Non-Corrigé
Uncorrected

CR 2008/25

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2008

Public sitting

held on Tuesday 9 September 2008, at 4.30 p.m., at the Peace Palace,

President Higgins presiding,

in the case concerning **Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia *v.* Russian Federation)**

VERBATIM RECORD

ANNÉE 2008

Audience publique

tenue le mardi 9 septembre 2008, à 16 h 30, au Palais de la Paix,

sous la présidence de Mme Higgins, président,

*en l'affaire relative à l'***Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie)**

COMPTE RENDU

Present:	President	Higgins
	Vice-President	Al-Khasawneh
	Judges	Ranjeva
		Shi
		Koroma
		Buergenthal
		Owada
		Simma
		Tomka
		Abraham
		Keith
		Sepúlveda-Amor
		Bennouna
		Skotnikov
	Judge *ad hoc*	Gaja
	Registrar	Couvreur

___

Présents : Mme Higgins, président
M. Al-Khasawneh, vice-président
MM. Ranjeva
Shi
Koroma
Buergenthal
Owada
Simma
Tomka
Abraham
Keith
Sepúlveda-Amor
Bennouna
Skotnikov, juges
M. Gaja, juge *ad hoc*

M. Couvreur, greffier

____

The Government of Georgia is represented by:

Ms Tina Burjaliani, First Deputy-Minister of Justice,

H.E. Ms Maia Panjikidze, Ambassador of Georgia to the Kingdom of the Netherlands,

as Agents;

Mr. Payam Akhavan, Professor of International Law, McGill University,

as Co-Agent and Advocate;

Mr. James R. Crawford, S.C., LL.D., F.B.A., Whewell Professor of International Law, University of Cambridge, Member of the Institut de droit international, Barrister, Matrix Chambers,

Mr. Paul S. Reichler, Foley Hoag LLP, Washington D.C., Member of the Bars of the United States Supreme Court and the District of Columbia,

as Advocates;

H.E. Mr. Nika Gvaramia, Minister of Justice,

Mr. Ekaterine Zguladze, First Deputy-Minister of the Interior,

Mr. Archil Giorgadze, Head of Human Rights Unit, Office of the Prosecutor-General,

Mr. Philippe Sands, Professor of Law, University College London, Member, Matrix Chambers,

Mr. Zachary Douglas, Barrister, Matrix Chambers, Lecturer, Faculty of Law, University of Cambridge,

Ms Stephanie Ierino, Barrister & Solicitor, Supreme Court of Tasmania, Research Associate, Lauterpacht Centre for International Law, University of Cambridge,

Mr. Lawrence H. Martin, Foley Hoag LLP, Member of the Bars of the United States Supreme Court, the District of Columbia and the Commonwealth of Massachusetts,

Mr. Andrew B. Loewenstein, Foley Hoag LLP, Member of the Bar of the Commonwealth of Massachusetts,

Ms Clara E. Brillembourg, Foley Hoag LLP, Member of the Bars of the District of Columbia and New York,

as Advisers.

The Government of the Russian Federation is represented by:

Mr. Roman Kolodkin, Director, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

H.E. Mr. Kirill Gevorgian, Ambassador of the Russian Federation to the Kingdom of the Netherlands,

as Agents;

Le Gouvernement de Géorgie est représenté par :

Mme Tina Burjaliani, premier vice-ministre de la justice,

S. Exc. Mme Maia Panjikidze, ambassadeur de Géorgie auprès du Royaume des Pays-Bas,

comme agents ;

M. Payam Akhavan, professeur de droit international à l'Université McGill,

comme coagent et avocat ;

M. James R. Crawford, S.C., LL.D., F.B.A., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, avocat, Matrix Chambers,

M. Paul S. Reichler, cabinet Foley Hoag LLP, Washington D.C., membre des barreaux de la Cour suprême des Etats-Unis d'Amérique et du district de Columbia,

comme avocats ;

S. Exc. M. Nika Gvaramia, ministre de la justice,

Mme Ekaterine Zguladze, premier vice-ministre de l'intérieur,

M. Archil Giorgadze, chef du département des droits de l'homme au bureau du procureur général,

M. Philippe Sands, professeur de droit au University College de Londres, avocat, Matrix Chambers,

M. Zachary Douglas, avocat, Matrix Chambers, chargé de cours à la faculté de droit de l'Université de Cambridge,

Mme Stephanie Ierino, avocat et *Solicitor* à la Cour suprême de Tasmanie, *Research Associate* au Lauterpacht Centre for International Law de l'Université de Cambridge,

M. Lawrence H. Martin, cabinet Foley Hoag LLP, membre des barreaux de la Cour suprême des Etats-Unis d'Amérique, du district de Columbia et du Commonwealth du Massachusetts,

M. Andrew B. Loewenstein, cabinet Foley Hoag LLP, membre du barreau du Commonwealth du Massachusetts,

Mme Clara E. Brillembourg, cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de New York,

comme conseillers.

Le Gouvernement de la fédération de Russie est représenté par :

M. Roman Kolodkin, directeur du département des affaires juridiques du ministère des affaires étrangères de la Fédération de Russie,

S. Exc. M. Kirill Gevorgian, ambassadeur de la Fédération de Russie auprès du Royaume des Pays-Bas,

comme agents ;

Mr. Alain Pellet, Professor at the University Paris Ouest, Nanterre-La Défense, member and former Chairman of the International Law Commission, associate member of the Institut de droit international,

Mr. Andreas Zimmermann, LL.M. (Harvard), Professor of Law at the University of Kiel, Director of the Walther-Schückling Institute, Member of the Permanent Court of Arbitration,

Mr. Samuel Wordsworth, member of the English Bar, member of the Paris Bar, Essex Court Chambers,

as Counsel and Advocates;

Mr. Dmitry Ognev, Solicitor, Egorov Puginsky Afanasiev and Partners, Moscow,

Mr. Khristofor Ivanyan, Managing Partner, Ivanyan and Partners law firm, Moscow,

as Advocates;

Mr. Nikolay Uvarov, Lieutenant General, Ministry of Defence of the Russian Federation,

Mr. Ilya Tiatkin, Major General, Ministry of Defence of the Russian Federation,

Mr. Elbrus Kargiev, Principal Counsellor, Ministry of Foreign Affairs of the Russian Federation,

Mr. Grigory Lukyantsev, Counsellor, Permanent Mission of the Russian Federation to the United Nations, New York,

Mr. Maksim Musikhin, First Secretary, Embassy of the Russian Federation in the Kingdom of the Netherlands,

Mr. Ivan Volodin, Acting Head of Division, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Ms Maria Zabolotskaya, Second Secretary, Permanent Mission of the Russian Federation to the United Nations in New York,

Mr. Pavel Kornatskiy, Second Secretary, Embassy of the Russian Federation in the Kingdom of the Netherlands,

Ms Svetlana Shatalova, Attaché, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Ms Diana Taratukhina, Attaché, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Ms Anastasia Tezikova, Attaché, Legal Department, Ministry of Foreign Affairs of the Russian Federation,

Mr. Christian J. Tams, LL.M., Ph.D. (Cambridge), Walher-Schückling Institute, University of Kiel,

Ms Alina Miron, Temporary Lecturer and Research Assistant, University Paris Ouest-La Défense, Researcher, Center for International Law of Nanterre (CEDIN),

M. Alain Pellet, professeur à l'Université de Paris Ouest, Nanterre-La Défense, membre et ancien président de la Commission du droit international, membre associé de l'Institut de droit international,

M. Andreas Zimmermann, LL.M. (Harvard), professeur de droit à l'Université de Kiel, directeur de l'Institut Walther-Schücking, membre de la Cour permanente d'arbitrage,

M. Samuel Wordsworth, membre des barreaux d'Angleterre et de Paris, Essex Court Chambers,

comme conseils et avocats ;

M. Dmitry Ognev, *Solicitor*, cabinet Egorov Puginsky Afanasiev & Partners, Moscou,

M. Khristofor Ivanyan, associé gérant, cabinet Ivanyan & Partners, Moscou,

comme avocats ;

M. Nikolay Uvarov, général de division au ministère de la défense de la Fédération de Russie,

M. Ilya Tiatkin, général de brigade au ministère de la défense de la Fédération de Russie,

M. Elbrus Kargiev, conseiller principal au ministère des affaires étrangères de la Fédération de Russie,

M. Grigory Lukyantsev, conseiller à la mission permanente de la Fédération de Russie auprès de l'Organisation des Nations Unies à New York,

M. Maksim Musikhin, premier secrétaire à l'ambassade de la Fédération de Russie aux Pays-Bas,

M. Ivan Volodin, chef de division par intérim du département des affaires juridiques du ministère des affaires étrangères de la Fédération de Russie,

Mme Maria Zabolotskaya, deuxième secrétaire à la mission permanente de la Fédération de Russie auprès de l'Organisation des Nations Unies à New York,

M. Pavel Kornatskiy, deuxième secrétaire à l'ambassade de la Fédération de Russie aux Pays-Bas,

Mme Svetlana Shatalova, attaché au département des affaires juridiques du ministère des affaires étrangères de la Fédération de Russie,

Mme Diana Taratukhina, attaché au département des affaires juridiques du ministère des affaires étrangères de la Fédération de Russie,

Mme Anastasia Tezikova, attaché au département des affaires juridiques du ministère des affaires étrangères de la Fédération de Russie,

M. Christian J. Tams, LL.M., docteur en droit de l'Université de Cambridge, Institut Walther-Schücking de l'Université de Kiel,

Mme Alina Miron, attaché temporaire d'enseignement et de recherche à l'Université de Paris Ouest, Nanterre-La Défense, chercheur au centre de droit international de Nanterre (CEDIN),

Mr. Sergey Usoskin, Lawyer, Egorov Puginsky Afanasiev and Partners,

Ms Elena Krotova, Lawyer, Egorov Puginsky Afanasiev & Partners,

Ms Tatiana Tolstaya, Lawyer, Egorov Puginsky Afanasiev and Partners,

Ms Anna Shumilova, Junior Lawyer, Egorov Puginsky Afanasiev and Partners,

Ms Oxana Gogunskaya, Junior Lawyer, Egorov Puginsky Afanasiev and Partners,

as Advisers.

