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GRADUATE  
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LAW**

**The Legal Consequences of the August 2008  
Russian-Georgian Military Conflict:  
How does the "creeping occupation" carried out  
by Russia violate Georgia's sovereignty and the  
Georgian people's rights?**

**MASTERS'S THESIS**

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**DECLARATION OF HONOUR:**

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

RIGA, 2017

## Summary

The present thesis illustrates how the "creeping occupation" violates Georgia's territorial integrity and fundamental human rights based on the historical, as well as the 2008 and subsequent developments. Stemming from the current political events, the number of IDPs is a big problem across the world. All this is stipulated by very common international or non-international conflicts that are happening in today's world. These conflicts also include the problems of people internally displaced from the occupied territories in Georgia. The above-mentioned occupation arises from violations of fundamental human rights.

"The creeping occupation" is an act that violates the fundamental human rights - one of the basic values of a democratic state. A stumbling circumstance took place in the form of a conflict (which is known as the Russia-Georgia war throughout the world) from August 7 through August 12, 2008 to ensure the development and implementation of democracy, but this was also followed by the so called creeping occupation, which still continues. Therefore, the thesis directly focuses on the problems and the violations of law, namely, violations of freedom of movement and violation of property rights, caused by the "creeping occupation". An illegal deprivation of liberty is also underscored.

The use of certain International Conventions envisaging the obligation to protect the above-said rights was necessary to identify these offenses. Consequently, the violations of fundamental human rights due to the "creeping occupation" were identified and determined with the help of the International Conventions. Certain types of violations that took place during the conflict were also determined.

Overall, the thesis focuses mainly on the consequences of the "creeping occupation", which are also reflected in the reports of the international organizations, including the EUMM, the OSCE, the UNOMIG, the COE and others. The parallel is drawn to the "creeping occupation" ongoing in Georgia, the "borderization" and the wall (security fence) built on the Israeli-occupied Palestinian territories, which was considered by the International Court of Justice (ICJ). Israel was given a certain advice regarding the conflict associated with the current situation in Georgia.

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## **List of Abbreviation**

AD – Additional Protocol

ECHR – European Convention on Human Right

EHtHR – European Court of Human right

EU – European Union

EUMM – European Union Monitoring Mission

GC – Geneva Convention

HRW – Human Right Watch

ICC – International Criminal Court

ICCPR – International Convention on Civil and Political Right

IDP's – Internally displaced Persons

IHL – International Humanitarian Law

IIFMCG – Independent International Fact-Finding on the Conflict in Georgia

MFA – Ministry of Foreign Affairs of Georgia

NATO – North Atlantic Treaty Organization

NGO – Non Governmental Organization

OSCE – Organization for Security and Co-operation in Europe

UN – United Nation

UNCLOS – United Nation Convention on the Law of the Sea

UNHCR – United Nation High Commissioner for Refugees

UNICEF – United Nation International Children's Emergency Fund

UNOMIG – United Nation Observer Mission in Georgia

## Introduction

Any war (military conflict) unleashed between the states very often brings a disaster and loss to the civilian population living in the countries confronted with each other. Wars and armed conflicts are accompanied by political and legal consequences; a territory of an opposing side is seized (occupied) not very rarely and if this area was distinguished by the separatist aspirations towards one of the warring states in the pre-war period, then it becomes very difficult to eradicate the war (conflict) results. In this regard, the August 2008 war between Georgia and Russia, which was launched with a classic scenario (provocations in Georgia's frontier secessionist region), developed (through the Russian interference in it) and ended up (with occupation of the Georgian territories) is not an exception, as well. According to the administrative division of Georgia, these territories are: a) the former South Ossetian Autonomous District (the "Tskhinvali Region"), while at present, the northern parts of Gori and Kareli Municipalities of Shida Kartli Region (Mkhare); Java, Akhagori, Tighvi, Eredvi and Kurta Municipalities; b) Azhar Municipality of the Autonomous Republic of Abkhazia, i.e. the Upper Kodori Gorge.

Hostilities are infrequently carried out in violation of a number of legal norms, since both parties involved in the conflict are the victory-oriented through using any force. It is noteworthy that Russia not only violated the fundamental human rights in the August 2008 war, but it also used such kinds of weapons that do not comply with the requirements of the four Geneva Convention: during the conflict, it is prohibited to make use of weapons such as "cluster" bombs that have no ability to take aim and control. Such bombs are incapable of reaching the exact point, therefore, when using these techniques, the cluster munitions become uncontrollable, which leads to the high degree of probability that civilians may be injured. Consequently, the use of the similar weapons is prohibited under Part I of Article 35 of Geneva Convention IV, "parties to a conflict do not have an unlimited choice of methods and means of warfare"; according to Part II of the same Article, "it is prohibited to use weapons which cause excessive injury and suffering," which was not considered by the Russian Federation during the August 2008 war.

Traditionally, an occupation zone (an occupied territory, which is ruled and governed by the occupational authorities) is often formed and a conflict zone (or the so-called buffer area that lies between both sides of the separation line) is created after the defeat of one of the parties in the war. Obviously, the existence of both zones promotes destructive processes, in particular, the violation of the territorial integrity of the state.

The purpose of the thesis is to reveal the violations of law that occurred during the 2008 conflict, as well as, the repressions carried out by Russia that are still ongoing in the occupied territories and the villages of the so-called Administrative Border and to demonstrate how the occupied territory is being expanded through the "creeping occupation".

Chapter I of the thesis creates a historic background that determines the period, when the Russian-Georgian rivalry began. It also refers to the methods and violations the 2008 Russian-Georgian military conflict was accompanied by. Chapter II discusses the subject of the research, specifically, the "creeping occupation" and the offenses caused by it, as well as, the chances of Georgia for peaceful de-occupation of captured territories. The practice proves that a massive violation of the fundamental human rights just takes place in the occupation, especially, the

conflict zone. In most cases, nobody considers the fundamental human rights and freedoms, including the right to life, the right to property and freedom, guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in hostilities. As per the above-mentioned Convention, torture and inhuman and degrading treatment that occur, unfortunately oftentimes, are also prohibited during the military conflict. Military officials, who are directly engaged in hostilities and, civilians, as well, often become the victims of such treatment, which means that the fundamental human rights are violated.

The August 2008 Russia-Georgia conflict was quite widely covered by the global media outlets in its time and, consequently, there is no lack of the facts and events. The reasons for the start of the war, its progress and the positions of the opposing parties are also well-explored. The researches prepared by individual authors and non-governmental organizations, the reports made by international commissions, etc. have been published. For example, let's refer to „Colonel George T. Donovan, Jr. (2009). Russian operational art in the Russo-Georgian war of 2008“<sup>1</sup>; „Independent International Fact-Finding Mission on the Conflict in Georgia“<sup>2</sup>. Besides, the Ministry of Foreign Affairs of Georgia has been preparing quarterly reports "on fundamental human rights violations in the occupied territory of Georgia" since 2015. The United Nations High Commissioner for Refugees (UNHCR) also released an official review titled "Universal Periodic Review for Georgia" regarding Georgia's internally displaced persons. Also NGO HRW report: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia, Megan J. Ballard, "Pre-Planning for Post-Conflict Property Remedies: A Case Study from Georgia", Dr. Christopher P.M. Waters, "The Legalization of the Georgia-Russia Conflict of 2008. The sources listed below will help us establish the truth and objectivity.

However, we also note that the problem related to the published literature about the August 2008 Russian-Georgian war is mainly studied from the historical, political and military point of view and not in legal terms.

In addition, we believe that the literature concerning the post-war situation is too insufficient, as well, which, in principle, is the most important problem for the Georgian authorities today.

After the August 2008 war, i.e. when Russia occupied a significant part (20%) of the Georgian state territory, Moscow changed the tactics of the whole annexation and began acting not with apparent military methods, but with the "creeping occupation", which means that the ex-administrative boundary of the former Autonomous District of "South Ossetia" is being granted state status and it is being gradually shifted into the depths of Georgia the "border relocation" implies that during the transformation of the former administrative border of the Autonomous District of South Ossetia into the state border, the barbed wire fences are being periodically installed on the territory controlled by the Georgian government, which, naturally, leads to the expansion of the occupied territory. This is an unprecedented fact in the world, indeed.

On this occasion, not only the violation of the state unity, but also the harassment of civilians continues: their property and free movement rights are restricted and they are also illegally deprived of their liberty. It should also be noted that the European Union Monitoring Mission<sup>3</sup> in Georgia (EUMM) is observing these circumstances.

The "creeping occupation" ("border relocation") is a relatively new term in international politics and legal relations. That's why it is being considered as an innovative value. One of the main objectives of this thesis is just to find out how the integrity of the state territory of Georgia

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<sup>1</sup> <http://www.dtic.mil/dtic/tr/fulltext/u2/a500627.pdf>

<sup>2</sup> <https://web.archive.org/web/20091003093859/http://www.ceiig.ch/Report.html>

<sup>3</sup> EUMM in Georgia, "EU Monitoring Mission (EUMM) in Georgia completes its 60,000<sup>th</sup> Patrol!", 20.10.2017 Available on: [https://eumm.eu/en/press\\_and\\_public\\_information/features/6026/](https://eumm.eu/en/press_and_public_information/features/6026/)

and the state interests of Georgia are being infringed due to the "creeping occupation" and what its negative impact is in terms of the violation of the rights of the local population.

Ethnic cleansing – internal displacement of the local Georgian population (a significant part of which has become refugees) from the occupied territory - has been carried out due to the Russian-Georgian conflict, on the initiative of the Ossetian and Abkhazian separatists and with the support of Moscow. Russia has never tolerated the international purposefulness and success of its neighboring countries, especially, Georgia. Naturally, the restoration of the independence of the Baltic Republics – Lithuania, Latvia and Estonia - was unacceptable for Moscow in its time, as well; however, Russia recognized their sovereignty relatively easily due to a wide range of political and diplomatic reasons. As for Georgia, Moscow considered that the South Caucasian country was historically beholden to it: : Russia believed that it saved Georgia from the attacks of Turkey and Iran (Persia) in the 19th century, and therefore, Georgia had to be loyal to it.

