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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2008

Public sitting

held on Monday 8 September 2008, at 10 a.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 lundi 8 septembre 2008, à 10 heures, 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 :

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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,

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

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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,

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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,

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M. Ilya Tiatkin, général de division 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,

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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,

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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 sitting is open. The Court meets today under Article 74, paragraph 3, of the Rules of Court, to hear the observations of the Parties on the Request for the indication of provisional measures submitted by Georgia in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*.

Judge Parra, for reasons explained to the Court, will not sit in the present case.

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As the Court does not include upon the Bench a judge of Georgian nationality, Georgia has availed itself of the right conferred upon it by Article 31, paragraph 2, of the Statute, to choose a judge *ad hoc*. It has chosen Mr. Giorgio Gaja. Notwithstanding that Mr. Gaja has been a judge *ad hoc* and made a solemn declaration in different previous cases, Article 8, paragraph 3, of the Rules of Court provides that he must make a further solemn declaration in the present case.

Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*.

In accordance with custom, I shall first say a few words about the career and qualifications of Mr. Gaja before inviting him to make his solemn declaration.

Mr. Giorgio Gaja, of Italian nationality, is Professor at the Faculty of Law at the University of Florence and a former Dean of that Faculty. He has held numerous other teaching posts around the world including the European University Institute, the University of Paris I and the Graduate Institute of International Studies in Geneva, and has also taught at the Hague Academy of International Law. Mr. Gaja has been a member of the International Law Commission since 1999 and is a member of the Institut de droit international. He has represented his Government on a number of occasions including as delegate to the Vienna Conference on the Law of Treaties

between States and International Organizations and between International Organizations. Mr. Gaja has appeared before this Court as counsel to the Italian Government in the *Elettronica Sicula S.p.A. (ELSI)* case. He was also chosen as judge *ad hoc* in one of the cases concerning *Legality of Use of Force*, namely in the *Serbia and Montenegro* v. *Italy* case, in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)* and in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*. Mr. Gaja has published numerous works and articles in diverse fields of international law, from European human rights law to international criminal law.

I shall now invite Mr. Gaja to make the solemn declaration prescribed by the Statute and I ask all those present to stand.

Mr. GAJA:

> "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: Thank you. Please be seated. I take note of the solemn declaration made by Judge Gaja and note that he is duly installed as judge *ad hoc* in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*.

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The proceedings in the present case were instituted on 12 August 2008 by the filing in the Registry of the Court of an Application by Georgia of the same date against the Russian Federation. To found the jurisdiction of the Court, Georgia invokes Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, to which the two States are parties.

In its Application, Georgia contends that:

> "the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of, and under the direction and control of the Russian Federation, is responsible for serious violations of its fundamental obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, including Articles 2, 3, 4, 5 and 6",

committed, it is said, during three distinct phases of interventions by the Russian Federation in South Ossetia and Abkhazia in the period from 1990 to August 2008.

In its Application, Georgia requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of or under the direction and control of the Russian Federation, has violated its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, in particular, by engaging in acts and practices of "racial discrimination against persons, groups of persons or institutions" and failing "to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation"; by sponsoring, defending and supporting racial discrimination; by failing to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination"; by failing to condemn "racial segregation" and failing to "eradicate all practices of this nature" in South Ossetia and Abkhazia; by failing to "condemn all propaganda and all organizations . . . which attempt to justify or promote racial hatred and discrimination in any form" and by failing "to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination"; by undermining the enjoyment of the enumerated fundamental human rights in Article 5 of the Convention by the ethnic Georgian, Greek and Jewish populations in South Ossetia and Abkhazia; and by failing to provide "effective protection and remedies" against acts of racial discrimination.

Georgia also requests the Court to order the Russian Federation to take all steps necessary to comply with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and "to pay full compensation to Georgia for all injuries resulting from its internationally wrongful acts".

On 14 August 2008, Georgia, referring to Article 41 of the Statute of the Court, and to Articles 73, 74 and 75 of the Rules of Court, filed in the Registry a Request for the indication of

provisional measures, dated 13 August 2008. In its Request for the indication of provisional measures, Georgia refers to the basis of jurisdiction of the Court invoked in its Application, namely, Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination, and to the facts and historical context set out in its Application.

In its Request for the indication of provisional measures, Georgia requests that the Court indicate provisional measures in order to preserve its "rights . . . under the International Convention on the Elimination of All Forms of Racial Discrimination . . . to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries". Georgia contends that "[the] continuation of these violent discriminatory acts constitutes an extremely urgent threat of irreparable harm to Georgia's rights under [the International Convention on the Elimination of All Forms of Racial Discrimination] in dispute in this case".

Georgia claims that, on 8 August 2008, the Russian Federation "launched a full-scale military invasion against Georgia in support of ethnic separatists in South Ossetia and Abkhazia", which has resulted in "hundreds of civilian deaths, extensive destruction of civilian property, and the displacement of virtually the entire ethnic Georgian population in South Ossetia". Georgia further claims that the Russian Federation's military operations have continued beyond South Ossetia into territories under the control of the Georgian Government and have involved ethnic cleansing and the pillage and extensive destruction of villages adjacent to South Ossetia. Georgia contends that Russian military operations have also extended to Abkhazia and beyond.

In its Request for the indication of provisional measures, Georgia requests the Court, as a matter of utmost urgency, to order the Russian Federation to give full effect to its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination; immediately to cease and desist from any and all conduct that could result, directly or indirectly, in any form of ethnic discrimination by its armed forces, or other organs, agents, persons and entities exercising elements of governmental authority, or through separatist forces in South Ossetia and Abkhazia under its direction and control, or in territories under the occupation or effective control of Russian forces; and to immediately cease and desist from discriminatory violations of the human rights of ethnic Georgians, including attacks against civilians and civilian objects, murder,

forced displacement, denial of humanitarian assistance, extensive pillage and destruction of towns and villages, and any measures that would render permanent the denial of the right to return of internally displaced persons, in South Ossetia and adjoining regions of Georgia, and in Abkhazia and adjoining regions of Georgia, and any other territories under Russian occupation or effective control.

Immediately after the Application and the Request for the indication of provisional measures were filed, the Deputy-Registrar, in accordance with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court, transmitted certified copies thereof to the Government of the Russian Federation. The Secretary-General of the United Nations was duly notified of the filing of the Application and the Request for the indication of provisional measures.

According to Article 74 of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. The date of the hearing must be fixed in such a way as to afford the parties an opportunity of being represented at it. Consequently, on 15 August 2008, the Registrar informed the Parties that the President of the Court, in accordance with Article 74, paragraph 3, of the Rules of Court, had fixed 8 September 2008 as the date for the opening of the oral proceedings.

On 15 August 2008, the President, acting under Article 74, paragraph 4, of the Rules of Court, also addressed an urgent communication to the Parties, drawing their attention to the need to act in such a way as to enable any Order the Court might make on the request for provisional measures to have its appropriate effects.

On 25 August 2008, Georgia filed in the Registry of the Court an "Amended Request for the Indication of Provisional Measures of Protection submitted by the Government of Georgia". A copy of the amended Request was immediately transmitted to the Government of the Russian Federation. The Secretary-General of the United Nations was also notified of the filing of the amended Request.

Introducing the document, Georgia explains that, "[i]n view of the rapidly changing circumstances in Abkhazia and South Ossetia, the Republic of Georgia respectfully files this Amended Request for Provisional Measures". In its amended Request Georgia states that "[t]he Russian Federation has now assumed control over all of South Ossetia and Abkhazia, as well as

adjacent areas within the territory of Georgia, following its invasion commencing on 8 August 2008".

Georgia contends, *inter alia*, that, by its acts and omissions, the Russian Federation

> "is threatening the right of ethnic Georgians to be secure in their persons, to be protected from violence resulting in death and bodily harm, to be protected against hostage-taking and detention based on their ethnicity, and to continue to reside in their homes and villages, and it is frustrating or rendering impossible the exercise of their right of return to their homes of origin".

I now ask the Registrar to read out the passage from the amended Request specifying the provisional measures which the Government of Georgia is asking the Court to indicate.

The REGISTRAR:

"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 . . :

(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 within Georgia.

. . . . . .

(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; and

(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."

The PRESIDENT: I note the presence before the Court of the Agents and counsel of the two Parties. The Court will hear Georgia, which has submitted the Request for the indication of provisional measures, this morning until 1 p.m. It will hear the Russian Federation this afternoon at 3 p.m. For purposes of this first round of oral arguments, each of the Parties will have available to it a full three-hour sitting. The Parties will then have the possibility to reply, if they deem it necessary; Georgia at 4.30 p.m. tomorrow and the Russian Federation at 4.30 p.m. on Wednesday 10 September. Each of the Parties will then have a maximum time of one-and-a-half hours in which to present its reply.

Before calling upon Her Excellency the Agent of Georgia, I shall draw the attention of the Parties to Practice Direction XI, which states, *inter alia*, that:

"Parties should in their oral pleadings thereon limit themselves to what is relevant to the criteria for the indication of provisional measures as indicated in the Statute, Rules and jurisprudence of the Court. They should not enter into the merits of the case beyond what is strictly necessary for that purpose."

In that context, the Court will find the assistance of the Parties particularly helpful in identifying the situation as it presently is. I now call upon the Agent of Georgia.

Ms BURJALIANI:

1. INTRODUCTION AND SCHEME OF ORAL PLEADINGS

1. Madam President, distinguished Members of the Court, I am Tina Burjaliani, the First Deputy-Minister of Justice of Georgia. It is a great honour for me to appear before the International Court of Justice as the Agent of the Government of Georgia.

2. Madam President, Georgia is appearing before the principal judicial organ of the United Nations to plead the present case at a time of great distress in its history, a time when hundreds of thousands of its nationals are persecuted and displaced from their homes only because they are Georgians.

3. My country has been invaded and occupied by the respondent State in a flagrant violation of international law, but this is not what this case is about. This case is initiated under the International Convention on the Elimination of All Forms of Racial Discrimination and concerns the ongoing discrimination against hundreds of thousands of ethnic Georgians by the respondent Government and the forces under its control.

4. When the International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the United Nations General Assembly in 1965, humankind was confronted with the scourge of colonial domination and racial segregation. Little did the world imagine then that the horrors of military aggression and ethnic cleansing would afflict the European continent; that racial hatred and violence would once again become an instrument by which powerful nations subjugate their neighbours and dismember their territory.

5. Sadly, despite the United Nations Charter and value of human rights introduced in instruments such as the Convention on Racial Discrimination, Georgia still lives under the shadow of a vastly more powerful neighbour that seeks to undermine its independence through a policy of "divide and conquer", a policy that has ripped apart its delicate multi-ethnic fabric and brought great suffering to its victims.

6. Georgia is a multi-ethnic society with a long history of peaceful coexistence of different ethnic groups in its territory. We are proud of our diversity and multi-ethnic culture. In 2005, in considering Georgia's country report under the Convention, the Committee on the Elimination of Racial Discrimination (CERD) expressed its satisfaction at measures taken "to strengthen the participation of ethnic minorities in its political institutions and noted approvingly Georgia's policy of reconciliation and peaceful reintegration"[1]. At the same time, the Committee acknowledged that the conflicts in South Ossetia and Abkhazia had resulted in systematic discrimination "including a large number of internally displaced persons and refugees"[2].

7. At that point in time, the Georgian Constitution already embraced the Autonomous Republic of Abkhazia, under the chairmanship of Abkhaz leader Malkhaz Akishbaia. The

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[1]Concluding Observations of the Committee on the Elimination of Racial Discrimination, Georgia, CERD/C/GEO/CO/3 (27 March 2007), para. 5.

[2]*Ibid.*

following year, in 2006, as an initial step leading to reintegration, this Government began to administer the remote Kodori Gorge of Upper Abkhazia, populated by ethnic Georgians. In the following year, on 10 May 2007, the Government of Georgia appointed former Ossetian separatist leader Dimitry Sanakoev as the head of the Provisional Administration on the Territory of the former South Ossetian Autonomous Region.

8. This was a time of great promise for Georgia — prominent Ossetian and Abkhaz leaders opposed to ethnic separatism sought a peaceful outcome.

9. Together with their fellow citizens of Georgian descent, they shared a vision of a multi-ethnic democracy in which their respective communities could live in peace. In the case of Abkhazia, President Saakashvili went so far as to offer "unlimited autonomy, wide federalism, and very serious representation in the central governmental bodies of Georgia" with international guarantees. The Constitution was to be amended to stipulate that the President of Abkhazia would be the Vice-President of Georgia ex officio. Abkhaz representatives in the Parliament and the Government of Georgia would have veto power on any decision affecting their community, as well as the territorial arrangement of the country. For the Russian Federation, the peaceful reintegration of these territories and the consolidation of a prosperous multi-ethnic democracy in Georgia was an outcome to be prevented.

10. Madam President and Members of the Court, Georgia has no other purpose here but to invoke the fundamental rights and obligations under the Convention on the Elimination of All Forms of Racial Discrimination. At the present time there are approximately 450,000 Georgians who have been expelled from their homes and villages and forced to seek refuge elsewhere in Georgia. They are known as "internally displaced persons" or IDPs in international law, but that designation does little to convey the circumstances of their displacement. More than 150,000 of them have been forcibly displaced by occupying Russian forces and separatist militias under their control in the past 30 days. Those ethnic Georgians remaining in Gali district of Abkhazia, Akhalgori and Gori districts of Eastern Georgia now live in constant fear of violent attacks and expulsions. The ethnic Georgian population in these districts is diminishing every day: they are being forced out of their homes by a campaign of harassment and persecution. In the ten days from 25 August to 5 September, the number of displaced Georgians increased by approximately 10,000.