M. Sergey Usoskin, juriste, cabinet Egorov Puginsky Afanasiev & Partners,

Mme Elena Krotova, juriste, cabinet Egorov Puginsky Afanasiev & Partners,

Mme Tatiana Tolstaya, juriste, cabinet Egorov Puginsky Afanasiev & Partners,

Mme Anna Shumilova, juriste junior, cabinet Egorov Puginsky Afanasiev & Partners,

Mme Oxana Gogunskaya, juriste junior, cabinet Egorov Puginsky Afanasiev & Partners,

comme conseillers.

The PRESIDENT: Please be seated. The hearing is open. We meet this afternoon for the second round of the oral observations of Georgia on its Request for the indication of provisional measures and I will immediately call upon Professor Crawford.

Mr. CRAWFORD:

1. JURISDICTION OVER AND ADMISSIBILITY OF GEORGIA'S REQUEST

Introduction

1. Madam President, Members of the Court, before dealing with various objections to jurisdiction and admissibility of the Request, some preliminary remarks are called for by the presentation of the Russian Federation yesterday.

A. Preliminary remarks

The submissions of the Russian Federation focused on the merits

2. The first preliminary remark concerns the relation between these proceedings and the merits.

3. Madam President, Georgia was attentive to your clarification yesterday as to what the focus of this hearing is under Practice Direction XI[1]. The merits of the dispute are only relevant in so far as they relate to the factual basis for the provisional measures requested. Georgia has been explicit that the escalation in violence against ethnic Georgians in August of this year provides the factual basis for our Request for provisional measures and explains their urgency. Despite the Court's unambiguous parameters, the Russian Co-Agent dedicated the major part of his presentation to an account of the ethnic conflict from the eighteenth century onwards, finally arriving at August 2008[2]. But precious little was said about facts on the ground over the past few weeks and no evidence was referred to for that purpose.

---

[1] CR 2008/22, p. 16.

[2] CR 2008/23, pp. 17-22, paras. 2-31 (Gevorgian).

4. Professor Zimmermann also trespassed onto the merits by raising various questions of attribution and breach. In relation to attribution, he said: "even at this stage, Georgia has to make its case, and cannot be allowed to merely assert it"[3]. In relation to the issue of breach, he said:

> "Were the Court to adopt these measures, it would have to share the underlying assumption that Russia is indeed committing such acts, without the Court previously having had any chance to verify the underlying alleged facts in an orderly procedure."[4]

With respect, these remarks reveal some confusion about the function of provisional measures. Whether certain acts breach an obligation and whether they are attributable to the respondent State cannot possibly be the subject of adjudication by the Court in a provisional measures hearing, and Practice Direction XI reflects this. In every case where the Court indicates provisional measures, it is acting in a way that Professor Zimmermann now says is impermissible.

5. I do not, therefore, propose to cross swords with Professor Zimmermann on questions such as attribution. But I cannot resist responding to his assertion that:

> "As a matter of fact, it is evident that both, during their time as recognized autonomous regions within Georgia, as well as since their declarations of independence, South Ossetia and Akbhazia have not been mere instruments of the Respondent lacking any real autonomy . . ."[5]

6. "As a matter of fact" — says Professor Zimmermann. Well, Madam President, Members of the Court, you are the judge of the facts, but not yet. The only question at this stage is whether facts are credibly asserted which, if true, would raise an issue under the Convention.

7. You will note that Mr. Wordsworth's presentation of the evidence tended to contradict Professor Zimmermann's assertion. You will recall how he tried to mitigate the damage done by the public remarks of the South Ossetian leader Mr. Kokoity. He referred to Mr. Kokoity's statement that "we do not intend to let anybody in here anymore", and he continued:

> "The Russian Ministry of Foreign Affairs immediately characterized Mr. Kokoity's remarks as 'an emotional statement made under the impact of the situation resulting from the massive armed assault on South Ossetia carried out by the Georgian leadership'. The . . . Russian Ministry further stated that:
>
> > 'There are generally recognized rules of international law entitling people to return to their former habitual residence when the

[3]CR 2008/23, p. 45, para. 20 (Zimmermann).

[4]*Ibid.*, p. 49, para. 36.

[5]*Ibid.*, p. 45, para. 22.

> circumstances owing to which they had to leave them do not exist anymore.’.”[6]

8. Mr. Kokoity’s interview was given on 15 August. The Russian Ministry of Foreign Affairs, knowing the case made against Russia before this Court, decided immediately to overrule his policy of not allowing ethnic Georgians back into South Ossetia. After Russia publicly rebuked his statement as “emotional”, Mr. Kokoity fell into line. Here is Mr. Wordsworth again:

> “We also note that, on 22 August, Mr. Kokoity met with the United Nations High Commissioner for Refugees and stated that there would be no discrimination based on ethnicity in the policy of voluntary return of refugees and other displaced persons.”

9. Madam President, Members of the Court, it is Georgia’s case that there is in fact, and has long been, “discrimination based on ethnicity in the policy of voluntary return of refugees and other displaced persons”, that this policy is associated with ethnic cleansing in relevant areas of Georgia, that the process of ethnic cleansing continues and that to at least a significant degree it is attributable to the Russian Federation. The Court will not expect us — indeed, Madam President, you will not allow us — to prove this case at this stage. Thus whether Mr. Kokoity’s real view is what he said in the press interview or (after he had received further instructions) what he said in fronting up to the United Nations High Commissioner for Refugees is not something that you can resolve here and now. What we have to show — and *all* that we have to show — is that such policies raise admissible issues under the Convention and that there is a real risk of their continuation pending further proceedings in this case, thereby causing irreparable harm.

10. I would also comment that the fact that even Mr. Kokoity found himself constrained to correct his earlier utterances tends to show an awareness of the 1965 Convention and its relevance to ethnic cleansing and the right of return. One may wonder whether such awareness would long survive the striking out of this case from the General List. And this relates to another significant feature of the Russian case yesterday. Professing their firm adherence to the 1965 Convention, they nonetheless present a series of exculpatory legal arguments that would not long survive examination if we *were* at a later stage of the proceedings — and which need not detain you even so long on this Request. “The Court is a last resort” (this from M. Pellet, whose principal resort is this Court and who persuaded the entire Court in *Nicaragua* that a bilateral treaty not even

---

[6]CR 2008/23, p. 58, para. 23 (Wordsworth).

mentioned in the Application — let alone in diplomatic exchanges — could be invoked on the merits)[7]. "Georgia has never complained about Russian complicity in ethnic cleansing and refusal of the right of return" (this again from M. Pellet)[8]. "The 1965 Convention does not apply abroad" (this from Professor Zimmermann, who appears to think that Article 29 of the Vienna Convention is somehow relevant to this issue)[9]. "There is no obligation of prevention" (this again from Professor Zimmermann, who appears to have overlooked phrases such as "eliminate" and "bring to an end" in Article 2)[10]. With all apologies to St. Augustine, it is as if the Russian Federation is heard to say: "Lord, make me accountable — but not very accountable and certainly not now, and certainly not for this!" If the facts are as they say, they have nothing to fear from the Court.

11. I also note in passing that the evidence of key members of the *de facto* Government in South Ossetia being concurrently employed by the Russian military and intelligence services, presented by Professor Akhavan yesterday[11], has not been contradicted. Professor Zimmermann appeared to think it common ground that such authorities are not *de facto* organs of the respondent State[12]: but that is not common ground at all. Of course your provisional measures order will be addressed exclusively at the Russian Federation and will only concern acts contrary to the Convention that are attributable to the Russian Federation.

No evidence of facts on the ground in Abkhazia and South Ossetia adduced by Russia

12. My second preliminary remark concerns, Madam President, your second remark in opening yesterday, when you said that the Court particularly seeks "the assistance of the Parties . . . in identifying the situation as it presently is"[13].

13. As I have said, Russia's submissions yesterday delved into the history of the ethnic conflict and relied heavily on arguments about attribution; yet these topics are entirely peripheral to the present phase. What does occupy centre stage is the situation that currently exists on the

---

[7]CR 2008/23, p. 35, para. 25 (Pellet).

[8]*Ibid.*, pp. 32-33, para. 18 (Pellet).

[9]*Ibid.*, p. 42, para. 9 (Zimmermann).

[10]*Ibid.*, p. 48, para. 31 (Zimmermann).

[11]CR 2008/22, pp. 43-44, paras. 18-20 (Akhavan).

[12]CR 2008/23, p. 44, para. 22 (Zimmermann).

[13]CR 2008/22, p. 16.

ground in the regions. This was the focus of Professor Akhavan's presentation. The extraordinary omission that characterized Russia's presentations was the absence of any attempt to adduce its *own* evidence as to what is happening there. Of the two Parties before this Court, there cannot be any doubt which is currently in a better position to engage in fact finding on the ground. Georgia is confined to interviewing IDPs, relying upon the reports of NGOs, studying satellite imagery: Russian forces are physically present in these regions in substantial numbers. Russia is in a position to counter Georgia's evidence of widespread burning of houses, looting and other manifestations of the ethnic violence that has swept the regions in the last few weeks, since the ceasefire. But it has failed to do so.

14. I would add that what facts the respondent State did assert, through counsel, bear no relation to the facts as we understand them. My colleagues will — as far as appropriate — deal with these matters shortly.