By the way, Russia's provocative steps and aggression were already felt in the early 1990s, when Georgia restored its independence. All this was reflected in encouraging the ethnic conflicts. Moscow's anti-Georgian attitude has been especially strengthened since 2007, when the conduct of democratic reforms started in Georgia for its rapprochement towards the European family, which, of course, is associated with the success and development of the country. Besides, at the 2008 Bucharest Summit, NATO leaders agreed that Georgia would become a member of NATO, in other words, the background to start aggressive behaviors was created.

In this thesis we will briefly discuss the key moments of legal relations in 1991-2008 between the two neighboring countries and will particularly touch upon the role of Russia in stirring up the ethnic conflicts of Georgia in order to better clarify the reasons of the Georgia-Russia 2008 war and its legal consequences.

## Chapter I

### 1. From the history of the Russian-Georgian military conflicts;

#### 1.1. The Georgian-Russian relations during the post-Soviet era (1991-2008)

Many researchers may be less aware of the fact that the first war (military conflict) between Georgia and Russia dated back to the 20<sup>th</sup> century took place in February 1921: several months earlier, the Soviet Russia archly violated the bilateral peace treaty of May 7, 1920, which legally recognized the **Democratic Republic of Georgia**<sup>4</sup>. The war lasted two months and caused grave political and legal consequences: Georgia lost its independence; the Red Army occupied the country and established the Soviet government with the support of the local Georgian communists (the Bolsheviks).

In 1989, the Empire of the Soviet Union was on the verge of collapse, when on April 9 the Georgian population organized a protest **rally**<sup>5</sup> demanding the independence of the country, including freedom of expression. This right is stipulated by Article 10 of the **European Convention**<sup>6</sup>, which implies that "every person has the right to freedom of expression". This protest rally ended with a bloody tragedy. On April 9, the Soviet Army landing unit launched the rally dispersal from four sides simultaneously. Protesters were besieged and clubbed by double-edged trenching shovels; poisonous gas and firearms were used during the dispersal of the protest rally resulting in the death of 20 people. By this action, the Soviet Union authorities violated Articles 2 and 10 of the European Convention on Human Rights", which provide the right to life and freedom of expression. This is one of the most important facts in the history of Georgia, which led to the collapse of the Soviet Union and restoration of Georgia's independence.

The confrontation with South Ossetia began in 1990, when, by the Russian incitement, the District Council of People's Deputies of the Autonomous District of South Ossetia made a decision on transformation of the Autonomous Oblast of South Ossetia into the "Soviet Republic". On December 10, the elections were held in Tskhinvali without the Georgian government's initiative and a separatist leader Tomez Kulumbegov took control of the local authorities. The Georgian government canceled the results of the Tskhinvali elections just on the second day, because those elections were not held by the authorities of independent Georgia. During this period, two separatists started to kill the Georgians on ethnic grounds, to which the Georgian government responded with the deployment of the National Guard to its own territory. Under the January 7, 1991 reciprocal instruction of the President of the USSR Mikhail Gorbachev, all the armed forces, besides the Soviet police, were ordered to withdraw from Tskhinvali. In 1992, when the Soviet Union collapsed, the conflict was renewed in the Tskhinvali Region and later it was temporarily suspended (the Georgian-Russian Joint Peacekeeping Forces were brought to the region) by the Agreement signed in Sochi between the

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<sup>4</sup> The Democratic Republic of Georgia, as well as the Republics of Lithuania, Latvia and Estonia, was established on the territory of the former Russian Empire in 1918. Under the treaty signed in Moscow on May 7, 1920, Russia recognized the state territory and borders of Georgia, including the current Abkhazia and South Ossetia.

<sup>5</sup> IIFMCG report, Vol. II, at p 4.

<sup>6</sup> European Convention on Human Right, Article 10

Available on : [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

President of the Russian Federation, Boris Yeltsin and the Chairman of the State Council of Georgia, Eduard Shevardnadze.

In 1992, the Head of the de facto authorities of the Autonomous Republic of Abkhazia, Vladislav Ardzinba, ceased the operation of the Georgian Constitution in the region under the instruction of the Russian government and declared the independence of the Republic, which was followed by the deployment of the military units (subordinated to the central government of Georgia) to Abkhazia. The Abkhaz conflict started in such a way. Georgia was defeated due to the military assistance provided by Russia to the Abkhazian separatists, which resulted in the loss of control over the Abkhazian region. Subsequently, both sides (Georgians and Abkhazians) suffered a huge amount of casualties, the economic infrastructure was destroyed, traffic movement was disrupted... The worst thing is that hundreds of thousands of ethnic Georgians were expelled from Abkhazia. During this period, the number of internally displaced persons amounted to “256 528 **people**<sup>7</sup> out of which 65 412 persons were under 18 years old”. The majority of IDPs are from the Abkhazian territories. This means that the ethnic cleansing of Georgians took place by that time; the European society also recognized and reflected it in its **report**<sup>8</sup>. Consequently, Article 14 of the European Convention on Human Rights and Fundamental Freedoms was restricted, which implies prohibition of discrimination. The ethnic cleansing of Georgians in Abkhazia (and also in "South Ossetia") constitutes discrimination, as they were being persecuted on ethnic grounds. The right to property and protection of property was also restricted, which is guaranteed by Article 1 of Additional Protocol I<sup>9</sup> to the European Convention on Human Rights.

Since then, the government of the Russian Federation has always been trying to hinder Georgia's development and progress both from the legal and political point of view.

In 1994, Georgia signed the PFP framework document<sup>10</sup> for cooperation with NATO. Georgia also participated in the Euro-Atlantic Partnership Council (EAPC), which was created by NATO in 1997 to deepen the PFP cooperation. These facts irritated the Russian authorities and aggravated the aggressive actions against the Georgians in the occupied territory, which is a factor of discrimination on ethnic grounds.

Since the late 1990s, Georgia has intensified its relations with the West: the country joined the Council of Europe<sup>11</sup>, expanded the relations with the North Atlantic Alliance and cut off the ties with the Collective Security Treaty Organization controlled by Russia. The Georgia-Russia relations were becoming more and more tense over time: Moscow encouraged the local separatist authorities to oppress and exert pressure on the remaining Georgians in the occupied territories, which was reflected in violations of law. The relationship between Moscow and Tbilisi was further aggravated after the 2<sup>nd</sup> Russian-Chechen war in 1999, when Georgia refused to let the Russian military forces enter the Chechen section of the Georgian-Russian border. The consequences of the 1999 OSCE Istanbul **Summit**<sup>12</sup> also led to Moscow's sharp dissatisfaction - Russia had to undertake an obligation to withdraw its military bases from Georgia, which was carried out in 2001.

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<sup>7</sup> UNICEF, Internally displaced children

Available on : <http://unicef.ge>

<sup>8</sup> IIFFMCG report, Vol. II, at p 187.

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf)

<sup>9</sup> Protocol, to the Convention for the Protection of Human Right and Fundamental Freedoms, Article 1

Available on: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>10</sup> IIFFMCG report, Vol. II, at p37

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf)

<sup>11</sup> IIFFMCG report, Vol. II, at p 6.

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf)

<sup>12</sup> IIFFMCG report, Vol. II, at p 6

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf)

The permanent tensions of the Russian-Georgian relationship indicated that the settlement of the ethnic conflicts on the territory of Georgia would become complicated in the near future. However, the principle of impartiality requires us to note that despite a number of incidents, the consensus is likely to be found on the attitude between Tbilisi and Tskhinvali (i.e. de facto authorities of the so-called South Ossetia) in the early 2000s. This was facilitated by economic contacts (for example, the "illegal" market located in the vicinity of the Ergneti village near Tskhinvali). Within the same period of time, the conflict resolution plans were outlined with the support of the West (for example, with the participation of the UN Special Representative Dieter Boden<sup>13</sup> in 2001, which turned out to be unacceptable for the Abkhazians as well as the Georgian side).

In fact, the peaceful resolution of the conflicts in the Georgian territories occupied by Russia was impossible.

Following the events (terrorist attacks) of September 11, 2001 in the United States, the US foreign policy was reoriented<sup>14</sup> and the EU was further enlarged, which led to the formulation of its new policy. (The change of the policy means expansion of NATO forces). These events were a favorable moment for Georgia's pro-Western policy in order the country to establish closer ties with the West and make it realistic for Georgia to join the EU and NATO.

As for the Georgian-Russian relations:

In the first years of the new Russian President Vladimir Putin's rule, some kind of stability was observable in terms of the attitude towards Georgia; however, in general, the Moscow-Tbilisi relations still remained tense. The situation changed dramatically following the 2003 Rose Revolution, when the new government came to power in Georgia. Ironically, Russia played a certain positive role in the conflict between the Georgian authorities and the government of the Autonomous Republic of Adjara: with the efforts of Moscow, the Adjarian local leader Aslan Abashidze, who was opposed to the new President of Georgia - Mikheil Saakashvili - went to Russia. However, this did not mean that the ties between Moscow and Tbilisi would warm. The situation could not have been improved even after the visit of Mikheil Saakashvili to Russia and his meeting with Vladimir Putin. The main reason was still the European and Western orientation of Georgia.