Last week a group of ethnic Georgians fled from the Gori district villages of Meghvrekisi and Karaleti, which are under the effective control of the Russian military. The number of IDPs from Akhalgori is increasing every day as well, even though, in this region of Georgia, the ethnic Ossetians have lived in peace with Georgians for many years before the military interference of the respondent State.

11. The continuing ethnic cleansing of the Georgian population in these areas has been documented by independent international bodies, such as Human Rights Watch and Amnesty International. International media sources have also reported ethnically motivated violence and the destruction of Georgian villages.

12. Due to the real and imminent threat to the ethnic Georgian population in Gali, Akhalgori and Gori districts under the effective control of the respondent State, Georgia is seeking the urgent assistance of this Court in the form of provisional measures — to protect the rights of Georgia and ethnic Georgians under Articles 2 and 5 of the Convention from irreparable harm.

13. Madam President, the reasons why the specific provisional measures that Georgia has requested should be ordered by the Court will be given by our distinguished counsel.

14. First, Professor James Crawford will explain how the obligations under the Convention on Racial Discrimination are engaged in this case and then address the existence of the Court's prima facie jurisdiction.

15. Second, Professor Payam Akhavan will describe the evidence of recent and continuing violations of the Convention on Racial Discrimination that form the basis of this Request for provisional measures.

16. Third, Mr. Paul Reichler will demonstrate that the legal standards for the indication of provisional measures have been fully met and that the provisional measures requested by Georgia are both fully justified and urgently required to prevent the irreparable loss of the rights guaranteed by the Convention on Racial Discrimination.

17. Thank you, Madam President and Members of the Court. I now ask you to allow Professor James Crawford to continue with the oral argument of Georgia.

The PRESIDENT: Thank you, Minister Burjaliani. I now call Professor Crawford.

Mr. CRAWFORD:

2. THE PRECONDITIONS FOR PROVISIONAL MEASURES ARE MET

Introduction

1. Madam President, Members of the Court, it is an honour to represent Georgia in this matter.

2. This case is about the ethnic cleansing of Georgians and ethnic Georgians and other minorities from regions within Georgian territory and in particular, for present purposes, regions of Abkhazia, South Ossetia and the adjacent Gori district. This is an extreme form of racial discrimination, and is contrary to the Convention on the Elimination of All Forms of Racial Discrimination, the text of which you will find at tab 1 of your folders. I stress that under the Convention the term "racial discrimination" is broadly defined, it includes distinctions "based on race, colour, descent, or national or ethnic origin" (see Article 1 (1)).

3. As Georgia's Application to the Court makes clear, this is not a dispute that had its genesis in August of this year. Ethnic Georgians have been targeted, and forcibly expelled from these regions in great numbers and denied the right to return over the course of more than a decade. The international community has repeatedly characterized this conduct as ethnic cleansing but little has been done to alleviate the suffering of the ethnic Georgians who have been displaced from their homes and places of origin in Abkhazia and South Ossetia. In 1994, the OSCE expressed "deep concern over 'ethnic cleansing', the massive expulsion of people, predominantly Georgian, from their living areas and the deaths of large numbers of innocent civilians"[3]. In 1996 the OSCE "condemn[ed] the 'ethnic cleansing' resulting in mass destruction and forcible expulsion of the predominantly Georgian population in Abkhazia"[4]. In 1999, the OSCE reiterated its "strong condemnation . . . of the 'ethnic cleansing' resulting in mass destruction and forcible expulsion of the predominantly Georgian population in Abkhazia, Georgia, and of the violent acts in May 1998

[3]OSCE, Budapest Summit 1994, Budapest Document "Towards a Genuine Partnership in a New Era", 21 December 1994, available at http://www.osce.org/documents/mcs/1994/12/4048_en.pdf.

[4]OSCE, Lisbon Summit 1996, Lisbon Document, 3 December 1996, para. 20, available at http://www.osce.org/documents/mcs/1996/12/4049_en.pdf.

in the Gali region"[5]. In 2001, 2005 and 2007 the Committee on Racial Discrimination — under the acronym of CERD — expressly recognized that ethnic discrimination is an aspect of the conflicts in South Ossetia and Abkhazia, that question of characterization is one to which I will return.

4. The discrimination against the ethnic Georgian communities in Abkhazia, South Ossetia and the Gori district gained momentum following 8 August this year. There have been burning of houses, murders of civilians, looting of property and forced expulsions on a scale that surpasses the darkest moments of the civil war of 1991-1992. In the last month, more than 158,000 ethnic Georgians have been added to the number of internally displaced persons in Georgia. In total, this means that 10 per cent of the Georgian population is now living in exile in their own country. This is not taking into account the real and present danger to the ethnic Georgians who remain in South Ossetia, Abkhazia and the neighbouring Gori district, which is the focus of these provisional measures.

The requirements for provisional measures

5. Georgia's Request for provisional measures is directed specifically at the protection of three ethnic Georgian populations who are now at grave risk of imminent violence against their person and property. These are the communities in the Gali district of Abkhazia, the Akhalgori districts of South Ossetia and the adjacent Gori district. And my colleague will show you on the map precisely where these districts are.

6. The Court has by now clarified the requirements for the exercise of its power to indicate provisional measures pursuant to Article 41, paragraph 1, of the Statute. There are three such requirements:

(a) First, the Court's jurisdiction must be established on a prima facie basis.

(b) Second, there must be "a risk of irreparable prejudice to rights in issue before the Court" (*Aegean Sea Continental Shelf (Greece* v. *Turkey), Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976*, p. 11, para. 33).

(c) Third, there must be urgency.

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[5]OSCE, Istanbul Summit 1999, Istanbul Summit Declaration, para. 13, available at http://www.osce.org/documents/mcs/1999/11/4050_en.pdf.

7. I will address the question of jurisdiction and show you that Georgia has rights in issue before the Court under the 1965 Convention. My colleagues will, between them, deal with what might be described as the second half of the requirements for provisional measures.

8. Before I do that, however, I need to make some observations on the object and purpose of the 1965 Convention, and of its relevance to situations such as those referred to in Georgia's Application and Request.

The object and purpose of the Convention on racial discrimination

9. Madam President, Members of the Court, it is no exaggeration to say that the Convention on Racial Discrimination was the first universal human rights treaty — it preceded by a year the two Covenants of 1966; it came into force more than a decade before they did. The Convention was opened for signature on 21 December 1965; it entered into force on 4 January 1969. And that is no accident — it reflected a deliberate priority of the international community as a whole to suppress racial discrimination, including racially motivated violence: the term race being broadly defined as I have said. The earliest categories — including the categories of this Court — of universal — we would now say, peremptory — norms of international law included the principle of racial non-discrimination, first incorporated in the 1965 Convention (see, e.g., *Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment, I.C.J. Reports 1970,* p. 32, para. 34).

10. In 1960, South African police killed 69 peaceful protesters in Sharpeville. This and other outrages elicited a strong response from the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which adopted a resolution condemning these manifestations as violations of principles of the Charter and the Universal Declaration of Human Rights[6]. At its 1961 session, the Sub-Commission suggested that the General Assembly should prepare an international convention which would impose specific legal obligations on the parties to prohibit the manifestation of racial, national and other hatreds[7].

[6]Report of the Twelfth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1960), United Nations, doc. E/CN.4/800, paras. 163 *et seq*.

[7]Report of the Thirteenth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1960), United Nations, doc. E/CN.4/815, paras. 176,185.

11. At the Seventeenth Session of the General Assembly in 1962, a number of African States, later joined by others, proposed in the Third Committee the adoption of a resolution to prepare an international convention on the elimination of racial discrimination and religious intolerance. The Seventeenth Session eventually concluded that two separate declarations and conventions should be prepared, and that the Declaration and Convention "on the elimination of all forms of racial discrimination"[8] should receive priority[9].

12. The particular issue of apartheid is emphasized in the preamble and the text of the Convention itself — apartheid is the only specific form of racial discrimination to which a specific article is devoted. Apartheid can be defined as the coercive suppression of a racial or ethnic group as such, their forced ejection as members of their society on grounds of their race or ethnicity[10]. It includes ethnically-motivated violence exercised by a State against a group defined in terms of its race or ethnicity and aimed at their suppression or virtual or actual expulsion. In the case of South Africa, as is well known, that expulsion eventually took the form of the Bantustans, ethnically constructed pseudo-States which the world refused to recognize[11]. Although the 1965 Convention was aimed at eliminating racial discrimination in "all its forms and manifestations", a primary focus — as this history shows — was racial discrimination in the construction of the State itself, and of the territorial community it represents.

13. A similarly broad emphasis has been evident in the practice of the Committee on the Elimination of All Forms of Racial Discrimination. This has been evident in the Committee's practice concerning southern Africa, but not only there. In Europe, for example, the Committee has expressed concern as to the possible discriminatory effects of citizenship laws passed by the Baltic States since 1991. In the 2001 Concluding Observations on Latvia, the Committee observed:

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[8]General Assembly resolution 1780 (XVII), 7 Dec. 1962.

[9]Report of the Third Committee, United Nations, doc. A/5305, 22 Nov. 1962; *Official Records of the General Assembly, Seventeenth Session,* 1165th-1171st meetings of the Third Committee, 156-204.

[10]International Convention on the Suppression and Punishment of the Crime of Apartheid, New York 1973, 1015 *UNTS* 243, in force 18 July 1976, Art. II.

[11]See General Assembly resolution 2775E (XXVI), 29 Nov. 1971; General Assembly resolution 3411D (XXX), 28 Nov. 1975, para. 3; J. Crawford, *The Creation of States in International Law* (2nd ed., OUP, 2006), pp. 338 *et seq*; C. O. Quaye, *Liberation Struggles in International Law* (Temple University Press, 1991), pp. 147 *et seq*.; M.F. Witkin, "Transkei: an analysis of the practice of recognition — political or legal?", 18 *Harvard International Law Journal* 605, 1977; M. Pomerance, *Self-determination in Law and in Practice* (Martinus Nijhoff publishers, 1982), p. 27; D. Raič, *Statehood and the Law of Self-determination* (Kluwer Law International, 2002), pp. 140-141.

> "12. . . . only such persons who were citizens of Latvia before 1940 and their descendants have automatically been granted citizenship. Therefore, more than 25 per cent of the resident population, many of them belonging to non-Latvian ethnic groups, have to apply and are in a discriminatory position . . .
>
> 13. The Committee draws attention to the situation of persons who do not qualify for citizenship under the Citizenship Law and who are also not registered as residents . . . Concern is expressed that such persons are not protected . . . under article 5 of the Convention."[12]

14. In its Concluding Observations on Lithuania in 2006, the Committee

> "stressing that deprivation of citizenship on the basis of national or ethnic origin is a breach of the obligation to ensure non-discriminatory enjoyment of the right to nationality, urge[d] [Lithuania] to refrain from adopting any policy that directly or indirectly leads to such deprivation . . ."[13].

I should say immediately that these criticisms, voiced over a number of years, have had some considerable effect, resulting in changes to the legislation in those countries.

15. To summarize, the principle of non-discrimination on racial, including ethnic, grounds has been broadly applied and is a fundamental principle of international public policy. It is concerned not merely with discrimination against individuals but with collective discrimination against communities and with fundamental issues relating to the composition of territorial communities, including the granting and withdrawal of nationality. Forced nationalization on racial or ethnic grounds is as repugnant as forced denationalization. Faced with this peremptory principle there is no reserved domain.

Jurisdiction

16. Madam President, Members of the Court, against this background I turn to the Court's jurisdiction over this case under the 1965 Convention.

17. To indicate provisional measures, the Court must be satisfied on a prima facie basis — and, of course, without prejudice — that it has jurisdiction *ratione personae* over the respondent State and that it has jurisdiction *ratione materiae* over the merits of the claims as described in the application (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 12, para. 14). The requirements of jurisdiction *ratione loci* and *ratione*

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[12]CERD/C/304/Add.79.

[13]United Nations, doc. CERD/C/LTU/CO/3, para 23.

temporis may be subsumed in some cases under the discussion of the other forms of jurisdiction but I propose to deal with them separately.

The title of jurisdiction

18. We start, of course, with the specific title of jurisdiction invoked by Georgia, Article 22 of the Convention. It provides:

> "Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

***Jurisdiction* ratione personae**

19. As to jurisdiction *ratione personae*, Georgia was admitted to the United Nations on 31 July 1992 and it is of course a party to the Statute. It deposited an instrument of accession to the Convention on Racial Discrimination on 2 June 1999.

20. The Russian Federation remains an original Member of the United Nations by virtue of its continuation of the State personality of the USSR[14], and of course it is a party to the Statute of the Court. In 1991 the Russian Federation also affirmed that it would continue the rights and responsibilities of the USSR under all other international treaties including the 1965 Convention, which was ratified by the USSR on 6 March 1969.

21. Neither Party maintains any reservation to Article 22 of the Convention.

***Jurisdiction* ratione materiae**

22. Article 22 confers on this Court jurisdiction over "any dispute . . . with respect to the interpretation or application of this Convention".