The provisional measures ordered by the European Court of Human Rights

15. My third preliminary remark concerns the provisional measures ordered by the European Court of Human Rights on 12 August and since reaffirmed. Mr. Wordsworth appeared to suggest that the proceedings before this Court have been rendered moot by virtue of the European Court's order. That proposition cannot be accepted.

16. There is, it is true, overlap between the rights guaranteed under Article 5 of the 1965 Convention and the rights protected by the ECHR. There are four individual complaints made under the ECHR relating to human rights abuses in the regions, in addition to the inter-State proceedings between the two Parties[14]. The order of the European Court is exhibited at tab 29.

17. The question for the Court is whether this order renders inadmissible the Request made to this Court.

18. As I have said, the underlying purpose of the 1965 Convention is to provide a last line of defence against discriminatory practices implicating the constitution and composition of territorial

---

[14] *Mamasakhlisi* v. *Russian Federation and Georgia* (Application 29999/04); *Mekhuzla, Sania, Duali, Gogia et al.* v. *Russian Federation and Georgia* (Application 5148/05); *Nanava* v. *Russian Federation and Georgia* (Application 41424/04); *Parastaevi* v. *Russian Federation and Georgia* (Application 50514/06).

communities[15]. Surely there can be no principle of admissibility serving the administration of justice that would disable a State facing the most acute crisis in its history from invoking specific rights before this Court? Mr. Wordsworth cited no authority to that effect. Surely Georgia is entitled to pursue legal remedies in each forum available to it. This is especially the case when the rights in issue in the two proceedings are different in substance.

B. Jurisdiction and admissibility

19. Madam President, Members of the Court, I turn briefly to the questions of jurisdiction and admissibility.

Characterization for the purposes of the Court's *ratione materiae* jurisdiction

20. It was Professor Pellet who addressed the question of characterization — that is, whether the dispute submitted by Georgia to this Court falls within the four corners of the 1965 Convention. First, he quotes a truncated paragraph from Georgia's initial Request for provisional measures, which, he says, "annonce la couleur" of the dispute[16]. Then he asserts that the present dispute relates solely to the unlawful uses of force in August 2008[17].

21. But, to restate, Georgia's claims in its Application and the rights it asserts in both the initial and amended Requests are grounded in the 1965 Convention and in that Convention alone. Georgia makes no claim here under international humanitarian law or the *jus ad bellum*. That can be tested simply by reading Georgia's Requests.

22. Professor Pellet says that Georgia's amended Request suffers from the same flaw because, in any event, "il s'agit bien de la même demande, fondée sur les mêmes faits"[18]. So Professor Pellet's second point is that the facts relied upon by Georgia to establish a prima facie do not engage the obligations under the 1965 Convention.

---

[15]CR 2008/22, p. 38, para. 67.

[16]CR 2008/23, p. 29, para. 10 (Pellet).

[17]*Ibid.*, p. 29, para. 11 (Pellet):

> "On ne saurait dire plus crûment que l'objet du différend que la Géorgie voudrait voir examiné par la Cour ne consiste nullement en de prétendues violations par la Russie de ses obligations en vertu de la convention de 1965, mais qu'il repose (et repose seulement) sur des allégations d'interventions illicites et contraires au droit international humanitaire en Ossétie du Sud et en Abkhazie."

[18]*Ibid.*, p. 30, para. 12 (Pellet).

23. Madam President, Members of the Court, I opened my own presentation yesterday with the words: "This case is about the ethnic cleansing of Georgians . . ."[19]. Professor Akhavan, who followed me, dedicated the major part of his presentation to the evidence of ethnic cleansing. Ethnic cleansing is a prohibited form of discrimination under the 1965 Convention. That proposition was not put in dispute yesterday. So I return to Professor Pellet's point about the facts. Russia can deny that ethnic cleansing has taken place in Abkhazia and South Ossetia and in adjacent regions, or it can say that it is not responsible for it: despite Russia's best efforts, this is just something that will happen, even in the best households. Such issues are for the merits. But what does Russia say about the connection between the facts *asserted by Georgia* and the Convention's obligations? That is the jurisdictional question for the Court today. And in that respect Professor Pellet's speech was a fact-free zone.

24. Professor Pellet says that our documents show that we never mentioned the 1965 Convention, and that:

> "pour sa part le mot 'discrimination' (et cela vaut aussi pour ses déclinaisons) apparaît une fois, une seule, dans la déclaration d'un témoin, qui impute d'ailleurs l'acte discriminatoire en question non pas à la Russie mais aux 'autorités abkhazes de fait'"[20].

25. Professor Pellet's French is always formally perfect — unlike my pronunciation of it. But it has been deployed to make a very formalistic point indeed. It amounts to this: the 248 pages of Georgia's evidence only refer once to the word "discrimination"; therefore, this cannot be a dispute under the 1965 Convention.

26. But if you turn to the first of these 248 pages, you will see references to reports entitled "Georgia: Satellite Images Show Destruction, Ethnic attacks", "Status of internally displaced persons and refugees from Abkhazia, Georgia", "Reports of lawlessness creating new forcible displacement in Georgia" — and then on page 2 — "South Ossetian police tell Georgians to take a Russian passport, or leave their homes", "France accuses Russia of Ethnic Cleansing", "Russia: Kouchner claims ethnic cleansing in Georgia", "South Ossetia emptied of Georgians", "Fanning Ethnic Flames in Georgia" and "Looting and ethnic cleansing against Georgian enclaves".

---

[19]CR 2008/22, p. 20, para. 2 (Crawford).

[20]CR 2008/23, pp. 31-32, para. 15 (Pellet).

27. Now, it is true, there is no reference to the word "discrimination" in these first two pages. But Professor Pellet's point is only a good one if this Court is prepared to accept that ethnic cleansing and other violence targeted against ethnic groups cannot amount to discrimination for the purposes of Article 1 of the Convention. That would be tantamount to saying that torture cannot satisfy the definition of grievous bodily harm.

28. The fundamental point is this. International relations are not governed by the forms of action, and this is particularly so when it comes to peremptory norms of international law. As I demonstrated yesterday — and as the Respondent appears to accept — the 1965 Convention is applicable as a matter of international public policy, and its application is independent of specific invocation by a party. The question is — as you held in *Nicaragua* — whether the facts as presently and plausibly alleged raise an issue covered by the Convention. Mr. Kokoity now seems to think that they do, to judge from his most recent professions. It is curious to find Professor Pellet behindhand on this point, as compared with the South Ossetian leader.

29. Of course, there is an admissibility issue, but it is not a formalistic one. In the *NATO* cases, at the provisional measures stage, you rightly held that the NATO actions there were not in the circumstances capable of raising an issue under the Genocide Convention (*Legality of Use of Force (Yugoslavia* v. *Belgium)*, *Provisional Measures, Order of 2 June 1999*). If you think that ethnic cleansing and the denial of the right of return are not governed by the 1965 Convention — in the *NATO* sense — then, of course, it is for you to say so. But we say the position is otherwise.

The obligation to negotiate

30. I turn to another issue concerning the admissibility of this Request: the phrase "which is not settled by negotiation" in Article 22.

31. Yesterday, Professor Pellet described the submission of a dispute concerning the Convention to this Court as "un ultime recours lorsque toutes les autres possibilités se sont révélées inopérantes"[21].

32. But in the most authoritative commentary on the Convention, the 1970 Commentary by Natan Lerner[22], there is no support for such a restrictive interpretation of Article 22. The

---

[21]CR 2008/23, p. 35, para. 24 (Pellet).

commentary merely notes that a dispute between the parties under the Convention may be referred to this Court at the request of either party "[w]hen such disputes are not settled by negotiation or by the procedures expressly provided for in the Convention"[23]. There is no mention in the commentary of the Court being a "last resort". Nor was this an agreed position taken during the negotiations.

33. A broad approach is consistent with the liberal interpretation Lerner advocates in relation to Article 16 of the Convention. Article 16 concerns recourse to procedures outside the Convention. It is inconsistent with the notion that there is a remedial hierarchy imposed by the Convention, with the Court (so to speak) as the last station at the end of a long line. As Lerner comments:

> "it is apparent that no single machinery for the implementation of the several human rights instruments can at this stage be created. Different machineries do exist, on the double level of different fields covered and the regional and universal level. None of these machineries go far enough and it could not have been the intention of the United Nations members, . . . to impose a restrictive interpretation on Article 16."[24]

The same is true, we say, of Article 22.

34. Yesterday I cited your decision in *Nicaragua*, and the separate opinion of Sir Robert Jennings, who was not exactly a jurisdictional radical[25]. That represents the consistent approach this Court has taken to provisions such as Article 22.

35. I also discussed *Congo* v. *Rwanda*[26]. Article 29 of CEDAW has some similarities to our Article 22, but there is an important difference. Article 29 of CEDAW *does* have the Court as a fall-back mechanism. The normal method of judicial settlement under CEDAW is arbitration, but that requires a *compromis* — it is only when the parties to the dispute have failed within six months to agree a *compromis* that this Court can be seised. Arbitration is the first judicial resort.

36. By contrast under the 1965 Convention the *only* form of judicial settlement is this Court. The *only* form of binding third party settlement is you. If international law is to be respected at

---

[22]N Lerner, *The U.N. Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, (A W Sijthoff, Leyden, 1970).

[23]*Ibid.*, p. 104.

[24]*Ibid.*, p.99.

[25]CR 2008/22, p. 33, para. 51 (Crawford).

[26]*Ibid.*, pp. 34-35, paras. 55-56 (Crawford).

times of crisis, the principle must be that judicial settlement is not a last resort but an *available* resort, and that if *conditions préalables* to judicial settlement are to be imposed it must be done in clear terms.

