

**Parliamentary Assembly**  
**Assemblée parlementaire**



<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11732.htm>

Doc. 11732 rev.

1 October 2008

The consequences of the war between Georgia and Russia

Opinion<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Christos POURGOURIDES, Cyprus, Group of the European People's Party

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A. Conclusions of the committee

The committee welcomes the draft resolution presented by the Monitoring Committee, which provides some clear indication as to the manner in which this conflict should be dealt with. From a legal and human rights perspective, a number of important points require further clarification, which is the purpose of the majority of the amendments proposed. In addition, in order to maintain the credibility of the Assembly as well as the Council of Europe as a whole, the seriousness of the situation requires the inclusion of a possible reaction in case the "minimum conditions for dialogue" laid down by the Monitoring Committee are not fulfilled before the next part-session, by both sides.

B. Proposed amendments to the draft resolution

*Amendment A:*

At the end of paragraph 5 of the draft resolution, between the words "international" and "law", insert the word "humanitarian"

Explanatory note:

The addition of "humanitarian" makes the text more precise.

*Amendment B:*

At the end of paragraph 18 of the draft resolution, add the words ", pending the restoration of public security by Georgian police."

Explanatory note:

The "buffer zone" is part of 'Georgia proper' – it must of course be up to Georgian police in the long run to protect law and order there. This cannot indefinitely be the job of the European monitors.

*Amendment C:*

In paragraph 22 of the draft resolution, delete the words "and the de facto authorities in South Ossetia" and add "and" between "Georgia" and "Russia".

Explanatory note:

As a matter of sovereignty of Georgia, PACE should also avoid addressing the separatist authorities directly; this is a consequence of ECtHR case law: the Court's judgments in the *Loizidou* and *Ilascu* cases were also addressed only to the powers exercising de facto authority (Turkey and Russia), respectively the state to whose territory the region in question belongs, as long as this state had also failed its obligations (Moldova, in the 'Ilascu' case).

The responsibility of Russia for the actions of the so-called de facto authorities is already appropriately made clear in paragraph 12.

*Amendment D:*

In paragraph 22.1 of the draft resolution, second sentence, delete the words "The de facto authorities in South Ossetia and".

Explanatory note:

(same as for Amendment C)

*Amendment E:*

In paragraph 23 of the draft resolution, insert at the beginning, as the following new sub-paragraph:

"not to recognise the independence of South Ossetia and Abkhazia".

Explanatory note: This should go without saying (as the condemnation of Russian recognition is quite unequivocal in the text), but it is worth putting black on white, to avoid any misunderstandings.

*Amendment F:*

After paragraph 26 of the draft resolution, insert the following new paragraph:

"The Assembly also invites the Secretary General of the Council of Europe to consider availing himself of his powers under Article 52 of the European Convention of Human Rights in particular for the purpose of asking the Russian authorities to provide information on how the rights guaranteed by the Convention in zones under their *de facto* jurisdiction are effectively secured and the Georgian authorities to provide explanations as to how it was deemed necessary to declare a state of war without it being necessary to make a derogation under Article 15 of the Convention."

*Amendment G:*

In the draft resolution, paragraph 28, replace the last two sentences with the following words:

"Consequently, the Assembly should consider the suspension of the voting rights of both the Russian and the Georgian delegations at the next part-session in January 2009, unless each country fulfils the following conditions until then:

- in the case of Georgia, the full implementation of the Peace Plan, including the withdrawal of all troops to their positions ex ante the conflict; full access of EU and OSCE monitors throughout the region; full co-operation with

the future international committee of inquiry, with the European Court of Human Rights, the International Court of Justice, and the International Criminal Court;

- in the case of the Russian Federation, in addition to all of the above, the withdrawal of the recognition of the *de facto* regimes in South Ossetia and Abkhazia.”