On July 7, 2003, the European Union<sup>15</sup> appointed its special representative in the South Caucasus region. On June 14, 2004, the Council of Ministers of the EU decided to include Georgia, Azerbaijan and Armenia in the European Neighborhood Policy. In 2005, Georgia was granted the privileges of the EU's revised generalized scheme of preferences (GSP + trade regimes) for encouraging a sustainable development and an effective governance. On November 14, 2006, the process of the agreement on Georgia's European Neighbourhood Policy Action Plan between the Government of Georgia and the European Commission was completed, setting out a strategic priority for mutual cooperation.<sup>16</sup> Such successful steps making Georgia's Western Partnership more realistic and convincing were followed by Russia's aggressive reaction: in March 2006 – a ban imposed on imports of agricultural products (wine), the spy scandal in September-October and the massive detention of Georgians and their forcible deportation<sup>17</sup> from

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<sup>13</sup> Natella Akaba and Iraklii khintba, "Transformation of the Georgian-Abkhaz conflict: rethinking the paradigm", (European Union: 2011) p15  
Available on: [http://www.c-r.org/downloads/Abkhaz%20Perspective Transformation%20of%20Georgian:Abkhaz%20Conflict 201102 ENG.p df](http://www.c-r.org/downloads/Abkhaz%20Perspective%20Transformation%20of%20Georgian:Abkhaz%20Conflict%20201102%20ENG.pdf)

<sup>14</sup> IIFMCG report, Vol. II, at p 7. Available on: [http://www.mpil.de/files/pdf4/IIFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFMCG_Volume_II1.pdf)

<sup>15</sup> Georgian-EU Cooperation

Available on: <http://www.eu-nato.gov.ge/en/eu/cooperation>

<sup>16</sup> Ibid

<sup>17</sup> Georgian Citizens Deported from Russia

Available on: <http://www.humanrights.ge/index.php?a=main&pid=6279&lang=eng>

Russia to Georgia by cargo planes in November. While detaining the Georgians, the Russian law enforcers violated the fundamental human rights and that was confirmed by the **decision**<sup>18</sup> of the European Court of Human Rights. At the end of 2006, Russia canceled visa-free regime for Georgian citizens, as well.

After the 2006 events, the Russian-Georgian relations became further strained. Transport connections (in the fields of automobile, marine and aviation) were restricted. All this reflected badly on the economic indicator of Georgia. By that time, Georgia was supplied with 53% of electricity and 95% of natural gas from **Russia**<sup>19</sup>, which was a vital need for the country and its population. Of course, the Russian Federation used the Georgian economic situation in its favor. It wanted Georgia to find itself in a crisis situation and, subsequently, the Georgian government would be forced to make some concessions. Despite all this, the European and American society supported Georgia, which extricated the country and its population from poverty.

Certainly, the Russian authorities took responsive measures:

In March 2007, the Russian "Mi-24" helicopters bombarded the Kodori and Chkhaltá Gorges and Tchuberi Pass. Also, in 2007 the air raids were carried out on the Tselbulani village near South Ossetia. These bombs were being dropped on the territory under the jurisdiction of the Georgian government, which implies that the Russian helicopters had violated the Georgian airspace several times.

In April 2008, the Russian "MiG-29" jet fighter aircraft shot down the reconnaissance unmanned aerial vehicle of the Georgian Armed Forces in Abkhazia.

In the spring of 2008, a significant increase of military tensions in the Georgian-Abkhazian conflict zone was observed. We have already mentioned how the Russian jet fighter aircraft shot down the Georgia-owned unmanned aerial vehicle that was equipped with only reconnaissance equipment and was not capable of attacking any spot, as it is included in the UNOMIG **report**<sup>20</sup>. The de facto authorities of Abkhazia and Russian government considered the implementation of intelligence operations by the Georgian side via the unmanned aerial vehicle as an aggressive step and provocation of the Georgian government. However, this step taken by Georgians was stipulated by the fact that the Abkhaz side carried out the military exercises (using tanks and small artillery) in the vicinity of the Georgian-controlled territory from February 29 till March 5. That is why Georgia conducted intelligence operations for security reasons, which had been misinterpreted by Abkhazia's de facto authorities and Russian government.

According to the United Nations Convention on the Law of the Sea, the sovereignty of a state and its airspace extends to its internal waters and airspace. Consequently, the Russian military aircraft violated Article 2 of Chapter II of **UNCLOS**<sup>21</sup>, which implies the sovereignty of a state's airspace and maritime areas. The Russian government even admitted that its military planes had illegally crossed into the Georgian **airspace**<sup>22</sup> and violated the state sovereignty, however, it was a brazen statement with a syndrome of impunity.

In April 2008, the Russian government declared about the possible tensions between Georgia and Abkhazia and sent the airborne **battalion**<sup>23</sup> consisting of 525 persons to the territory

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<sup>18</sup> ECtHR Decision, case no. 13255/07, Georgia v. Russia, 3 July 2014

Available on: [https://hudoc.echr.coe.int/eng#{"fulltext":\["13255/07"\],"itemid":\["001-145546"\]}](https://hudoc.echr.coe.int/eng#{)

<sup>19</sup> IIFFMCG report, Vol. II, at p 22

Available on: [http://www.mpil.de/files/pdf4/IIFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFMCG_Volume_II1.pdf)

<sup>20</sup> UNSC, Report of the Secretary-General on the situation in Abkhazia, Georgia, S/2008/480, 23 July 2008, at p 4

Available on: <http://www.un.org/en/peacekeeping/missions/past/unomig/unomigDrp.htm>

<sup>21</sup> UNCLOS, Part II, Article 2

Available on: [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

<sup>22</sup> IIFFMCG report, Vol. II, at p 24

Available on: [http://www.mpil.de/files/pdf4/IIFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFMCG_Volume_II1.pdf)

<sup>23</sup> IIFFMCG, Vol. II, at p 201

of Abkhazia as though with a peacekeeping mission. In May 2008, the Russian government deployed the 400-member military railroad subdivision to Abkhazia in order to provide a humanitarian aid and restore the railway. The developments showed that all this was determined to start a war and the Russian authorities had no intention of deploying a peacekeeping mission to Abkhazia, which was expressed in its actions on August 8, 2008. This was confirmed by the European Parliament [Resolution of 5 June 2008](#)<sup>24</sup>.

Furthermore, Russia violated the "[Ceasefire Agreement](#),"<sup>25</sup> which was signed between Russia and Georgia in 1992-1994, envisaging the inadmissibility of the arms supply to the Abkhaz and Ossetian separatists.

In short, the Russian authorities did not avoid provocative steps to strengthen relations with the Georgian government.

Briefly, the Russian authorities have never shied away from provocative steps to exacerbate the relations with the Georgian government officials.

To protect the principle of impartiality, it is noteworthy that the Georgian authorities have also made some mistakes regarding the resolution of the South Ossetian conflict. In August 2004, during the presidency of Mikheil Saakashvili, the aggravation of the situation with South Ossetia began unilaterally, which was designated with the deployment of the Georgian troops to the demilitarized zone. The incident turned out to have fatal consequences, as well. Besides, the Georgian authorities canceled the Ergneti market under the pretext of fighting against smuggling, which resulted in the termination of economic contacts with the South Ossetian population. Such steps led to the alienation between the parties.

## **1.2. The reasons and consequences of the August 2008 military conflict ("five day war")**

The decision made at the April 2008 NATO Bucharest Summit played an important role in escalating tensions between Russia and Georgia. The point is that NATO leaders agreed at the Bucharest Summit that Georgia would become a [member of NATO](#)<sup>26</sup>, which meant new opportunities and great advancement to maintain the sovereignty and independence of the country. Russia perceived this fact as a high risk for its security.

In the summer of 2008, the situation was further aggravated in the conflict zone. Initially, in early July, the de-facto authorities of South Ossetia [imposed restrictions](#)<sup>27</sup> on the movement of traffic and people from South Ossetia to the Georgian-controlled territory, while shootings started later. Both mortars and heavy artillery were used in these clashes.

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Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_III.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_III.pdf)

<sup>24</sup> European Parliament resolution of 5 June 2008 on situation in Georgia

Available on: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0253&format=XML&language=EN>

<sup>25</sup> IIFFMCG report, Vol. II at p 24

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_III.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_III.pdf)

<sup>26</sup> Office of the State Minister of Georgia on European & Euro-Atlantic Integration

Available on: <http://www.eu-nato.gov.ge/en/nato>

<sup>27</sup> IIFFMCG, Vol. II, at p 207

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_III.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_III.pdf)

On July 15, 2008, the Georgian Armed Forces launched the **military exercises**<sup>28</sup> with the help of the US, which stressed the Georgian side's response to the fact that the Russian Federation had been strengthening its military force in the occupied Abkhazia during 2008. In this regard, the Russian military forces - the 58th Army deployed in the North Caucasus – also launched military exercises near the Roki Tunnel (the Roki Tunnel constitutes an element of the infrastructure of the Transcaucasian motorway connecting Georgia and Russia). The purpose of the military trainings was a demonstration of the forces.

The tensions lasted until the end of July 2008, when the area of the shootings and explosions was extended, which resulted in the civilian **casualties**<sup>29</sup>. In accordance with Article 48 of Additional Protocol I to the **Geneva Convention**<sup>30</sup>, to ensure the protection of civilians "the parties to the conflict must at all times distinguish between civilians and combatants; attacks may only be directed against combatants; attacks must not be directed against civilians". Also, according to Part 1 of Article 52 of Protocol Additional III to the **Geneva Convention**<sup>31</sup>, "civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in Part II of this Article." It can be said that both opposing parties violated the principles of the Geneva Conventions.

It should be mentioned that the Georgian government had hoped for the West's support after the NATO Bucharest Summit. Consequently, President Mikheil Saakashvili decided to take a radical action for the restoration of the territorial integrity - to reinstate Georgia's jurisdiction over South Ossetia by using military force - and so he did: on the night of August 8, 2008, the Georgian army started military operation to occupy Tskhinvali. On the same day, the Russian President Dmitry Medvedev announced the launch of a "peace coercion operation" in the South Ossetian conflict zone. Parts of the 58th Army of Russia entered South Ossetia (i.e. the territory of Georgia) via the Roki Highway Tunnel located at the Caucasus Ridge. Thus, the Russian military intervention in Georgia's domestic affairs began.