37. In any event, I note that even where an obligation to negotiate prior to seising the Court does exist, it is well established that it does not require the parties to continue with negotiations which show every sign of being unproductive (see, for example, *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, pp. 13-15; *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 346; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, pp. 33-34, para. 55). Discussions and negotiations with the Russian Federation in relation to the return of IDPs have been ongoing since 2003, as noted yesterday[27]. Yet during this period things got worse, not better — and now, despite Mr. Wordsworth, they are worse still.

38. Georgia has consistently raised the problem of ethnic violence against Georgians in the region in the public sessions of international organizations to which Russia is a party. These include the United Nations Human Rights Committee, the Committee Against Torture and the European Commission against Racism and Intolerance. By way of example — many examples could be given — the Georgian President said the following at the Sixth-First session of the United Nations General Assembly on 22 September 2006, which you will find at tab 30 of your folders:

> "Since the deployment of Russian peacekeepers in Abkhazia, Georgia, more than 2,000 Georgian citizens have lost their lives and more than 8,000 Georgian homes have been destroyed. For more than 12 years, Russian peacekeepers have been unable to facilitate the return of more than 250,000 internally displaced persons to their homes in Abhazia — though this is an explicit part of their mandate."[28]

The President of Georgia confirmed the substance of this statement to the General Assembly a year later in September 2007[29]. He made an explicit reference to "ethnic cleansing"[30].

---

[27]See CR 2008/22, pp. 35-36, paras. 57-59 (Crawford).

[28]Statement by H.E. Mr Mikheil Saakashvili, President of Georgia at the Sixty-First Session of the United Nations General Assembly, 22 Sept. 2006, available at www.un.org/webcast/ga/61/gastatement22.shtml.

[29]Statement by H.E. Mikheil Saakashvili, President of Georgia, at the General Debate of the Sixty-Second Session of the General Assembly of the United Nations, 26 Sept. 2007,

[30]Statement by H.E. Mr Mikheil Saakashvili, President of Georgia at the Sixty-First Session of the United Nations General Assembly, 22 Sept. 2006, available at http://www.un.org/webcast/ga/62/2007/pdfs/georgia-en.pdf.

Madam President, we have given to the Court in response to the challenge yesterday, an Exchange of Letters between the Presidents of the two Governments dated 23 June and 1 July. I will not refer to them unless the Court would like me to do so. I think Professor Pellet says that he is happy, but . . .

The PRESIDENT: Please continue.

Mr. CRAWFORD:

39. Russia admonished Georgia yesterday for failing to raise these forms of discrimination in bilateral negotiations with Russia. But I refer to the letter of the Georgian President to the Russian President dated 23 June 2008 and the Russian President's response of 1 July 2008. We have given the Court the originals and translations. The Georgian President requested a "serious dialogue" in relation to a catalogue of problems facing Abkhazia. The first on the list was the safe return of internally displaced persons to the Gali and Ochamchirski regions of Abkhazia. In his response, which you can read and judge for yourself, the Russian President made it clear that, in relation to working out a solution to these problems, "the principal partner must be Abkhazia".

Jurisdiction *ratione loci*

40. Madam President, Members of the Court, I will not talk very much about jurisdiction by reference to place. I note only that the most instructive precedent for the present circumstances is *Ilaşcu* v. *Moldova and Russia* — a case I cited yesterday[31] but which Professor Zimmermann ignored. The European Court concluded that Russia's "military, economic, financial and political support"[32] to the separatist régime there meant that the region came within Russia's control and therefore jurisdiction for the purposes of Article 1 of the European Convention. If Russian control was found to exist over the region called the "Moldavian Republic of Transdniestra" without military occupation, can there be any doubt about Russian control over Abkhazia and South Ossetia *with* military occupation?

---

[31]CR 2008/22, p. 28, para. 35 (Crawford).

[32]*Ilaşcu* v. *Moldova and Russia*, (dec.) [GC], No. 48787/99, para. 392.

Obligation to prevent under Articles 2 and 5 of the Convention on Racial Discrimination

41. Finally, I turn to the scope of the obligations imposed under Articles 2 and 5. Professor Zimmermann came to the surprising conclusion that these Articles do not enshrine a duty to *prevent* breaches of the Convention. An initial point is that we say that Russia is complicit in these breaches; indeed many are committed by persons whose conduct, we say, is attributable to the respondent State. So our case does not depend solely on prevention.

42. But taking the ordinary meaning of these provisions, Article 2, paragraph 1, requires States parties to purpose "by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms". In particular under Article 2 (1) *(d)*: "Each State party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization." Bring to an end.

43. By what logic does an obligation to "bring to an end, by all appropriate means" not entail an obligation to prevent racial discrimination? Article 5 requires "compliance with the fundamental obligations laid down in Article 2" by States parties in fulfilling the obligations under that provision. In appropriate circumstances, both Articles impose an obligation to prevent.

Conclusions

44. Madam President, Members of the Court, for these reasons, supplementing what I said yesterday, Georgia's Application falls prima facie within the scope of the Court's jurisdiction under the Convention and the present Request is admissible. Madam President, I ask you now to call upon Professor Akhavan.

The PRESIDENT: Thank you, Professor Crawford. We now call Professor Akhavan.

Mr. AKHAVAN:

2. RUSSIA HAS FAILED TO REBUT GEORGIA'S FACTUAL ASSERTIONS

1. Madam President, distinguished Members of the Court, I shall briefly address the Russian Federation's oral observations on Georgia's factual assertions. In doing so, I would observe that the most significant aspect of Russia's case was what it *did* not address. In particular, I take note of Russia's failure to contest the evidence that Georgia has put before the Court. *First*, Russia has not

denied that the Ossetian militia is engaged in continuing acts of ethnic cleansing against Georgians in areas under Russian control. *Second*, although Russia has denied the participation of its forces in such conduct, it has not produced any evidence rebutting Georgia's voluminous evidence demonstrating that Russian forces are in fact participating in such acts of ethnic cleansing. *Third*, Russia has not denied that senior military and intelligence officials in the *de facto* separatist governments are in fact officials of the Russian Federation.

2. It is indicative of Russia's case that only Mr. Wordsworth even attempted to challenge Georgia's evidence. We would submit however, that his pleadings were wholly inadequate in rebutting Georgia's factual assertions.

3. Mr. Wordsworth made much of the fact that Georgia has not submitted as much evidence on ethnic cleansing in Abkhazia as it has on South Ossetia. I would make four observations on Mr. Wordsworth's argument. *First*, Russia does not deny that the Gali population is completely isolated and cut off by Russian forces. Should the Court require additional evidence on this point, I would respectfully draw its attention to an article published yesterday, 8 September, by *Itar-Tass*, wherein the Abkhaz separatist leader Sergei Bagapsh confirms that Russian forces "will remain in the republic and [they] will also be our border guards in Gali district"[33]. To the extent that further evidence would elucidate the situation of the ethnic Georgian community in that district, it is Russia that is in the best position to obtain the evidence and clarify the facts. This it has failed to do. *Second,* the once majority ethnic Georgian population has been eliminated throughout Abkhazia with the sole exception of Gali district. In other words, as set forth in our Application, and as not denied by the Agents or counsel for Russia in their pleadings on the history of the present dispute, much of the ethnic cleansing of Georgians in that region is a fait accompli from the 1992-1994 conflict. *Third*, Russia does not deny the ethnic cleansing of 3,000 Georgians from the Kodori gorge in mid-August 2008. *Fourth*, Russia does not deny that the Georgians in Gali are being threatened with expulsion if they refuse to adopt Russian citizenship.

4. Mr. Wordsworth also took exception that Georgia has cited numerous reputable press reports of ethnic cleansing. He invoked the jurisprudence of the Court, paragraphs 62 and 63 of the

[33]"Abkhazia will be able to host brigade of RF troops — Bagapsh", *Itar-Tass*, 8 Sept. 2008.

Nicaragua case in particular, in support of the proposition that such sources are inherently unreliable. But this argument has no merit here. *First,* paragraph 63 of the *Nicaragua* case indicates that in *United States Diplomatic and Consular Staff in Tehran*, the Court relied on press and broadcast material which was "wholly consistent and concordant as to the main facts and circumstances of the case" to declare that it was satisfied that the allegations of fact in that case were well founded. That is exactly the case here. Mr. Wordsworth also disregards the fact that Georgia's Observations includes multiple credible sources, including the reports of the UNHCR, the ICRC, reputable human rights organizations, numerous witness statements, and UNOSAT satellite imagery. All of these sources, including the media sources cited by Georgia, are consistent and corroborate the pattern of ethnic cleansing that is at issue before the Court.

5. *Second*, in paragraph 64 of the *Nicaragua* case, which counsel for Russia failed to mention, the Court indicated that "statements by representatives of States" including those made "during press conferences or interviews" and "reported by the local or international press . . . are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them". The media sources submitted by Georgia include several statements against interest from the *de facto* separatist authorities in South Ossetia wherein they confirm their intention to ethnically cleanse and permanently displace the Georgian population. These are supported and corroborated by witness statements and other sources.

6. *Third*, Russia is trying to hold Georgia to an evidentiary standard applicable at the merits phase of proceedings. The case before the Court is one concerning provisional measures, and we respectfully submit that Georgia has more than adequately satisfied its evidentiary burden for such purposes.