C. Explanatory memorandum by Mr Pourgourides, rapporteur

I. Introduction

1. The opinion of the Committee on Legal Affairs and Human Rights must be based on the assessment of the issues of international law and of human rights law that are raised by the armed conflict between Georgia and Russia<sup>2</sup>.

2. Issues of international law to be covered include the assessment of the lawfulness of military action both by Georgian and Russian forces, and of the diplomatic recognition of the breakaway regions by the Russian Federation. Issues of human rights law include the responsibility for different types human rights violations allegedly committed in the region by all sides to the conflict.

i. *Issues of international law*

a. *Lawfulness of the assault by Georgian forces on Tskhinvali ?*

3. Any use of military force is *prima facie* a violation of the prohibition of the use of force (Charter of the United Nations, 1945, Article 2 § 4). As this prohibition shall safeguard peace in all circumstances, it also applies to “stable de-facto regimes” (i.e. entities that are not recognised internationally as states but which might fulfil some, though not all attributes of statehood). The assault on Tskhinvali may also constitute a violation of the (treaty-based) duty to abstain from use of force under the Russian-Georgian Agreement of 1992 reaffirmed in 1996<sup>3</sup>.

4. Such an assault could be justified as an intervention to “restore the constitutional order” in the breakaway region. If there was indeed an unlawful secession, proportionate use of force can be justified in exceptional circumstances - but only as a last resort.

5. Since 2001, under the protection of the Russian Federation, separate administrations with state-like institutions (parliament, government etc.) were built up both in South Ossetia and in Abkhazia, with the increasingly clear and explicit intention to break away from the Republic of Georgia.

6. But Georgian federal intervention in South Ossetia could only be justified if the attempted secession was indeed unlawful – which is the case if the territorial integrity of the Republic of Georgia prevails over the right to self-determination of the inhabitants of South Ossetia.

7. The territorial integrity of Georgia (including South Ossetia and Abkhazia) has been recognised by the UN and the international community after the break-up of the Soviet Union. The recognition of the two entities as states by the Russian Federation as such could clearly not justify the secession retroactively, to the time of the Georgian intervention.

8. The question is whether the South Ossetians had the right to self-determination, including that to establish their own statehood. Ossetians are ethnically and culturally distinct from Georgians, and have historically developed a strong wish for independence rather than autonomy within the Republic of Georgia. They have put into place a *de facto* administration of their own, but it is heavily dependent on Russian support for security, the economy (income), infrastructure, and energy.

9. As a general rule, territorial integrity (within internationally recognised borders) prevails over self-determination (understood as a right to secession). Self-determination must as a rule be exercised in the form of autonomy (regional, cultural etc.) within the territorial state. Georgian President Saakashvili has proposed such an autonomous status several times, for the last time the day before the assault on Tskhinvali.

10. The general rule following which territorial integrity prevails over any right to secession is also the point of view held by the Russian Federation, with respect e.g. to Chechnya.

11. The states which have recognised the independence of Kosovo do not consider this as a precedent, but as a special ('sui generis') case because of decades of oppression and the "attempted genocide" by the Milosevic regime that prompted the intervention by NATO (bombing of Serbian targets) to save the Kosovars *in extremis*.

12. The Russian Federation now seems to argue that the recognition of Kosovo was a violation of international law, but at the same time a 'precedent' for the recognition of South Ossetia and Abkhazia. But the Russian Federation would appear to be estopped from putting forward this argument: international law does not allow a state to rely on an evolving state practice that the same state objected to at the time - and still does: the Russian Federation is a "persistent objector".

13. An alternative, or supplementary, argument put forward by the Russian Federation is that the South Ossetians also suffered attempted genocide, perpetrated by the Georgians.

14. But the facts do not seem to support the genocide allegations against Georgia: the number of Ossetian (civilian) victims of the Georgian assault ("thousands" according to early numbers cited by the Russian authorities relying on "provisional data") seem to be much exaggerated; now it appears that most Ossetian victims (whose number is also much lower now) were combatants. Individual atrocities such as those described in certain Russian media and submissions to the Committee of Ministers would be serious crimes in their own right, but not attempted genocide. In any case, human rights violations committed by the Georgian forces during the assault in question cannot "retroactively" give the Ossetians a right to secession before the assault.