23. The Court's jurisdiction is stipulated in broad terms. Article 22 refers to "*any* dispute" (emphasis added) which concerns either "interpretation or application" of the Convention. This juxtaposition is significant: it gives the Court jurisdiction to pronounce on the scope of the rights and responsibilities set out in the Convention but also upon the consequences of breach of those

[14]Letter of President of the Russian Federation to the United Nations Secretary-General of 24 Dec. 1991, United Nations, doc. 1991/RUSSIA, App. 24 Dec 1991, 31 *ILM* 138.

rights and responsibilities. A dispute concerning the "application" of treaty obligations of a State party entails the adjudication of its international responsibility for any breach of the treaty (*Factory at Chorzów*, *Jurisdiction*, *Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, pp. 20-21).

***Jurisdiction* ratione loci**

24. The next issue is jurisdiction *ratione loci*. In addressing the extraterritorial aspects of the present dispute, it is necessary to distinguish between two categories of claims advanced by Georgia in its Application. First, there are claims founded upon the acts or omissions of Russia's State organs within Russia itself. Second, there are claims founded upon the acts or omissions of persons exercising Russia's governmental authority or other persons acting on the instructions or under the control of Russia within Georgian territory, particularly in Abkhazia and South Ossetia, as well as other areas of Georgia under *de facto* occupation by Russian military forces.

25. In respect of the first category of claims, no question concerning the spatial scope of the obligations under the Convention arises. For example, the resolution adopted by a Russian State organ that supports a policy of racial discrimination maintained by *de facto* governmental authorities in Abkhazia and South Ossetia may constitute a breach of the Convention by its support of racial discrimination or its failure to condemn it. The locus of such a breach is within the territory of the Russian Federation.

26. In relation to the second category of claims, the spatial scope of the obligations under the Convention does fall to be considered, and the Court needs to be satisfied on a prima facie basis that Russia's obligations under the Convention extend to acts and omissions attributable to Russia which have their locus within Georgia's territory and in particular in Abkhazia and South Ossetia.

27. It is a striking feature of the Convention that it does not contain a general provision imposing a spatial limitation on the obligations it creates. In this respect it may be contrasted with other international human rights instruments negotiated within the United Nations system.

28. For instance, the International Covenant on Civil and Political Rights, which was being drafted at the same time as the 1965 Convention, provides in Article 2, paragraph 1, that: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant . . ." This

language recalls Article 1 of the European Convention on Human Rights and Fundamental Freedoms, which requires States to accord "to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". The Torture Convention of 1984, to take another example, contains a similar provision in Article 2, paragraph 1.

29. By contrast with these international human rights instruments, the Convention on Racial Discrimination contains no general provision restricting the spatial scope of its obligations. The States parties to the Convention agreed to limit the scope of their obligations only in respect of Articles 3 and 6.

30. The particular rights under the Convention that are in issue before this Court for the purposes of the Amended Request for preliminary measures are contained in Articles 2 and 5. There is no stipulation in those Articles or in the remaining text of the Convention that could be interpreted as placing a spatial limitation on the obligations on the State parties under Articles 2 and 5. The specific words employed in Articles 3 and 6 to limit the spatial scope of those obligations would be superfluous if the same limitations were to be implied with respect to other provisions of the Convention.

31. It must follow that the Court has prima facie jurisdiction over the rights in issue under Articles 2 and 5 for the purposes of this Request for provisional measures. The Court does not have to consider the limiting words in Articles 3 and 6 at this stage in the proceedings.

32. But I note in passing that even if the Convention were to be construed as containing a general limitation limiting the spatial scope of its obligations, this would not preclude the claims asserted by Georgia in this Application and in this Request. For example, Article 3 of the Racial Discrimination Convention undoubtedly applied to attempts by South Africa to impose apartheid in South West Africa (Namibia), and did so even after the General Assembly revoked the mandate for South West Africa in 1967.

33. As to the limitation contained in Article 2, paragraph 1, of the International Covenant, the Human Rights Committee has interpreted this provision in General Comment No. 31:

> "This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."[15]

34. In the present case, Abkhazia and South Ossetia have been within the power or effective control of Russia since Georgia lost control over those regions following the hostilities. The Russian invasion and deployment of additional military forces within Abkhazia and South Ossetia last month has only served to consolidate further its effective control over those regions.

35. I would respectfully refer the Court to the case of *Ilaşcu* v. *Moldova and Russia*[16], where the European Court held that the applicants, who alleged violations of their human rights by the separatist authorities in Transdniestria in Moldova, came within the jurisdiction of Russia from the time that Moldova lost control over that region during the conflict in 1991-1992.

36. Unlike the Human Rights Committee, CERD has not issued a recommendation to clarify the spatial scope of obligations under the 1965 Convention. CERD has, however, rejected the possibility of a territorial limitation to the scope of Article 3, which refers to "jurisdiction", in its reports on individual countries. For instance, in relation to Israel's report submitted pursuant to Article 9 of the Convention, it was stated:

> "The Committee underlined that, in accordance with article 3 of the Convention, Israel's report needed to encompass the entire population under the jurisdiction of the Government of Israel. The report under consideration, which described the situation only within the State of Israel itself, was, in that respect, incomplete. Members also wished to have specific information on the economic, social and educational conditions prevailing in the occupied territories, as well as to know whether the Geneva Convention relative to the Protection of Civilian Persons in Times of War was in force in the occupied territories."[17]

37. To summarize: (1) there is no general provision limiting the scope *ratione loci* of the obligations contained in the Convention; (2) there are specific limitations in relation to the obligations in Articles 3 and 6 only; (3) these obligations of Russia and the corresponding rights of Georgia are not in issue for the purposes of this Request for provisional measures, which relies only upon Articles 2 and 5; (4) even if a general spatial limitation were to be transposed into the 1965 Convention, this requirement would be satisfied in the present case.

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[15]General Comment No. 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant, 26/05/2004, CCPR/C/21/Rev.1/Add.13.

[16](Dec.) [GC], No. 48787/99.

[17]Report of the Committee on Racial Discrimination, *Official Records of the General Assembly, Forty-Sixth Session, Supplement No. 18 (A/46/18)*, 1992, para. 368.

Attribution

38. I should say a word on attribution. These remarks on the spatial scope of the obligations under the Convention are of course without prejudice to the question of attribution. When the time comes — Madam President, we understand entirely it has not come yet — when the time comes for the Court to decide upon the merits of Georgia's claims under the Convention, it will be incumbent on Georgia to demonstrate that the acts and omissions of which we complain can be attributed to Russia. The evidence already available indicates on a prima facie basis that acts and omissions which form the basis of Georgia's complaint have been committed — and continue to be committed — by persons for whose conduct Russia is responsible. Different rules of attribution may need to be invoked by Georgia in relation to different categories of actors. But all that has to be shown now is that there is an apparent or prima facie case of attribution, which there plainly is. How could one say otherwise. The rest is a matter for the merits.

***Jurisdiction* ratione temporis**

39. I turn to jurisdiction *ratione temporis*. Certain aspects of the present dispute as indicated in the Application predate Georgia's accession to the 1965 Convention, which, as I have said, occurred on 2 June 1999. There is, however, no question of *ratione temporis* jurisdiction in relation to what we have described as the "Third Phase of Russia's Intervention in South Ossetia and Abkhazia", which commenced in August of this year. The rights in issue which form the basis for the present Request for provisional measures are rights under the Convention that Georgia submits have been, and continue to be, violated by Russia during this third temporal phase of the dispute. This explains the urgency of the measures requested. Any question relating to the Court's jurisdiction over earlier issues may be reserved to a subsequent phase of the proceedings. Madam President, Members of the Court, subject to the question of characterization, what I have said establishes on a prima facie basis your jurisdiction over this dispute.

The rights in dispute before this Court

40. But I turn now to my second task, the rights in dispute before the Court.

41. There can, Madam President, Members of the Court, be no doubt that the dispute which is submitted to this Court by Georgia is a dispute "with respect to the interpretation or application

of" the Convention. CERD has expressly recognized that ethnic discrimination is a key aspect of the conflicts in South Ossetia and Abkhazia. It did so in three reports from 2001 onwards. In its report of 2001, the Committee stated:

> "the situations in South Ossetia and Abkhazia have resulted in discrimination against people of different ethnic origins, including a large number of internally displaced persons and refugees. On repeated occasions, attention has been drawn to the obstruction by the Abkhaz authorities of the voluntary return of displaced populations, and several recommendations have been issued by the Security Council to facilitate the free movement of refugees and internally displaced persons."[18]

42. Almost identical statements can be found in the Committee's reports on Georgia in 2005 and 2007[19]. The Committee's 2007 report, by way of illustration, is tab 2 in your folders.

43. At the heart of this dispute is the Russian Federation's direct involvement in these ethnic conflicts and its essential support for the separatist *de facto* authorities and militias in South Ossetia and Abkhazia. As a result of Russia's actions, ethnic Georgians have been denied their fundamental rights under Article 5 of the Convention, and denied them solely on the grounds of their ethnicity as referred to in Article 1. Those who have survived the conflicts are now, solely because of their ethnic origin, internally displaced persons within their own country of Georgia. They have an unconditional right of return to their homes under Article 5 of the Convention, and the possibility of exercising that right, in fact, depends squarely upon the actions of the Russian Federation. Georgia's Request to this Court urgently requests its intervention to secure the preservations of the rights of the remaining citizens under the Convention, rights which are now being denied and which are apparently intended to be denied in the coming weeks and months.

44. It is not only CERD that has recognized this situation; the General Assembly has done so. In its resolution 62/249 of 29 May 2008, which is tab 3 in your folders. The Assembly

> "1. *Recognizes* the right of return of all refugees and internally displaced persons and their descendants, regardless of ethnicity, to Abkhazia, Georgia;
>
> 2. *Emphasizes* the importance of preserving the property rights of refugees and internally displaced persons from Abkhazia, Georgia, including victims of reported 'ethnic cleansing', and calls upon all Member States to deter persons under their

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[18]CERD/C/304/Add.120, 27/04/2001, Concluding Observations on the Committee on the Elimination of Racial Discrimination, para. 4.

[19]CERD/C/GEO/CO/3, 01/11/2005, Concluding observations on the Committee on the Elimination of Racial Discrimination, para. 5; CERD/C/GEO/CO/3, 27/03/2007, Concluding Observations on the Committee on the Elimination of Racial Discrimination, para. 5.

> jurisdiction from obtaining property within the territory of Abkhazia, Georgia, in violation of the rights of returnees; and
>
> 3. *Underlines* the urgent need — *the urgent need* — for the rapid development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes in Abkhazia, Georgia."

That was before August of this year.

45. The ethnic conflicts have escalated since August 2008. The situation concerning internally displaced persons in the affected regions has significantly deteriorated. There can be no question that the rights in issue before this Court are rights guaranteed and protected by the Convention on Racial Discrimination.

46. Madam President, Members of the Court, in the present case jurisdiction is based on a general treaty provision (as distinct from a special agreement). In such circumstances, as the Court will know only too well, respondent States have quite often argued that, if the dispute is characterized in another way, it falls outside the four corners of the treaty provision conferring jurisdiction on the Court. Such arguments have not been successful. For instance, in the case concerning *Oil Platforms* (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 803), the United States objected to the Court's jurisdiction because "Iran's claims raise issues relating to the use of force, and these do not fall within the ambit of the Treaty [of Amity, Economic Relations and Consular Rights] of 1955" (*ibid.*, pp. 810-811, para. 18)[20]. You rejected this argument in the following words:

> "The Treaty of 1955 imposes on each of the Parties various obligations on a variety of matters. Any action by one of the Parties that is incompatible with those obligations is unlawful, regardless of the means by which it is brought about. A violation of the rights of one party under the Treaty by means of the use of force is as unlawful as would be a violation by administrative decision or by any other means. Matters relating to the use of force are therefore not *per se* excluded from the reach of the Treaty of 1955."[21] (*Ibid.*, pp. 811-812, para. 21.)

And that was in response to a claim under a bilateral treaty of amity.

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[20] "les demandes de l'Iran soulèvent des questions relatives à l'emploi de la force, et ces questions n'entrent pas dans le champ d'application du traité [d'amitié, de commerce et de droits consulaires] de 1955".

[21] "Le traité de 1955 met à la charge de chacune des Parties des obligations diverses dans des domaines variés. Toute action de l'une des Parties incompatible avec ces obligations est illicite, quels que soient les moyens utilisés à cette fin. La violation, par l'emploi de la force, d'un droit qu'une partie tient du traité est tout aussi illicite que le serait sa violation par la voie d'une décision administrative ou par tout autre moyen. Les questions relatives à l'emploi de la force ne sont donc pas exclues en tant que telles du champ d'application du traité de 1955."

47. In the present case, Georgia advances claims against Russia based upon obligations contained in the Convention on Racial Discrimination. A Convention articulating a fundamental policy of the international community. Each cause of action on which we rely is founded upon an obligation in the Convention. The means by which Russia has apparently breached its obligations under the Convention are irrelevant to the Court's jurisdiction. By application *a fortiori* of your decision in *Oil Platforms*. The "Third Phase" of Russia's intervention commenced on 8 August 2008 with military action. During this Third Phase, the means by which Russia has apparently acted in violation of its obligations under the Convention has included, *inter alia*, the use of force, the use of military force. In its Application, Georgia does not invoke as a cause of action any claim that that force is unlawful under other instruments; it is pursuing remedies based on claims arising in relation to Russia's apparent breaches of this Convention.