7. I also note that Mr. Wordsworth, while never directly refuting any of the press reports relied upon by Georgia, suggested that Russia has compiled an equally impressive volume of media sources supporting its views. He cited only one example of such supposed parity of evidence and with your permission I will briefly examine this assertion. Mr. Wordsworth noted that both Georgia and the Russian Federation cite articles published by the *Guardian*. He neglected however, to describe the content of the article submitted by Georgia, contained in Annex 13 of Georgia's Observations. That article is entitled "Russia's cruel intention: in South Ossetia, I

witnessed the worst ethnic cleansing since the war in the Balkans." It is written by a journalist who spent three weeks travelling throughout South Ossetia where he interviewed Russian soldiers about what he describes as a campaign of "killing, burning, stealing, and kidnapping" against ethnic Georgians. He indicates that in response to his queries about these acts of ethnic cleansing, a Russian official first claimed that "Georgian special commandos burned the houses" and then, alternatively, that "[t]hose houses suffered from a gas or electricity leak". He reports further how he witnessed Georgians fleeing from Russian controlled Akhalgori and how an Ossetian militia leader, a certain Captain Elrus, when asked about the destruction of Georgian villages between Tskhinvali and Gori admitted that "[w]e did carry out cleaning operations, yes".

8. In contrast with this article from the *Guardian*, corroborated by numerous other sources in Georgia's Observations, Mr. Wordsworth suggests that an opinion editorial from the *Guardian*, entitled "This is a tale of US expansion not Russian aggression", is somehow of equal evidentiary weight. Madam President, I need not dwell further on the complete irrelevance of such political commentary in a judicial proceeding. It only underscores the fact that the Russian Federation has completely failed to rebut the credible and compelling evidence that Georgia has put before the Court.

9. I also take this opportunity, Madam President, to respond further to your question yesterday concerning the provenance of the sketch-map provided by Georgia on the ethnic composition of South Ossetia and Gori district before and after the Russian invasion of 8 August. Georgia's Agent has authorized me to advise the Court that the white circles depicting villages that have been depopulated are based on information provided by the Civil Registry Agency of the Ministry of Justice of the Government of Georgia. In particular, they are based on information reported by internally displaced persons who are required to register and to indicate the villages from which they have been expelled. Where there are a sufficient number of IDPs registering from a particular village and indicating the circumstances of their displacement, that village has been identified with a white circle. I trust that this explanation meets with the Court's satisfaction and Georgia stands ready to provide further information as required.

10. I would also add, Madam President, that the facts that the sketch-map represents are corroborated by the witness statements, reports of Human Rights Watch, media sources, UNOSAT

satellite imagery, and other sources. I provided Kekhvi as an example of a Georgian village that all these sources confirm has been destroyed. The same could be done for many other villages on the sketch-map but I have refrained from doing so in view of time constraints.

11. Madam President, I shall now turn to some of the evidence invoked by counsel for Russia in support of its contentions. As I shall demonstrate, this evidence actually *confirms* Georgia's assertions of fact. Yesterday, Mr. Wordsworth gave a remarkably optimistic assessment, asserting that since "the armed actions have now ceased . . . civilians of all ethnicities are returning to some, although not yet all, of the former conflict zones". In support of this assertion, he referred to a map prepared by the United Nations Office of Co-ordination for Humanitarian Affairs (OCHA) "showing the situation in Georgia as of 25 August 2008". Since counsel for Russia failed to produce this map, we have taken the liberty of doing so for the Court's consideration. It may be found at tab 23 of the judges' folder and is projected on the screen before you.

12. The map depicts the movement of refugees and internally displaced persons out of and back into the areas affected by the conflict. You will see from the legend of the map that displacements are represented by black arrows. The return of populations is represented by red arrows. You will see as a general matter that there are only two populations that are returning: Ossetians in North Ossetia in the Russian Federation are returning to South Ossetia; and Georgians are returning to the town of Gori and villages in the immediate vicinity, outside of Russia's so-called "buffer zone". You will see that this zone of Russian occupation is roughly depicted by a red oval with a black box indicating "no humanitarian access". This corresponds to the map provided yesterday at tab 17 of the judges' folder in which this same zone is depicted. For purposes of comparison, you can compare the close-up of South Ossetia that we presented yesterday depicting this same zone with a dark grey line.

13. Madam President, when Mr. Wordsworth discussed this map, he correctly noted that it states that 67 per cent of those displaced in South Ossetia are expected to return within three months. You will notice the box on the upper right-hand corner of the map containing this figure. As I noted just now, however, the red arrow pointing from North Ossetia to South Ossetia indicates that only Ossetians in the Russian Federation are returning to this region. I would also draw the

Court's attention to the fact that 67 per cent corresponds roughly with the proportion of South Ossetia's population that is ethnic Ossetian. In other words, this map confirms that displaced ethnic Georgians, approximately 40 per cent of the pre-war population, are not expected to return any time soon.

14. The map also indicates that in areas of Gori district that are under Georgian Government control, 87 per cent of IDPs are expected to return within three months. The same does not apply to the so-called "buffer zone" under Russian control where, as the map indicates, there is "no humanitarian access". In any event, Russian forces are not allowing Georgian IDPs back to this area. Indeed, the map indicates that those few that remain are still being forcibly displaced from their villages. As you can see, the map shows black arrows emanating from the red oval representing Russia's so-called "buffer zone" in Gori district. Likewise, the map depicts displacement from the area around Akhalgori to the north-east of Gori. You will recall, Madam President, that these are the two areas in and around South Ossetia that Georgia identified yesterday as requiring urgent measures of protection by the Court.

15. The map also provides valuable information on the situation of ethnic Georgians in Abkhazia. Since Mr. Wordsworth complained that Georgia has provided insufficient proof in this regard, it should be pointed out that the map fully corroborates Georgia's factual assertions concerning the ongoing ethnic cleansing of the Georgian population in Gali district. You will see to the left of the map that there are black arrows emanating from Kodori gorge to the top and Gali district just below, indicating displacements from these ethnically Georgian populated territories. You will also notice just below Gali, to the bottom left, at the boundary of Abkhazia and the Zugdidi district, the village of Ganmukhuri. There is also a black arrow emanating from this village indicating displacement of Georgians. The Court will recall that the statement of Mr. Joni Mishvelia, found at tab 15 of the judges' folder, that I quoted in my presentation yesterday pertains to this same village. It contains testimony that the Georgian residents of that village have been pressured to adopt Russian citizenship on threat of expulsion, and that many residents have felt compelled to leave. Mr. Wordsworth belittled this testimony as being, to use his words, simply

"allegations based on hearsay"[34]. Madam President, the United Nations map that Mr. Wordsworth himself has invoked corroborates Mr. Mishvelia's testimony. Indeed, this map fully confirms that the situation throughout is exactly as described by Georgia in its oral pleadings yesterday, not only in Abkhazia, but also in Akhalgori and Gori districts in and around South Ossetia.

16. It was also remarkable that in his presentation, Mr. Wordsworth referred to 89 Georgian civilians who were detained in Tskhinvali. He told the Court yesterday, quoting an Ossetian source, that "the authorities were holding 89 Georgian civilians who were taken into custody to save them from being lynched after the initial Georgian attack on the town earlier this month"[35]. In other words, Mr. Wordsworth would have us believe the Georgian civilians were being protected from harm. However, if we consult the testimony of these detainees, a very different story emerges.

17. This is how Enver Babutsidze, a 62-year-old resident of Kvemo Achabeti, recounts his capture: the "Russian soldier suddenly jabbed me in the back with the point of his rifle and then hit me with the butt". His testimony is contained in Annex 25 of the Observations of Georgia. He then explains that he was marched towards Tskhinvali in the custody of a lieutenant in the Russian army, and placed into a car with two Ossetian militiamen, who drove him to the Interior Ministry building in Tskhinvali. He was then placed "in a windowless cell with only a small hole for air to enter" and the guards told him that "we were hostages and would be held until there was an exchange".

18. Mr. Babutsidze and his fellow prisoners were subjected to inhumane conditions.

> "The guards often beat hostages. On one occasion they took 4 men and I could hear them being beaten. Another time a guard brandished a knife and shouted 'I wish I could drink your blood and that I never see Georgians'. I also remember a brutally beaten 94-year-old man being thrown into the cell. This man said that he had been beaten by Russian soldiers."

19. It is astonishing that Mr. Wordsworth would invoke this incident as an instance of proper conduct by the Ossetian forces. If anything, the testimony of these hostages indicates the full complicity of the Russian forces in such abuses against ethnic Georgians. Mr. Babutsidze's testimony describes how, when engaged in forced labour, he witnessed Mikhail Mindzaev, who as

---

[34]CR 2008/23, p. 56, para. 14 (Wordsworth).

[35]*Ibid.*, p. 57, para. 19.

I described yesterday is the Interior Minister of the *de facto* Ossetian authority and a colonel in the Russian police, speaking with the commander of the Russian peacekeeping force, General Kulakhmetov, literally metres away and in plain view of Mr. Babutsidze and other hostages.

20. Perhaps General Kulakhmetov's inaction in the face of witnessing hostages is not surprising, since Russian officers led interrogations of these prisoners. Mr. Babutsidze recounts his interrogation: "There was a place in the prison where Russians and Ossetians interrogated the hostages. My interrogation was mostly carried out by Russian officers. I recall they had stars on their uniforms but I do not recall their ranks. 'Russia' was written on their badges."

21. Mr. Babutsidze tells how the number of hostages — including many elderly women — became so large that some had to be kept in cages. Madam President, I am now showing you a photograph contained as an attachment to Mr. Babutsidze's testimony. It was taken by Jonathan Littel, a freelance journalist, and obtained by Georgia from Amnesty International. It was taken on 22 August and in the background you will notice a lighted area with Russian and Ossetian flags which is a widely reported Kremlin-sponsored concert that was held in front of Tskhinvali's parliament building with the conductor of the London Symphony Orchestra, Valery Gergiev. Mr. Babutsidze identified this photograph as being the cage in which he himself was placed. I would like to draw your attention to the large green object located a few meters behind the cage. Mr. Babutsidze identified this in his statement as "temporary housing where Russian soldiers stayed" and testified that "I frequently saw Russian soldiers standing in this area".