15. The conclusion must be that there was indeed an unlawful secession attempt by the de facto authorities in Tskhinvali.

16. But the use of force by Georgia as such might still be illegal if there was another possibility to stop the unlawful secession attempt, or if the force used was disproportionate.

17. Over many years, the Georgian authorities have attempted to reach a negotiated settlement, including a final public offer of autonomy from President Saakashvili the day before the assault. These proposals have not been accepted. Whilst the details still need to be established more clearly, the South Ossetian and Russian authorities seem to have acted more and more provocatively, including through the use of (sporadic, but increasing) violence against Georgian civilians.

18. As to proportionality, the issues that need to be further explored (in particular, in terms of the actual facts) include whether everything possible was done to protect civilians, especially what type of weapons were used. The use of cluster bombs (sub-munitions) would be problematic, especially in inhabited areas<sup>4</sup>.

19. A separate issue is whether the Commonwealth of Independent States (CIS) "peacekeeping troops" stationed in Tskhinvali could legally be targeted by the Georgian forces, as their presence was based on the Sochi Agreement of 24 June 1992 and the memoranda of 1994 and 1996. The Georgian assault could nevertheless be justified if this contingent can be seen as part and parcel of an "invasion force" from the Russian Federation, against which Georgia would have acted in legitimate self-defence (see below).

20. The Georgian assault could be justified as "self-defence" against a Russian attack if Russian forces (i.e. ones that were not covered by the 1992 Agreement) invaded Georgia beforehand.

21. The factual question of when Russian troops and armour passed through the Roki Tunnel (before or after the beginning of the Georgian assault) does not seem to be answered with sufficient certainty. The "evidence" presented by Georgia (intercepted telephone conversations between border guards posted at both ends of the tunnel<sup>5</sup>) does not appear to be conclusive; it will also be necessary to examine in more detail the 1992 Agreement to determine to what extent these alleged troop movements would have been justified under the said agreement (e.g. as routine rotation of troops and equipment). It is indeed surprising that neither side has been able, so far, to present satellite imagery in support of their allegations of massive troop movements of the other side in the period preceding the outbreak of full-scale hostilities.

22. To sum up, the assessment of the legality of the Georgian assault against Tskhinvali depends on the clarification of a number of factual issues.

b. *Legality of the counter-attack by the Russian Federation?*

23. The legality of the Russian counter-attack depends, in turn, on the assessment of the Georgian assault on Tskhinvali (cf. above). In assessing the validity of the "self-defence" argument, the following may need to be distinguished: the defence against the immediate threat to the Russian (CIS) peacekeepers, to South Ossetian civilians having Russian nationality (passports); and, possibly, the defence of the de-facto regime of Tskhinvali against an attack by Georgia.

24. Defence of peacekeepers threatened by the Georgian assault on Tsinkhvali: to the extent that the peacekeepers' presence was justified under the Sotchi Agreement – an issue that needs to be further examined, also taking into account the actual role played by the peacekeepers during the last months of escalating conflict - their defence against the assault could justify defensive military action against the assailants (i.e. the Georgian units around Tsinkhvali).

25. But the question of proportionality of the defensive action arises: was it necessary, from a military point of view, to also attack Georgian forces outside the area, in order to stop the attack on the peacekeepers, as 'anticipatory self-defence'? The Russian side argues that the attack against Georgian forces around Gori was necessary from a military standpoint, and therefore proportionate, in order to stop artillery attacks emanating from forces stationed around this town. But subsequent air attacks on targets throughout Georgia, the occupation of Senaki and Poti, the attack on Georgian ships in the Black Sea, and the entry of Russian troops in Abkhazia were almost certainly not necessary to defend the peacekeepers in Tsinkhvali and would therefore seem to constitute a disproportionate reaction.