48. I stress of course, and again, that in saying this it is by no means necessary for Georgia to prove, or still less for the Court to find, that violations are actually occurring. The questions are twofold: (1) are rights and obligations under the Convention engaged, and (2) does the apparent or prima facie disregard of those rights and obligations by persons, for whose conduct the respondent State may be responsible, create a situation of urgent need for provisional measures. The former cannot be doubted. My colleagues will address the latter point.

The reference to negotiation and procedures under the Convention in Article 22

49. I turn to another issue concerning the admissibility of the present request, which is raised by the opening sentence of Article 22 of the Convention. I remind the Court that it reads:

> "Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention . . ."

50. Respondents before this Court have frequently raised a preliminary objection based upon the alleged deficiency of negotiations preceding the institution of judicial proceedings. It is not an objection that has enjoyed much success; indeed it has been repeatedly rejected both by the Permanent Court and by yourself. I refer to *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*, pp. 319, 346), *United States*

Diplomatic and Consular Staff in Tehran (*United States of America* v. *Iran) (Judgment, I.C.J. Reports 1980*, p. 27, para. 51), *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) and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom) (Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 17, para. 21); *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America) (Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 122, para. 20) and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility (Judgment, I.C.J. Reports 1984*, pp. 428-429, para. 83)[22] cases. *Nicaragua* is particularly instructive on the effect of a reference to negotiation in a compromissory clause. As you pointed out there:

> "In the view of the Court, it does not necessarily follow that, because a State has not expressly referred in negotiations with another State to a particular treaty as having been violated by conduct of that other State, it is debarred from invoking a compromissory clause in that treaty . . . It would make no sense to require Nicaragua now to institute fresh proceedings based on the Treaty, which it would be fully entitled to do."

51. Judge Sir Robert Jennings in his separate opinion had this to say:

> "In the present case, the United States claims that Nicaragua has made no attempt to settle the matters, the subject of the application, by diplomacy. But the qualifying clause in question merely requires that the dispute be one 'not satisfactorily adjusted by diplomacy'. Expressed thus, in a purely negative form, it is not an exigent requirement. It seems indeed to be cogently arguable that all that is required is, as the clause precisely States, that the claims have not in fact already been 'adjusted' by diplomacy. In short it appears to be intended to do no more than to ensure that disputes that have already been adequately dealt with by diplomacy, should not be

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[22] "De l'avis de la Cour, parce qu'un Etat ne s'est pas expressément référé, dans des négociations avec un autre Etat, à un traité particulier qui aurait été violé par la conduite de celui-ci, il n'en découle pas nécessairement que le premier ne serait pas admis à invoquer la clause compromissoire dudit traité. Les Etats-Unis savaient avant l'introduction de la présente instance que le Nicaragua affirmait que leur comportement constituait une violation de leurs obligations internationales; ils savent maintenant qu'il leur est reproché d'avoir violé des articles précis du traité de 1956. Il n'y aurait aucun sens à obliger maintenant le Nicaragua à entamer une nouvelle procédure sur la base du traité - ce qu'il aurait pleinement le droit de faire."

> reopened before the Court."[23] (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility (Judgment, I.C.J. Reports 1984*; separate opinion of Judge Sir Robert Jennings, p. 556.)

52. Similarly, Article 22 of our Convention, the 1965 Convention refers to a dispute "which is not settled by negotiation". The question, and if Nicaragua is followed, the only question for the Court is: has the present dispute been settled by negotiation? The answer is transparently no and that ends the matter.

53. I should say that the reference to "procedures expressly provided for in this Convention" is stipulated as an alternative to negotiations. By parity of reasoning, it is not a condition precedent for the Court's jurisdiction. Again, it raises a question of fact as to whether the procedures set out in Part II of the Convention have been successfully employed to achieve a settlement of the dispute. There is no indication in the Convention that all the procedures in Part II are to be exhausted before recourse is made to this Court. Indeed, Article 16 of Part II explicitly provides to the contrary.

54. The meaning of Article 16 seems clear: the procedures are not designed to be exclusive or compulsory in respect of disputes concerning the subject-matter of the Convention.

55. In this context, I should, however, refer the Court to the *Congo* v. *Rwanda* case, and in particular your discussion of Article 29 of the 1979 Convention on the Elimination of Discrimination against Women, which is in similar terms to Article 22 of the 1965 Convention[24] In the *Congo* v. *Rwanda* case you said:

> "as regards the requirement of the existence of a dispute between the DRC and Rwanda for purposes of Article 29 of the Convention, that Article requires also that any such dispute be the subject of negotiations. The evidence has not satisfied the Court that the DRC in fact sought to commence negotiations in respect of the

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[23] "Dans la présente espèce, les Etats-Unis objectent que le Nicaragua n'a rien fait pour régler par la voie diplomatique les questions qui font l'objet de sa requête. Cependant, le traité de 1955 se contente d'exiger que le différend n'ait pas été "réglé d'une manière satisfaisante par la voie diplomatique". Ainsi exprimée, sous une forme purement négative, ce n'est pas là une condition très stricte. On pourrait même soutenir, semble-t-il, que tout ce qui est requis est que, comme le texte le dit avec précision, les reproches entre les parties n'aient pas d'ores et déjà été "réglés" par la voie diplomatique. Bref, il semble que les rédacteurs du traité aient seulement voulu éviter que les différends déjà réglés de façon satisfaisante par la voie diplomatique ne soient rouverts devant la Cour."

[24] 1249 *UNTS* 513.

interpretation or application of the Convention."[25] (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application*, Judgment of 3 February 2006, para. 91.)

56. *Congo* v. *Rwanda* was a very different case. There, the Applicant invoked no less than 11 separate bases of jurisdiction, all of which you ultimately rejected; I think 11 is the Court's record. It is not too much to say that in its efforts to find a possible basis for jurisdiction, it threw as many Conventions at the wall of the Court as it could think of in the hope that one of them would stick! Yet no one had previously thought to characterize Rwanda's military involvement in the Congo as one raising issues of discrimination against women. There was no consideration of that situation by CEDAW at any time. By contrast, as I have noted, CERD has already recognized on a number of occasions that the situation in South Ossetia and Abkhazia involves discrimination and denial of fundamental human rights on grounds of ethnicity. The same is true of General Assembly resolution 62/249.

57. Not only has the dispute been characterized by competent bodies in terms which are relevant to the 1965 Convention; there have also been extensive bilateral contacts between the parties. I refer for example to the Secretary-General's Report to the Security Council on 9 April 2003, where Secretary-General Annan stated:

> "The period under review was also marked by increased bilateral activity between the Russian Federation and Georgia at the highest level. During the informal summit of the Heads of State of Commonwealth of Independent States (CIS) in Kyiv on 28 and 29 July 2003, President Vladimir Putin and President Eduard Shevardnadze discussed . . . the return of internally displaced persons. On 6 and 7 March during a meeting in Sochi, the two Presidents agreed to create working groups that would address the return of refugees and internally displaced persons initially to the Gali district . . .."[26]

58. The Security Council, in resolution 1494 of 30 July 2003 noted that Russia and Georgia had conducted bilateral meetings in order to advance the peace process as agreed by the two Presidents in their meeting in March 2003 and also in the initial high-level meeting of the Parties on 15 July 2003. These meetings included discussion of the issue of the return of internally

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[25]"… au regard de l'exigence de l'existence d'un différend entre la RDC et le Rwanda aux fins de l'article 29 de la Convention, cet article requiert également qu'un tel différend fasse l'objet de négociations. Les éléments de preuve présentés à la Cour n'ont pas permis d'établir à sa satisfaction que la RDC ait en fait cherché à entamer des négociations relatives à l'interprétation ou l'application de la Convention."

[26]S/2003/412, para. 5.

displaced persons, displaced in previous episodes of ethnic cleansing[27]. Reports of the Secretary-General to the Security Council in 2004 and 2005 document ongoing meetings of the Sochi Working Group on the Return of Refugees and Internally Displaced Persons[28].

59. I should also mention the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons signed on 4 April 1994, the Protocol of the talks between the governmental delegations of the Republic of Georgia and the Russian Federation, 9 April 1993 and other documents included in the "Contribution by the Russian Federation" under the heading of "Documents of the negotiating process", which also evidence negotiations between Georgia and the Russian Federation. In these and other documents the Russian Federation is engaged as a party principal; it is not simply as an interlocutor or a disinterested third party.

60. For these reasons, even if Article 22 of the 1965 Convention were considered to lay down a condition precedent for seising the Court, that condition is satisfied here.

International humanitarian law as a *lex specialis*

61. Madam President, Members of the Court, finally in this catalogue of possible objections, I should refer to the issue of the relation between the Convention as a human rights instrument and the rules of international humanitarian law. It is well known that the Russian armed forces invaded Georgia on 8 August 2008 and have conducted military operations within Georgia's territory since that date.

62. You have several times pronounced upon the question whether international humanitarian law displaces the otherwise applicable international human rights law in the context of an armed conflict. Your answer to this question has been an emphatic "no". For example, in the Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* you said:

> "[T]he Court considers that the protection offered by human rights Conventions does not cease in case of armed conflict, save through the effect of provisions for

[27] S/RES/1494 (2003), para. 9.

[28] See S/2003/751, para. 30; S/2004/570, para. 7; S/2005/452, para. 5.

> derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights." (*I.C.J. Reports 2004*, p. 178, para. 106.)[29]

63. You came to the same conclusion in your earlier Advisory Opinion on *Nuclear Weapons,* (*I.C.J. Reports 1996*, p. 240, para. 2) and in *DRC* v. *Uganda* (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, pp. 69-70, paras. 215-217).

64. In this respect it is important to emphasize that, unlike the International Covenant on Civil and Political Rights, the Convention on Racial Discrimination does not contain any provision allowing the States parties to derogate from their obligations in a time of public emergency. The reason for this omission is clear: racial discrimination cannot be justified by States on the basis of any type of exigency, even when the life of the nation is threatened in case of armed conflict. Indeed, the derogation provision in Article 4, paragraph 1, of the International Covenant on Civil and Political Rights is careful itself to preserve the universal prohibition of racial discrimination, whatever the exigencies of the emergency confronting the State parties. One of the conditions for derogation on Article 41 is that the measures "do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin".

65. That settles the question as to whether the obligations under the Convention continue to apply in a situation of armed conflict. But I would also refer, by way of conclusion, to the Human Rights Committee's General Comment No. 31 where the Committee said:

> "[T]he Covenant applies also in situations of armed conflict in which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specifically relevant for the purposes of the interpretation of the Covenant rights, both spheres of law are complementary, not mutually exclusive."[30]

And that conclusion applies *a fortiori* to the 1965 Convention.

66. In short, there can be no conceivable justification for departing from this principle in relation to the 1965 Convention on Racial Discrimination. Given the absence of a derogation

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[29] "[L]a Cour estime que la protection offerte par les Conventions régissant les droits de l'homme ne cesse pas en cas de conflit armé, si ce n'est par l'effet de clauses dérogatoires du type de celle figurant a l'article 4 du pacte international relatif aux droits civils et politiques."

[30] Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26.5.2004, CCPR/C/21/Rev.1/Add.13, para. 11.

provision in the Convention, the application of its obligations in situations of armed conflict is more comprehensive than in the case for the obligations under the International Covenant of 1966.

Conclusions

67. Madam President, Members of the Court, let me conclude. There have been great advances in the legal protection of racial and ethnic groups from discrimination in the past 50 years. Many countries have passed laws with increased standards to promote the equality of all members of society regardless of race and religion. In some parts of the world, the focus has happily shifted from the prevention of ethnic violence, which was at the heart of the initial impulse for the Convention, to guarantees of equal employment opportunities — what one might call civil discrimination. But we should not forget that the Convention on Racial Discrimination was the result of international concern — it is not too much to say outrage — at some of the more extreme and sinister forms of racial discrimination; in particular, practices of violent discrimination against ethnic groups by States and persons sponsored by States, to achieve political ends — practices implicating the constitution and composition of territorial communities. The Convention on Racial Discrimination expresses in emphatic terms the fundamental international norm of non-discrimination in that fundamental matter. It remains the last line of defence against a State that has traversed the limits of acceptable conduct in its differential and unjustified treatment of ethnic groups.

68. Turning to this case, the obligations under the Convention are evidently engaged in relation to Russia's treatment of ethnic Georgians in Abkhazia, South Ossetia, and other areas of Georgia under Russian control. For the purposes of this request for provisional measures, the rights at issue before this Court are the fundamental human rights of ethnic Georgians guaranteed under Article 5 of the Convention, including the right not to be expelled from and if necessary to return to their homes. Georgia has the right to insist, pursuant to Article 2, that Russia refrain from sponsoring, defending or supporting racial or ethnic discrimination by any persons or organizations.

69. The Court has prima facie jurisdiction under Article 22 of the Convention in respect of Georgia's claims based upon these obligations. I have addressed each aspect of the Court's

jurisdiction and in doing so I have attempted to anticipate possible objections to the Court's exercise of that jurisdiction. Russia and Georgia are parties to the Court's Statute and to the Convention and neither has made any reservation to Article 22. The subject-matter of the present dispute falls within the four corners of the Convention as I have demonstrated. The provisional measures relate to the immediate crisis in Abkhazia, South Ossetia and the Gori district and hence this part of the dispute arose years after Georgia's ratification of the Convention. Having regard to the consistent jurisprudence of the Court any question in relation to a more onerous requirement of negotiations or the application of humanitarian law as a *lex specialis* must fail.

Madam President, Members of the Court, thank you for your attention.

Madam President, this would be a convenient moment for the break, after which I would ask that you call upon Professor Akhavan.