22. I would also draw attention to the statements of Mr. Wordsworth on the need to protect these elderly civilians from "public anger"[36]. Counsel for Russia has suggested that Georgia, through its military operations to put an end to Ossetian separatist attacks against Georgian villages, has provoked the ethnic cleansing that has followed. A closer examination of the evidence, however, indicates that the Russian portrayal of Georgians as aggressors is itself an integral part of the ethnic cleansing campaign that began immediately after Russia's invasion of 8 August and which continues to this day. I do not intend now to consider the circumstances and

---

[36]Para. 19.

events that led to Russia's invasion of 8 August in support of the ethnic separatists. That is an issue that is properly for the merits. I do wish however to explain that what Mr. Wordsworth refers to as "public anger" following Georgia's brief defensive operation against Ossetian separatist forces on 7 August is part of a deliberate and ongoing strategy by Russia to justify the current ethnic cleansing campaign. Within hours after the hostilities began, then President Vladimir Putin of Russia was already accusing Georgia of "genocide" for the alleged mass murder of 2,000 Ossetian civilians[37]. Annex 1 to Document 3 of Russia's Observations contains the letter dated 11 August from Russia's Permanent Representative to the President of the United Nations Security Council claiming that "1,500 peaceful civilians" were killed by Georgian forces. At the same time that these accusations of genocide were levelled against Georgia, Russia commenced the massive bombardment of Georgian forces in Tskhinvali, which it would later compare to Stalingrad and blame on the Georgians. To date, there is no evidence whatsoever of anything remotely approximating a casualty figure of 2,000 Ossetian civilians as reported by the Russian Federation. A Human Rights Watch report confirms that there were only 44 dead in Tskhinvali hospital and that a majority of casualties were military personnel[38]. It further confirms that among Ossetians interviewed in surrounding villages "[n]one . . . complained about cruel or degrading treatment by Georgian servicemen, who searched the houses looking for remaining militias and arms". Russia's own Observations indicates, in document 2 at page 20, that the Russian State Investigation Committee has since reduced this number from 2,000 to 133.

23. Russia's incendiary propaganda was used to instigate and justify the wave of ethnic cleansing that followed. As stated by a Human Rights Watch investigator in a 14 August interview: "The torching of [Georgian] houses in these villages is in some ways a result of the massive Russia propaganda machine which constantly repeats claims of genocide and exaggerates the casualties . . . That is then used to justify retribution."[39] This campaign of misinformation, echoed again in the pleadings of counsel for Russia, only underscores why there is "public anger"

---

[37]"Putin accuses Georgia of genocide", *Russia Today*,10 August 2008, available at http://www.russiatoday.com/news/news/28744.

[38]Human Rights Watch, "Russia/Georgia: Investigate Civilian Deaths", 14 August 2008, available at http://hrw.org/english/docs/2008/08/13/russia19620.htm

[39]Tom Partift, "Human Rights Watch: Russia Inflating Casualty Figures", *The Guardian*, 14 August 2008, available at http://www.guardian.co.uk/world/2008/aug/14/georgia.russia1.

against ethnic Georgians who are portrayed as aggressors while in reality they are the victims of ethnic cleansing.

24. Madam President, Members of the Court. In closing, I would respectfully submit that the Russian Federation has failed completely to rebut the factual case that Georgia has put before you, and that the evidence that has been submitted is more than sufficient to establish the facts of ongoing ethnic cleansing for the purposes of a provisional measures hearing. That concludes my submission. It has been an honour and privilege to appear before you in this hearing. I would now ask the Court to call on Mr. Reichler.

The PRESIDENT: Thank you, Professor Akhavan. We now call Professor Reichler.

Mr. REICHLER:

3. THE PROVISIONAL MEASURES REQUESTED BY GEORGIA ARE URGENTLY REQUIRED

1. Madam President, Members of the Court, it is my task today to respond to what distinguished counsel for the Russian Federation, Mr. Wordsworth and Professor Zimmerman, said yesterday about the criteria for the indication of provisional measures, and the specific provisional measures requested by Georgia.

2. The Parties are in agreement about what the criteria for provisional measures are. My good friend Mr. Wordsworth agreed yesterday that there must be a risk of irreparable prejudice to rights in dispute, and urgency. Where the Parties disagree, as Mr. Wordsworth made very clear, is whether the facts that have been presented to the Court at these hearings are sufficient to show a real risk of irreparable harm, and whether they are sufficient to show urgency.

3. Professor Akhavan has already responded to Mr. Wordsworth's arguments that the facts do not sufficiently show a risk of irreparable harm to the rights that are in dispute in this case. As Professor Akhavan has just demonstrated, in responding to the points Mr. Wordsworth made in this regard, the risk of irreparable harm to the ethnic Georgians who still remain in the Akhalgori district of South Ossetia, the Gali district of Abkhazia, and the portion of the Gori district that Russian military forces still occupy as their so-called "buffer zone", is every bit as real and as grave

as Georgia showed yesterday morning. I do not need to add anything further to Professor Akhavan's observations.

4. But I will respond to Mr. Wordsworth's attempt to demonstrate that there is no urgency. He made several points, and I will take them one by one. First, he argued, and I quote him, that Georgia has failed to make out a case of urgency because "the latest document in its judges' folder is dated 29 August — in the Internet age in which we sadly now all have to operate, the absence of more recent documents tells a significant story"[40]. True enough, and here is what the story is. Georgia sent all its evidence to the printer on 2 September, so that it would arrive at the Court in advance of these hearings and be delivered to the respondent State in sufficient time to allow it to review that evidence before the hearings began, and thereby avoid causing any prejudice. That should hardly give Mr. Wordsworth cause for criticism. But since he wants more recent documents, we are happy to provide them, today, as a supplement to our judges' folder. I should note that all of the supplementary documents are publicly available. At tab 25 of your judges' folder is a report from UNHCR dated 2 September, which states:

> "UNHCR remains concerned about the humanitarian situation in and around the Georgian town of Gori, just south of the breakaway region of South Ossetia. All [4,200 people registered as IDPs] came from villages in the so called 'buffer zone' between Gori and the South Ossetian boundary . . . Our initial assessment indicates that some 450 people arrived from their villages within the last week due to massive intimidation by marauding militias. Those who remained behind are now leaving due to beatings, harassment, looting and burning of houses."[41]

UNHCR further reports:

> "The remaining 3,750 IDPs were actually on their way back home from Tbilisi and other parts of Georgia where they had sought refuge during the conflict, but got stuck in Gori when they could not proceed into the 'buffer zone'."[42]

5. Let us recall that yesterday afternoon Mr. Wordsworth advised the Court that there was no longer any risk of harm to the ethnic Georgians living in the part of the Gori district claimed by Russia as a "buffer zone", and that the situation was so calm that Georgians were returning to their homes there, and that they were being warmly welcomed by the Russian forces. UNHCR, not Georgia, UNHCR refutes Mr. Wordsworth's presentation on two counts. First, it establishes that

---

[40]CR 2008/22, p. 60, para. 32 (Wordsworth).

[41]UNHCR, *Briefing Notes*, Georgia: "Gori Arrivals Tell of Massive Intimidation by Militias" (2 Sept. 2008).

[42]*Ibid.*

the risk to ethnic Georgians in the Russian-controlled area is ongoing, including, "for those who remained behind . . . beatings, harassment, looting and burning of houses"[43]. Second, it shows that, contrary to what Mr. Wordsworth told us yesterday, ethnic Georgians are not allowed by the Russians to return to their homes in Russian-controlled territory; instead, when they approach they are stopped at the Russian checkpoints and told "they could not proceed into the 'buffer zone'"[44].

6. By contrast to the plight of ethnic Georgians whose return Russia has blocked, UNHCR says that "the vast majority of those who fled to the Russian Federation have now been returned to their places of origin in South Ossetia"[45].

7. But that was on 2 September, a full week ago, and maybe Mr. Wordsworth will come back tomorrow and tell you that is not recent enough either. So we are also submitting to the Court today the even more recent statement of 5 September by the Ambassadors of Sweden, Estonia and Latvia, who were blocked by the Russian forces from entering the "buffer zone" to verify the "ethnic cleansing reported by the humanitarian agencies (against the Georgian population in the area) and to deliver humanitarian aid"[46]. According to the three Ambassadors: "The vehicle loaded with humanitarian aid was stopped at Karaleti and was not allowed to move any further under excuse of the established regulation by the Russian authorities concerning delivery of humanitarian aid."[47] This statement, which, by the way, also confirms who is actually in control in this part of Georgia, has been added to your judges' folder at tab 26.

8. And then there is a report from just yesterday stating on 8 September — and it would be difficult to satisfy Mr. Wordsworth if he wants something more recent than that — Russian military forces prevented international humanitarian assistance convoys from delivering urgently-needed relief to Georgians remaining in Russian-held territory. The report quoted Mr. David Carden, the leader of an interagency mission representing UNHCR, UNICEF and the World Food Program: "We tried to do a preliminary humanitarian mission. It didn't work out today as we would have

---

[43]*Ibid.*

[44]*Ibid.*

[45]*Ibid.*

[46]Statement of Ambassadors of Estonia, Latvia and Sweden to Georgia and the Deputy-Minister of Foreign Affairs of Lithuania (5 Sept. 2008).

[47]*Ibid.*

hoped . . ."[48] This report, which has been added to your judges' folder at tab 27, includes a colour photograph of Mr. Carden speaking with a Russian general at the Karaleti checkpoint, where his aid mission was blocked.