26. Defence of South Ossetian civilians holding Russian passports? International law allows granting citizenship to foreigners, but only if they have a 'real and effective' personal, specific link to the country granting them citizenship.<sup>6</sup> Otherwise, the massive grant of citizenship to nationals of another country living in that country is likely to constitute an intervention in the internal affairs of that country, from which a right to intervene militarily in that country cannot be derived<sup>7</sup>.

27. In addition, the issue of proportionality arises here, too: would it have been necessary for Russian forces to advance well into "Georgia proper" and to attack Georgian positions and infrastructures outside the region inhabited by Russian citizens in order to protect the latter?

28. Defence of the *de facto* regime in South Ossetia ('self-defence by proxy'): whilst the *de facto* regime is in principle protected by the general prohibition of the use of force and thus has an "inherent right to self-defence" (cf. above), the unlawfulness of the secession attempt means that the "call for assistance" by South Ossetia's parliament early on 8 August 2008 cannot justify the counter-attack by the Russian Federation.

## ii. *Issues of Human Rights law*

### a. *Possible human rights violations by the Russian Federation*

29. The Russian Federation is obviously responsible for any human rights violations committed by its own forces. Intentional or avoidable killing and wounding of civilians, destruction of property, expulsions on the basis of ethnicity etc. would of course be violations of the European Convention on Human Rights (ECHR - Articles 2, 3, 14 in particular) - even if committed outside the Russian Federation, i.e. on Georgian/South Ossetian territory, which is also covered by the Convention.

30. The Russian Federation (RF) could also be responsible for human rights violations committed by South Ossetian militias in the area controlled *de facto* by RF forces (after the expulsion of Georgian police/security forces by the advancing RF forces).

31. Possible legal precedents for the responsibility of the Russian Federation based on *de facto* control of the area in question, which belongs to the territory of the Republic of Georgia under international law, would be the judgments of the European Court of Human Rights in the *Loizidou*<sup>8</sup> (responsibility of Turkey for human rights violations committed against Cypriots by the authorities of the "TRNC", recognised only by Turkey), and *Ilascu*<sup>9</sup> (responsibility – also - of the Russian Federation for a violation committed by the separatist authorities of Transnistria) cases.

32. The Strasbourg Court's language based on an "effective control" test (a prominent argument being the presence of a high number of troops) would seem to fit the situation in South Ossetia quite well. The fact that the Ossetian militias or "volunteers" from the North Caucasus might have operated behind the advancing Russian troops, which were merely passing through the area, does not absolve the Russian forces from their

responsibility, as they could be deemed to be at least grossly negligent, or reckless, in not ensuring the safety of the civilian population behind their advance.

33. The responsibility of the Russian Federation for violations committed behind Russian lines by Ossetian and other militias would also follow from the 1907 Hague Convention<sup>10</sup>: Article 47 of the annex requires an “occupying power” to actively prevent looting, to guarantee public order and safety (Article 43) and to protect the lives of persons and private property (Article 46).

34. As regards facts, our Committee heard, during its meeting on 30 September 2008, presentations by two representatives of Human Rights Watch (HRW)<sup>11</sup> who have themselves conducted field work in the region during August and September. They have personally observed looting and burning of houses of ethnic Georgians, including by Ossetian militias, whilst Russian forces were standing by in close proximity. They have also asked several looters and arsonists, who were acting in complete openness, for the reasons of their actions. The answer they received was that they wanted to make sure that the Georgian inhabitants had no houses they could return to! They also confirmed that when, on 13 August, Russian forces set up checkpoints in the area and intervened against looters, the looting and arson dropped dramatically. For unknown reasons, these countermeasures were lifted again some days after they had been brought in, and the looting and arson resumed. The HRW researchers indicated that they had personally visited nine ethnic Georgian enclave villages in South Ossetia<sup>12</sup>, all of which were almost fully burnt down by the second week of September. They also interviewed displaced persons from six other Georgian villages<sup>13</sup>, who all spoke of a similarly severe level of destruction.

