

COMMUNICATIONS TO THE ICC AND OTHER ACTIONS REGARDING THE SITUATION IN GEORGIA

On August 7, 2008, Georgia sent its troops to re-take control of South Ossetia, a pro-Russian province that rejected Georgian rule in the 1990s. In response, Russia sent in heavily armed forces to South Ossetia and Georgian territory. According to the Office of the UN High Commissioner for Refugees, almost 160,000 people have been forced out of their homes in Georgia and South Ossetia as a result of fighting. In addition, there have been reports of war crimes being committed by the armed forces of both countries and many civilians have been killed or wounded.

Russia alleges that Georgia has committed genocide of the Ossetian people and initially estimated that about 2,000 Ossetians had been killed in the recent conflict. Human Rights Watch (HRW), however, claimed that its findings did not back up the Russian statistics and said that Russia was deliberately exaggerating the number of deaths to trigger revenge against ethnic Georgians in South Ossetia. On August 20, Russia issued new casualty figures, counting 133 civilians killed, 64 of its army personnel killed and more than 300 wounded in the conflict.

Georgia alleges that Russia has committed large-scale violations of human rights and that it has pursued an ethnic cleansing and purification campaign in South Ossetia. On August 19, a Georgian government official reported a total of 215 killed on the Georgian side, including 69 civilians. He further reported that about 1,500 civilians and military personnel were wounded. Neither figures advanced by Russia and Georgia have been independently confirmed. On August 29, HRW said that satellite images confirm that widespread torching of ethnic Georgian villages inside South Ossetia has occurred and show that the destruction was caused by intentional burning and not armed combat.

The alleged commission of crimes, which fall under the jurisdiction of International Criminal Court (ICC), has led the Office of the Prosecutor (OTP) to analyze the situation in Georgia. The OTP has been closely monitoring all information on the situation since the outbreak of violence in South Ossetia on August 7.

Timeline of Communications to the ICC

- On August 11, Russia announced that it intended to file a complaint against Georgia at the ICC for the attack on South Ossetia.
- On August 12, the ICC Prosecutor stated that his office had started to receive communications about the conflict in South Ossetia. When asked if he would be launching a preliminary investigation, he said it was a possibility.
- On August 13, the Russian Prosecutor General's Office declared that it was collecting evidence of war crimes allegedly committed by the Georgian forces in South Ossetia.





- On August 14 at the ICC, the Director of the Division of the Jurisdiction, Complementarity and Co-operation of the OTP, Beatrice Le Fraper, said that a representative of the Georgian government had come to provide information and to ask questions, but that no further steps had been taken since.
- On August 19, Russia confirmed that it would file a complaint against Georgia with the ICC. Russian officials added that the filings would be related to war crimes allegedly committed against ethnic Russians in South Ossetia. In addition, Russia's Foreign Ministry called for Georgian President Mikhail Saakashvili to face war crimes charges before the ICC.
- On August 20, the ICC Prosecutor confirmed that his office is analyzing the situation in Georgia. In particular, the Office is analyzing information about attacks on civilians. He said that an official from the Georgian government met with the OTP to offer information and co-operation, and that Russia formally delivered information to the OTP and is continuing to do so. He concluded by saying that the Office would proceed to seek further information from all actors concerned. The OTP has made no further comment since then regarding its analysis of the Georgian situation.

Georgia is a State Party to the ICC. Thus, the ICC has jurisdiction to investigate and prosecute those most responsible for genocide, war crimes and crimes against humanity committed on its territory or by Georgian nationals. Even though Russia is not an ICC State Party, its nationals could be prosecuted for crimes committed in Georgia, an ICC State Party. The OTP could open a formal investigation on its own initiative, with approval of the pre-trial judges, or could do so if a State Party or the Security Council refers the situation to the Prosecutor.

Background Information and Political Dimension of the Conflict

Georgia gained its independence after the collapse of the Soviet Union in 1991. South Ossetia, a separatist pro-Russian province in Georgia, has continuously fought Georgian rule. In 1996, South Ossetia held presidential elections, though these were not recognized internationally. A year later, Georgia and South Ossetia agreed to respect Georgia's territorial integrity and South Ossetia's right to self-determination. In April 2008, South Ossetia rejected a Georgian power-sharing deal, insisting on its independence.

On August 7, 2008, Georgian forces attacked South Ossetia to re-take control of the breakaway region. Russia responded to the assault by sending its troops. On August 15-16, the presidents of Georgia and Russia agreed to a six-point plan to clam the conflict over Georgia's separatist territories. The agreement calls for an immediate ceasefire with Russian and Georgian forces withdrawing to the positions they held before the outbreak of the hostilities. It also requires free access to humanitarian aid. Russia has yet to abide by the six-point cease-fire agreement. On August 26, Russia recognized South Ossetia and Abkhazia, another Pro-Russian separatist province, as sovereign states, a move that has failed to win international backing.

On September 3, the European Parliament (EP) passed a resolution on Georgia, calling on Russia to respect the sovereignty and territorial integrity of Georgia and to honor all its commitments under the ceasefire agreement. The EP condemned Russia for its recognition of the independence of Georgia's breakaway regions. In addition, it urged Georgia and Russia to support and fully cooperate with the ICC.





Other International and Regional Courts Actions

On August 13, 2008, Georgia initiated proceedings before the International Court of Justice (ICJ) – the United Nations’ highest court which rules on disputes between nations – against Russia for its actions on and around the territory of Georgia from 1991 to 2008 in breach of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Georgia alleges ethnic cleansing by Russia. Georgia has accused Russian troops of engaging in murder, rape and mass displacement of civilians during the recent conflict between the two countries. In addition, Georgia alleges that since 1991, Russia, along with separatists in Abkhazia and South Ossetia under Russia’s control, used violent means to expel 300,000 ethnic Georgians from the two breakaway regions and prevented their return home. Georgia is seeking an ICJ order that Russia pay unspecified compensation, withdraw its troops, and allow all displaced ethnic Georgians to return home. Beginning on September 8, the ICJ held a three day public hearing concerning the proceedings initiated by Georgia against Russia. The Court was set to decide in the weeks following whether it has jurisdiction over the case and whether emergency measures to stop the alleged killings and mass displacement of Georgian civilians are justified. The Court’s judgment will be binding on both parties.

Georgia has also initiated proceedings with the European Court of Human Rights (ECtHR), alleging that Russia violated Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights (ECHR).

On August 11, Russia announced that it intended to file a complaint against Georgia at the ECtHR for the Georgian attack on South Ossetia. On August 18, Russian officials said that the government is considering filing a separate complaint with the ICJ.

*Researched and drafted by Aurélie Coppin
Updated September 10, 2008*