A pretext for the launching of the military intervention was the protection (a significant part of the population of South Ossetia had obtained Russian passports prior to the war, i.e. they were the citizens of Russia in violation of the Georgian legislation) of the local civilians and the Tskhinvali-based Russian peacekeeping contingent from the attacks of the Georgian Army. Russia developed such a position regarding the military intervention in Georgia's internal **affairs**<sup>32</sup>.

It can be said that on August 8, 2008, the attack of parts of the regular army of Georgia against the military formations of the separatist "Republic of South Ossetia" turned into a war between Georgia and Russia.

Admittedly, on August 8, 2008 Georgia's Regular Army Units launched an offensive against the military formations of the breakaway "South Ossetian Republic", but the war actually started between Georgia and Russia.

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<sup>28</sup> HRW report, "Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia", at p 21  
Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

<sup>29</sup> IIFMCG, Vol. II, at p 204

Available on: [http://www.mpil.de/files/pdf4/IIFMCG\\_Volume\\_III1.pdf](http://www.mpil.de/files/pdf4/IIFMCG_Volume_III1.pdf)

<sup>30</sup> Geneva Convention, AP I, 8 June 1977, Article 48

Available on: [https://ihl-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8A9E7E14C63C7F30C12563CD0051DC5C)

[databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8A9E7E14C63C7F30C12563CD0051DC5C](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8A9E7E14C63C7F30C12563CD0051DC5C)

<sup>31</sup> Geneva Convention, AP III, Article 52 part 1

Available on: [https://ihl-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F08A9BC78AE360B3C12563CD0051DCD4)

[databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F08A9BC78AE360B3C12563CD0051DCD4](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F08A9BC78AE360B3C12563CD0051DCD4)

<sup>32</sup> Russia runs peace enforcement in S.Ossetia-Medvedev

Available on: <https://www.reuters.com/article/idUSL9268068>

Both sides, including Russia, used the infantry and heavy hardware as well as the aviation. The Russian aviation was especially active on August 8, launching the bombardment of the strategic facilities of the Georgian Armed Forces, including the infrastructure of the airports and major cities, which resulted in the death of civilians. On 9 August, because of the excessive forces of the enemy, the Georgian army failed to retain the positions occupied in the city of Tskhinvali (the capital of the so-called "Republic of South Ossetia"), due to which, Georgia had to retreat its forces back in return for the casualties.

The Russian military units carried out an attack, crossed the South Ossetian administrative boundary line and invaded the territory, namely, Khashuri and Gori<sup>33</sup>, controlled directly by Georgia. The Russian army was followed by the South Ossetian Police, which had repeatedly violated the European Convention on Human Rights, in particular, persecution of Georgians on ethnic grounds, marauding, robbing the houses of civilians and so on. It should be noted that these actions were being implemented by Russian and Ossetian militaries.

Due to the catastrophic situation, the Georgian government withdrew the Georgian military contingent from Iraq to strengthen its positions, but the events unfolded so rapidly that the Georgian soldiers rushed back to their homeland from Iraq were not able to take part in the military operations.

In parallel with the battles on the Shida Kartli front (Eastern Georgia), the hostilities were also taking place on the Abkhazian front (Western Georgia), namely in the Kodori Gorge, on the territory of the Azhara Municipality (the only part of the Autonomous Republic of Abkhazia controlled by the Georgian authorities). Regrettably, the Georgian military forces gathered here ceded the territory almost without a fight and retreated. The Russian military units and Abkhazian separatists seized a huge amount of ammunitions, heavy equipment and other military materials. Despite the fact that the Georgian government declared<sup>34</sup> unilateral ceasefire on 10 August and also stated that it would withdraw its troops from South Ossetia, the Russian military forces crossed the administrative boundary line of Abkhazia after the ceasefire and penetrated<sup>35</sup> into the territory, particularly, Samegrelo Region, controlled directly by Georgia. Unfortunately, since the Army's management was completely disrupted, the Georgian military units did not even resist again. The Russians absolutely robbed the Senaki military base, where a significant stock of weapons was kept.

We also note that the military operations were underway in the Black Sea aquatorium, too. The Russian Black Sea Fleet (missile boats) almost completely destroyed the Georgian naval forces by exploding and sinking missile boats into the Poti Port, only a few of them, which managed to be nestled in the Batumi Port, could have been saved.

We have to emphasize one important fact that occurred during the wartime, expressing the international solidarity with Georgia: the then President of Georgia Mikheil Saakashvili publicly stated that "he was informed about the bombardment of Tbilisi, the capital of Georgia", which was absolutely disturbing not only for the Georgian people, but also the European community. The leaders of Latvia, Lithuania, Estonia, Poland and Ukraine arrived in Tbilisi being in anticipation of a possible military strike and that was the most important step to support Georgia<sup>36</sup>.

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<sup>33</sup> IIFFMCG report, Vol. II, at p 211

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf)

<sup>34</sup> "Georgia Announces Ceasefire, Pulls out troops". Civil Georgia 10.08.2008

Available on: <http://www.civil.ge/eng/article.php?id=19025&search=%20accessed%20on%2018.08.2009>

<sup>35</sup> HRW report, "Humanitarian Law Violation and Civilian victims in the Conflict over South Ossetia", at p 25

Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

<sup>36</sup> CNN news, "Leaders of ex-Soviet republics support Georgia at rally", 12 August 2008

Available on: <http://edition.cnn.com/2008/WORLD/europe/08/12/georgia.rally/>

The then Russian President Dmitry Medvedev ordered a cease fire in Georgia just on August 12, 2008, while on August 16, 2008, through intermediary of the French President Nicolas Sarkozy, the President of Georgia Mikheil Saakashvili and the Russian President Dmitry Medvedev signed a six-point ceasefire **agreement**<sup>37</sup>. This document provided for the withdrawal of the Russian forces from Georgia to their positions before the **hostilities began**<sup>38</sup> (on August 6). The representatives of the international monitoring mission should have also been given the opportunity to control the ongoing events. Following this accord, Russia started to withdraw its troops from the Georgian territories since August 20.

At the same time, while withdrawing its troops from Georgia, the Russian authorities left the checkpoints in the northern area called as a security zone by the Russian side. It became widely known as a "buffer zone", which still covers about 20 km and is being completely controlled by the Russian soldiers.

Should this action be considered as an aggression against Georgia - the launch of a war against the country, in other words?

Article 1 of the Resolution adopted in 1974 by the UN General Assembly **determined that**<sup>39</sup> "aggression is the use of armed forces by a State against the sovereignty, territorial integrity or political independence of another State". Therefore, when the Russian Federation's Armed Forces invaded the territory of South Ossetia, their action was directed against Georgia's territorial integrity, because South Ossetia and Abkhazia were and are still considered to be the territory included by a sovereign state of Georgia.

The Russian President explained that his armed forces had emerged on the territory of Georgia since the Russian citizens were in South Ossetia and needed the protection from Russia. The Russian government also called the Georgian attack on South Ossetia, particularly, Tskhinvali and the surrounding area, "an act of aggression". But an action can be considered "aggressive" only by the UN Security Council, based on the assessment of all circumstances of the military intervention. It is also noteworthy that a military assistance can be provided to a country for defense purposes on the basis of an official agreement. Besides, South Ossetia is the territory of Georgia and the actions carried out by the Georgian Armed Forces can not be regarded as an act of aggression, since South Ossetia has neither status of an independent country nor state sovereignty - this territory is included in the territorial integrity of Georgia. Consequently, the actions of the Russian military forces go beyond any legal framework, because it invaded the territory of Georgia and occupied its part.

Based on the above-mentioned, we can briefly specify the main causes of the Georgian-Russian war:

- a) Moscow could not recognize the sovereign right of Georgia - implementation of foreign policy in accordance with the national (state) interests;
- b) Moscow could not recognize the pro-Western choice of Georgia, which guarantees the protection of the security and sovereignty of the country;
- c) Moscow considered (and still considers) that Georgia's pro-Western stance poses a threat (in the form of Georgia's NATO-membership) to the security of Russia.

As for the consequences of the war:

- a) the five-day war had a destructive impact on Georgia both in terms of economy and self-defense as well as further development and advancement of the country. Not to mention a

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<sup>37</sup> HRW report, "Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia", at p 25 Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

<sup>38</sup> Embassy of France in Washington, "Peace agreement between Russia and Georgia", 14.08.2008 Available on: <https://franceintheus.org/spip.php?article1101>

<sup>39</sup> UN Resolution adopted by the General Assembly, 3314 (XXIX). Definition of Aggression, Article 1 Available on: <http://www.un-documents.net/a29r3314.htm>

huge economic loss, based on the official information<sup>40</sup>, 170 employees of the Ministry of Defense of Georgia, 14 employees of the Ministry of Internal Affairs of Georgia and 224 civilians were killed in the war while, according to the Ossetian side, 5.000 Ossetians died as a result of the military actions. Fighting with the methods and weapons banned by Russia caused the civilian deaths – the Russian servicemen were bombing the villages or towns so that they did not have any accurate information about the presence of civilians there; the Russian aviation also used the so-called "cluster bombs" that have no ability to reach and take aim at the exact point. That is the circumstance resulted in the death of civilians.

b) the war also damaged Georgia from the political point of view: by 2008 the country was on the edge of the integration with the EU and especially NATO, but it conceded the positions due to the war, which was the most important success for Russia, as Moscow's goal was to keep Georgia backward on the European path and stop its integration process in the European family.

### 1.3. The international legal aspects of the occupation of the Georgian territories

During the military conflict, the adversary parties should take the international law into account, such as the international humanitarian law, also known as the law of war. The Russian-Georgian war of August 2008 was not an exception either, when the adversary parties had to act in accordance with the principles of the international humanitarian law in order civilians not to be injured and suffered, first of all. Humanitarian law deliberately restrains the parties involved in the military conflict to ensure that their actions are carried out within the "humane limits".

The international humanitarian law includes the Geneva Convention IV of 1949<sup>41</sup>, the "Additional Protocols of 1977" and the Hague Convention<sup>42</sup>. Those international legal documents are aimed at the protection of an individual during the international armed conflict as well as non-international ones. It is worth noting that both Georgia and Russia are the States Parties<sup>43</sup> to the basic agreement of the international humanitarian law, including the four Geneva Conventions of 1949, three Additional Protocols of 1977 and the 1907 Hague Convention IV. Consequently, during the armed conflict both States should have acted under these Conventions, i.e. the fundamental human rights should have been protected during a peaceful coexistence as well as the armed conflict. This is derived from the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).

One important issue here - difference between the Georgian-Ossetian conflict and the Russian-Georgian war and their interrelationship in legal terms.

A) As mentioned in Article 2 of Part I of Geneva Convention IV of 1949<sup>44</sup>, "the international armed conflicts should occur between two or more States". Consequently, the

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<sup>40</sup> IDIF information, "Information Regarding the 2008 August War Between Russia and Georgia"  
Available on: <https://idfi.ge/en/information-about-war-between-russia-georgia-in-august-2008>

<sup>41</sup> Geneva convention 4, 1949 year

Available on: <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf>

<sup>42</sup> Hague convention, IV

Available on: <https://ihl-databases.icrc.org/ihl/INTRO/195>

<sup>43</sup> IIFFMCG, VOL. II, at p 298

Available on: [http://www.mpil.de/files/pdf4/IIFMCG\\_Volume\\_III1.pdf](http://www.mpil.de/files/pdf4/IIFMCG_Volume_III1.pdf)

<sup>44</sup> Geneva convention 4, 1949 year, Chapte 1, Article 2

Available on: <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf>

military operations carried out by Georgia in South Ossetia (and Abkhazia) in 2008 were not considered as an international armed conflict at the initial stage, as these actions were implemented by the Georgian authorities on its sovereign territory. Initially, this conflict had an intrastate confrontation character (as between a center and a separatist region), and when the Russian military forces got involved in it and provided the military aid to the separatists and the armed confrontation grew into the Georgian-Russian war, the conflict was granted the status of an international or an intra-state war.

According to Article 51 of the Charter of UN , a military assistance can be provided during an armed conflict, if it is taking place between two or more sovereign and independent States. Since South Ossetia is part of Georgia's territory and does not constitute a sovereign state, the Russian authorities had no right to provide South Ossetia with the military aid.

B) In accordance with Part IV of Article 2 of the UN Charter<sup>45</sup>, "all members shall refrain in their international relations from the threat or use of force against any independent and sovereign state."

C) According to Article 51<sup>46</sup> of the Charter of the United Nations, no one has the right to intervene in the conflict (to assist the party acting for self-defense purposes) unless the United Nations (UN) Security Council considers this issue and makes any decision. Hence, the involvement of the Russian military forces in the conflict was illegal (because the Security Council did not give it this permission) and inconsistent with the international law that the international community also recognized.

As for Georgia, on August 8, 2008, Georgia's representative stated at an emergency session of the United Nations Security Council that "Georgia's military actions in South Ossetia were implemented on the basis of the necessity of self-defense because of the provocative actions and a very tense situation. In addition, Georgia's military action was conditioned by the will to prevent the infringement of civilians' rights and their lives"<sup>47</sup>. According to the position of Georgia, South Ossetia violated the Ceasefire Agreement signed in Sochi in 1992; this violation was reflected in a sharp escalation of violence - killing several military officers serving in peacekeeping operations and civilians.

It should be taken into account that, in general, the government of Georgia is not forbidden to use a military force to neutralize the internal conflicts within the country for the protection of the territorial integrity. For example, when the rebels start a civil war and fight for the separation from a sovereign state with the use of force.

It has been said above that during the international conflict and military actions, it is necessary to make a distinction between civilians and soldiers in order civilians not to be harmed and injured and that is stipulated by international humanitarian legislative conventions and additional protocols.

Generally, during the conflict, the state military and police forces as well as mercenaries and volunteers participate in combat activities. According to the international humanitarian law, everyone who takes part in combat activities must have a distinctive sign from civilians. The Georgian and Russian forces were also participating in the Georgia-Russia 2008 war as military and police forces as well as mercenaries,<sup>48</sup> which is confirmed by the witness testimonies saying that the hired Chechen and Russian warriors (Cossacks), who committed certain types of

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<sup>45</sup> CHARTER OF THE UNITED NATIONS, 1945, Article 2 part 4

Available on: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

<sup>46</sup> UN Charter, Chapter VII, Article 51

Available on: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

<sup>47</sup> IIFMCG, Vol. II, at p 246

<sup>48</sup> IIFMCG, Vol. II, at p 302

Available on: [http://www.mpil.de/files/pdf4/IIFMCG\\_Volume\\_III.pdf](http://www.mpil.de/files/pdf4/IIFMCG_Volume_III.pdf)

international offenses, were being observed on the South Ossetian territory during the August 2008 war.

According to **Article 42<sup>49</sup>** of the Hague Convention, the territory is considered occupied when it is actually placed under the authority of the hostile army. Based on this Convention, 20% of the Georgian territory is occupied by the Russian Federation, because South Ossetia and Abkhazia are fully controlled by the Russian military forces.

It is necessary to assess the facts in order to legally establish whether or not the Russian Federation actually has occupied this part of the Georgian territory.

The Georgian authorities claim that the Russian government has occupied the Georgian territories both during and after the war. On October 23, 2008, the Parliament of Georgia adopted the Law on **Occupied Territories<sup>50</sup>**, declaring "part of the territory of Georgia "occupied", while the Russian army an "occupant". On March 13-14, 2009, the Venice Commission published its opinion on the above-mentioned law adopted by the Parliament of Georgia in 2008. According to the Commission's position, Russia has really occupied part of the Georgian territories. The Commission's position also emphasizes that the Law on Occupied Territories is relevant to the International Conventions. As per the Venice Commission, "a territory is considered occupied when it is actually placed under the authority of **the hostile army**"<sup>51</sup>. In turn, the authorities of the Russian Federation agree with neither the Georgian Law on "Occupation" nor the Venice Commission conclusion stating that Russia cannot be considered occupant, since it has not replaced the government in South Ossetia **and Abkhazia<sup>52</sup>**. Russia also demonstrates the fact that it has never adopted any regulatory act that is mandatory for the population of South Ossetia (and Abkhazia).

But the facts prove the falsity of Russia's position. First of all, we should pay attention to the fact that the military bases of the Russian armed forces are deployed to South Ossetia and Abkhazia. Tskhinvali, Sokhumi and Moscow claim that the existence of the bases is stipulated by a bilateral agreement and it does not mean any occupation. The question is arising: if Russia denies that it is not controlling the territories of Abkhazia and South Ossetia, why are the Russian bases permanently stationed in these regions with a few thousand soldiers then? Obviously, the fact of occupation is disguised under the so-called bilateral agreement, which contradicts all the principles of international law.

It is also important to stress the process of passportization ongoing in the occupied territories reflected in distributing the Russian passports to the civilian population living there.

In 2009, the Administration of Akhgori District occupied by Russia as a result of the August 2008 determined to distribute the Russian passports to residents living there, which meant the loss of a Georgian citizenship. This kind of action was being carried out somehow in a forceful manner, as the remaining Georgian population did not want to lose a Georgian citizenship. Although, the Administration later said the Georgians would be able to retain a Georgian citizenship in exchange for getting a Russian citizenship (passport), but it was absolutely false and misinformation - the Russian Federation's legislation does not envisage a **dual citizenship<sup>53</sup>**. All this means that the Russian Federation's authorities secretly carried out the

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<sup>49</sup> The Hague Convention, 18 October 1907, Article 42

Available on: <https://ihl-databases.icrc.org/ihl/WebART/195-200052?OpenDocument>

<sup>50</sup> Parliament of Georgia, "Law of Georgia on Occupied Territories"

Available on: <https://matsne.gov.ge/en/document/view/19132>

<sup>51</sup> Venice Commission, At its 78<sup>th</sup> Plenary Session, "Opinion On The Law Occupied Territories Of Georgia", at p 3

Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)015-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)015-e)

<sup>52</sup> IIFFMCG, Vol. II, Chapter 7, at p 309

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_III.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_III.pdf)

<sup>53</sup> HRW report, "Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia", at p 150

Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

dissemination of the Russian legislation in the occupied territories through the de facto authorities of South Ossetia and Abkhazia.

The international humanitarian legal conventions were repeatedly violated during the Georgia-Russia August 2008 war, which is a matter of criminal liability. During the "five-day war", disproportionate military strikes were also deliberately carried out, causing a significant damage and resulting in the death of civilians. This was caused by the Georgian side's attacks using grenade-launchers prior to the open confrontation as well as the action taken by the Russian military during the open confrontation. There is a fact that "one of the commanders of the Russian army subdivision knew that civilians remained in the village, even though he still ordered **its bombardment**"<sup>54</sup>. As for the Russian military forces (deployed to South Ossetia by Russia under the "Sochi Agreement" signed in 1992) engaged in peacekeeping missions and their legal status before the Georgian-Russian war: according to the customary international law, peacekeepers are professional soldiers, who protect their peace and do not support the position of any country that is reflected in **their mission, too**<sup>55</sup>. In addition, peacekeepers enjoy the right of defense such as one given to civilian population. This means that during the armed conflict no attacks and certain military actions can be carried out against them.

Any attack on peacekeepers or any kind of military action carried out against them should be considered a military offense, because peacekeepers<sup>56</sup> protect civilians and their location, which is their main function. The status of peacekeepers should not be misused and they should not carry out offensive actions, while the de facto authorities of Russia and South Ossetia had not taken this into consideration. In addition, in the August 2008 war, the peacekeepers were recruited by Russian and Ossetian servicemen, whose "mission was not to protect civilians, but to attack the **Georgian soldiers**"<sup>57</sup> and so they did. Consequently, the status of peacekeepers was misused by Russia and South Ossetia.

#### ***1.4. War crimes committed by the Russian army (the use of cluster bombs, repressions against civilians, refugees and internally displaced persons)***

Under the international law, the use of military force is evaluated in two ways. According to the first assessment, the question of the use of military force implies the explanation of how legitimately and properly the military force was used by a party to the conflict and whether or not the use of force was justified? The use of military force in international relations is prohibited, but there are some exceptions, when a subject uses the right to self-defense. It is

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<sup>54</sup> HRW report, "Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia", at p 31  
Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

<sup>55</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, "Customary International Humanitarian Law", Britain 2009, at p 112

Available on: <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>

<sup>56</sup> Customary International Humanitarian Law, Vol. II, Chapter 9, Rule 33, p 112.

Available on: <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>

<sup>57</sup> HRW report, January 2009 "Humanitarian Law Violation and Civilian Victims in the Conflict over South Ossetia" at p 33

Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

another question how this force was used, whether or not it was legitimate and whether the methods prohibited by humanitarian law were used or not.

In the military conflict, depending on the difference principle, every person participating in the hostilities must have a distinctive sign to ensure that an opposing party is able to make a difference between a civilian and a person involved in the military actions. According to Part III of Article 44 of **Additional Protocol I**<sup>58</sup> to the Geneva Convention, "parties to the conflict shall at all times distinguish between the civilian population and combatants in order to promote the protection of the civilian population from the effects of hostilities". In accordance with this Article, all the persons engaged in the hostilities were distinguished from civilians.

During the hostilities, it is also important to differentiate military and civilian objects from each other. According to Part II of Article 52 of **Additional Protocol I**<sup>59</sup> to the Geneva Convention, "military operations may only be directed against military objectives. Civilian objects are all objects which are not military objectives, that is, those objects which by their nature, location, purpose or use make an effective contribution to military action or whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." The above-mentioned Article had been repeatedly violated in the Russian-Georgian war of August 2008: the target of air strikes were civilian population and their objects that led to the most severe damage and the loss of life.

As we have already mentioned, the war was caused by the provocative steps of the Russian authorities taken against Georgia. Let's recall that in the spring of 2008 the Georgian airspace had been violated many times by the Russian military planes and the Georgian policemen were being shot in the coastal regions resulting even in their death. All these facts brought the expected start of unrest and war to light, which turned out to be inevitable for Georgia.

However, there is no doubt that the Georgian Armed Forces launched the military attack against South Ossetia by President Mikheil Saakashvili's order at 23:35 on August 7, 2008. This attack was aimed at the so-called police officers of South Ossetia, who were shooting dead the Georgian policemen and civilians living near the border before the attack. It is also an important fact that the medical unit located in Tskhinvali had **been engulfed in flames**<sup>60</sup> for 18 hours due to the attack carried out by the Georgian military forces, which caused a significant damage. **According to Article 12**<sup>61</sup> of Additional Protocol I to the Geneva Convention, "it is prohibited to carry out any military action or attack against a medical unit". All this means that Georgia used military force disproportionately and illegally, because, according to the International Conventions, military operations must only be conducted against military objectives and combatants, but in no case **against civilian population**<sup>62</sup>.

Perhaps, the Georgian side did not really meet the requirements of the Conventions, but we should not forget the fact that its steps were aimed at the eradication of separatism. Obviously, Georgia did not use the military force against Russia just on its own territory, but only on the state territory of Georgia.

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<sup>58</sup> Geneva Conventions, 12 August 1949, AP I, Article 44 part 3

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

<sup>59</sup> Geneva Convention, 12 August 1949, AP I, Article 52 part 2

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

<sup>60</sup> HRW report, January 2009, "Humanitarian Law Violation and Civilian Victims in the Conflict over South Ossetia", at p 42

Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

<sup>61</sup> Geneva convention, 12 August 1949, AP I, Article 12

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

<sup>62</sup> Geneva convention, 12 August 1949, AP I, Article 52

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

At the UN Security Council meeting on August 8, 2008, the representative of Georgia declared<sup>63</sup>: "I can say with full responsibility that Georgian troops are not targeting peacekeepers, but only mercenaries from the Russian Federation." Georgia's representative also underlined the fact that Georgia was conducting military operations for self-defense, protecting civilians and the reason for all this was the provocative steps taken by the Ossetian side.

Contrary to this statement, the Russian Federation's representative also addressed<sup>64</sup> the Security Council: "the firepower of tanks, military combat vehicles and helicopters is being aimed directly at peacekeepers." The latter's statement is not true, since Georgia's military actions were not directed against the civilian population. Although several civilians died as a result of some attacks, but those were not purposeful and **deliberate** actions. As for the military operations carried out by the Russian **servicemen**, they were intentionally killing the civilians of Georgia and destroying civilian objects.

The targets of the Russian Federation were allegedly only the military objectives of Georgia, but they were not carrying out the relevant intelligence operations that would facilitate information specificity as to whether or not this or that military objective was really staffed by the Georgian armed forces. Consequently, they did not have any respective accurate information about the military objectives, which is confirmed by plenty of facts.

From August 8 through August 12, 2008, the Russian Federation's military forces assaulted the military bases deployed to the city of Gori, as well as, the villages of South Ossetia inhabited by ethnic Georgians, causing the death of civilians and destruction of or damage to their property. The Russian air strikes were delivered from aircraft so inaccurately that the bombs and missiles targeted<sup>65</sup> allegedly for only the military objectives were dropping on the civilian population living near these facilities.

Russia did not also take into consideration the principle of proportionality and the potential outcomes of the **bombardment** that could have caused the death of the population. During a military assault, an attack must be relevant and corresponding to the law. Proportionality implies a relevant military force used against an object. According to subparagraph "b" of Part V of Article 51 of the **Additional Protocol I**<sup>66</sup> to the Geneva Convention, "an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated," in other words, illegal and disproportional. Russia's military operations were mostly disproportional and illegal in the August 2008 war, causing the death of civilians and, in some cases, severe health problems.

On August 9, 2008, the Russian air attack targeted military barracks in Gori. As a result of the attack, the military base was destroyed and the soldiers serving there were injured. The attack also targeted three five-storied residential buildings with civilian population in them. As a result of the air strikes, "14 civilians were killed and dozens of people were injured." This fact reaffirms that the Russian military command did not take into account the proportionality of military actions during the air strikes. The Georgian Armed Forces were trying to deploy mobile weapons and military subdivisions far away from the population, but this does not mean that the proportionality of an assault should not be taken into account and protected during the attacks.

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<sup>63</sup> UN, Security Council, New York, 8 August 2008, S/PV 5952

Available on: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/PV.5952](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5952)

<sup>64</sup> UN, Security Council, New York, 8 August 2008, S/PV 5952

Available on: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/PV.5952](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5952)

<sup>65</sup> HRW report, January 2009, "Humanitarian Law Violation and Civilian Victims in the Conflict over South Ossetia", at p 89

Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

<sup>66</sup> Geneva Convention, AP I, Article 51 (5)(b)

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

The similar fact was observed when the Russian air forces bombarded the Public School #7 in the city of Gori. The bombardment was carried out on 9 August, when the reservists enlisted in the Georgian Armed Forces were deployed to the school yard. On the one hand, it seems clear why the school became a target of the Russian air forces - a civilian building controlled by the military forces (in this case, the school) is losing its right to protect civilian objects, as it is being used for military purposes. Therefore, the Russian military forces might consider that the Georgian side was using the school for military purposes and that is why they had bombarded it, but it is a very important fact that one of the air strikes was carried out on a building located near the school, resulting in the deaths of “five civilians and 18 people were wounded”, while another air strike was carried out on a building located in the vicinity of the school, which caused no casualties. Obviously, the Russian air forces missed their target, causing the death of civilians.

On August 12, 2008, after a number of air strikes, the local population left the city of Gori, but doctors and hospital staff still remained in the hospital in order to provide medical assistance to the wounded and injured people. On August 13, the Russian warplanes carried out an air attack on the Gori Hospital, where the wounded soldiers and civilians were present. A red cross was depicted on the rooftop of the hospital<sup>67</sup>, as a warning signal for the pilots to avoid an air attack on a medical facility. In spite of this, the Russian servicemen took into consideration neither the purpose of the hospital nor the action prohibited by the respective Article of the International Convention. According to Article 12<sup>68</sup> of Additional Protocol II to the Geneva Convention, "medical units shall be respected and protected at all times and shall not be the object of attack". The Gori Hospital was a medical unit the purpose of which was medical aid provision, and therefore, the Russian air forces did not have any legitimate right to attack it, i.e. the Russians breached the requirement of this Article.

During the August 2008 Russia-Georgia military conflict, the Russian Federation's armed forces were using the weapons, which caused an excessive damage to the civilian population and their suffering. These weapons are cluster bombs that killed 12 civilians and injured 46 people, including three children. Cluster bombs are designed to explode after some time with delays over an area of a certain territory that will result in the loss of life. In the explosion of cluster bombs, as a rule, explosive devices scatter over a certain area<sup>69</sup> and explode themselves independently. Cluster bombs were first used by Germany and the Soviet Army in the cities against armored vehicles during the World War II. Their significant use took place during the US-Vietnam War that caused mass destruction of civilians, including children. Cluster bombs were used by the Israeli extremist group against "Hezbollah", which led to the deaths<sup>70</sup> of 265 civilians. The international community expressed great concern about a huge loss of civilian population caused by cluster bombs.

Initially, the Russian Federation denied the use of cluster bombs during the 2008 Russian-Georgian military conflict, but in October of the same year, when the representative of the Russian Foreign Ministry was responding to the questions of journalists, he did not deny<sup>71</sup> the use of cluster bombs by Russia, thus, confirming this fact. It is also noteworthy that RBK-

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<sup>67</sup> HRW report, “January 2009, “Humanitarian Law Violation and Civilian Victims in the Conflict over South Ossetia” at p 95

<sup>68</sup> Geneva Convention, AP I, Article 12

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

<sup>69</sup> Sean Watts, Future Weapons Technology Forum: “REGULATION-TOLERANT WEAPONS, REGULATION-RESISTANT WEAPONS AND THE LAW OF WAR”, 2015

Available on: Westlaw database. Accessed on 29 October 2017

<sup>70</sup> Ibid

<sup>71</sup> HRW report, “January 2009, “Humanitarian Law Violation and Civilian Victims in the Conflict over South Ossetia”, at p 104

Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

500, RBK 250 and AO-2.5 RTM cluster bombs were found later in several Georgian villages located in the conflict zone that is currently under the Georgian jurisdiction. This weapon is manufactured in the Russian Federation and is included in its army armament. This fact confirms the use of cluster bombs by Russia, while the Georgian army armament is not composed of this type of weapon.

According to subparagraph "b"<sup>72</sup> of Part V of Article 51 of Additional Protocol I to the Geneva Convention, "an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated". Therefore, the use of cluster bombs by the Russian Federation's armed forces led to the destruction of the lives of the civilians of Georgia and the damage to their objects, which gives us the basis to consider Russia's use of force disproportionate, respectively, subparagraph "b" of Part V of Article 51 of Additional Protocol I to the Geneva Convention was violated. All this led to the forced displacement of the civilians from their own homes.

In August 2008, the five-day war between Russia and Georgia was mainly ongoing in the territory of South Ossetia, as a result, 138,000 internally displaced persons left this region together with their homes and sheltered themselves in the other regions of Georgia<sup>73</sup>. After stabilizing the situation, the majority of IDPs have returned to their homes, but about 38,000 refugees<sup>74</sup> are still sheltering in Georgia and cannot return to their homes. 19,000 people out of them are IDPs from South Ossetia, about 2,000 - from the Kodori Gorge of Abkhazia and more than 11,000 - from the areas adjacent to South Ossetia that had been under the Georgian control and jurisdiction prior to the military conflict. The IDPs are not able to return to their homes, because the Russian army's disproportionate assault destroyed most of their houses; the lack of security guarantees in the occupied territories also plays an important role. It is worth mentioning that 5 000 persons are displaced from Akhagori district, which is now controlled by the Russian Federation and civilian ethnic Georgians cannot return to their own homes due to the absence of security guarantees there. The migration of internally displaced persons was also stipulated by the fact that the South Ossetian soldiers carried out violent actions such as torture and inhuman treatment against civilians during the conflict.

According to Part II<sup>75</sup> of subparagraph "a" of Part II of Article 75 of Additional Protocol I to the Geneva Convention, "torture of all kinds of human beings, whether physical or mental, shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents." Also, according to subparagraph "a"<sup>76</sup> of Part II of Article 4 of Additional Protocol II to the Geneva Convention, "violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment" is prohibited. During the five-day war between Georgia and Russia, major operations of which were taking place on the South Ossetian territory, a number of inhuman treatments<sup>77</sup> against civilians had been identified, which is prohibited by Additional

<sup>72</sup> Geneva Convention, AP I, Article 51 Part 5 (b)

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

<sup>73</sup> UNHCR, Universal periodic review for Georgia, at p 1

Available on:

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/UNHCR\\_UNHighCommissionerforRefugees-eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/UNHCR_UNHighCommissionerforRefugees-eng.pdf)

<sup>74</sup> IFFMCG, Vol. II, at p 224

Available on: [http://www.mpil.de/files/pdf4/IFFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IFFMCG_Volume_II1.pdf)

<sup>75</sup> Geneva Convention, AP I, Article 75, part 2 (a) (II)

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

<sup>76</sup> Geneva Convention, AP II, Article 4, part 2 (a)

Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)

<sup>77</sup> OSCE, "Human Right in the War-Affected Areas Following the Conflict in Georgia"

Protocols to International Conventions. Specifically, the representatives of the South Ossetian law enforcement agencies severely beat several civilians in the Tirdznisi village, while in the Karaleti village the Ossetians did not allow the Georgian population to extinguish the fires erupted on civilian objects, otherwise, the Ossetians threatened them with death. In addition, the NGO operating in Georgia identified 50 cases of torture against civilians during the conflict, i.e. Additional Protocols to the Geneva Convention and Article 3 of **European Convention on Human Rights**<sup>78</sup>, which prohibit torture, had been violated.

After the identification of the similar facts, civilians, internally displaced ethnic Georgians are afraid of returning to their homes, because their lives will be in danger on the occupied territories. Therefore, they still remain on the Georgian-controlled territory, where every human right is protected.

## Chapter II

### 2. The situation in the territories occupied by Russia

#### 2.1. The essence of the "creeping occupation-annexation"

Following the military conflict with Georgia in August 2008, the Russian troops deployed to the occupied territories started to install the barbed wire fences along the administrative boundary line, which separates the territories controlled by the Georgian authorities, on the one hand, and by the Ossetian and Abkhazian separatists, on the other hand, from each other. This action meant that a) the existing administrative border was assigned the status **of the state border**<sup>79</sup>; b) the IDPs from the territory controlled by the Georgian authorities could not cross the territories of Georgia, which were divided by the barbed wire fences. Russia's activity in the breakaway regions of Georgia was motivated to "freeze" the conflict zones and, thus, keep control of Transcaucasia, which would create problems to Georgia's development.

As we have stressed above, Russia started the annexation of Georgia yet before the 2008 war, intending **the "passportization"**<sup>80</sup> of the population of Abkhazia and South Ossetia. "Passportization" means distributing the Russian passports to the people living there, so that the Russian Federation intended to put South Ossetia and Abkhazia under its jurisdiction. That's why the Russian authorities had been claiming during and after the August 2008 war that they were protecting their citizens. All this was preceded and triggered by the so-called passportization. Consequently, the Russian government had preliminarily planned to launch a military conflict against Georgia and yet it occurred.

According to Article 42 of the 1907 **Hague Convention**,<sup>81</sup> "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation

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Available on: <http://www.osce.org/odihr/35578?download=true>

<sup>78</sup> European Convention on Human Right, Article 3, Available on:

[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>79</sup> The EU observers have called the line separating Georgia and the ex-autonomy from each other the ABL-Administrative Boundary Line.

«Die Tageszeitung». <https://www.taz.de/Archiv-Suche!/5456141&s=S%C3%BCdossetien&SuchRahmen=Print/>

<sup>80</sup> IIFFMCG, Vol. II, at p 19

Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf)

<sup>81</sup> Hague Convention, 18 October 1907, Article 42

extends only to the territory where such authority has been established and can be exercised". Therefore, part of Georgia's territory, namely, South Ossetia and Abkhazia are occupied, since they are being controlled by the Russian authorities and military personnel. During the 2008 war, when the government of the Russian Federation became aware of the level of the European and American support towards Georgia and the extreme concern and criticisms expressed by the international community about Russia's aggression, it (Russia) failed to fully fulfill its wish - the whole occupation of Georgia. In spite of this, Russia continued to take provocative steps in the occupied territories leading to the Georgian government's aggression again. The former High Commissioner for the United Nations Human Rights Committee estimated Georgia's breakaway territories, namely, South Ossetia, as "a black hole" and one of the impenetrable places **in the world**<sup>82</sup>, meaning that the Russian authorities were trying to hush up the situation in the occupied territories as much as possible, because the fundamental human rights as well as various International Conventions were being violated.

After the August 2008 military conflict, the Russian Federation realized that Georgia had enjoyed a strong international support for the protection of its territorial integrity. That's why the occupant country replaced its occupation policy with the "creeping occupation" in an inconspicuous manner. The so-called **"creeping occupation"**<sup>83</sup> means that the Russian border guards and Ossetian servicemen periodically relocate the administrative boundary line between Georgia and South Ossetia as well as between Georgia and Abkhazia demarcated by the barbed wire fences into the depth of the Georgian government-controlled territory and capture the additional land areas. These provocative steps are aimed at instigating Georgia to launch hostilities in order Russia to fully occupy the country. The international community condemns Russia's "creeping occupation" into the Georgian soil, but it has not yet taken a decisive step to stop Russia's actions against Georgia. The leaders of the Georgian government have repeatedly raised this issue at the United Nations **General Assembly**<sup>84</sup> as well as at the Security Council, however, radical decisions that would change the situation for the better have not been made. The EU Monitoring Mission in Georgia (EUMM in Georgia) said in connection with the **"creeping occupation" that**<sup>85</sup> "Russia is using a map drawn by the Soviet military's general staff in the 1980s", which means that the "creeping occupation" will not stop until it reaches the area of the frontier that is shown in the topographical documents created in the Soviet era.

It is also noteworthy that in parallel with the "creeping annexation" policy carried out against Georgia, in 2014 the Russian Federation launched hostilities on the territory of Ukraine that had turned into a military conflict. Consequently, the attention of the entire international community was attracted by the Ukrainian conflict promoting Russia to implement its intents towards Georgia without an excessive noise. In other words, the Russian Federation had undergone a period when the European and American leaders were oriented towards the resolution of Ukraine's problems, while the discussions on the Georgian concerns had moved to the second stage of the agenda. Russia had used this moment for its benefit and misappropriated the area under Georgian jurisdiction through the "creeping occupation".