35. The researchers also described cases of unlawful detentions of Georgian civilians by Ossetian militias. They have reported inhuman and degrading conditions of detention of Georgian civilians. Some of the detainees were subjected to ill-treatment and beatings by Ossetian forces. The HRW researchers also reported that Ossetian forces tortured several Georgian soldiers and executed at least one.

36. The HRW representatives also drew attention to the dramatic security vacuum in the so-called buffer zone, where militias and criminal thugs commit crimes with impunity, as the Russian forces that still control the zone fail to intervene in order to protect the civilian population, Georgian police is prevented from accessing the area by Russian forces, and regrettably European observers that have begun to be deployed in the zone have no protection mandate.

37. Finally, the Russian Federation could also be held responsible for possible violations committed by Russian peacekeepers, who worked under the CIS mandate. This could raise an interesting legal issue under the Strasbourg Court’s Bankovic judgment<sup>14</sup>, as the Court might be reluctant to “pierce the international veil” provided by the CIS mandate<sup>15</sup>.

#### *b. Possible human rights violations by Georgia*

38. It is clear that Georgia is responsible, under the ECHR, for any avoidable killings of civilians, destruction of property, etc. by Georgian forces. The competent Georgian authorities are obliged to fully investigate any serious alleged human rights violations and prosecute the perpetrators regardless of their rank.

39. The above-mentioned HRW researchers have also made findings of human rights violations committed by Georgian forces, in particular during the initial phase of their assault on Tskhinvali. They found evidence of the use, by Georgian forces, of “Grad” multiple rocket launchers in residential areas, as well as of tanks firing into buildings, including their basements, where civilians were seeking shelter. Whilst some of the buildings in question were also used by Ossetian fighters shooting at the Georgian forces, the use of such heavy weapons against buildings where civilians were still holding out appears disproportionate. HRW also documented civilian casualties as a result of Russia’s use of “clusters” in the towns of Gori and Ruisi. Georgia acknowledged using “clusters” against Russian military targets near the Roki Tunnel, but HRW has not documented to date any civilian casualties as a result of this. Both researchers found that the allegations of “genocide” raised by some Russian politicians and media were unsubstantiated. Indeed, in the view of the Rapporteur, the violations described above are serious crimes in their own right, and need to be treated as such, they do not come anywhere near the threshold of an organised attempt to destroy the South Ossetian ethnic group.

40. As regards the treatment of Russian and South Ossetian prisoners by Georgian forces, the researchers were able to establish some cases of ill-treatment of such prisoners during their transport, but not in their places of detention.

