

A. Tbilisi nervously eyes Russia's border barricade of South Ossetia

Case prepared by Mr. George Dvaladze, LL.M., student at the Geneva Academy of International Humanitarian Law and Human Rights, under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

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

[Source: Tbilisi nervously eyes Russia's border barricade of South Ossetia, Financial Times, 6 November 2013, available at: <http://www.ft.com/intl/cms/s/0/b04900fe-4609-11e3-9487-00144feabdc0.html#axzz2xTXuhyqF>]

[1] In the 2008 war between Georgia and Russia, Givi Makhachashvili's house on the border of Georgia's breakaway South Ossetia region was set alight and left a smoldering shell. Mr. Makhachashvili, 72, never made it fully habitable again. But he patched it up and used it for farm equipment – until a few weeks ago.

[2] Then, he says, came a warning from the South Ossetian authorities. Russian troops who have occupied the region since the war were building a new border fence that would run 50 meters south of an existing barbed-wire barricade that split his village Dvani in two.

[3] Mr. Makhachashvili's house and some land would be on the wrong side of the fence. So if he wanted to salvage anything, he had better take what he could.

[4] 'We took the house down', he says, gesturing to bricks and corrugated iron piled by the road. 'We were all crying – can you imagine dismantling something you built with your own hands?'

[5] That is what Georgia's government calls 'borderisation'. Officials and border-dwellers say Russian troops have put up barricades along the boundary of South Ossetia, which Russia, but few other countries, has recognized as an independent state, intermittently since the war.

[6] But in recent months they have accelerated their efforts, erecting more substantial fences across farmland south of the Caucasus Mountains. They have frequently shifted the boundary south of the previously accepted course – Mr. Makhachashvili says Russian troops around Dvani were using maps dated 1921 – in effect grabbing hectares of extra land.

[7] Moscow has said South Ossetian authorities were merely demarcating its true boundary, using Soviet-era maps.

[8] Tbilisi [Georgia] sees this as a creeping Russian annexation of South Ossetia and larger Russian-occupied Abkhazia, which together once amounted to 20% of Georgian territory and which it still aspires to win back.

[...]

[9] 'The fences are separating people's houses from their land, they're separating family members and in some cases they've gone right through people's homes', says Ketevan Tsikelashvili, Georgia's deputy minister of reintegration.

[...]

[10] On a plain above Dvani, a line of brand-new green steel mesh, with a Russian military base visible in the distance behind, stops before it reaches a shallow village valley. But Mr. Makhachashvili and other residents are convinced the barrier will resume its march towards them.

[12] The increasing segregation of South Ossetia from Georgian villages is creating other problems. Mountainous Ossetia was once the market for agricultural goods from these villages and a source of vital irrigation water: concrete, Soviet-era conduits now stand disused and crumbling.

[...]

B. Comment of the Ministry of Foreign Affairs of Russia Regarding the Situation on the Borders of Georgia with South Ossetia and Abkhazia

[Source: Comment by Maria Zakharova, Deputy Director of the Information and Press Department of the Russian Ministry of Foreign Affairs, regarding statements by western representatives on the

situation on the borders of Georgia with South Ossetia and Abkhazia, 4 October 2013, available at: http://www.mid.ru/bdomp/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/7d9d634889ec044a44257bfe0044ab19

[1] We noted the series of statements from the West (the NATO Secretary General, Press Secretary of the High Representative of the Union for Foreign Affairs and Security Policy, Deputy Spokesperson for the U.S. Department of State) which contain invented accusations against Russia regarding the measures involved in setting up the borders of South Ossetia and Abkhazia with Georgia, which are conducted by the authorities of these Republics with the support of our frontier guards.

[...]

[2] The Republic of South Ossetia and the Republic of Abkhazia are independent countries, which have full rights to control their territory by the means they deem appropriate. Issues of border crossing and border regime are exclusively within the competence of the authorities of Tskinali and Sukhumi. In accordance with the international obligations of the Russian Federation, our frontier guards only fulfill the tasks which are delegated to them by the South Ossetian and Abkhazian authorities under bilateral agreements of 2008 on our joint efforts to protect the borders.

[3] We note the measures of the South Ossetian party to set up frontier barriers, the purpose of which is to reduce the number of incidents related to unintentional trespassing of the frontier by the local population from both sides and thus remove the factor creating constant tensions near the border. It is a fact that the number of such incidents significantly reduced when we started to install barriers. This is also confirmed by the EU Monitoring Mission in Georgia.