9. Finally, I would call the Court's attention to the report of 8 September — that is, again, yesterday — by the Council of Europe Commissioner for Human Rights, which has been added to your judges' folder at tab 28. Here are some of his findings: "Lawlessness spread in the 'buffer zone' controlled by Russia between Tskhinvali and Karaleti and forced many to leave from there."[49] "There is a return movement to homes in Gori [that is, the city of Gori] and other safe neighboring villages. At the same time there are new flows of displacement coming from areas where inter-community violence was reported."[50] "Very severe damages have been caused on the villages in South Ossetia with a majority Georgian population. Those villages between Tskhinvali and Java have been destroyed, reportedly by South Ossetian militia and criminal gangs."[51]

10. Mr. Wordsworth's next comment on urgency was that if it existed, it was only during the period of military hostilities, which ended with the ceasefire that took effect on 10 August. I addressed this issue in my remarks of yesterday, in my discussion of the *Nigeria* v. *Cameroon* case, where the Court ordered provisional measures because, notwithstanding the ceasefire between those two States, there was a risk that the acts potentially causing irreparable harm might occur again. Again, as I pointed out yesterday, in the present case, the acts creating a risk of irreparable harm to ethnic Georgians has not only continued but has grown worse since the ceasefire. But since Mr. Wordsworth made this argument nonetheless, I will refer the Court to tab 9 of our judges' folder, which is Human Rights Watch's report on the UNOSAT photos of destroyed Georgian villages that Professor Akhavan discussed and showed the Court yesterday. The Human Rights report says: "The map shows active fires in the ethnic Georgian villages on August 10, 12, 13, 17, 19 and 22, well after hostilities ended in the area on August 10."[52] Furthermore, the reports

---

[48]Fox News, Associate Press, "Russian Troops Turn Away U.N. Convoy in Georgia" (8 Sept. 2008).

[49]Council of Europe Commissioner for Human Rights, Thomas Hammarberg, Human Rights in Areas Affected by the South Ossetia Conflict, Special Mission to Georgia and Russian Federation (8 Sept. 2008), para. 2.

[50]*Ibid.*, para. 63.

[51]*Ibid.*, para. 78.

[52]Human Rights Watch, *Human Rights News*, "Georgia: Satellite Images Show Destruction, Ethnic Attacks. Russia Should Investigate, Prosecute Crimes" (29 Aug. 2008).

of UNHCR, ICRC, and Amnesty International, at tabs 5 through 8 of your judges' folder — all of which attest to the ongoing violent attacks and forced expulsions inflicted on ethnic Georgians remaining in Russian-controlled territory, also post-date the cessation of military hostilities.

11. Mr. Wordsworth's last attempt at denying the obvious presence of urgency in these proceedings is to recite public professions by the Russian Foreign Ministry of its commitment to assuring the right of return of all IDPs. The recent report by the European Commissioner for Human Rights likewise states that he "raised the right of return with high Government officials in both Tbilisi and Moscow and noted that they all recognized the importance of the unconditional implementation of the right to return for all victims, without any distinction whatsoever"[53]. But Moscow's words are not its deeds. And its deeds are to the contrary. According to UNHCR's report of 2 September, from which I quoted a few moments ago, only Ossetian IDPs have been allowed to return to their homes in South Ossetia. Georgian IDPs have not been allowed to return to South Ossetia, to Abkhazia or to the part of the Gori district that Russia calls its buffer zone. It is true, as Mr. Wordsworth said, that Georgians are returning to Gori. But what he neglected to tell the Court is that they are returning to Gori city and its nearby villages, precisely because there are no longer any Russian forces there, and these areas are once again administered by the Georgian Government, which has facilitated their return. They are still not allowed into the Gori district under Russian control. Nor, as we have seen, are international humanitarian assistance organizations or members of the diplomatic corps allowed past the Russian lines marked by the barbed wire that is depicted in the photograph at tab 27.

12. With respect, there is nothing that was said yesterday by learned counsel for the respondent State that diminishes the conclusions reached by reputable international and non-governmental organizations, to which we referred yesterday, that: "the remaining residents of these destroyed Georgian villages are facing desperate conditions, with no means of survival, no help, no protection, and nowhere to go . . ." (tab 7; and "with access to humanitarian agencies blocked [and] poor security, their situation is becoming more precarious by the day" (tab 5). Madam President, Members of the Court, it is difficult to craft a better definition of urgency.

---

[53]Council of Europe Commissioner for Human Rights, Thomas Hammarberg, "Human Rights in Areas Affected by the South Ossetia Conflict, Special Mission to Georgia and Russian Federation" (8 Sept. 2008), para. 34.

13. I will now address Mr. Wordsworth's argument that the Court should decline to order provisional measures against the respondent State as a matter of discretion. This is plainly a last-ditch argument, and he all but admits it. He says that "even if [the Court] considers that the criteria of Article 41 are met . . . there is a powerful factor that goes to discretion, and this is that the events of August 2008 were born out of Georgia's use of force is South Ossetia. It is undeniable that Georgia used force before Russia . . ."[54] Now, about this argument several brief comments are in order. First is to note his reliance on purported facts that relate exclusively to the merits and have nothing to do with provisional measures. Mr. Wordsworth's response to the evidence of irreparable harm presented by Georgia is to shout "But Georgia started it!" And he invites us to debate with him who fired the first shot. We decline. We are conscious of the President's admonition yesterday morning, in her citation of Practice Direction XI, that the Parties should "limit themselves to what is relevant to the criteria for the indication of provisional measures . . . They should not enter into the merits of the case beyond what is strictly necessary for that purpose."[55] The issue before the Court is whether the rights under the 1965 Convention relating to the ethnic Georgians who remain in South Ossetia, Abkhazia and the Russian "buffer zone" are now or imminently at risk of irreparable prejudice. There could be no conceivable relevance to a debate over whose army shot first on 7 August, or why it did so. This cannot be a reason for the Court to exercise its discretion to deny provisional measures, to quote Mr. Wordsworth "if [the Court] considers that the criteria of Article 41 are met"[56]. He has offered no other reason.

14. I will now proceed to the arguments made by my friend Professor Zimmermann against the indication of provisional measures. Professor Crawford has already disposed of most of them. But he did leave three of them for me. First, Professor Zimmermann tells us that the Court cannot order provisional measures in this case without prejudging the merits[57]. With respect, he cannot be right about this. His thesis is at odds with the jurisprudence of the Court on provisional measures.

---

[54]CR 2008/23, p. 62, para. 43 (Wordsworth).

[55]CR 2008/22, p. 16 (President).

[56]CR 2008/23, p. 62, para. 43 (Wordsworth).

[57]*Ibid.*, pp. 48-51, paras. 32-45.

I refer the Court in particular to paragraph 44 of its Order of 8 April 1993 on provisional measures in the *Bosnia* case, to which I specifically referred yesterday.

15. Professor Zimmermann tells us that if the Court orders provisional measures, it is necessarily assuming the existence of the circumstances giving rise to them, including the responsibility of the respondent State. But that is incorrect. To be sure, as the Court said in the *Bosnia* case, it "has in accordance with Article 41 of the Statute to consider the circumstances drawn to its attention as requiring the indication of provisional measures" (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 8 April 1993*, *I.C.J. Reports 1993*, p. 22, para. 44). There is nothing remarkable here. If the Court does not consider the circumstances, how can it determine whether the criteria for provisional measures have been met? But this does not mean, as Professor Zimmermann suggests, that in considering the circumstances, the Court is prejudging them. In fact, the opposite is true. The Court made this clear in *Bosnia,* where it said that it "cannot make definitive findings of fact or of imputability, and the right of each Party to dispute the facts alleged against it, to challenge the attribution to it of responsibility for those facts, and to submit arguments in respect of the merits, must remain unaffected by the Court's decision" *(ibid.)*.

16. Professor Zimmermann also argues that, even if provisional measures are warranted in this case, the Court should not order the specific measures requested by Georgia because they would impose on the respondent State a responsibility for actors and actions over which it has no control. Georgia intends no such thing. Presumably, Professor Zimmermann was referring to paragraph 24 *(b)* of Georgia's revised provisional measures Request, pursuant to which Georgia asks for an order that the respondent State "take all measures to prevent groups or individuals from subjecting ethnic Georgians to coercive acts of racial discrimination". But as I stated yesterday, the purpose of this Request is to protect the rights relating to ethnic Georgians that are threatened by "organizations or individuals that, whether or not they are organs of the respondent State, are in any event subject to its direction, control or influence . . ."[58]. This is the same language that the Court

---

[58]CR 2008/22, p. 65, para. 35.

used in its provisional measures Order in the *Bosnia* case. In any event, Georgia has no objection to inserting these words into its Request for this provisional measure, such that it would require the respondent State to "take all necessary measures to prevent groups or individuals *subject to its direction, control or influence* from subjecting ethnic Georgians to coercive acts of racial discrimination".

17. This is not a matter that should cause the Court to hesitate in its indication of the requested provisional measures. With or without the additional language, Georgia accepts that Russia cannot be held responsible for breaching the Court's order based on acts committed by third parties beyond its control or influence. Nor is the Court remotely likely to hold Russia responsible in such circumstances. In the event Georgia were to claim a breach of any provisional measure ordered by the Court, it would have to prove attribution in the same way it would have to prove any other fact on the merits. Accordingly, Russia is in no danger of being held responsible for acts by third parties over which it exercises no control or influence.

18. Professor Zimmermann suggests that in order to comply with the provisional measures that might be issued by the Court, Russia would have to send more troops into Georgia. This argument is a red herring. In fact, the opposite is true. The best way for Russia to avoid violating any orders that might be issued by the Court is to withdraw its forces from Georgia altogether. A clear example is the city of Gori and its surrounding villages. After Russia withdrew its forces, peace and order were quickly restored and IDPs were returned to their homes. No inter-ethnic conflict has been reported. It is only behind the Russian lines that the violent attacks and the home burnings continue, and the ethnic Georgians continue to leave. If Russia wants to avoid responsibility for these acts, it can return the "buffer zone" to Georgia, which is, after all, the undisputed sovereign. If Russia wants to avoid responsibility for violations of the 1965 Convention occurring in South Ossetia and Abkhazia, it can withdraw from those regions as well, in favour of the long-promised but constantly-postponed arrival of neutral European peacekeepers. Russia cannot be held responsible for acts in areas where it exercises no control. The best way for Russia to protect itself against a claim that it breached its obligations under Court-ordered provisional measures, therefore, is to surrender control over these areas to Georgia

and European peacekeepers, respectively. Until it does, provisional measures applicable to the respondent State are required.