## II. Conclusions

41. Some conclusions can be drawn regardless of the determination of questions of fact that are still disputed between the parties.
42. These include the statement in the report of the Monitoring Committee that both Georgia and the Russian Federation have violated international law in so far as their military action was disproportionate as regards the extent of the action in geographical terms and its intensity, notably in terms of "collateral damage" caused.
43. It is also clear that the Russian Federation has violated, and continues to violate, the territorial integrity of the Republic of Georgia by its recognition of the *de facto* regimes in South Ossetia and Abkhazia. This continuing violation must be ended by the immediate withdrawal, by Russia, of the recognitions of independence and terminating "bilateral" agreements with the said regimes, including those on the stationing of Russian troops in these regions. It goes without saying that all other member states of the Council of Europe have the duty to refrain from any measures putting into question the territorial integrity of Georgia.
44. The Russian Federation also bears responsibility for human rights violations, including acts of ethnic cleansing, committed by the *de facto* regime in Tskhinvali against ethnic Georgian inhabitants. Having *de facto* control over the region in question, the Russian Federation has the responsibility to re-establish public safety throughout South Ossetia for the benefit of all inhabitants and for creating conditions for the safe return of those inhabitants who were forced to flee from their homes.
45. The dramatic situation of the remaining ethnic Georgians in South Ossetia urgently requires the presence of international monitors, as also proposed by the Monitoring Committee, which must be allowed to move freely and securely throughout the two regions.
46. Both the Russian Federation and Georgia have the duty, under the ECHR, to fully investigate and prosecute violations of human rights committed by their forces or those for whose actions they are responsible, due to their control over the region in question. They must hold to account perpetrators and compensate victims of such violations without regard to their rank or ethnic origin.
47. In order to allow for the objective settlement of all outstanding questions of fact, both sides of the conflict should fully cooperate with the international committee of inquiry that shall be established for this purpose without delay, as proposed by the Monitoring Committee.
48. In order to allow for the objective, binding settlement of all outstanding questions of international law, Georgia and the Russian Federation should accept the jurisdiction of the International Court of Justice (ICJ), at least in as far as their dispute with respect to South Ossetia and Abkhazia is concerned; Russia has not done so yet. Meanwhile, both parties must cooperate with the ICJ in the proceedings brought by Georgia under the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination.<sup>16</sup>
49. As Georgia is a State Party to the 1998 Statute of Rome, all allegations of war crimes and other crimes against humanity committed on its territory fall within the jurisdiction of the International Criminal Court (ICC)<sup>17</sup>, including those allegedly committed by members of the Russian armed forces. Both sides of the conflict should fully cooperate with the ICC in order to ensure that there may be no impunity for such crimes.
50. Both sides should also fully cooperate with the European Court of Human Rights, which has addressed interim measures based on Rule 39 of its Rules of Procedure to both sides of the conflict following a request recently made by Georgia<sup>18</sup>.
51. The co-operation, by both sides, should also continue to extend to the Council of Europe Commissioner for Human Rights, who has played an active and positive role, in particular in offering his good offices for humanitarian purposes.<sup>19</sup>
52. The Secretary General of the Council of Europe should be encouraged to avail himself of his powers under Article 52 of the European Convention of Human Rights in particular for the purpose of asking the Russian authorities to provide information on how the rights guaranteed by the Convention in zones under their *de facto* jurisdiction are effectively secured and the Georgian authorities to provide explanations as to how it was deemed necessary to declare a state of war without it being necessary to make a derogation under Article 15 of the Convention<sup>20</sup>.
53. In view of the extreme seriousness of the situation involving two member states of the Council of Europe in an armed conflict, which has been the cause of numerous and very serious human rights violations, the

credibility of the Organisation as a whole requires a strong reaction from the Parliamentary Assembly, which cannot go on with "business as usual".

54. As a minimum, the Assembly should resolve to reinforce its own monitoring procedures vis-à-vis the two countries and to encourage the Committee of Ministers to take similar measures, as is proposed by the Monitoring Committee.

55. In addition, the Assembly should take a decision now to suspend the voting rights of both the Russian and the Georgian delegations at the next part-session in January 2009, unless each country fulfils the following conditions beforehand:

- in the case of Georgia, the full implementation of the cease-fire agreement, including the withdrawal of all troops to their positions ex ante and full access of EU and OSCE monitors throughout the region, full co-operation with the future international committee of inquiry, with the European Court of Human Rights, the International Court of Justice, and the International Criminal Court;

- in the case of the Russian Federation, in addition to all of the above, the withdrawal of the recognition of the *de facto* regimes in South Ossetia and Abkhazia.

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*Reporting committee:* Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

*Committee for opinion:* Committee on Legal Affairs and Human Rights

*Reference to committee:* Reference No 3489 of 29 September 2008 (urgent debate)

*Opinion approved by the committee on 1 October 2008*

*Secretariat of the committee:* Mr Drzemczewski, Mr Schirmer, Mrs Maffucci-Hugel, Ms Heurtin

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<sup>1</sup> See [Doc. 11724](#) tabled by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

<sup>2</sup> See in this connection the report by the Chairman of the Committee of Ministers in view of the informal meeting of Ministers of Foreign Affairs of the Council of Europe (New York, 24.09.2008), document AS/INF/CM (2008)14 (30 September 2008), especially pp. 8-9.