The PRESIDENT: Thank you, Professor Crawford. The Court will now rise briefly.

The Court adjourned from 11.15 to 11.40 a.m.

The PRESIDENT: Please be seated. Professor Akhavan.

Mr. AKHAVAN:

3. OVERVIEW OF THE FACTS BEARING ON THE URGENT NEED FOR PROVISIONAL MEASURES

1. Madam President, distinguished Members of the Court, it is an honour and privilege to appear before you on behalf of Georgia. In my presentation, I shall set forth the factual basis of Georgia's Request for provisional measures, which is before the Court today. I will deal only with the factual issues that relate directly to this provisional measures phase. The broader issues — including the important historical material and background to the events of last month — are referred to in the Application but are properly for the merits phase.

The ethnic Georgian populations at imminent risk

2. There are currently some 158,000 internally displaced ethnic Georgians who have been expelled from South Ossetia, the adjacent Gori district and Abkhazia, over the course of the past month. Together with the estimated 300,000 persons displaced during the conflicts of the 1990s,

they account for some 10 per cent of Georgia's total population. Their plight has been recognized in United Nations Security Council and General Assembly resolutions and documented in the successive reports of human rights organizations. The continuing violation of their rights under Articles 2 and 5 of the Convention on Racial Discrimination will be a central concern of Georgia's case on the merits.

3. The principal focus of the Request for provisional measures today, however, is upon those ethnic Georgians who remain in Georgian territories in South Ossetia, Gori district and Abkhazia, under Russian control. This population faces an imminent danger of violence against their person and property and expulsion from their homes in direct violation of their rights under the Convention. The urgent intervention of this Court is necessary to prevent further irreparable harm to the rights of these thousands of ethnic Georgians, whose very survival has become precarious as a result of a campaign of sustained and violent discrimination being waged against them. The executors of this ongoing campaign are Russian soldiers and separatist militias under their control. There is no sign that the Russian Federation and the *de facto* separatist authorities in South Ossetia and Abkhazia intend to cease this campaign before its objective has been achieved. That objective is the creation of two territories that are cleansed of ethnic Georgians and placed under the authority of separatists loyal to the Russian Federation. The violent discrimination has continued since the so-called "ceasefire", since Georgia filed its Application, and since the Request for provisional measures was put before the Court. It continues today. The Court has an important role to play to help ensure it does not continue tomorrow.

4. With your permission, Madam President, I would like to refer you to a map of Georgia to explain the location of the ethnic Georgian populations that are particularly exposed to risk of further ethnic cleansing in direct violation of their rights under Articles 2 and 5 of the Convention.

5. The map before you is contained at tab 16 of the judges' folder. It indicates the location of the Autonomous Republic of Abkhazia to the west of Georgia, and the territory of the former autonomous region of South Ossetia to the north.

6. The following map, at tab 17 of the judges' folder, is a close-up of South Ossetia. The capital of this region is situated in Tskhinvali, in the region's southernmost extremity. As I shall

discuss, after the Russian invasion of 8 August, the Georgian villages in the immediate vicinity of Tskhinvali were ethnically cleansed and systematically destroyed.

7. Immediately below Tskhinvali is Gori District, which was under Georgian Government control prior to the 8 August invasion. Russia has declared the northern part of this district as a so-called "buffer zone". The shaded grey line on the map indicates the approximate extent of the current Russian zone of occupation in Gori district. As I shall discuss, most Georgian villages in this portion of Gori have also been destroyed, but a scattered population estimated at 3,000-4,000 remains.

8. In South Ossetia, the remaining ethnic Georgian population is concentrated in the Akhalgori district. Turning again to the close-up map before you, the location of Akhalgori can be seen in the eastern part of this region. This district was also under Georgian Government control prior to the 8 August invasion. There are some 9,000 ethnic Georgians still in this area.

9. In Abkhazia, the only remaining territory where ethnic Georgians continue to live is the Gali district, where the Georgian population numbers some 42,000. The map before you, contained at tab 18 of the judges' folder, indicates the location of Gali district in the south-western extremity of Abkhazia, separated from the rest of Georgia by the Enguri river. Before the recent attacks on Georgian villages in the Kodori Gorge, there was also a community of 3,000 Georgians in that area of Upper Abkhazia, to the north of Gali district. Those who survived these ethnically motivated attacks fled their homes and have joined the hundreds of thousands of internally displaced persons living in temporary shelters elsewhere in Georgia.

The pattern of violence against ethnic Georgians over the past weeks

10. To appreciate the imminent risk of continued violent discrimination against the ethnic Georgian populations in the Akhalgori, Gori, and Gali districts, it is sufficient to focus on the pattern of ethnic cleansing during the past days. With your permission, I would like to direct the Court to some recent examples.

11. Human Rights Watch, in its report entitled "Georgian Villages in South Ossetia Burnt, Looted" — that is located at tab 7 of the judges' folder — stated that on 12 August 2008, its researchers had:

> "witnessed terrifying scenes of destruction in four villages that used to be populated exclusively by ethnic Georgians. According to the few remaining local residents, South Ossetian militias that were moving along the road looted the Georgian villages and set them on fire . . ."[31]

12. A separatist official told Human Rights Watch: "These old people shouldn't be complaining — they should be happy they weren't killed."[32]

13. On 22 August 2008, Amnesty International reported that "[t]hose who remained in South Ossetia and in parts of western Georgia where fighting has taken place . . . remain vulnerable to ethnically motivated attacks"[33]. This report may be found at tab 6 of the judges' folder.

14. This pattern of ethnic violence continues. On 28 August — just 11 days ago — Human Rights Watch concluded in a report found at tab 8 of the judges' folder that although "Russia is obligated to ensure the safety and well being of civilians in the areas under its *de facto* control . . . civilians are clearly not being protected"[34].

15. United Nations agencies and other international organizations also confirm this ongoing pattern of ethnic violence in what Russia proclaims to be its "buffer zone". Two weeks ago, on 26 August, the United Nations High Commissioner for Refugees "expressed concern over reports of *new forcible displacement* caused by marauding militias north of the Georgian town of Gori near the boundary line with the breakaway region of South Ossetia"[35]. I stress the words "new forcible displacement". This report may be found at tab 4 of the judges' folder.

16. Madam President, Members of the Court, the violent discrimination against ethnic Georgians is continuing. According to UNHCR, this group of newly displaced persons consisted of:

> "elderly people who had remained in their homes throughout the conflict, but had now been forced to flee by armed groups. The newly displaced said that some had been beaten, harassed and robbed, and that three persons had reportedly been killed. The

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[31] "Georgian Villages in South Ossetia Burnt, Looted", Human Rights Watch, 13 Aug.t 2008 (Ann. 5 to Georgia's observations).

[32] *Ibid.*

[33] "Continuing Concern for Civilians After Hostilities in Georgia", Amnesty International, 22 Aug. 2008 (Ann. 6 to Georgia's observations).

[34] "EU: Protect Civilians in Gori District, Security of Civilians Should Be Central to Summit Discussions on Russia", Human Rights Watch, 28 Aug. 2008 (Ann. 2 to Georgia's observations).

[35] "Reports of lawlessness creating new forcible displacement in Georgia", UNHCR, 26 Aug. 2008 (emphasis added) (Ann. 9 to Georgia's observations).

marauders were reportedly operating in the so called buffer zone established along the boundary line with South Ossetia."[36]

17. On 25 August, speaking in his capacity as OSCE Chairman, the Foreign Minister of Finland, Alexander Stubb, stated that in Gori district he had personally witnessed how "Russian emergency troops brought in two lorries full of elderly people" from "southern Ossetia who had been torn away from their homes"[37]. His conclusion was unambiguous: they "are clearly trying to empty southern Ossetia of Georgians"[38]. He was not referring to some obscure historic event. Foreign Minister Stubb is talking about events taking place now.

Russia's control over the *de facto* separatist authorities in South Ossetia and Abkhazia

18. Madam President, Members of the Court, as Professor Crawford has stated, the question of attribution is one for the merits, and I need say very little on this matter. What I *shall* say supports our case that provisional measures directed to Russia can have real, positive effects: Russia exercises significant control over the Georgian territories under its occupation, and also controls the separatist régimes in Abkhazia and South Ossetia. As such, it has the power to stop ongoing acts of discrimination.

19. I will focus on South Ossetia. The preponderance of the key positions in the *de facto* Government of South Ossetia is now occupied by current or former Russian military and intelligence officers. The South Ossetian Minister of Internal Affairs, Mikhail Mairamovich Mindzaev, is a colonel of the Russian police force. For many years he served at the Ministry of Internal Affairs of the North Ossetian Autonomous Republic in the Russian Federation. Anatoly Konstantinovich Brankevich, the Secretary of the Security Council of South Ossetia, is a colonel in the Russian army who served for four years as the First Deputy Military Commissioner of Chechnya; immediately prior to his appointment in South Ossetia he was the Deputy Military Commissioner of Stavropol Krai, a territorial unit of the Russian

[36] *Ibid*.

[37] S. Ossetia "emptied of Georgians", BBC News, 25 Aug. 2008 (Ann. 19 to Georgia's observations).

[38] *Ibid*.

Federation. Boris Mazhitovich Atoev, the Chairman of the State Security Committee of South Ossetia, served for many years in the Soviet KGB and in the Federal Security Service in Moscow[39].

20. In short, these and other key officials of the separatist authorities in South Ossetia and Abkhazia are in the employ of the Russian Federation and remain under its direct control. Indeed many of them are concurrently employed by its military and intelligence services, and they control the paramilitary forces that the United Nations High Commissioner for Refugees has referred to as "marauding militias"[40].

The ethnic basis of the targeted discrimination and violence

21. I have referred to the reports of international organizations and NGOs over the last few weeks to demonstrate the systematic nature of the ongoing violent discrimination inflicted by Russian forces upon ethnic Georgians in South Ossetia, Gori district, and Abkhazia. It is the most recent testimony of individual Georgians, however, that provides the most compelling and disturbing evidence of the ethnic basis for this violence. I refer the Court to the witness statements that have been provided in the observations of Georgia submitted last week. Again, we are not concerned now with historical material — although the history sheds grim light on what is happening today. We are concerned with what is happening now, today, to show that discrimination is continuing, that it is violent, and that it threatens to cause irreparable damage. This testimony exposes the gravity of the situation that faces the remaining Georgians in the Akhalgori district of South Ossetia, the adjacent Gori district, and the Gali district of Abkhazia. This testimony leaves no doubt that these remaining Georgians are at a real risk of violence because of their ethnicity and nothing but their ethnicity.

22. The witness testimony of Jimsher Babutsize is at tab 11 of the judges' folder. Mr. Babutsize is 59 years old and lived in the village of Achebeli close to Tskhinvali until he fled on 10 August 2008. He recounts his meeting with the Russian forces when they arrived in his village:

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[39]Georgian Ministry of Foreign Affairs, "Russian Officials in Georgia Separatist Governments" (undated) (Ann. 39 to Georgia's observations).

[40]"Reports of lawlessness creating new forcible displacement in Georgia", UNHCR, 26 Aug. 2008 (Ann. 9 to Georgia's observations).

> "The Russian soldiers then told us, '[i]f you are Georgian and want to survive, run away from here' because we would die if we didn't leave. He said 'You see what is happening here. Do you want to die?'".[41]

23. Like many among the historically mixed population of South Ossetia, Klara Khetaguri is an ethnic Ossetian married to an ethnic Georgian. She explains in her witness statement, at tab 12 of the judges' folder, that "[m]y village was occupied by the Russian army and the Ossetian militia for several days. The Ossetians looted and burned the houses in the village, and the Russian army did not try to stop them."[42] She asked a Russian officer "why the Russians were allowing the Ossetian militia to burn down the Georgians' houses"[43]. Her testimony regarding the Russian officer's response is revealing:

> "He told me that they didn't have any right to stop the Ossetians. The Russian soldiers tied pieces of white cloth to the buildings they were staying in. Because I was very afraid that my house would be burned down, the officer told me to tie a white cloth on my house to indicate to the Ossetians that my house, like the buildings where the Russian[s] . . . were staying, should not be burned. The officer told me that these buildings, including my house, would not be burned as long as the Russians remained in the village."[44]

24. This instruction was followed by the Ossetian militia. Quoting again from her statement, "The Ossetians burned down all the houses in the village except the houses where the Russians were staying and my house."[45]

25. There are several other examples confirming the ethnic basis of this violence. Tab 13 in the judges' folder contains the witness statement of Ana Datashvili, a 73-year-old resident of the village of Tamarasheni. She testifies that "Russian soldiers returned to the village, together with Cossacks and Chechens and other North Caucasus bandits" and "began looting and burning Georgian houses on a massive scale"[46]. She recounts a "Russian soldier" who:

> "started yelling in a loud voice with me but I could not understand what he was saying since I don't know Russian. Afterwards an Ossetian explained to me in Georgian that the Russian soldier had ordered me to leave the house since they were going to burn it down. I asked them why they [were] doing this, since we were relatives. I explained that I was half Ossetian and that my mother was Ossetian. Despite my explanation,

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[41] Ann. 26 to Georgia's observations.

[42] Ann. 33 to Georgia's observations.

[43] *Ibid.*

[44] *Ibid.*

[45] *Ibid.*

[46] Ann. 27 to Georgia's observations.

> they told me that I was Georgian and had no place with them. They said that Georgians will never live on this land anymore."[47]

26. To quote from her statement, "[t]he Russian soldier forced me by physical abuse to leave the house", whereupon, she recounts, an Ossetian soldier "threw an object resembling a bomb on the first floor of my house, setting the house ablaze"[48].

27. The statement of 71-year-old Zaira Khetagashvili, at tab 14 of the judges' folder, provides similar testimony concerning the destruction of the village of Kekhvi. She explains that three Ossetians entered her house, stole a television set and other household goods, and "told me to leave immediately or else they would kill me"[49]. She testifies that her attackers said they would "exterminate the whole Georgian ethnicity and kill everybody" and that all "Georgians should leave the area because it is Ossetian territory"[50]. Her statement indicates that the Ossetian separatists "forced the population out of our houses and shouted to leave this place. They immediately started searching and robbing our houses and then burnt them."[51] She further testifies that when the houses of Kekhvi were being burned "a 90-year-old man . . . could not escape from the fired house and was burned up inside it"[52].

Risk of imminent harm against Georgians in Akhalgori, Gori, and Gali

28. I shall now describe for the Court the acts of discrimination being perpetrated today against ethnic Georgian populations remaining in Akhalgori, Gori, and Gali districts. The events over recent weeks demonstrate a real risk that the discrimination in Georgian territories under Russian control will continue and lead to the further physical harm or death of Georgian civilians and their forced expulsion from these regions of Georgia.

29. The 42,000 Georgians in the Gali district of Abkhazia are the last impediment to the creation of an ethnically homogeneous Abkhazia under Russian control. When the most recent conflict broke out in August, the Russian forces closed the only bridge across the Enguri river

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[47] *Ibid.*

[48] *Ibid.*

[49] Ann. 32 to Georgia's observations.

[50] *Ibid.*

[51] *Ibid.*

[52] *Ibid.*

linking Gali to the rest of Georgia. The ethnic Georgian population is now completely isolated and the Georgian Government has no means of protecting them[53].

30. Joni Mishvelia, the Chair of the Local Municipality of Ganmukahuri, a village in Zugdidi district immediately adjacent to Gali, has provided a declaration that appears at tab 15 of the judges' folder. He testifies that on the day the Russians and Abkhazian separatists occupied his village, a representative of the separatist authorities "told the population that Georgian passports were useless and if they wanted to live in their villages, they should accept the passports of Russian citizens"[54]. Mr. Mishvelia further states that, as far as he is aware, "the population of Ganmukhuri refused this proposal, and as a result, they were forced to leave their families and hide . . ."[55]. The occupying forces do not allow them to return, which is causing economic devastation, particularly since the villagers cannot complete their harvest.

31. The estimated 9,000 ethnic Georgians in the Akhalgori district claimed by separatists as part of South Ossetia also face acts of discrimination. Like the Georgians in Gali, they are the last impediment to an ethnically homogeneous South Ossetian territory under Russian control. On 27 August, the French Foreign Minister, Bernard Kouchner, reported that "Russian forces are sweeping through [Akhalgori town] pushing Georgians out and over the border. It's ethnic cleansing, creating a homogeneous South Ossetia."[56] This article may be found at tab 10 of the judges' folder. In the coming days, independent reports by the press further confirmed Mr. Kouchner's statement.

32. An article published on 31 August, in the *Telegraph* of London, reported that "Akhalgori's residents must register at paramilitary checkpoints, giving details that are passed on to the town police station"[57]. It further reported that: "At a compulsory interview a new Russian appointed chief of police gives people a stark and simple choice: take a Russian passport, or leave

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[53]Declaration of Zaza Gorozia, Ann. 30 to Georgia's observations.

[54]Ann. 36 to Georgia's observations.

[55]*Ibid.*

[56]"Russia: Kouchner claims ethnic cleansing in Georgia", *Euronews.net* (27 August 2008) (Ann. 17 to Georgia's observations).

[57]"South Ossetian police tell Georgians to take a Russian passport, or leave their homes", *Telegraph* (31 Aug. 2008), Ann. 14 to Georgia's observations.

the town."[58] The article quoted an Akhalgori resident as saying "The Russians are telling everyone in the town they must take a Russian passport . . . One came to me and explained that if I did not take it, my safety could not be certain. I was scared, so I am leaving."[59] The article further indicates that the population of Akhalgori town "which was estimated at 6,800 before the conflict, is believed to have halved in a week. . . . Hundreds have fled to Georgia rather than accept a new life as Russians."[60]

33. The gravity and urgency of the situation confronting the ethnic Georgian communities of Gali, Akhalgori, and Gori are demonstrated by the maps that I shall shortly put before the Court. Before doing so, I would like to draw your attention to a statement by the so-called "President" of the *de facto* authority in South Ossetia, Eduard Kokoity, found at tab 21 of the judges' folder. On 15 August 2008, shortly after the systematic destruction of Georgian villages in the vicinity of Tskhinvali, Mr. Kokoity gave an interview to the Russian publication *Kommersant*. He was asked the following question by the journalist: "After the Tskhinvali and Ossetian villages were liberated, the hostilities were then conducted in Georgian enclaves. What is going on there now?"[61] Mr. Kokoity simply responded: "*Nothing, we have flattened everything there. The boundaries of South Ossetia have been defined*."[62] And indeed, Mr. Kokoity was right. The ethnic-based boundaries of the separatist republic are being literally burned onto the map.

34. I would now like to draw the Court's attention to the satellite imagery contained at tab 19 of the judges' folders. The images you will see come from the United Nations Institute for Training and Research Operational Satellite Applications Programme (UNOSAT), which conducted a damage assessment of the area to the north of Tskinvali from 19 August. According to a 29 August Human Rights Watch report, these UNOSAT images

> "confirm the widespread torching of ethnic villages inside South Ossetia . . . The damage shown in the ethnic Georgian villages is massive and concentrated. In Tamarasheni, UNOSAT's experts counted a total of 177 buildings destroyed or severely damaged, accounting for almost all the buildings in town. In Kvemo

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[58] *Ibid.*

[59] *Ibid.*

[60] *Ibid.*

[61] Republic of South Ossetia New Agency, press conference conducted in the International Press Centre of Tskhinvali (26 Aug. 2008), Ann. 40 to Georgia's observations.

[62] *Ibid.* (Emphasis added.)

> Achabeti, there are 87 destroyed and 28 severely damaged buildings . . . in Kekhvi, 109 destroyed and 44 severely damaged buildings . . ."[63]

35. The Court will recall that the village of Kekhvi is the location where 71-year old Zaira Khetagashvili testified that Ossetian militia expelled the Georgian population and systematically burnt homes. The image before you now, contained at tab 19 of the judges' folders, is a UNOSAT image of Kekhvi taken after the attack. If you look closely, you will see house after house destroyed by fire, as evidenced by the absence of roofs.

36. The next UNOSAT image before you, also at tab 19, places red and orange squares, with red indicating buildings that have been destroyed and orange indicating buildings that have been severely damaged. These dots, and the underlying analysis they represent, come not from Georgia, but from UNOSAT itself. The images and analysis are publicly available at the UNOSAT website.

37. The next image I will show you is also from UNOSAT and is a composite representing the entire area to the north of Tskinvali. You will Kekhvi in the upper left corner of the image, together with a number of other Georgian villages referenced in the witness testimony submitted to the Court. As is apparent from the heavy concentration of red and orange dots, the devastation in areas under Russian control is widespread and follows a distinct pattern, encompassing virtually all the Georgian villages north of Tskhinvali. This stands in sharp contrast to Ossetian villages such as Mamita, situated at the right-hand side of the same image. You will see that the UNOSAT analysis did not find any destroyed buildings whatsoever in this village.

38. In order better to illustrate the broader pattern of ethnic-based destruction, I would now draw your attention to a sketch-map projected on the screen behind me, and included at tab 20 of the judges' folders. This map reflects the ethnic composition of South Ossetia prior to the events of August 2008. Ethnic Georgian villages are represented by red circles and ethnic Ossetian villages by blue circles. The circles correspond to the size of the population in each location. As in prior maps, the Russian zone of control is depicted by a dark grey line.

39. The next image is a close-up of the region in the immediate vicinity of Tskhinvali reflecting the ethnic composition of that area prior to August. The next image depicts the Georgian villages that have been destroyed. These destroyed villages are depicted by white circles. If I may,

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[63]Human Rights Watch, *Human Rights News*: "Georgia: Satellite Images Show Destruction, Ethnic Attacks. Russia Should Investigate, Prosecute Crimes" (29 Aug. 2008) (Ann. 1 to Georgia's observations).

I will illustrate once again the transformation of the red circles representing Georgian villages into white circles representing those that have been destroyed. First, before the events of August, then, after Russian occupation of these territories after the 8 August invasion. You will see that the Georgian villages surrounding Tskhnivali have all been ethnically cleansed. You will also see that the Georgian villages in Gori district have also been systematically destroyed. It may be recalled that Russia has declared this area to be a "buffer zone". As the image reflects, there are still a number of populated ethnic Georgian villages inside the Russian zone of occupation. In addition, there are also some ethnic Georgian individuals left behind in the destroyed villages. This remaining Georgian population is currently subjected to continuing acts of ethnic violence and each day more displaced persons arrive in Tbilisi and other locations from Gori district.

The PRESIDENT: Could I just interrupt to have some clarification as to the provenance of this map. Do I rightly understand that the colourings and designations on the map have been prepared by the Georgian Government on the basis of other materials you are showing us to illustrate the overall picture that you are making? Have I got that right?

Mr. AKHAVAN: Yes, Madam President, the maps are based on statistics which reflected the ethnic composition prior to the conflict and the sketch of the destroyed villages is based on information that has been arriving, literally until the day that we have appeared before this Court, and we would be pleased to provide that to the Court, should you so deem.

The PRESIDENT: Thank you.

Mr. AKHAVAN:

40. Madam President, there can be little doubt that the intention of the separatists is not merely the expulsion of all Georgians, but also to render such displacement permanent. In the *Kommersant* Moscow interview that I have already referred to, the leader of the South Ossetian separatists, Mr. Kokoity, was asked: "Will Georgian civilians be allowed to return?"[64] He

[64]Republic of South Ossetia New Agency, press conference conducted in the International Press Centre of Tskhinvali (26 Aug. 2008) (Ann. 40 to Georgia's Observations).

answered: "We do not intend to let anybody in here anymore."[65] Several days after the interview, the *Economist* quoted a South Ossetian intelligence officer as follows: "We burned these houses. We want to make sure that they [the Georgians] can't come back, because if they do come back, this will be a Georgian enclave again and this should not happen."[66] Based upon this unmistakable pattern of conduct, there is a very serious risk that the remaining Georgian population in the Akhalgori district in South Ossetia will suffer the same fate as the ethnic Georgians elsewhere in that territory. As depicted in the next map, contained at tab 20 of the judges' folders, the ethnic Georgian population of Akhalgori in the east of South Ossetia is the largest remaining obstacle to the realization of the separatist's campaign to create an ethnically "pure" State.

41. As set forth in my presentation, there are compelling indications that the expulsion of ethnic Georgians in Akhalgori district is currently under way. I have also set forth facts demonstrating that the risk of discriminatory violence applies with equal force to the estimated 3,000-4,000 Georgians remaining in the northern portion of Gori district under Russian occupation, as well as the remaining Georgian population of Gali district in Abkhazia, the last population of Georgians in the entire region.

42. Madam President, distinguished Members of the Court, the facts are unambiguous: the violent discrimination against ethnic Georgians has not stopped, it is continuing and it is having devastating and irreparable human consequences. The evidence before the Court also makes it clear that Russia has the power to stop these violent, discriminatory acts. Yet Russia continues to support the continuing programme of ethnic cleansing.

43. That, Madam President, concludes my submission. With your permission, I would ask that the Court now call on Mr. Reichler.

The PRESIDENT: Thank you, Professor Akhavan. And the Court does now call Mr. Reichler.

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[65] *Ibid.*

[66] A Caucasian journal, *The Economist*, 21 Aug. 2008.

Mr. REICHLER:

4. THE PROVISIONAL MEASURES REQUESTED BY GEORGIA ARE MERITED

1. Madam President, distinguished Members of the Court, it is always a special honour for me to appear before you, and I am particularly honoured today to appear in this case on behalf of Georgia.

2. It is my role today to demonstrate that the criteria established by the Court for the indication of provisional measures have been met, and that the particular provisional measures requested by Georgia should be indicated by the Court. The criteria for the indication of provisional measures are well established. There must be "a risk of irreparable prejudice to rights in issue before the Court"; and there must be "urgency". In its most recent statement on the subject, on 13 July 2008, in the *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America)*, the Court said in its Order:

> "the power of the Court to indicate provisional measures under Article 41 of its Statute 'presupposes that irreparable prejudice shall not be caused to rights which are the subject of a dispute in judicial proceedings'" (*Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America), Provisional Measures,* Order of 16 July 2008, p. 16, para. 65 (quoting *LaGrand (Germany* v. *United States of America)*, *Provisional Measures, Order of 3 March 1999*, *I.C.J. Reports 1999 (I)*, p. 15, para. 22)).

On the subject of "urgency," the Court has said in *Great Belt* and other cases, that this must exist "in the sense that action prejudicial to the rights of either party is likely to be taken before" (*Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J Reports 1991*, p. 12, 17, para. 23; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America), Provisional Measures,* Order of 16 July 2008, p. 16, para. 66[67]) the Court's final decision is given. More recently, in the *Pulp Mills* case, the Court has suggested that the test of urgency is met if the risk of irreparable injury is

[67] "c'est-à-dire s'il est probable qu'une action préjudiciable aux droits de l'une ou de l'autre Partie sera commise avant qu'un tel arrêt définitif ne soit rendu".