19. The last argument by Professor Zimmerman that I will discuss is his suggestion that, in any provisional measures order issued by the Court, the rights of both parties should be addressed. Mr. Wordsworth actually made a similar point, when he referred on several occasions to the Amnesty International report at tab 6 of the judges' folder. Mr. Wordsworth emphasized that, in his words: "Amnesty has called on *all parties to the conflict* 'to provide protection to civilians who may be subjected to inter-ethnic reprisals . . .'"[59]. Together, it appears, Professor Zimmerman and Mr. Wordsworth are suggesting that any provisional measures ordered by the Court should be directed equally to both Parties.

20. But what are the circumstances that might require a provisional measures order directed at Georgia? Professor Zimmerman and Mr. Wordsworth never say. They offer nothing that is relevant in this regard. Professor Zimmerman merely says that provisional measures orders must protect the rights in dispute of both parties. True enough. But he doesn't tell us what rights of Russia require protection. As I discussed yesterday, the provisional measures requested by Georgia would require Russia to do what it is already obligated to do by the 1965 Convention. It has no right to engage in any of the discriminatory activities that would be prohibited by a provisional measures order. To be sure, Russia has a right not to be the subject of a provisional measures order unless the requirements for provisional measures are met. But we say, as we did yesterday, that they are, and the facts that have been presented by Georgia demonstrate this.

21. As Georgia has shown, the rights that are at risk of irreparable prejudice, meriting provisional measures, are those relating to ethnic Georgians who still remain in territories under Russian military control, namely, the Akhalgori district of South Ossetia, the Gali district of Abkhazia and the parts of the Gori district where Russia maintains a self-proclaimed "buffer zone". There has been no showing that the rights relating to any other group or individual are at risk of irreparable prejudice. Certainly there has been no showing that the rights of anyone present in territory under Georgian administration are at risk of irreparable prejudice. To be sure, ethnic

---

[59]CR 2008/23, p. 57, para. 17.

Ossetians and Abkhaz and others enjoy the same protections as ethnic Georgians under the 1965 Convention. But the respondent State has submitted no facts even remotely suggesting that the rights of these or any other ethnic groups are presently or prospectively at risk of *any* harm, let alone irreparable harm, in territory controlled by the Government of Georgia. The only rights that have been shown to be at risk of irreparable prejudice are those relating to ethnic Georgians remaining in Russian-controlled territory. Accordingly, if provisional measures are to be ordered, that is where they should be directed, not at Georgia.

22. Madam President, Members of the Court, this concludes my presentation. I once again thank the Court for its kind and courteous attention, and I respectfully ask you to call the Agent of Georgia to make Georgia's concluding remarks and present its Submissions.

The PRESIDENT: Thank you, Mr. Reichler. The Court now calls the Agent of Georgia.

Ms BURJALIANI:

4. CONCLUSIONS AND GEORGIA'S SUBMISSIONS

1. Madam President, Members of the Court, today I will respond to some arguments raised by the honourable counsel for the Russian Federation and once again establish the grounds for Georgia's request for provisional measure.

2. My Government is appearing before this honourable Court because we believe that this dispute should be resolved in accordance with international law. We appreciate the time and attention Your Excellencies have dedicated to this matter.

3. Madam President, Members of the Court, while we are here today, discrimination against ethnic Georgians continues. More people are forced to leave their homes and join the hundreds of thousands of others who are already exiles in their own country. The statement, made by distinguished counsel for the Russian Federation, that IDPs are starting to return simply is not true. Only approximately 30,000 IDPs from the town of Gori, not the Gori district, Kaspi, Kareli, Khashuri and Igoeti districts, have started to return to areas that have returned to Georgian government control. No Georgians are allowed to return to the Gori district villages in the vicinity

of Tskhinvali region under the control of the respondent State military forces. To the contrary, the few remaining Georgians in the Gori district are being expelled.

4. As Professor Akhavan indicated on the map, the most extreme southern checkpoint of the military forces of the respondent State is located in the village of Karaleti — a few kilometres north of the town of Gori. Less then two weeks ago, dozens of displaced Georgians managed to enter the village of Karaleti. Within less then one week all of them were expelled from their houses as a result of harassment and persecution. Just yesterday, we have received a report from a survivor from the village of Mekhvrekisi, Tea Kakhiashvili, that on 28 August, Cossacks and Russians entered the village, burnt what was left and forced Georgians to leave. According to her, they tortured a 70-year-old woman, Olia Khaladze, killed her in front of the other villagers and put her body on exhibition.

5. On 5 September 2008, Ambassadors from Estonia, Latvia and Sweden accompanied by the Lithuanian Deputy-Minister for Foreign Affairs reported that they had been denied access to the Georgian villages in Gori district by the Russian military forces deployed in Karaleti and Variani villages. The Ambassadors expressed concern "about possible ethnic cleansing [that] remain in force"[60].

6. Any argument raised by respected counsel for the Russian Federation that this is neither the urgent nor ongoing discriminatory violence against Georgians is simply not true.

7. Madam President, Members of the Court, the assertion made by Professor Zimmermann that the Russian Federation has only a limited military presence in the territory of Georgia and that it is being reduced is contradicted by the facts. I respectfully remind counsel for the Russian Federation that Georgia is a small country. The region of South Ossetia, including the Gori district villages under Russian control covers only 4,500 sq km. The Russian military checkpoints are placed on strategic roads in order to ensure full and effective control of the perimeter. Counsel for the Russian Federation probably was not aware that yesterday, while we were appearing before the Court, Russian military forces opened a new checkpoint in the western Georgian village of Nazadi bringing yet another Georgian community under its control.

---

[60]Statements of Ambassadors on the Russian Military Checkpoints, 7 Sept. 2007.

8. Madam President, Members of the Court, it is the respondent State that instigated ethnic violence in Georgian territory. Despite its assumed role and well-designed cover, it is no longer a question for the international community that Russia is an interested party rather than the neutral mediator as it pretends to be.

Madam President, I see it is 6.00 p.m. With your permission, I will conclude in 3 minutes. Thank you very much.

9. The respondent State's position that Georgia triggered ethnic violence in South Ossetia has no basis in fact; Georgia has no conflict with Ossetians; there are thousands of Ossetians living throughout Georgia and there has been not a single incident of discrimination observed by any international body. Many Ossetians are actively involved in the political, economic and cultural life of Georgia. Some of them occupy high positions in the Government, including Cabinet Ministers and senior State advisers.

10. Madam President, Members of the Court, my country is seeking urgent assistance from this Court not to solve numerous political or other outstanding issues with the respondent State, but to save the lives and integrity of thousands of ethnic Georgians at the mercy of the respondent State and separatist militias under its control.

11. Therefore Georgia respectfully requests the Court, as a matter of urgency, to order the following provisional measures, pending its determination of this case on the merits, in order to prevent irreparable harm to the rights of ethnic Georgians under Articles 2 and 5 of the Convention on Racial Discrimination:

(a) The Russian Federation shall take all necessary measures to ensure that no ethnic Georgians or any other persons are subject to violent or coercive acts of racial discrimination, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and unlawful detention, the destruction or pillage of property, and other acts intended to expel them from their homes or villages in South Ossetia, Abkhazia and/or adjacent regions within Georgia;

(b) The Russian Federation shall take all necessary measures to prevent groups or individuals from subjecting ethnic Georgians to coercive acts of racial discrimination, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and unlawful detention, the

destruction or theft of property, and other acts intended to expel them from their homes or villages in South Ossetia, Abkhazia and/or adjacent regions within Georgia;

(c) The Russian Federation shall refrain from adopting any measures that would prejudice the right of ethnic Georgians to participate fully and equally in the public affairs of South Ossetia, Abkhazia and/or adjacent regions of Georgia.

Georgia further requests the Court as a matter of urgency to order the following provisional measures to prevent irreparable injury to the right of return of ethnic Georgians under Article 5 of the Convention on Racial Discrimination pending the Court's determination of this case on the merits:

(d) The Russian Federation shall refrain from taking any actions or supporting any measures that would have the effect of denying the exercise by ethnic Georgians and any other persons who have been expelled from South Ossetia, Abkhazia, and adjacent regions on the basis of their ethnicity or nationality, their right of return to their homes of origin;

(e) The Russian Federation shall refrain from taking any actions or supporting any measures by any group or individual that obstructs or hinders the exercise of the right of return to South Ossetia, Abkhazia, and adjacent regions by ethnic Georgians and any other persons who have been expelled from those regions on the basis of their ethnicity or nationality;

(f) The Russian Federation shall refrain from adopting any measures that would prejudice the right of ethnic Georgians to participate fully and equally in public affairs upon their return to South Ossetia, Abkhazia, and adjacent regions.

12. Madam President, to those requests as presented in its 25 August amended provisional measures Request, Georgia adds one other, as stated yesterday by Mr. Reichler. It is this: "The Russian Federation shall refrain from obstructing, and shall permit and facilitate, the delivery of humanitarian assistance to all individuals in the territory under its control, regardless of their ethnicity."

Madam President, Members of the Court, on behalf of the Government and people of Georgia, I thank you for your attention to this urgent matter.

The PRESIDENT: I thank the Honourable Ms Burjaliani. This brings to an end the second round of oral argument of Georgia. The Court will meet again tomorrow at 4.30 p.m., to hear the second round of oral argument of the Russian Federation.

The Court now rises.

The Court rose at 6.05 p.m.

____