[...]

Discussion

I. Classification of the Situation and Applicable Law

1. (Document A, paras [1]-[2], [5], [8] and [10]) What, in your opinion, constitutes occupation? Which test should be applied in order to determine whether Dvani and other villages in South Ossetia and Abkhazia are occupied territories? Does the Financial Times article consider South Ossetia and Abkhazia as occupied territories? Do you agree that Dvani and other villages in South Ossetia are occupied territories? Even if South Ossetia is an independent State? What additional information would you need in order to make a determination on this question? Which rules of international law apply to occupied territories? (GC I-V, Art. 2; P I, Art. 1; HR, Art. 42)
2. (Document B, paras [1]-[2]) Does the Russian Federation consider South Ossetia and Abkhazia as occupied territories? Is it relevant for the applicability of IHL rules if the parties concerned agree as to the existence of occupation? (GC I-V, Art. 2; P I, Art. 1; HR, Art. 42)
3. (Document A, para [5]) Does recognition of Abkhazia and South Ossetia as independent States by the

Russian Federation affect the applicability of the law of occupation? (GC I-V, Art. 2; GC IV, Arts 6 and 47; P I, Arts 1 and 3(b); HR, Art. 42)

4. (Document A, para. [8]) How do you define annexation? Is annexation different from occupation? Does IHL apply to annexed territories? Does subsequent annexation of the occupied territories change the applicability of IHL? (GC I-V, Art. 2; GC IV, Arts 6 and 47; P I, Arts 1 and 3(b); HR, Art. 42)
5. (Document A, paras [2] and [6]) Does IHL apply to the territories marked by the new fence and the 'old barbed-wire barricade'? Is the erection of the fence and barricade prohibited by IHL? (GC I-V, Art. 2; GC IV, Arts 6 and 47; P I, Arts 1 and 3(b); HR, Arts 42 and 43)
6. (Document A, paras [1] and [5]) When does IHL cease to apply? Did IHL cease to apply any time between the armed conflict between Georgia and Russia in 2008 and the construction of fences in 2013? Which rules of IHL, if any, applied in 2013? (GC IV, Art. 6; P I, Art. 3(b); HR, Art. 42)
7. If you consider South Ossetia to be an independent state, would IHL apply to the situation described? If yes, would the conduct reported violate IHL of IACs? Would the moving of the fence create a small occupied territory? Would anything change to your answers to questions 9-14? (GC I-V, Art. 2; P I, Art. 1; HR, Art. 42)
8. If you consider the 2008 conflict between Georgia and South Ossetia to be a NIAC, would IHL apply to the situation described? If yes, would the conduct reported violate IHL of NIACs? (P II, Art. 17)

II. Classification of Persons

1. Is Mr. Makhachashvili a protected person? What additional information, if any, would you need to make the necessary determination? Under what circumstances would he benefit from the status of a protected person? (GC IV, Art. 4)

III. Legality of Construction of Border Fence

1. (document a, para [6]) does the construction of the border fence amount to annexation? if yes, would such an annexation be contrary to ihl? (GC IV, Art. 47; HR, Art. 43)
2. Is an Occupying Power prohibited under IHL from building defenses at the outer limits of an occupied territory? Is it a violation of IHL to extend the occupied territory? (GC I-V, Art. 2; P I, Art. 1; HR, Arts 42 and 43)
3. (Document A, para. [12]) Is an Occupying Power obliged not to change adversely the living conditions of persons living outside the occupied territories? Under IHL? Under International Human Rights Law (IHRL)? (GC I-V, Art. 2; P I, Art. 1; HR, Arts 42 and 43)

IV. Protection of Persons

1. (Document A, paras [1]-[4]) Does IHL prohibit destruction of private property? Could the situation of Mr. Makhachashvili ('taking down the house') be regarded as destruction of private property? (CIHL, Rule 51; HR, Arts 46 and 53)
2. (Document A, paras [1]-[4]) What does IHL say about forcing persons to leave the occupied territories? Can the construction of a fence at the outer limits of an occupied territory result in forcible expulsion of persons from the territory? If an inhabitant of a dwelling incorporated into the barricade is forced to leave the territory? (GC IV, Art. 49)