"imminent" (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures*, Order of 13 July 2006, p. 18, para. 73).

3. Madam President, Members of the Court, my presentation today has three parts. In the first part, I will demonstrate that the particular rights which Georgia seeks to protect by means of its Request for provisional measures are rights which are at the very heart of this dispute. In the second part, I will demonstrate that these very rights are at real risk of irreparable prejudice, such that intervention by the Court, in the form of an indication of provisional measures, is necessary to protect them against irreversible loss or impairment during the pendency of these proceedings. In the third and last part, I will show that the particular provisional measures requested by Georgia to protect these rights are urgently required.

The rights Georgia seeks to protect are rights in dispute

4. I begin with the requirement that, in the Court's words, "rights sought to be made the subject of provisional measures [must be] the subject of the proceedings before the Court on the merits of the case" (*Arbitral Award of 31 July 1989 (Guinea-Bissau* v. *Senegal), Provisional Measures, Order of 2 March 1990*, *I.C.J. Reports 1990*, p. 70, para. 26[68]). In its amended Request for provisional measures of 25 August, at paragraph 16, Georgia invoked Articles 2 and 5 of the Convention on Elimination of All Forms of Racial Discrimination, and requested provisional protection of the following rights thereunder:

> "the right of ethnic Georgians to be free from discriminatory treatment, in particular violent or otherwise coercive acts, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and detention based on ethnicity, the destruction and pillage of property, and other acts intended to expel them from their homes in South Ossetia, Abkhazia, and adjacent regions located within Georgian territory"[69].

5. Georgia's amended Request for provisional measures, at paragraph 18, also seeks the Court's protection, under Articles 2 and 5 of the Convention, for "the exercise by ethnic Georgians . . . 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".

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[68] "les droits allégués dont il est demandé qu'ils fassent l'objet de mesures conservatoires ne sont pas l'objet de l'instance pendante devant la Cour sur le fond de l'affaire".

[69] Amended provisional measures Request, 25 Aug. 2008, para. 16.

6. These are precisely the same rights under the 1965 Convention that Georgia has invoked in its Application of 12 August, at paragraph 81.

7. As Professor Crawford has explained, the rights for which Georgia seeks protection both in its amended Request for provisional measures and in its Application are the specific rights guaranteed by Articles 2 and 5 of the Convention. Under Article 2, paragraph 1 *(a)* and *(b)*, Georgia has a right to have Russia, as a State party to the Convention, "engage in no act or practice of racial discrimination against persons, groups of persons or institutions" and to undertake "not to sponsor, defend or support racial discrimination by any persons or organizations". Under paragraph 1 *(d)* of Article 2, Georgia also has the right to have Russia "prohibit and bring to an end, by all appropriate means . . . racial discrimination by any persons, group or organization". The specific rights protected by Article 5 are: first, the right under Article 5 *(b)* "to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution"; second, the right under Article 5 *(d)* (i) "to freedom of movement and residence within the border of the State"; third, the right under Article 5 *(d)* (ii) "to return"; fourth, the right under Article 5 *(d)* (iii) "to nationality"; and fifth, the right under Article 5 *(d)* (v) "to own property". These are the very rights that Georgia has invoked in its Application of 12 August, at paragraph 81, and in its amended Request for provisional measures of 25 August, at paragraphs 16 and 18.

The rights in dispute are at risk of irreparable prejudice

8. I turn to my second point: the same rights that I have just described are now, today, at risk of irreparable prejudice. In addressing this subject, I refer to the evidence described by Professor Akhavan. We appreciate that the Court will not look at the merits at this stage. We have no intention of arguing the merits here. We raise the evidence only to show that acts that are apparently inconsistent with Articles 2 and 5 are continuing to occur, that they are likely to keep occurring, and that as a result, the rights at issue in this dispute are at real risk of irreparable prejudice. In fact, this evidence suggests that each of the Articles 2 and 5 rights that is the subject of Georgia's amended Request for provisional measures is subject to widespread violation on a continuing basis. The risk is not only of irreparable injury or impairment, but of complete

extinction of these rights, in real and practical terms, long before the final decision is taken in this case.

9. As Professor Crawford has explained, it is not Georgia's burden, or its place, at this stage of the case to establish either that the Convention has been violated or that the violations are attributable to the respondent State. What *is* Georgia's role, is to show that there is a risk of irreparable injury to the rights at issue, and that there is an urgent need to protect them. This, of course, necessitates a recitation of some very recent events, coupled with a demonstration that recent or current acts or omissions that may be interpreted as giving rise to violations are continuing, or are likely to recur.

10. As Professor Akhavan has mentioned, the evidence of risk of irreparable harm to rights in dispute includes independent reports of reputable international and non-governmental organizations. These reports catalogue the ongoing, widespread and systematic abuses of rights of ethnic Georgians under the Convention in *all* areas of Georgia presently occupied by Russian forces. I highlight, in particular, what these neutral and objective observers have said about the continuing exposure of the ethnically-targeted population and its urgent need for immediate protection. The United Nations High Commissioner for Refugees, in its report of 26 August, at tab 4 of the judges' folder, advises that the current crisis has already generated at least 158,000 displaced persons within Georgia. It is significant that UNHCR further expresses its "concern over reports of new forcible displacement caused by marauding militias north of the Georgian town of Gori near the boundary line with the breakaway region of South Ossetia . . .", and UNHCR concludes that there is now an immediate need "to contain further outbreaks of lawlessness which could contribute to additional displacement"[70].

11. The vulnerability of the ethnic Georgians remaining in Russian-controlled territory, and the need for their immediate protection, is further described by the International Committee of the Red Cross, in its report of 17 August, at tab 5 of the judges' folder:

> "[I]t is not only the displaced who are in need. Equally worrying is the fact that in all the villages from which people have fled, there are others who could not leave because of sickness, disability or simply old age. With access to humanitarian

[70]United Nations Commissioner for Refugees, UNHCR press release, "Reports of lawlessness creating new forcible displacement in Georgia" (26 Aug. 2008).

> agencies blocked to rural areas because of poor security, their situation is becoming more precarious by the day."[71]

The same warning was issued by Amnesty International on 22 August — this is at tab 6 of the judges' folder: "Those who remained in South Ossetia and in parts of western Georgia where fighting has taken place are also in need of humanitarian assistance. They also remain vulnerable to ethnically motivated attacks."[72] To the same effect is the report of Human Rights Watch on 13 August , at tab 7 of the judges' folder: "The remaining residents of these destroyed ethnic Georgian villages are facing desperate conditions, with no means of survival, no help, no protection, and nowhere to go . . ."[73]

12. According to another Human Rights Watch report, dated 28 August, at tab 8 of the judges' folder:

> "Georgian villages in the border have become a no man's land, with civilians at the mercy of Ossetian militias and armed criminals . . . Russia is obligated to ensure the safety and well-being of civilians in the area of its *de facto* control, but civilians are clearly not being protected . . . [T]his issue cannot wait for a political solution to the conflict. Addressing this situation should be a top priority . . ."[74]

13. This evidence is compelling and unequivocal. It shows that ethnic Georgians who remain today in South Ossetia, Abkhazia and other parts of Georgia currently under Russian occupation are at imminent risk of violent attack and forced expulsion by what UNHCR has called "marauding militias". It also identifies the acts and omissions of the Russian authorities that exacerbate this risk, indicating that measures ordered by this Court can have a real effect on those who are contributing to the risk or turning a blind eye. The evidence is deeply disturbing. It shows a present failure, and a risk of continuing failure, on the part of the Russian authorities to ensure that rights for ethnic Georgians under the Convention are respected, particularly those Georgians who still live in South Ossetia and other regions of Georgia presently occupied by Russian forces, and those who wish to return to their homes in those regions. The evidence of Russian involvement and of continued abuse is clear and immediate. As the Foreign Minister of France

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[71]International Committee of the Red Cross, ICRC feature, "Georgia: uncertainty about the future haunts the displaced" (17 Aug. 2008).

[72]Amnesty International, *Amnesty International News and Updates*, "Continuing concern for civilians after hostilities in Georgia" (22 Aug. 2008).

[73]Human Rights Watch, *Human Rights News*, "Georgian Villages in South Ossetia Burnt, Looted" (13 Aug. 2008).

[74]Human Rights Watch, *Human Rights News*, "EU: Protect Civilians in Gori District. Security of Civilians Should Be Central to Summit Discussion on Russia" (28 Aug. 2008).

reported at the end of August — at tab 10 of the judges' folder: "Russian troops are sweeping through [Akhalgori] pushing Georgians out and over the border. It's ethnic cleansing, creating a homogeneous South Ossetia."[75]

14. Also in imminent danger, and equally in need of protection, are the rights of approximately 42,000 ethnic Georgians living in the Gali district of Abkhazia. They are the last remaining Georgians in Abkhazia, a region where Georgians formerly constituted the majority of the population. The approximately 3,000 Georgians who lived in the Kodori Gorge area of Abkhazia have been forcibly expelled *since* the filing of Georgia's Application. Those presently living in the Gali region are especially vulnerable because they are all that is left of the Georgian community in Abkhazia, and they are surrounded by Russian forces and allied separatist militias, and cut off from contact with the rest of Georgia.

15. The witness statements that have been submitted provide further evidence of the real risk of continued ethnic cleansing by Russian military forces and separatist militias operating behind Russian lines, especially in those areas that still have significant Georgian populations. The witness statements are consistent with and corroborate the reports of respected international and non-governmental organizations like UNHCR, ICRC, Human Rights Watch, and Amnesty International, and together with these reports constitute a consistent body of evidence mutually reinforced by multiple sources. These statements, by the victims themselves, merit the Court's careful attention, not to prove what has happened in the past but to indicate what is likely to happen in the very near future if the Court does not act. Professor Akhavan has read from some of these statements. They constitute particularly compelling evidence of the ongoing and recurrent risk of violent attack and forced expulsion confronting ethnic Georgians in Russian-controlled territory, and of irreparable loss of the rights at issue in this case.

16. Also at risk of irreparable and irreversible loss is the right of return of the 158,000 ethnic Georgians who have been violently expelled from South Ossetia and Abkhazia within the past 30 days alone, and who have not been permitted to return, even though the right of return is expressly guaranteed by Article 5 of the Convention. In stark contrast with the plight of these

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[75] *Euronews.net*, "Russia: Kouchner claims ethnic cleansing in Georgia" (27 Aug. 2008).

displaced ethnic Georgians, thousands of ethnic Ossetians have been permitted to exercise their right of return to South Ossetia. It appears that this is a deliberate policy of the *de facto* authorities in South Ossetia. At tab 21 of the judges' folder is an interview with the separatist leader of South Ossetia who was asked, on 15 August: "Will Georgian civilians be allowed to return?" He responded: "We do not intend to let anybody in here anymore. More than 18,000 Ossetian refugees from Georgia are currently in North Ossetia. They are to be returned to South Ossetia."[76] Not so for ethnic Georgians. In fact, as the Agent of Georgia said this morning, the number of ethnic Georgians forcibly displaced from Georgian territory under Russian control increased by approximately 10,000 in the ten-day period that ended Friday last, on 5 September. And with each passing day, the likelihood of exercising their right of return diminishes. History shows this. Examples abound in displaced persons camps around the world, many of which have taken on the character of permanent settlements. Georgians themselves prove this point. Some 300,000 of them became exiles in their own country during earlier waves of ethnic cleansing, which forced them out of South Ossetia and Abkhazia in the 1990s. They still have not been allowed to return, and after more than a decade of exile, the possibility of their eventual homecoming is becoming more remote.

17. The evidence shows that the rights in dispute are threatened with harm that by its very nature is irreparable. Without action now, there is no relief the Court could order in its judgment on the merits that could or would adequately repair the damage to these rights in the event of a judgment in Georgia's favour. No satisfaction, no award of reparations, could ever compensate for the extreme forms of prejudice to the rights at issue here. Killings, beatings and physical injuries cannot be uninflicted. Communities that are eliminated, through burning and destruction of homes and entire villages, and forced expulsion of the populace, cannot be easily re-established, if at all. Time spent imprisoned or displaced cannot be added back to a life. Discrimination cannot be undone.

18. Long ago, the Permanent Court of International Justice ruled that prejudice was irreparable if it "could not be made good simply by the payment of an indemnity or by

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[76]Republic of South Ossetia State News Agency, Press conference conducted in the International Press Centre of Tshinval*i* (26 Aug. 2008).

compensation or restitution in some other material form"[77] (*Denunciation of the Treaty of 2 November 1865 between China and Belgium, Orders of 8 January, 15 February and 18 June 1927, P.C.I.J., Series A, No. 8*, p. 7). This Court has adhered to that formulation. In the *Aegean Sea Continental Shelf* case, for example, it held that Turkey's alleged breach of the exclusivity of the right claimed by Greece did not constitute a risk of irreparable prejudice precisely because it was "one that might be capable of reparation by appropriate means"[78] (*Aegean Sea Continental Shelf (Greece* v. *Turkey), Interim Protection, Order of 11 September 1976*, *I.C.J. Reports 1976*, p. 11, para. 33).

19. In cases like this one, involving actual and threatened harm to human beings, including potential loss of life or bodily injury, the Court has not hesitated to find the potential injury "irreparable". Indeed, if there is one category of cases in which the Court has consistently granted provisional measures, it is when the lives or health or welfare of human beings are at stake.

20. The Court's most recent provisional measures ruling on 13 July 2008, just two months ago, is a good example. The Court ordered provisional measures because Mexican nationals in United States prisons faced execution unless the Court intervened. The Court's decision followed a body of similar precedent established in the *Germany* and *Paraguay* cases (*LaGrand (Germany* v. *United States of America), Provisional Measures, Order of 3 March 1999, I.C.J. Reports 1999 (I)*, p. 9; *Vienna Convention on Consular Relations (Paraguay* v. *United States of America), Provisional Measures, Order of 9 April 1998, I.C.J. Reports 1998*, p. 248), and in an earlier phase of the same *Mexico* case (*Avena and Other Mexican Nationals (Mexico* v. *United States of America), Provisional Measures, Order of 5 February 2003, I.C.J. Reports 2003*, p. 77).

21. The Court's readiness to order provisional measures is not limited to these cases. It has done so in all kinds of cases involving the threat of harm to people. Thus, provisional measures were indicated in all of the following cases, each of which involved actual or threatened harm to human beings: the *Nuclear Tests* cases, *United States Diplomatic and Consular Staff in Tehran*, *Military and Paramilitary Activities in and against Nicaragua*, *Application of the Convention on*

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[77] "la violation éventuelle . . . ne saurait être réparée moyennant le versement d'une simple indemnité ou par une autre prestation matérielle".

[78] "si ce droit était établi, donner lieu à une réparation appropriée".

the Prevention and Punishment of the Crime of Genocide, *Land and Maritime Boundary between Cameroon and Nigeria*, and *Armed Activities on the Territory of the Congo*.

22. There is nothing to distinguish the underlying principle in those cases from this one. The intrinsically irreparable nature of harm to people is most succinctly captured in the provisional measures order in the *Diplomatic and Consular Staff* case in which the Court observed that the:

> "continuance of the situation the subject of the present request exposes the human beings concerned to privation, hardship, anguish and even danger to life and health and thus to a serious possibility of irreparable harm"[79] (*United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979*, p. 20, para. 42).

23. The Court made a similar point in the *Democratic Republic of Congo/Uganda* case in which the Congo's provisional measures request related to the need to protect persons and property threatened by the armed conflict between Ugandan and Rwandan forces in the Congolese city of Kisangani. The Court stated:

> "in the circumstances, the Court is of the opinion that persons, assets and resources present on the territory of the Congo, particularly in the area of conflict, remain extremely vulnerable, and that there is a serious risk that the rights at issue in this case . . . may suffer irreparable prejudice"[80] (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000*, p. 128, para. 43).

24. The risk that the rights at issue in a case may suffer irreparable prejudice is not necessarily removed by a suspension or cessation of the military hostilities that initially provided the context in which the risk was generated. This issue arose in the *Cameroon* v. *Nigeria* case on Cameroon's request for the indication of provisional measures to prevent the irreparable harm to its rights that was threatened by the armed clashes between the two States in the Bakassi Peninsula. Nigeria argued that in light of a ceasefire brokered by the President of Togo several weeks before Cameroon's request was heard by the Court, the issue was moot (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996 (I)*, p. 22, paras. 36-37). The Court rejected Nigeria's

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[79] "la persistance de la situation qui fait l'objet de la requête expose les êtres humains concernés à des privations, à un sort pénible et angoissant et même à des dangers pour leur vie et leur santé et par conséquent à une possibilité sérieuse de préjudice irréparable".

[80] "Considérant qu'au vu des circonstances, la Cour est d'avis que les personnes, les biens et les ressources se trouvant sur le territoire du Congo, en particulier dans la zone de conflit, demeurent gravement exposés, et qu'il existe un risque sérieux que les droits en litige dans la présente espèce, tels que décrits au paragraphe 40 ci-dessus, subissent un préjudice irréparable."

argument, finding that "this circumstance does not, however, deprive the Court of the rights and duties pertaining to it in the case brought before it"[81] (*ibid.*, para. 37). The Court's determination in this respect was predicated on the fact "from the elements of information available to it, the Court takes the view that there is a risk that events likely to aggravate or extend the dispute may occur again, thus rendering any settlement of that dispute more difficult"[82] (*ibid.*, p. 23, para. 42). In the present case, neither the unilateral ceasefire declared by Georgia on 10 August, or the ceasefire brokered by the President of France on 13 and 16 August, stopped the ethnic violence against Georgian civilians. The reports of independent international and non-governmental organizations, and the statements of witnesses, all show that the widespread violations of the rights of ethnic Georgians under the Convention grew even worse after military engagements ceased, that they have continued unabated since then, and that they are continuing still.

25. It is also instructive to consider the Court's opinion on provisional measures in the *Bosnia* case. There, as the Court is well aware, Bosnia claimed rights under the Genocide Convention that were allegedly threatened with irreparable harm. In particular, Bosnia sought interim protection in light of what it argued were acts attributable to Serbia of murder, summary executions, torture, rape, mayhem and ethnic cleansing. Bosnia claimed the acts were being committed not only by Serbia directly, but also indirectly through its control of and support of local paramilitary forces (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April1993, I.C.J. Reports 1993*, p. 3, p. 21, para. 41.) Serbia, for its part, argued that provisional measures were not warranted because, *inter alia*, there was "no credible evidence that its Government ha[d] committed acts of genocide against anyone"[83] (*ibid.*, para. 43).

26. The Court ordered provisional measures, including the following:

> "The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular

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[81] "considérant que cette circonstance ne prive cependant pas la Cour des droits et devoirs qui sont les siens dans l'affaire portée devant elle".

[82] "considérant qu'au vu des éléments d'information à sa disposition la Cour est d'avis qu'il existe un risque que des événements de nature à aggraver ou à étendre le différend puissent se reproduire, rendant ainsi toute solution de ce différend plus difficile".

[83] "il n'existe aucun élément de preuve crédible que son gouvernement ait commis des actes de génocide contre quiconque".

> armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its *control, direction* or *influence*, do not commit any acts of genocide.[84]" (*Ibid*., para. 52 (B); emphasis added.)

27. In deciding to indicate provisional measures in that case, the Court did not make any binding factual determinations regarding the conduct of Serbia. In fact, it specifically reiterated that it did not have the power to do so at the provisional measures stage:

> "Whereas the Court, in the context of the present proceedings on a request for provisional measures, has in accordance with Article 41 of the Statute to consider the circumstances drawn to its attention as requiring the indication of provisional measures, *but 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.[85]" (*Ibid*., para. 44; emphasis added.)

28. This is a very helpful articulation, we submit, of the role of the Court, as well as that of the parties, at the provisional measures phase. The Court need not, indeed it cannot, decide the facts or the matter of attribution at this phase of the proceedings. Accordingly, it is not incumbent on Georgia to prove at this phase that the acts it alleges have been committed, or that they are in fact attributable to Russia. Nor is it Russia's role to prove that they were not committed, or that, if committed, the responsible party was beyond Russia's control, direction or influence. Russia cannot avoid the indication of provisional measures, therefore, by simply denying that the events suggested by the evidence took place, or by denying its responsibility for them. The issue for the Court on provisional measures is this: is the evidence sufficient to satisfy the Court that there is a *risk* of irreparable harm to the rights in dispute, and that the risk of such harm is sufficiently serious and imminent that provisional measures are required to protect the threatened rights. Georgia submits that, under any view of the evidence, that test is easily satisfied here.

29. This conclusion is reinforced by the peremptory nature of the norms imposed by the 1965 Convention. In the *Genocide* case, the Court stressed that provisional measures were warranted in part in light of the parties' unambiguous and indisputable duty "to prevent" the crime

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[84] "Le Gouvernement de la République fédérative de Yougoslavie (Serbie et Monténégro) et le Gouvernement de la République de Bosnie-Herzégovine doivent ne prendre aucune mesure et veiller à ce qu'il n'en soit prise aucune, qui soit de nature à aggraver ou étendre le différend existant sur la prévention et la répression du crime de génocide, ou à en rendre la solution plus difficile."

[85] "Considérant que la Cour, dans le contexte de la présente procédure concernant l'indication de mesures conservatoires, doit, conformément à l'article 41 du Statut, examiner si les circonstances portées à son attention exigent l'indication de mesures conservatoires, mais n'est pas habilitée à conclure définitivement sur les faits ou leur imputabilité et que sa décision doit laisser intact le droit de chacune des Parties de contester les faits allégués contre elle, ainsi que la responsabilité qui lui est imputée quant à ces faits et de faire valoir ses moyens sur le fond."

of genocide under Article 1 of the Genocide Convention. It ordered that the parties, "whether or not any such acts in the past may be legally imputable to them, are under a clear obligation to do all in their power to prevent the commission of any such acts in the future"[86] (*ibid.*, para. 45).

30. It is the same here. The parties to the 1965 Convention are under a clear and unqualified obligation under Article 2 *(b)* "not to sponsor, defend or support racial discrimination by any persons or organizations". They are expressly obligated by Article 2 *(d)* to "prohibit and bring to an end, by all appropriate means . . racial discrimination by any persons, group or organization". And Article 5 obligates them "to prohibit and to eliminate racial discrimination in all its forms".

31. These obligations are mandatory in times of war as well as peace, as Professor Crawford has stressed. Russia may challenge the facts, but it cannot deny its obligations under the Convention. No State is entitled to permit or condone ethnic violence. No State may lawfully turn a blind eye to such discrimination. No State may force people from their homes based solely on their ethnicity, or deny such people the right of return to their native towns and villages. Accordingly the provisional measures Georgia has requested pose no threat of any kind to the rights of Russia. All that Georgia seeks is an order requiring Russia explicitly to do what it is already indisputably required to do by the Convention — to stop targeting ethnic Georgians for discrimination, and to stop others under its control, direction or influence from denying ethnic Georgians the rights guaranteed by the Convention. Provisional measures that order a party to fulfill its specific obligations under the Convention represent the minimum the Court can and must do. In doing so, the Court reaches no conclusion on the merits, or on any factual or legal issue which may be in dispute.

There is an urgent need to protect the rights in dispute

32. I will turn now, Madam President and Members of the Court, to the third and final part of my presentation, which addresses the matter of urgency. The urgency of the measures requested by Georgia is self-evident. To be sure, the definition of urgency in the Court's jurisprudence has evolved. As I have already mentioned, in cases like *Great Belt*, the Court has indicated that

[86] "Yougoslavie et la Bosnie-Herzégovine, que de tels actes commis dans le passé puissent ou non leur être imputés en droit, sont tenues de l'incontestable obligation de faire tout ce qui est en leur pouvoir pour en assurer la prévention à l'avenir."

urgency exists when action prejudicial to the rights in dispute is likely before the final decision is given. More recently, and especially in its Order denying provisional measures sought by Argentina in the *Pulp Mills* case, there is a suggestion by the Court that urgency implies imminence of threatened harm, such that provisional measures are indicated when the risk to the rights in dispute is imminent.

33. Under either approach, the standard is plainly met here. The risk of irreparable prejudice to the rights at issue in this case is not only imminent, it is already happening. Actions prejudicial to these rights are not only possible or very likely in the near future; they are occurring now, and they are very likely to continue to occur unless and until the Court orders that they be stopped. The facts that we have brought to the Court's attention today show that the ethnic cleansing and other forms of prohibited discrimination carried out against Georgians in Abkhazia, South Ossetia and other regions occupied by Russian forces is still occurring, and that it is likely to continue to occur and to recur absent the provisional measures Georgia has requested. Accordingly, whatever approach to urgency the Court might take, the requisite standard is plainly met in this case.

Conclusion

34. Madam President, Members of the Court, I come now to my conclusions, which I shall state briefly. First, because of the grave and imminent risk of irreparable prejudice to the right under Article 5 of the 1965 Convention to "security of person and protection by the State against violence or bodily harm", to the "right of freedom of movement and residence", to "the right to own property", and to the right "to return", the Court should order the respondent State, as set forth in paragraph 24 *(a)* of the amended Request for provisional measures, to

> "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".

Madam President, I note that it is one o'clock. With the Court's indulgence, if I am allowed, I would be able to finish my presentation in two minutes. Thank you.

35. Second, because of the grave and imminent risk that acts prejudicial to these rights will be committed 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, the Court should order the respondent State, pursuant to paragraph 24 *(b)* of Georgia's Request for provisional measures, to "take all necessary measures to prevent groups or individuals from subjecting ethnic Georgians to coercive acts of racial discrimination", including the same kinds of acts that I have just described.

36. Third, to protect the right of return of ethnic Georgians, the Could should order the respondent State, pursuant to paragraph 24 *(d)* of Georgia's Request, to

> "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".

37. Finally, in addition to these and the other specific requests set forth in paragraph 24 of the amended Request for provisional measures, Georgia asks the Court, based on the independent reports of respected humanitarian organizations that we have today brought to the Court's attention, to order the respondent State to permit and facilitate, and to refrain from obstructing, the delivery of urgently needed humanitarian assistance to ethnic Georgians and others remaining in territory that is under the control of Russian forces.

38. Madam President, Members of the Court, this concludes Georgia's opening round presentation. I thank you for your kind and courteous attention.

The PRESIDENT: Thank you, Mr. Reichler. This does indeed bring an end to the first round of oral observations of Georgia. The Court will meet again at 3 p.m. this afternoon to hear the first round of the oral observations of the Russian Federation.

The Court now rises.

The Court rose at 1.05 p.m.