property is civilian, under IHL it may not be the object of attack. [...]

[53] Reports on the conflict in Georgia contain very few allegations of damage caused to cultural monuments, museums or churches. While not systematically put forward, such claims as have been made come from both Georgia and the Russian Federation. According to the latter, “a random examination of historic and cultural monuments conducted on 15-18 August 2008 showed that a number of unique objects had been lost as a result of large-scale heavy-artillery shelling of South Ossetian communities by the Georgian forces. Furthermore, instances of vandalism and the deliberate destruction of cultural monuments and ethnic Ossetian burial sites were attributed to the Georgian military as well.” [...]

[54] The most significant damage confirmed concerns the Bishop's Palace in Nikozi (10<sup>th</sup>/11<sup>th</sup> centuries). [...] It is described by the Georgian authorities as "one of the most important examples from the late medieval period, [and it] was heavily damaged following aerial bombardment on 9<sup>th</sup> August and a subsequent fire." This is confirmed by the Council of Europe Assessment Mission on the Situation of the Cultural Heritage in the Conflict Zone in Georgia. [...]

[55] Generally, more information is needed in order to assess both the extent of the damage and the facts relating to the circumstances of the military operations. This is critical as the special protection given to cultural property ceases only in cases of imperative military necessity.

## **b) Indiscriminate attacks including disproportionate attacks**

[56] Some of the most serious allegations by all sides in the August 2008 conflict relate to indiscriminate attacks and the deliberate targeting of civilians. [...] Allegations in this regard focus inter alia on the use of certain types of weapons having indiscriminate effects. [...]

[57] The IFFMCG deems it necessary first to address the issue of the types of weapons used and the ways in which they were used before proceeding with a general assessment of the question of indiscriminate attacks.

### **(i) The types of weapons used and the ways in which they were used**

[58] [...] None of the weapons used in the context of this conflict is covered by a specific ban, whether be it conventional or customary. Nevertheless, while none of the weapons used during the August 2008 conflict could be regarded as unlawful per se under the general principles of IHL, the way in which these weapons were used raises serious concern in terms of legality. This is significant considering that the weapons in question were used mostly in populated areas. The two types of controversial weapon are the GRAD rockets and cluster bombs.

[59] As rightly stated by Georgia, "at the time of the international armed conflict between Russia and Georgia in August 2008, Georgia was not party to any of the international legal instruments expressly prohibiting the use of GRAD Multiple Rocket Launching systems or cluster munitions in international armed conflict; neither was there any rule of customary international law, applicable to Georgia, prohibiting the above." This also holds true for Russia.

[60] Where GRAD rockets are concerned, Georgia, as reported by HRW, stated that [...] "The Armed Forces

of Georgia used GRAD rockets only against clear military objectives and not in populated areas.” [...]

[61] [This statement], however, contradict the information gathered by the IIFFMCG. According to many reports and accounts from witnesses present in Tskhinvali on the night of 7 August 2008, Georgian artillery started a massive area bombardment of the town. Shortly before midnight the centre of Tskhinvali came under heavy fire and shelling. OSCE observers assessed that this bombardment originated from MLRS GRAD systems and artillery pieces [...]. Narratives of the first hours following the offensive indicate intense shelling with incoming rounds exploded at intervals of 15 to 20 seconds. Within 50 minutes (8 August, 0.35 a.m.) the OSCE observers counted more than 100 explosions of heavy rounds in the town, approximately half of them in the immediate vicinity of the OSCE field office which was located in a residential area. The OSCE compound was hit several times, and damaged.

[62] Investigations and interviews carried out by HRW and Amnesty International seem to confirm these facts. Human Rights Watch concluded that Georgian forces fired GRAD rockets using, among other weapons, BM-21 “GRAD,” a multiple rocket launcher system capable of firing 40 rockets in 20 seconds, self-propelled artillery, mortars, and Howitzer cannons. [...] Amnesty International representatives observed extensive damage to civilian property within a radius of 100-150 m from these points, particularly in the south and south-west of the town, highlighting the inappropriateness of the use of GRAD missiles for targeting these locations.

[63] The Fact-Finding Mission concludes that during the offensive on Tskhinvali the shelling in general, and the use of GRAD MLRS as an area weapon in particular, amount to indiscriminate attacks by Georgian forces, owing to the characteristics of the weaponry and its use in a populated area. Furthermore, the Georgian forces failed to comply with the obligation to take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects.

[64] The other highly debated weapons used in the course of the conflict are the cluster munitions. While the use of cluster bombs in order to stop the advance of the Russian forces was acknowledged by the Georgian authorities, Moscow did not officially authorise such use by its own forces.

[65] According to Amnesty International, the Georgian authorities stressed that cluster munitions were deployed only against Russian armaments and military equipment in the vicinity of the Roki tunnel in the early hours of 8 August and only by Georgian ground forces. The Georgian authorities informed Amnesty International that such cluster munitions were also used on 8 August to attack Russian and Ossetian forces on the Dzara bypass road. Amnesty International noted that “the Georgian authorities maintain that there were no civilians on the Dzara road at the time of the Georgian cluster bombing as the movement of all kinds of civilian transport vehicles was stopped during combat operations in the area, and this was confirmed by Georgian forward observers.” [...] However, it noted that “it is clear that several thousand civilians were fleeing their homes both towards central Georgia and to North Ossetia during the course of 8 August and that



the Dzara road was an obvious avenue of flight for South Ossetians heading north.”

[66] Georgia explained the military necessity for using cluster bombs in the following terms:

“Cluster munitions [...] have been used exclusively against heavily armored vehicles and equipment moving into the territory of Georgia. The use of the aforementioned was based on a thorough analysis of the military necessity and the military advantage it could give to the Georgian army in the given situation. The pressing military necessity was to halt the advance of Russian military personnel and equipment into Georgian territory. [...]”

[67] As for the presence of clusters that hit nine villages in the Gori District, HRW noted that “several factors suggest that Georgian forces did not target these villages, but rather that the submunitions landed on these villages owing to a massive failure of the weapons system.” HRW documented a number of civilian casualties as a consequence of these incidents, either when cluster munitions landed, or from unexploded duds.

[...]

[68] Concerning the alleged use of cluster bombs by Russia, this state reiterated its position in its replies to the IIFFMCG questionnaire: “Cluster munitions, though available to the strike units of the Russian Federation Air Force and designed to inflict casualties on the enemy and destroy military equipment in open spaces, have never been used.” This contradicts evidence, collected by Human Rights Watch, which asserted that cluster munitions were used, inter alia, in the village of Variani, killing three people; in Ruisi; and in the main square of Gori city, killing six people.

[69] The death of a Dutch journalist in the course of the 12 August cluster munitions strike on Gori’s main square strengthens this claim that Russia did use cluster munitions. This is significant as not only HRW but also the commission of inquiry set up by the Dutch Ministry of Foreign Affairs concluded that this journalist had been killed as a result of the use of such weapons by the Russian side.

[...]

[70] The use by Georgia of certain weapons including GRAD MRLS during the offensive against Tskhinvali and other villages in South Ossetia did not comply with the prohibition of indiscriminate attacks and the obligation to take precautions with regard to the choice of means and methods of warfare.

The use of artillery and cluster munitions by Russian forces in populated areas also led to indiscriminate attacks and the violation of rules on precautions.

## **(ii) Indiscriminate attacks by Russia and Georgia**

[...]

[71] HRW [...] documented cases in which villagers from Tamarasheni described how Russian tanks had fired on villagers' homes. Witnesses told Human Rights Watch that there were no Georgian military personnel in their houses at the time when the tank fire took place. HRW also referred to "one witness [who] described an incident in which tanks methodically moved through the streets, firing on numerous houses in a row, suggesting that the fire was not directed at specific military targets and that such attacks were indiscriminate."

[72] Georgian attacks, both during the shelling of Tskhinvali and during the ground offensive, raise serious concerns. In the former, according to HRW, "at the very least the Georgian military effectively treated a number of clearly separate and distinct military objectives as a single military objective in an area that contained a concentration of civilians and civilian objects," amounting under IHL to indiscriminate attacks. [...]

[73] In several cases, Georgia and Russia conducted attacks that were indiscriminate and consequently violated IHL.

## Paras 71 to 109

### c) Precautionary measures in attacks

[...]

1. [...] Most important are the issue of the intelligence used to select targets and the question of the presence of the civilian population in Tskhinvali at the time of the offensive. Amnesty International [...] noted that "at the time of the initial shelling of Tskhinvali, Georgian forces were positioned several kilometres from Tskhinvali, at a distance from which it would have been difficult to establish the precise location of the Ossetian positions firing on them. Nor, as Ossetian forces were lightly armed and mobile, could there have been any guarantee that positions from which munitions had been fired in preceding days were still occupied on the night of 7 August." It also expressed concern about whether precautions were actually taken in relation to the choice of means and methods and issuing a warning to the civilians.

[...]

1. [...] There is [...] no doubt that many people were still in Tskhinvali on the night of 7 August. Consequently, the question is about the type of precautionary measures that were taken by the Georgian military command to minimise the harm to civilians, both during the shelling and afterwards, in the course of the ground operation.
2. During the meeting between representatives of the Ministry of Defence of Georgia and the IIFFMCG in June 2009, the Mission's experts were told that the Georgian forces had used smoke grenades to warn the population before artillery shelling. This seems to fall short of giving effective advance warning under

IHL. In its replies to the questionnaire, Georgia indicated that “moreover, at 15:00 on 8 August, the Georgian authorities declared a three-hour unilateral cease-fire to allow the remaining civilians to leave the conflict area in the southern direction from Tskhinvali towards Ergneti.” This appears to be not enough in the light of the IHL obligation to take all feasible measures. When the offensive on Tskhinvali was carried out, at night, no general advance warning was given to the remaining population.

3. It should be mentioned that the presence of South Ossetian fighters, mostly in buildings in whose basements civilians were sheltering, and the fact that they even shot at Georgian soldiers from these very basements, complicates the conduct of warfare on the part of the attacker. This does not, however, release the Georgian forces from their obligations. In this regard, one of the most worrying examples of the lack of precautionary measures taken by the Georgian forces is their use of tanks and infantry fighting vehicles to fire at those buildings while knowing that there were civilians inside. [...]
4. ***During the offensive on Tskhinvali and other villages in South Ossetia, Georgian forces failed to take the precautions required under IHL.***

[...]

#### **d) Passive precautions and human shields**

1. Under IHL, the defender too is bound by obligations to minimise civilian casualties and damage to civilian objects such as houses. Article 58 of Additional Protocol I of 1977 sets out the obligations with regard to precautions against the effects of attacks [...]. This is a rule of customary law applicable in both types of conflict. IHL also prohibits the use of human shields.
2. Of very serious concern for the IFFMCG are the numerous testimonies, some by South Ossetian combatants themselves, that they used houses and residential basements in Tskhinvali from which to fire at Georgian ground troops, putting at risk the lives of civilians who were sheltering in the basements of the same buildings. [...]
3. This is a clear violation of the obligation to avoid locating military objectives within or near densely populated areas. It probably did not constitute a violation of the prohibition against using human shields, however, as this rule requires the specific intent to prevent attacks by deliberately collocating military objectives and civilians.
4. ***South Ossetian forces reportedly violated IHL by firing from houses and residential buildings and using them as defensive positions, putting the civilian population at risk.***

#### **B. Treatment of persons and property in areas under changing control**

[...]

#### **d) Detention of combatants**

1. Under IHL, rules regarding detention and related status are different depending on the type of conflict, i.e. whether it is international or non-international in character. In the former case, combatants benefit from the status of prisoner of war under certain conditions.
2. With respect to persons detained by Georgian forces, according to the Georgian authorities 32 persons

were detained because of their participation in hostilities. According to Human Rights Watch the authorities did not display evidence that they were all combatants. A few Ossetian civilians were also detained. [...] According to information given by an NGO to the HRAM [the Human Rights Assessment Mission] of the OSCE, “14 Ossetians, including two teenagers, were detained by Georgian police following the Russian withdrawal from the ‘buffer zone’ and were held incommunicado.”

3. Georgia provided additional information on persons it detained: “Russian military personnel held as POWs: five; – Members of separatist illegal armed formations: thirty-two; – Apparent mercenary: one (Russian citizen).” Georgia indicated that:
4. *“All Georgian-held prisoners were exchanged for the 159 Georgian civilians and 39 POWs held under Russian authority. The ICRC was afforded unimpeded access to Georgian detention facilities and visited three of the five POWs – the other two were taken prisoner late in the war. The ICRC visited facilities maintained by the Ministries of Defence and Justice on a number of occasions, inspecting the conditions in which not only the POWs were detained, but also those of the detained members of separatist illegal armed formations.*

*“Those detained in the context of the conflict were placed separately from other prisoners.”*

1. According to the Russian Federation, “during the operation Russian and South Ossetian military units detained 85 Georgian nationals” and “Taking into consideration the fact that some Georgian servicemen deserted from their units, disposed of their weapons and military uniform, destroyed their identity papers, changed into civilian clothing, etc., it proved impossible to ascertain the exact number of military personnel among those detained.”
2. The Russian Ministry of Foreign Affairs added the following in its replies to the questionnaire sent by the IIFMCG:

*“Throughout the entire period during which Russia’s armed forces took part in the military operation in South Ossetia and Abkhazia between 8 and 12 August 2008, the Russian military forces detained Georgian military personnel only (as of 12.08.2008 no other Georgian military were detained). Since Russia took part in an armed conflict that was international in nature, these detainees were treated as combatants in accordance with IHL. Therefore, once detained they received the status of prisoners of war. To the best of our knowledge after the conflict ended and the prisoners of war were cleared of any potential military crimes, on 19 August all of them were handed over to the Georgian side in the presence of ICRC delegates with the Council of Europe Commissioner for Human Rights T. Hammarberg acting as a mediator. The Russian side treated these prisoners of war in accordance with the requirements set out in IHL. They were never subjected to torture.”*

[...]

1. In the case of the detention of Georgian military servicemen by South Ossetian forces, however, direct eyewitnesses reported that Russian forces were present in the place of detention. Some of those Georgian combatants were captured by South Ossetian militias. Some were transferred first to Ossetian police and then handed over to Russian forces. [...]

#### e) Detention of civilians, arbitrary arrests, abduction and taking of hostages

1. There are also many cases where civilians of Georgian ethnicity have been deprived of their liberty. Such cases include the arrest and detention of civilians in inappropriate conditions by Ossetian forces, some being kidnapped and released against payment of a ransom. Many civilians also described their arrest as being taken hostage to be used in exchanges later.
2. Two elderly women from Achabeti village were brought by South Ossetian forces to Tskhinvali on 11 August and were detained together with more than 40 people, most of them also elderly, in the basement of what they identified as the FSB building in Tskhinvali. They were all kept together for three days in the same small room, where they had to take turns to lie down on a few wooden beds, and with very little bread or water. They were then kept in the yard for five days and had to clean the streets. Many civilians detained had to bury corpses.

[...]

1. During the meeting the IFFMCG experts had on 5 June 2009 with representatives of the de facto Ministry of Defence and Ministry of Interior of South Ossetia, these authorities actually acknowledged that civilians had been present in the Ministry of Interior building, but they indicated that they had been taken there in the context of safety measures to protect them from the effects of the hostilities. Not only is this in complete contradiction with numerous testimonies from persons detained there but, even if it were so, it would be impossible to explain why, if such measures were taken for protection purposes, those persons were not released until 27 of August, two weeks after the hostilities had ended, and why they had to clean the streets and bury dead bodies.

[...]

1. ***It seems that there have been numerous cases of illegal detention of civilians, arbitrary arrests, abduction and taking of hostages, mostly committed by South Ossetian forces and other South Ossetian armed groups.***

#### f) Pillage and looting

1. IHL prohibits pillage both in time of international armed conflict and in time of armed conflict of a non-international character. [...]
2. The conflict in Georgia and its aftermath have been characterised by a campaign of large-scale pillage and looting against ethnic Georgian villages in South Ossetia and in the so-called buffer zones. While this was mainly committed by Ossetian military and militias, including Ossetian civilians, there are many eyewitness reports of looting by Russian forces. Most importantly, numerous testimonies refer to Russian soldiers being present while armed Ossetians were looting. Some pillage started immediately after the withdrawal of the Georgian forces.
3. [...] By way of example, the HRAM told of a woman in Kekhvi who saw her house being looted by a group of "Ossetians" wearing military uniforms with white arm bands. The men also stole her car and loaded it with furniture from a neighbour's house before driving away. As she fled the village, she saw "Ossetian" soldiers who were being protected by Russian forces and were pillaging shops and other

houses.

4. It is critical to stress that in the aftermath of the conflict the looting and pillage intensified both in South Ossetia and in the buffer zone [...].
5. Moreover, Ossetian villagers also participated in looting in September, demonstrating a lack of protection and policing by the Ossetian and Russian forces. Many testimonies refer to Russian forces being present whilst Ossetian militias were looting.
6. Far from being a few isolated cases, in certain villages the pillage seems to have been organised, with looters first using trucks to take the furniture and then coming to steal the windows and doors of houses.

[...]

1. ***During and, in particular, after the conflict a systematic and widespread campaign of looting took place in South Ossetia and in the buffer zone against mostly ethnic Georgian houses and properties. Ossetian forces, unidentified armed Ossetians, and even Ossetian civilians participated in this campaign, with reports of Russian forces also being involved.***

***The Russian forces failed to prevent these acts and, most importantly, did not stop the looting and pillage after the ceasefire, even in cases where they witnessed it directly.***

[...]

#### **g) Destruction of property**

1. While IHL provides that parties to an international armed conflict may seize military equipment belonging to an adversary as war booty, in both international and non-international armed conflict it prohibits the destruction or seizure of the property of an adversary, unless required by imperative military necessity. Article 33 of Geneva Convention IV states that “Reprisals against protected persons and their property are prohibited.” Under Article 147 of this convention, “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” is a grave breach. The ICC Rome Statute also qualifies these acts as war crimes in non-international armed conflict. This prohibition should also be read in conjunction with the prohibition under IHL against collective punishment.

[...]

1. In this regard it is [...] paramount to stress that a number of testimonies seem to suggest a pattern of deliberate destruction and torching in the ethnic Georgian villages in South Ossetia that was different in scale and motives from what happened in the buffer zone.

[...]

1. After the cease-fire this campaign did not stop, but actually intensified. Regarding the extent of the damage caused, it is clear from both eyewitness reports and satellite images that many houses were burned in the last two weeks of August and in September.



2. [...] Furthermore, although to date unverifiable, one person interviewed by the Mission's expert claimed that some burned houses were later destroyed to conceal the fact that they had been torched. This may be related to confirmed reports of burned houses having been "bulldozed" in September.
3. The IIFFMCG also wishes to note that this campaign of burning houses in South Ossetia was accompanied by violent practices such as preventing people from extinguishing fires under threat of being killed or forcing people to watch their own house burning.
4. The IIFFMCG concludes that [...] after the bombing, South Ossetians in uniform as well as Ossetian civilians who followed the Russian forces' advance undertook a systematic campaign of arson against homes and other civilian buildings in villages populated predominantly by ethnic Georgians. Interviews by the IIFFMCG expert confirmed that with few exceptions Russian forces did not participate directly in the destruction of villages, aside from a brief period in mid-August, but nor did they intervene to stop it.

[...]

1. Without questioning the reality of the destruction by torching of houses in the buffer zone, the IIFFMCG wishes to observe that, at least for the villages its expert visited in June 2009 and in the light of the interviews it conducted, the patterns of destruction through arson appear to be slightly different than in South Ossetia. First, the scale of the destruction is less vast. [...] The motive for torching deserves particular attention. [...] Information gathered by the IIFFMCG expert appears to suggest that lists of houses to be burned down were pre-established. Some inhabitants felt that the destruction was prompted by the fact that the owner had a relative in the police who had allegedly been involved in acts committed against ethnic Ossetians. An elderly woman living with her family on the outskirts of Karaleti explained that the house in front of hers had been burned down by a group of Ossetians because the owner had bought cattle that had previously been stolen from ethnic Ossetians. [...]
2. Another explanation for this more selective violence could be that many mixed families with Ossetian relatives live in the buffer zone. [...]
3. ***South Ossetians in uniform, and Ossetian civilians who followed the Russian forces' advance, undertook a systematic campaign of arson against homes and other civilian buildings in villages populated predominantly by ethnic Georgians, including in the so-called buffer zones. With few exceptions, Russian forces did not participate directly in the destruction of villages, aside from a brief period in mid-August, but neither did they intervene to stop it.***

## Paras 110 to 148

### h) Maintenance of law and order

1. Under the IHL on military occupation the occupying power, once it has authority over a territory, has an obligation to take all the measures in its power to restore, and ensure, as far as possible, public order and safety. Ensuring safety includes protecting individuals from reprisals and revenge. There is also an obligation to respect private property.

[...]

1. While denying the status of occupying power, the Russian Federation acknowledged that it had tried to

exercise police powers on the ground. [...]

2. [...] Russia claims that although it was not an occupying power, “the Russian military contingent called upon to carry out purely military tasks in the territory of South Ossetia, to the best of their abilities tried to maintain law and order and prevent any offences in the areas of their deployment including Georgia proper, where owing to the flight of Georgian government authorities an apparent vacuum of police presence ensued.” First, it recognises the absence of policing by Georgian authorities. Second and most importantly it clearly states that effectively the Russian forces, to a certain extent, were trying to maintain order and safety. Russia elaborated further on the actions it carried out in this regard:

“From day one of the operation, the Russian military command undertook exhaustive measures to prevent pillaging, looting and acts of lawlessness with respect to the local Georgian population. All personnel serving in units that took part in the operation was familiarised with the Directive issued by the General Staff of the Russian Armed Forces and the order given by the Army Commander-in-Chief ‘to maintain public safety and ensure the security and protection of citizens residing in the territory of the South Ossetian Republic’.

“Russian troops, jointly with South Ossetian law-enforcement and military units, provided round-the-clock protection of the homes and land allotments that remained undamaged in Georgian villages, at the same time ensuring the safety and security of South Ossetian residents regardless of their ethnic background.”

[...]

1. In general, these elements demonstrate that to a certain degree, Russian forces were in a position to ensure public order and safety in the territories they were stationed in, and claim to have undertaken measures in this regard. This contrasts strikingly with what happened on the ground, where there was a serious lack of action by the Russian troops to prevent violations and protect ethnic Georgians.
2. One of the main measures taken by Russian troops was to set up roadblocks and checkpoints. Regarding South Ossetia, Human Rights Watch noted that “roadblocks set up by Russian forces on August 13 effectively stopped the looting and torching campaign by Ossetian forces, but the roadblocks were inexplicably removed after just a week.”
3. As reported by HRW, two residents of Tkviavi, a village 12 kilometres south of Tskhinvali that was particularly hard hit by looters from South Ossetia, said that the looting had decreased when the Russian forces maintained a checkpoint in the village, although the marauders kept coming during the night. Furthermore, several Tkviavi villagers told Human Rights Watch that they believed that more frequent patrolling by the Russian forces or Georgian police would have improved security in the area. A witness told Human Rights Watch that looters “seemed to be afraid to encounter the Russians, and were hiding from them,” suggesting, according to HRW, that had Russian forces taken more preventive measures to stop violence against civilians these measures would have been effective.
4. In this regard, other measures by the Russian troops consisted of patrolling and informing the inhabitants and giving the villagers phone numbers so they could contact the Russian military authorities if they witnessed any kind of violation. [...]
5. At this stage it is critical to note that the measures such as checkpoints introduced by the Russian forces were meant to prevent violations by South Ossetian militias, and consequently ensure respect of IHL. Oddly, one result of the checkpoints was actually to prevent the Georgian police from maintaining

law and order in those areas, and in some cases to stop villagers attempting to return home from Gori to villages in the “buffer zone,” while Russia continued to invoke the lawlessness.

[...]

1. Nevertheless, from all the testimonies collected, it appears that the Russian authorities did not take the necessary measures to prevent or stop the widespread campaign of looting, burning and other serious violations committed after the ceasefire.

[...]

1. The Russian authorities and the South Ossetian authorities failed overwhelmingly to take measures to maintain law and order and ensure the protection of the civilian population as required under IHL and HRL.

[...]

#### **D. Forced displacement**

[...]

#### **b) The prohibition of arbitrary or forcible displacement and the reasons for displacement in the context of the 2008 armed conflict and its aftermath**

[...]

#### **(ii) Patterns of and reasons for the displacements**

[...]

1. The Russian Federation insisted that “one of the most dramatic consequences of the Georgian military operation against South Ossetia was the massive exodus of local population to the territory of the Russian Federation in search of refuge.” Georgia claims on the contrary that more than 130,000 civilians have fled as a result of the campaign of expulsion of ethnic Georgians and raids against Georgian villages by Russian forces in conjunction with irregular proxy armed groups. [...]
2. According to the Russian Federation, “[...] This process was not caused by any premeditated actions directed against ethnic Georgians per se.” This seems to contradict various testimonies according to which, days prior to the outbreak of the conflict, ethnic Georgians left because of the shelling against ethnic Georgian villages in South Ossetia [...].
3. While it is not always possible to identify the exact reason for displacement in the context of armed conflict, it appears critical here to distinguish the general motive of fleeing the conflict zone to avoid the dangers of war from more specific actions deliberately carried out to force a displacement. In this regard, looting and the burning of houses and property were the reasons for the displacement of ethnic

Georgians living in villages around Tskhinvali. This is particularly significant for people who had decided to stay in those villages despite the hostilities, but who were forced to leave. [...]

4. The causes for displacement are more striking when we consider the period after 12 August when, as the EU-brokered peace deal was being discussed, hostilities virtually ceased. Of particular concern is what happened in the so called “buffer zone.” As outlined by the United Nations Inter-agency Humanitarian Assessment Mission to South Ossetia, “according to reports received from UN and NGO colleagues with access to the buffer zone outside the administrative boundaries of South Ossetia, a pattern of intimidation leading to displacement, and of destruction of properties, continues in certain targeted villages in that zone.” [...]
5. The situation in the Akhagori district shows that displacement was not caused merely by general direct hostilities. Indeed there were no hostilities in this district – an area in the east of South Ossetia, populated mostly by ethnic Georgians and under Georgian administration before the war. [...] As noted by Human Rights Watch, “residents of Akhagori district face threats and harassment by militias and anxiety about a possible closure of the district’s administrative border with the rest of Georgia. Both factors have caused great numbers of people to leave their homes for undisputed Georgian territory.” [...]
6. There were several reasons for the displacement of approximately 135,000 persons in the context of the 2008 August conflict and its aftermath. While the need to avoid the danger of hostilities and the general climate of insecurity account for most of the displacements, numerous documented cases of violations of IHL and HRL committed in order to force the displacement of ethnic Georgians in South Ossetia lead us to conclude that the prohibition against arbitrary or forced displacement has been violated.

### **c) Allegations of ethnic cleansing against Georgians**

1. While Georgia did not make allegations of genocide, it claimed that the crime of ethnic cleansing had been committed by South Ossetian and Russian forces. It submitted that “ethnic Georgians were subjected to ethnically motivated crimes committed either directly by Russian armed forces or through their tacit consent by South Ossetian militias (on the territories falling under Russian control).”

[...]

1. The assessment of this claim is complicated by the fact that ethnic cleansing is not a term defined in international treaty law. Taking stock of the various attempts to define “ethnic cleansing”, Professor William Schabas noted: “while there is no generally recognized text defining ethnic cleansing, [such attempts] concur that it is aimed at displacing a population in order to change the ethnic composition of a given territory, and generally to render the territory ethnically homogeneous or ‘pure’...” [...]
2. [...] [A] number of testimonies report destruction and torching done explicitly to force people to leave and prevent them from returning. This is significant when one considers that while most of the population of those villages left at the outbreak of the hostilities, this violence was directed against the few inhabitants who had stayed on. [...]
3. Given the scale and the type of acts of violence such as forced displacement, pillage and the destruction of homes and property committed in South Ossetia, the question of whether they could amount to a crime against humanity arises. [...]
4. Several elements suggest the conclusion that ethnic cleansing was carried out against ethnic Georgians

in South Ossetia both during and after the August 2008 conflict.

[...]

**e) The right to return, and obstacles**

**(ii) Impediments to the full exercise of the right to return**

[...]

1. The most difficult issue appears to be the return of persons displaced from South Ossetia. [...]
2. According to Georgia, “many of the ethnic Georgians who fled their villages in the Tskhinvali region/South Ossetia during the conflict and its immediate aftermath have not been able to return.” It referred inter alia to declarations made by the de facto South Ossetian authorities making people’s return conditional on their acceptance of South Ossetian passports and renunciation of Georgian passports [...].
3. According to the HRAM, “some displaced persons appear to have been pressured by the Georgian authorities to return to their former places of residence in the areas adjacent to South Ossetia before conditions were in place to guarantee their security or an adequate standard of living, in contravention of OSCE commitments and other international standards.”

[...]

1. The authorities in Abkhazia and South Ossetia, together with Russia, should take all appropriate measures to ensure that IDPs are able to return to their homes. No conditions for exercising this right, other than those laid down by international standards, shall be imposed on IDPs. Georgia shall respect the principle of return as a free, individual decision by displaced persons.

**f) Protection of property rights**

1. Under IHL the property rights of displaced persons must be respected. This rule is considered to be a norm of customary law. [...]
2. The protection of property rights constitutes a critical issue: first, it entails ensuring that the property of displaced persons remains untouched until they can effectively return to their homes; secondly, it concerns property that has already been destroyed. [...]
3. According to the Russian Federation, the “property rights of displaced persons in the territory of South Ossetia are protected by the South Ossetian law enforcement authorities. Russian organisations cooperating with South Ossetia have been instructed not to engage in any transactions involving real estate of dubious legal standing.” [...]
4. On the contrary, many reports indicate the absence of proper measures to protect houses. [...]
5. In South Ossetia there has been a serious failure on the part of the authorities and the Russian forces to protect the property rights of IDPs during – and, especially, after – the August 2008 conflict. Furthermore, South Ossetian forces did participate in the looting, destruction and burning of houses during and after the conflict. Comprehensive reparation programmes should be designed and

implemented. They should be seen as a complement to the exercise of the right to return of IDPs, and not a substitute for this right.

[...]

## **F. Investigation into and prosecution of violations of IHL and human rights law**

1. Under IHL, States have an obligation to investigate war crimes allegedly committed by their nationals and members of their armed forces, as well as other persons falling under their jurisdiction. The obligation to investigate and prosecute applies in both international and non-international armed conflict.

[...]

1. These obligations to investigate and prosecute call for accountability on the part of all the sides that committed violations of IHL and HRL, whether they be Russians, Georgians, South Ossetians or Abkhaz.

[...]

1. In the light of the grave violations of IHL and HRL committed during the conflict and in the weeks after the cease-fire, Russia and Georgia should undertake or continue prompt, thorough, independent and impartial investigations into these violations, and should prosecute their perpetrators. This is also an obligation incumbent on the authorities in South Ossetia. The fight against impunity is one of the prerequisites for a true and lasting solution to the conflict.

## **G. Reparation**

[...]

1. There is a general obligation under IHL for a state responsible for violations of international humanitarian law to make full reparation for the loss or injury caused.
2. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law set out in more detail the rights of victims to restitution, compensation and rehabilitation. [SeeUN, Guidelines on the Right to a Remedy and Reparation for Violations of International International Humanitarian Law and Human Rights Law]
3. It is worth noting that the Russian Federation stated that “residents of South Ossetia who suffered as a result of the hostilities received compensation paid out of the Federal budget. Several types of such compensation were envisaged: 1) all civilian victims residing in South Ossetia received a one-time payment in the amount of 1 000 roubles; 2) separate payments were earmarked for retirees; 3) finally, residents who had lost their property during the hostilities were paid up to 50 thousand roubles.”
4. This raises serious concerns as it would mean that no such reparations were paid to persons who suffered as a result of the hostilities on the territory of Georgia proper or in Abkhazia. Furthermore, it is crucial that such compensation should also be allocated to ethnic Georgians for the reconstruction of



their homes in South Ossetia.

5. The Russian and Georgian governments should provide compensation for civilian damage and destruction caused by violations of international humanitarian law for which they are respectively responsible. Compensation is also vital in the light of the extensive destruction of property by South Ossetian forces and other armed individuals.
6. Accountability and reparation for violations of IHL and HRL are vital for a just and lasting peace. In the short term, this is also crucial in order to enable individuals who lost their property to rebuild their lives.

[...]

## Discussion

### A. Qualification of the conflict and applicable law

(*Paras [2]-[18]*)

1.
  - a. How would you qualify the conflict? How does the IFFMCG 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? What law does the IFFMCG apply? (GC I-IV, Art. 2; P I, Art. 1; P II, Art. 1)
  - b. If you consider the conflicts separately, how do you qualify the fighting between Georgian forces and Russian forces? Between Georgian forces, on the one hand, and South Ossetian and Abkhaz forces, on the other? Between Georgian forces and foreign individual volunteers or volunteer militias (*para. [15]*)? Does it matter whether the fighting occurred on disputed or on undisputed Georgian territory? (GC I-IV, Art. 2; P I, Art. 1; P II, Art. 2)
2.
  - a. (*Para. [9]*) Did IHL still apply after 12 August? Did it stop applying because of the cease-fire? When does IHL stop applying? Is IHL meant to stop applying as soon as hostilities end? In the present case, did IHL still apply after 12 August because the Russian Federation was considered to be occupying part of the Georgian territory (*see also paras [100]-[109]*)? (GC I, Art. 5; GC III, Art. 5; GC IV, Art. 6; P I, Art. 3)
  - b. Do you agree with the IFFMCG that certain rules of IHL may still apply after the end of hostilities? In the present case, which rules, if any, still applied after 12 August?
3. Do you think that the Russian Federation's involvement in the conflict between Georgian forces, on the one hand, and Abkhaz and Ossetian forces, on the other, rendered the conflict international? What is the test to apply? Does the IFFMCG answer the question? Do you think that there are sufficient elements to conclude that the Russian Federation was exercising overall control over Abkhaz forces? Over South Ossetian forces? Is the Russian Federation's involvement the only possible reason for the conflict between Georgian forces and Abkhaz and Ossetian forces to be governed by the IHL of international armed conflicts? (GC I-IV, Art. 2; P I, Art. 1; P II, Art. 1)
4. (*Para. [18]*) Do you agree that there is no difference between the rules governing international armed conflicts and those governing non-international armed conflicts? As IHL stands today, does it make a difference which law applies? Do you agree that similar rules apply to both? Even the rules relating to military occupation? When the same customary rules apply to both types of conflict, does that imply that the differences between the two legal systems are no longer valid?

## **B. Qualification of the territory**

*(Paras [19]-[28])*

1. How do you define occupation? How does the IFFMCG define it? Do you think that there is a difference between occupation as defined in Art. 42 of the Hague Regulations and occupation as envisaged in Convention IV? Do you agree with the IFFMCG that there may be different stages in the application of the law of occupation, according to the degree of control exercised over the territory (*paras [21]-[22]*)? (HR, Art. 42; GC I-IV, Art. 2)
2.
  - a. (*Para. [25]*) How does the Russian Federation define occupation? Do you agree that “the presence of an armed force in the territory of another state is not always construed as occupation”? In what situations can the armed forces of a State be present on the territory of another State without occupying it? Do you agree that effective control over the territory is necessary in order to establish occupation? (HR, Art. 42; GC I-IV, Art. 2)
  - b. (*Para. [25]*) What do you think of the Russian Federation’s threefold argument to reject occupation? Are the three elements used relevant for assessing the existence of occupation? (HR, Art. 42; GC I-IV, Art. 2)
3. (*Paras [110]-[119]*) Is it sufficient to be “in a position to ensure public order and safety” in order to be regarded as an Occupying Power under IHL? Does the fact that the Russian Federation failed to take all appropriate measures to prevent or stop violations contradict the conclusion that Russia was the Occupying Power? (HR, Arts 42-43)
4. What do you think of the IFFMCG’s argument that if “Russia’s military intervention cannot be justified under international law, and if neither Abkhazia nor South Ossetia is a recognized independent state”, the law of occupation applies? Does it matter whether the Russian Federation’s intervention was justified under international law for IHL and the law of occupation to apply? Does it matter whether Abkhazia and South Ossetia were independent States? Had they been independent, would the Russian presence on their territories not have amounted to occupation?
5. Can South Ossetia be considered an occupied territory even though Georgia agreed to the presence of Russian troops in the Sochi agreement? Was the buffer zone outside South Ossetia occupied even though Georgia agreed to the temporary presence of Russian troops in the 12 August ceasefire?

## **C. Assessment of violations**

1. In what instances does the IFFMCG conclude that IHL was violated? In what instances is it unable to assess whether IHL was or was not violated? Why is it more often possible to conclude that IHL has been violated when it comes to the treatment of persons and property under control of the enemy than in the conduct of hostilities? What should the IFFMCG have established in order to conclude whether the rules of IHL on the conduct of hostilities had been violated? Why has it been unable to establish those facts?

## **D. Conduct of hostilities – Military objectives**

1. (*Paras [31]-[36]*) May members of peacekeeping operations be directly targeted? If so, in what circumstances? What other elements would you need to determine whether the attacks against Russian peacekeepers were lawful? [See Convention on the Safety of UN Personnel, Arts 2 and 7]
2. (*Paras [37]-[39]*) Are administrative buildings as such legitimate targets of attack? Can they be

considered legitimate targets merely because they belong to the enemy power? Can all objects administered by the enemy be considered military objectives? Or can they be attacked only when used for military purposes? (P I, Arts 50-52; CIHL, Rules 1-10)

3. (*Paras [40]-[42]*) How are schools and educational buildings protected under IHL? Under what circumstances, if ever, can such buildings become military targets? Was School No. 7 in Gori a legitimate target? Was it lawful to attack it because of the presence of Georgian military reservists in the school yard? (P I, Arts 50-52; CIHL, Rules 1-10)
4. (*Paras [43]-[47]*)
  - a. What protection do hospitals enjoy under IHL? Can they be considered military targets? If so, in what circumstances? Can the damage caused to the Tskhinvali hospital result from a lawful attack? Does it matter that a hospital is caring for both wounded civilians and combatants, and not just for civilians? (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)
  - b. 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 just 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)
  - c. What protection do medical personnel enjoy under IHL? Was the attack against the hospital staff members lawful? Does it make a difference whether the hospital was displaying the red cross emblem? Can the attack amount to a grave breach? (GC I, Arts 24-25 and 50; GC IV, Arts 20 and 147; P I, Arts 15 and 85; P II, Art. 9; CIHL, Rules 25, 27 and 30)
5. (*Paras [48]-[51]*)
  - a. (*Paras [48]-[49]*) Does a civilian vehicle become a legitimate target when it is driven by armed militia fighters? In all cases? Or only when the militia fighter is directly participating in hostilities? Can militia fighters be targeted at any time? Can they be targeted when they are trying to flee or to get relatives out of the conflict zone? Can they be targeted if, when so doing, they are wearing uniforms or camouflage? (GC I-IV, Art. 3; P I, Art. 50; P II, Art. 13(3); CIHL, Rules 5-6)
  - b. (*Paras [50]-[51]*) Could the attack against the convoys have been legitimate if militiamen had been present among those fleeing? Are all deliberate attacks on civilian vehicles war crimes? Can an attack amount to a grave breach? (GC I-IV, Art. 3; P I, Art. 50; P II, Art. 13(3); CIHL, Rules 5-10)
6. (*Paras [52]-[55]*) What protection do cultural objects and buildings enjoy under IHL? What does special protection mean? Can a specially protected object become a military objective? What law applies to Georgian bombardments of South Ossetian cultural buildings? Does special protection also apply in non-international armed conflicts? [See Conventions on the Protection of Cultural Property] (HR, Art. 27; P I, Arts 52-53 and 85(4); P II, Art. 16; CIHL, Rules 38-40)

## **E. Conduct of hostilities – Indiscriminate attacks**

(*Paras [58]-[73]*)

1. a. (*Paras [58]-[63]*) Considering the characteristics of GRAD rockets and the damage they caused, do you think that their use was lawful? What rules are GRAD rockets subject to? Is it necessarily prohibited to use them in densely populated areas? What precautions in the choice of means and methods of warfare could and should Georgian forces have taken when shelling Tskhinvali to avoid or minimize civilian deaths, injury or damage? (P I, Arts 35, 51(4) and 57(2)(a)(ii); CIHL, Rule 17)

- b. (*Paras [64]-[70]*) Were cluster munitions prohibited during the conflict? In what circumstances, if ever, can a State use cluster munitions? Is it necessarily prohibited to use them in densely populated areas? [See Convention on Cluster Munitions] (P I, Arts 35, 51(4) and 57(2)(a)(ii); CIHL, Rule 17)
  - c. (*Para. [66]*) Can the argument of military necessity put forward by Georgia justify the use of cluster munitions on the Dzara road? Would your answer be different if Georgia knew that the road was being used by civilians to flee? (P I, Arts 51(5)(b) and 57(2)(a)(ii); CIHL, Rules 14 and 17)
  - d. (*Para. [67]*) Considering that some casualties resulted from unexploded devices, do you think that, when assessing the proportionality of an attack, the expected civilian harm should also encompass casualties and harm over time? Even casualties and harm expected to occur after the end of the conflict? Has the mere possibility of future civilian harm to be taken into account when evaluating the proportionality of an attack? (P I, Arts 51(5)(b); CIHL, Rule 14)
  - e. (*Para. [67]*) Is the bombardment of Georgian villages by Georgian forces governed by the IHL of international armed conflict? Even if the villages bombed were under Georgia's control at the time of the attack? Can IHL be violated even when the bombardment of a village is not deliberate, but due to a massive failure of the weapons system? (P I, Arts 49(2) and 57(1) and (2)(a)(ii); CIHL, Rules 15 and 17)
2. (*Paras [71]-[73]*) What is an indiscriminate attack? Is an attack indiscriminate when it is not directed at a specific military objective? When it treats "a number of clearly separate and distinct military objectives as a single military objective"? In such a case, is it indiscriminate only when the targets are located in an area containing "a concentration of civilians and civilian objects"? (P I, Art. 51(4) and (5); CIHL, Rules 12 and 13)

## **F. Conduct of hostilities – Precautionary measures**

(*Paras [74]-[82]*)

1.
  - a. What were Georgia's obligations regarding precautionary measures in order to minimize the harm to civilians? Can the use of smoke grenades be regarded as effective advance warning? (P I, Arts 57 and 58; CIHL, Rules 15-21)
  - b. (*Para. [76]*) Once an attack has started, can a cease-fire be regarded as a sufficient precaution? What precautionary measures could Georgia have taken before launching the attack against Tskhinvali on 7 August? (P I, Arts 57 and 58; CIHL, Rules 15-21)
  - c. (*Para. [77]*) What may an attacker do when the enemy is firing from a building that also shelters civilians? Is it only a question of taking all feasible precautionary measures? Is it not also a question of whether the attack is proportionate? What precautionary measures could and should Georgia have taken? (P I, Arts 51(5)(b), 57 and 58; CIHL, Rules 14-21)
2.
  - a. (*Paras [79]-[82]*) What precautions must a defender take to protect the civilian population against the effect of attacks? Is it always possible to avoid locating military targets in populated areas? Is this a strict obligation under IHL? (P I, Art. 58; CIHL, Rule 23)
  - b. (*Paras [79]-[82]*) Did South Ossetian combatants violate the prohibition to use human shields when they used residential buildings while civilians were inside? When is the use of inhabited civilian houses tantamount to use of human shields? (P I, Art. 51(7); CIHL, Rule 97)

## **G. Treatment of persons – Detention**

*(Paras [83]-[89])*

1. What is the status of the different groups of persons detained by Georgia (“Russian military personnel held as POWs”, “Members of separatist illegal armed formations” and “Apparent mercenary”)? Do any of them benefit from POW status? Do any of them have the right to be visited by the ICRC? (GC III, Arts 4 and 126; GC IV, Arts 4, 76 and 143; CIHL, Rule 124)
2. What is the status of the persons detained by Russian and South Ossetian military units? Does their status vary according to whether they were captured by Russian forces or by South Ossetian forces? What is the status of the Georgian combatants captured by South Ossetian forces but detained by joint Russian and South Ossetian units? (GC III, Art. 4; GC IV, Art. 4)
3. *(Para. [86])* Is there an obligation under IHL to detain persons captured during an armed conflict separately from other prisoners? Does such an obligation exist for POWs only? For civilian internees only? (GC III, Art. 97; GC IV, Art. 84)
4. *(Paras [90]-[93])*
  - a. What is the law applicable to Georgian civilians detained by South Ossetian forces? In what circumstances can civilians be detained in an armed conflict? Can a ransom be demanded for their release? What is the difference between internment and hostage-taking? (GC I-IV, Art. 3; GC IV, Arts 34, 42, 78 and 147; P I, Art. 75(2)(c); P II, Art. 4(2)(c); CIHL, Rule 96)
  - b. Does IHL give any indication regarding places of internment? In the present case, was it lawful to detain the Georgian civilians in a basement, in a yard or at the Ministry of Defence and Ministry of Interior? Can civilian internees be asked to clean the streets? Can they be asked to bury corpses? (GC IV, Arts 85, 89 and 95; P II, Art. 5; CIHL, Rules 95, 118 and 121)

## **H. Treatment of persons – Forced displacement**

*(Paras [120]-[130])*

1. *(Paras [120]-[125])*
  - a. What is the law applicable to the displacements of ethnic Georgians described by the IFFMCG? Does it make a difference whether the population fled because of the hostilities or because it was forced? If it was forced, does it make a difference whether it was forced to leave by Russian forces or by South Ossetian forces? Was the Russian Federation bound by the prohibition of forced displacements? Does it make a difference whether or not the Russian Federation was the Occupying Power? (GC IV, Arts 49 and 147; P I, Art. 85(4); P II, Art. 17; CIHL, Rule 129)
  - b. What is the protection afforded by IHL to displaced persons? Is there a difference between the protection afforded to South Ossetians who fled to the Russian Federation and ethnic Georgians from South Ossetia who fled to the undisputed part of Georgia? (GC I-IV, Art. 3; GC IV, Arts 23 and 49; P I, Art. 70; P II, Art. 17; CIHL, Rule 131)
2. *(Paras [126]-[130])* Does IHL prohibit ethnic cleansing as such? Do other rules of IHL prohibit acts that may constitute ethnic cleansing?
3. *(Paras [131]-[134])* Does IHL protect the right to return of displaced persons? Can South Ossetia make the return of those displaced during the conflict subject to conditions, such as the renunciation of their Georgian nationality? Can Georgia force displaced persons to return to their place of origin? (GC IV, Art. 49; CIHL, Rule 132)

4. (*Paras [135]-[139]*) How does IHL protect the property of displaced persons? Who is bound by the obligation to respect such property? Was there an obligation for South Ossetian forces to ensure that the property of displaced persons was respected? Was there an obligation for the Russian Federation to do so? (CIHL, Rule 133)

## **I. Treatment of property**

1. (*Paras [94]-[100]*) Did IHL apply to the looting and pillaging that occurred after the cease-fire and the end of hostilities? Did IHL apply to the acts of pillage committed by Ossetian villagers in September? Assuming that IHL applied, what does it say about acts of pillage and destruction of private property? Did the provisions on pillage apply to South Ossetian forces the same way as they applied to Russian forces? Did Convention IV apply to the acts of pillage committed by South Ossetian forces? Does it make a difference whether or not Russian forces were involved? (HR, 28 and 47; GC IV, Art. 33; P II, Art. 4(2)(g); CIHL, Rule 52)
2. (*Paras [101]-[109]*) Did IHL apply to the arson campaign that occurred in late August and September in South Ossetia? Assuming that IHL applied, which law applied to the acts of the South Ossetian forces and civilians who participated in the campaign? Do you think that the campaign can be regarded as “reprisals against protected persons”? Can it be regarded as collective punishment? Did it amount to a grave breach? (GC IV, Arts 33 and 147; P I, Arts 51(6), 52(1), 75 and 85; P II, Art. 4; CIHL, Rules 103, 146-148)

## **J. Investigation and reparation**

(*Paras [140]-[148]*)

1. What are the obligations of Georgia, South Ossetia and the Russian Federation in terms of investigation of alleged violations of IHL? Is there an overall obligation for a State to start investigations at the end of an armed conflict, or does the obligation arise only if potential violations are reported? (GC I-IV, Arts 52/53/132/143 respectively; CIHL, Rule 158)
2. Is there an obligation under IHL to pay reparation or compensation to victims of violations? Are Georgia and the Russian Federation liable for the violations committed by their armed forces? Who is liable for violations committed by South Ossetian forces? (Hague Convention IV, Art. 3; P I, Art. 90; CIHL, Rule 150)