

Question #1: Concerning allegations of genocide, please explain who, in your view, committed genocide, and if so, when. If so please mention the facts permitting to conclude that the elements of the crime of genocide in particular the existence of a protected group and of the intent to destroy that group in whole or in part.

Georgia does not concede that the crime of the genocide have been committed by either party to the conflict during and/or aftermath 2008 hostilities.

At the same time, Georgia notes that the Russian Federation has on several occasions declared that the crime of genocide was committed by the Georgian side as the legal justification for their intervention into the territory of Georgia. For this matter, we address the question posed in two parts:

- First, Georgia submits that no crime of Genocide has been committed by the Georgian side, as neither acts meeting the gravity of the said crime nor the facts commonly known support this allegation took place or were substantiated.
- Second, we submit 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). Detailed information on the issue is provided in the materials submitted to the Commission in March; namely, the Application of Georgia against the Russian Federation under the CERD, the Request of Georgia for the application of provisional measures of August 13, 2008, the Amended Request of Georgia for the application of provisional measures of August 25, 2008, the Annexes thereto as well as the oral pleading of Georgia at the International Court of Justice.

The Russian Federation from the very beginning of the conflict exercised significant efforts (mainly through large scale propaganda) to qualify the acts of Georgian ground troops as act of genocide¹. The numbers of deaths cited by the Russian and South Ossetia proxy regime at the beginning of the conflict varied from 1,500 to 2,000 persons².

Russian President Dmitry Medvedev instructed the Investigative Committee of the Prosecution Service of Russian Federation SKP to investigate the act of genocide in South Ossetia³. Leaving aside the question of whether the Russian Prosecution service was authorized to exercise jurisdiction in this matter, already on August 12, 2008, the SKP announced deployment of more than 200 investigators and 29 experts to conduct an investigation in South Ossetia⁴. Notably, unlike the SKP, even international humanitarian organizations were not given access to the territory up to August

¹ Dmitry Medvedev statement of August 10, 2008, see SKP RF Opened a Criminal Investigation into the Killings of Russian citizens in South Ossetia, Kommersant Online, August 14, 2008, <http://www.kommersant.ru/doc.aspx?DocsID=1011523&ThemesID=301>

² Statement of Russian Ambassador to Georgia Vyacheslav Kovalenko of August 9, 2008; Statement of Russian Deputy Minister of Foreign Affairs Grigory Karasin of August 10, 2008; Statement of the Russian Foreign Ministry Official Boris Malakhov of August 11, 2008;

³ <http://www.sledcomproc.ru/news/666/>

⁴ Ibid;

19-20, 2008⁵. As such, during the first stages of evidentiary gathering, the SKP was the sole fact-finding institution present on the ground.

In this context, the SKP announced on August 21, 2008 the deaths of 133 individuals, on October 12, 2008 – 159 individuals and on December 23, 2008 – 162 individuals⁶. Interestingly enough, the high level Russian authorities prior to the deployment of the SKP as early as August 9 and 10, 2008 were making bold statements regarding an egregious number of casualties, which further increases question marks as to the reliability of such information. Thus, the numbers were seriously exaggerated to create a moral justification for the intervention. Indeed, according to some international human rights organizations (i.e. Human Rights Watch), these exaggerated claims may have had a direct and pernicious result in promoting revenge killings. (See Annex)

As for Russia's claim regarding the crime of genocide, by September 25, 2008, the SKP reported that the evidence-gathering phase was completed and they came to unequivocal conclusion that Georgia's goal was to annihilate the national group of Ossetians residing in the Tskhinvali Region/South Ossetia. Here, what is of primary importance is the fact that the SKP has not given any legal explanation as to how the acts allegedly committed by Georgian soldiers amounted to genocide by Georgia. In addition, the SKP has not corroborated much of its findings with relevant evidence, nor has it substantiated its allegations of genocide with objectively determined facts. Specifically:

- The SKP investigative files are not publicly available⁷;
- The SKP findings are not supported by any international/independent monitoring/fact-finding body⁸;
- The SKP employed inaccurate hearsay which when encountered by Human Rights Watch on spot (in villages allegedly subjected to extermination) none of the cases proved to be true⁹; The request of the HRW to provide the names of the witnesses who could confirm the stories of egregious acts was not fulfilled by Russian side.
- The SKP report contained statements regarding death or injuries, without giving further details, whether the persons named as victims (dead or injures) were civilian or combatant/legitimate military target, as well as lacked any situation description how the suggested deaths/injuries took place (during hostilities, on spot, etc)¹⁰;
- Interestingly, even the number of dead persons (civilian) officially declared by the Russian authorities poses question marks as to whether the list includes only civilians or also representatives of South Ossetia militias, who during the combat operation represented legitimate military targets.

⁵ See <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/georgia-interview-150808>

⁶ Up in Flames, p. 75;

⁷ Human Rights Watch Report, Up in Flames, p. 70;

⁸ Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, "The Consequences of the War between Georgia and Russia", Opinion by Rapporteur Ch. Pourgourides, Doc. 11732 rev, October 1, 2008;

⁹ Up in Flames, pp. 71-72;

¹⁰ Ibid;

The last provision is particularly important as the witnesses in South Ossetia quite often referred to the South Ossetian proxy militant men as “civilian”, while being combatants and thus, legitimate target for an attack if such took place.

According to publicly available evidence (witness statements), not only genocidal intent but even discriminatory intent was missing among Georgian soldiers during the ground operations.

In particular, the Georgian troops entering the villages did not deliberately cause physical harm to the civilian population. Several Ossetians interviewed by the HRW said, that Georgian soldiers told them they were under *order to look for and pursue Ossetian Militia and spare women, children and elderly*¹¹.

Russian propaganda on the alleged genocide committed by Georgians started immediately after their illegal invasion of Georgia. This propaganda served two goals, first, to justify Russia’s illegal activities and second to encourage Ossetian proxy militants and other armed formations to commit brutalities against ethnic Georgians in revenge of the “genocide and mass killings.” HRW in its report “Up in Flames” confirms that Russian claims of genocide committed by Georgians is not supported by any evidence.¹² Neither the Council of Europe Parliamentary Assembly Committee on the Honoring of Obligations and Commitments by Member States who visited Georgia and Russia at the end of September support the allegation.¹³

With regard to crimes committed against ethnic Georgians, Georgia submits that we differentiate the act of genocide from the act of ethnic cleansing, as the latter act aims to render “an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area”¹⁴. Neither the intent, as a matter of policy, to render an area “ethnically homogeneous”, nor the operations that may be carried out to implement such policy, can *as such* be designated as genocide: the intent that characterizes genocide is “to destroy, in whole or in part” a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement¹⁵.

It does not mean that ethnic cleansing can not constitute genocide, if it reaches the specific intent of the crime – *destruction of the group* in comparison with the intent of the *removal of the group from region*.

Georgia argues that the expulsion of ethnic Georgians from certain regions of Georgia, through the acts committed and steps taken by the Russian Federation along with South Ossetian proxy militants is equal to the act of ethnic cleansing. Georgia considers “ethnic cleansing” as an extreme form of racial discrimination under article 1 of the Convention on Elimination of All Forms of Racial Discrimination.

¹¹ Up in Flames, p. 61;

¹² Ibid at p. 71-72

¹³ PACE, Committee on Legal Affairs and Human Rights, “The consequences of the war between Georgia and Russia” opinion by rapporteur Christos Pourgourides, Doc. 11732rev. October 1, 2008.

¹⁴ Interim Report by the Commission of Experts, S/35374 (1993), para. 55;

¹⁵ Genocide Case, para. 190;

Ethnic discrimination has been one of the key aspects of the conflicts in Abkhazia and South Ossetia in 1990's as expressly recognized by the Committee on the Elimination of the Racial Discrimination (CERD)¹⁶. The situation has escalated since August 2008, when up to 140,000 thousand Georgians were forcibly displaced from their homes due to the Russian invasion. Although Georgia considers that this dispute had its genesis prior to August 2008, the issue of the forcible expulsion of several hundred thousand Georgians in 1990's shall not be subject of the discussion to this question and can be viewed for consideration in *Background Document* presented by Georgian side (submission to the International Court of Justice) to the Fact Finding Commission in March.

¹⁶ CERD/C/304/Add.120, 27/04/2001, Concluding Observations on the Committee on the Elimination of Racial Discrimination, para. 4; CERD/C/GEO/CO/3, 01/11/2005, Concluding observations on the Committee on the Elimination of Racial Discrimination, para. 5; CERD/C/GEO/CO/3, 27/03/2007, Concluding Observations on the Committee on the Elimination of Racial Discrimination, para. 5.