<sup>3</sup> cf. Otto Luchterhandt, *Völkerrechtliche Aspekte des "Georgien-Krieges"* (2008), in: *russland-analysen* Nr. 169 (19.09.2008), p. 5.

<sup>4</sup> The Convention on cluster munitions adopted at the Dublin conference of 30.05.2008 has not yet entered into force, but it is seen by many as a milestone in the development of customary international law

(cf. <http://www.clusterconvention.org>)

<sup>5</sup> Cf. C.J. Chivers, *Georgia Offers Fresh Evidence on War's Start*, *New York Times*, 16.09.2008

[www.nytimes.com/2008/09/16/world/europe/16georgia.html?\\_r=1&partner=rssnyt&em...](http://www.nytimes.com/2008/09/16/world/europe/16georgia.html?_r=1&partner=rssnyt&em...)

<sup>6</sup> Cf. the famous "Nottebohm" (Liechtenstein v. Guatemala) judgment of the International Court of Justice of 06.04.1955 ; <http://www.icj-cij.org/presscom/index.php?p1=6&p2=1&y=1955>

<sup>7</sup> *Nemo commodum capere potest de sua propria iniuria*

<sup>8</sup> Case of *Loizidou v. Turkey* (Application no. 15318/89), judgment of 18.12.1996.

<sup>9</sup> Case of *Ilascu and others v. Moldova and Russia* (Application no. 48787/99), judgment of 08.07.2004

<sup>10</sup> Chapter IV - Respecting the Laws and Customs of War on Land.

<sup>11</sup> Tanya Lokshina, Deputy Director of HRW's Moscow office, and Giorgi Gogia, South Caucasus researcher for HRW. The Rapporteur conducted a more in-depth interview with the two HRW representatives after the meeting.

<sup>12</sup> Tamarasheni, Zemo Achabeti, Kvemo Achabeti, Kurta, Kekhvi, Eredvi, Vanati, Avnevi, Nuli.

<sup>13</sup> Dzartsemi, Kheiti, Prisi, Disevi, Beloti, and Tighva.

<sup>14</sup> *Banković and Others v. Belgium and 16 Other Contracting States* (application no. 52207/99), inadmissibility decision [GC] of 19.12.2001.

<sup>15</sup> in the same way as in the *Bankovic* case, when the Court decided it did not possess jurisdiction over the actions of NATO countries, including those which were signatories of the ECHR, whose armed forces had carried out air attacks on Serbian targets; but the *Bankovic* judgment might not be the Court's last word; UNSC 'black lists' cases have begun to reach the Court, and the European Court of Justice in Luxembourg, in its *Kadi and Al Barakaat* judgment of 03.09.2008 (also in a UN/EU blacklist case) has found that the European institutions are not bound to execute UNSC decisions without regard to European fundamental rights principles.

<sup>16</sup> Information on the proceedings is posted at the website of the ICJ:

<http://www.icj-cij.org/search/index.php?pg=1&p2=2&op=&str=georgia&lg=0&op=0>

<sup>17</sup> Cf. website of the ICC: preliminary inquiry by the ICC prosecutor:

<http://www.icc-cpi.int/press/pressreleases/413.html>

<sup>18</sup> As to the binding nature of interim measures, see the Court's case law: *Mamatkulov and Askerov v. Turkey*, Grand Chamber judgment of 04.02.2005.

<sup>19</sup> Cf. Opinion by the Committee on Migration, Refugees and Population, and the reports by the Commissioner on Human Rights on his visits to the region in August and September 2008.

<sup>20</sup> Article 15 – Derogation in time of emergency

1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 52 – Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention