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Available on: [http://www.opbw.org/int\\_inst/sec\\_docs/1907HC-TEXT.pdf](http://www.opbw.org/int_inst/sec_docs/1907HC-TEXT.pdf)

<sup>82</sup> MFA of Georgia, First Quarterly Report, January-March 2015, "on the Human Rights Situation in the Occupied Regions of Georgia"

Available on: <http://mfa.gov.ge>

<sup>83</sup> CNN, 10 January 2017, "Returning home to find your house in a 'different country' "

Available on: <http://edition.cnn.com/2017/01/09/europe/georgia-south-ossetia-russia-border/index.html>

<sup>84</sup> General Assembly of the UN, 1 October 2015, General Debate of the 72nd Session, Georgia, Mr. Irakli Garibashvili, Prime Minister

Available on: <https://gadebate.un.org/en/70/georgia>

<sup>85</sup> EUMM in Georgia, Press, 25.10.2016, " In Russia's 'Frozen zone', a Creeping Border With Georgia"

Available on: [https://eumm.eu/en/press\\_and\\_public\\_information/features/5639/](https://eumm.eu/en/press_and_public_information/features/5639/)

If we observe Russia's scenario carried out in Georgia and Ukraine, we will definitely find the similarity between the two cases, because both Georgia and Ukraine are the countries that seek to integrate into the EU and NATO, which Russia considers to be a threat to it. Therefore, the occupant country is trying to hinder these processes by all means and methods.

The so-called "creeping occupation" creates various problems that directly affect the civilians and violate their rights.

## 2.2. The violation of property rights of the population

After the occupation of South Ossetia and Abkhazia Regions by Russia, a problem regarding the property rights of IDPs had been emerged. In particular, the civilian population, who took shelter in different regions of Georgia during the Georgian-Russian war, can no longer return to their own homes or soil. In 2016, the OSCE Parliamentary Assembly adopted a resolution calling on the Russian Federation to "respect the territorial integrity and sovereignty of Georgia within its internationally **recognized borders**"<sup>86</sup>. Consequently, when the Russian Federation supports South Ossetia's de facto authorities from the military and financial point of view, the Georgian government becomes powerless and cannot take certain legal steps to restore the refugees' property rights to their lands and dwellings.

Under the decision made by the de facto authorities of South Ossetia on December 7, 2010, "if anyone had been living for 18 years in the IDPs' houses located in the territory of South Ossetia, that property would have been **conveyed to them**"<sup>87</sup>. Therefore, Article 46 of the 1907 Hague Convention was violated, indicating that "private property cannot be **confiscated**"<sup>88</sup>.

According to the 2009 report of the PACE Committee on Migration, Refugees and Displaced Persons, a rapporteur, who had visited the part of the occupied territories, formerly controlled and inhabited by Georgians, stated that "these villages no longer exist. There is only rubble and no sign of any belongings left in the remnants of the houses. The systematic destruction of every single house is a clear indication that there has been an intention to ensure that no Georgians have a property to return to in **these villages**"<sup>89</sup>. It is also an important fact that the ethnic Georgians left on the occupied territories are being persecuted. The de facto authorities are forcing the Georgians, who still reside on the occupied territories to "give up Georgian passports and receive Russian or Ossetian and Abkhaz documents upon **threat of**

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<sup>86</sup> OSCE PA, Resolution on the Conflict in Georgia, pp 26

Available on: <https://www.oscepa.org/documents/all-documents/annual-%20sessions/2016-tbilisi/declaration-24/3371-tbilisi-declaration-eng/file>

<sup>87</sup> Coalition for Justice. "Violation of Human Rights on occupied territories of Georgia", Report. PP 20. 2011. (Own translation)

Available on: <http://en.calameo.com/read/000953612f9017b7b894f>

<sup>88</sup> The Hague Convention, 18 October 1907, Article 46

Available on: [http://www.opbw.org/int\\_inst/sec\\_docs/1907HC-TEXT.pdf](http://www.opbw.org/int_inst/sec_docs/1907HC-TEXT.pdf)

<sup>89</sup> Committee on Migration, Refugees and Population, Rapporteur: Mrs Corien W.A, Netherlands, Groups of the European People's Party. The humanitarian consequences of the war between Georgia and Russia: follow-up given to the Resolution 1648 (2009), pp 9, 9 April 2009

Available on: [https://www.ecoi.net/file\\_upload/470\\_1239711804\\_edoc11859.pdf](https://www.ecoi.net/file_upload/470_1239711804_edoc11859.pdf)

expulsion"<sup>90</sup>. This fact is an obvious expression of compulsion and persecution on ethnic grounds carried out by de facto authorities of South Ossetia and Abkhazia.

According to the Public Defender of Georgia, "the residents of the village of Bershueti in Gori municipality, were deprived of the right to use their property. Digging the so-called anti-fire trenches, pre-announced by the de-facto Tskhinvali region, restricts the access of the population living along the dividing line to their lands and pastures, which is their source of income"<sup>91</sup>. Just totally unfair and illegal political steps taken by the de facto government represent one of the expressions of the "creeping occupation", as these actions promote the annexation of more territories.

As we have already noted, we encounter the violation of property rights of civilians most frequently in line with the "creeping occupation", because the residents are losing the area of land that is in their possession during the installation of the barbed wire fences along the Georgian-controlled territory. Consequently, Article 1 of Protocol I to the European Convention on Human Rights<sup>92</sup>, as per which, "every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law", is being violated.

Based on the quarterly report of the Ministry of Foreign Affairs of Georgia, during the "creeping occupation", several families lost the houses, which they lived in and were their property: "the house was located near the administrative boundary line of Georgia's breakaway region and one day their house turned out to be beyond the barbed wire, i.e. on the area already controlled by Russians and Ossetians"<sup>93</sup>. As a result, they lost their home, which was followed by a violation of property rights.

Destruction of civilians' property as well as its misappropriation is also being carried out on ethnic grounds in the occupied territories. In 2015, the Russian and so-called "Abkhazian Special Units" burnt down the houses of four ethnic Georgians in Gali district, which is controlled by the Russian troops and de-facto authorities of Abkhazia. On January 23, 2015, the Russian servicemen conducted a "raid" to determine who had crossed the Georgian-controlled territory. During the raid, they had illegally confiscated the property in the houses. Such facts happen very often in Abkhazia.

Therefore, the current situation in the occupied territories is not subject to control and basic human rights are violated on a daily basis. Moreover, through the "creeping occupation", the Russian authorities appropriate the Georgian lands and property of the population living there every day.

Nowadays there are ethnic, civil and international conflicts in the world forcing civilians to leave their homes and move to a more secure area. Similar processes violate basic human rights, including property rights. After some consultations, the United Nations adopted important

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<sup>90</sup> OSCE Review Conference – Human Dimension Session, Human Right in the Occupied Territories of Georgia, p3, 8 October 2010.

Available on: <http://www.osce.org/home/73289?download=true>

<sup>91</sup> Public Defender of Georgia, "Public Defender's Statement on 9th Anniversary of August 2008 War", 07 August 2017.

Available on: <http://www.ombudsman.ge/en/news/public-defenders-statement-on-9th-anniversary-of-august-2008-war-page>

<sup>92</sup> ECHR, AP I, Article 1

Available on: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>93</sup> MFA of Georgia, First Quarterly Report (January – March 2015), on the Human Right Situation in the Occupied Regions of Georgia, p 11

Available on: <http://mfa.gov.ge>

Principles on "Housing and Property Restitution for Refugees and Displaced Persons"<sup>94</sup>; according to Paragraph 1 of Section II of the Principles, "all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal"<sup>95</sup>.

Therefore, all refugees or internally displaced persons residing on the territory controlled by the Georgian government have the right to demand regaining the possession of their houses or land, which had been illegally transferred to other persons on the occupied territories. They also have the right to demand compensation for the destroyed houses. Regrettably, the Russian authorities do not take into account the document adopted by the UN and the population still cannot return to their homes. The current political developments in the country cannot become an obstacle to the implementation of property restitution<sup>96</sup>. According to Section III of the same Principles, discrimination of a person on any ground is prohibited<sup>97</sup>. As we have mentioned above, the houses of Georgians were burnt down by Russians just on ethnic grounds in Gali district causing substantial property and material damage to the civilian population. Similar incidents took place in South Ossetia, which is evidenced by a number of sources<sup>98</sup>. In particular, the occupants set fire to the houses in the villages inhabited by ethnic Georgians near the Tskhinvali Region and burnt them down.

It is also important to execute the property restitution, which is regulated under Principle 20<sup>99</sup>. According to Principle 20.1, a State must specify itself those agencies, which will be entitled to enforce property restitution<sup>100</sup>. Therefore, there should be a political will to carry out restitution of material damage to the civilian population. As of today, the Russian Federation has not taken any steps to return refugees to their homes and restore their property, so, basic human rights are still being violated. It should be noted that the Parliament of Georgia adopted the Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia<sup>101</sup> on February 6, 2014, providing for the right to property restitution, namely, in accordance with Section I of Article 15 of this Law, the State recognizes the IDPs' right to restitution, which is hereditary, on the real estate they left in the places of permanent residence<sup>102</sup>. This Article envisages property restitution for internally displaced persons in accordance with the Principles established by the United Nations.

The 2008 Ceasefire Agreement that ended the hostilities between Russia and Georgia created the so-called "International Mediation Platform"<sup>103</sup> to resolve the conflict. This conflict resolution process is known as the Geneva Talks that started after the August 2008 war. These

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<sup>94</sup> UN Sub-Commission on the Promotion and Protection of Human Right, Housing and property restitution in the context of the return of refugees and internally displaced persons, 28 June 2005, E/CN.4/SUB.2/2005/17

Available on: <http://www.unhcr.org/50f94d849.html>

<sup>95</sup> Ibid, Section II, principle 2.1

<sup>96</sup> Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the 'Pinheiro Principles', Inter-Agency, 2007 March, p 40

Available on: [http://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

<sup>97</sup> Ibid, Section III, principle 3.1

<sup>98</sup> Annual Human Rights Reports Submitted to Congress by the U.S. Department of State, Vol 32a, p 1327

Available on: Heinonline database, Accessed on November 7, 2017

<sup>99</sup> Ibid, Section V, principle 20

<sup>100</sup> Ibid, principle 20.1

<sup>101</sup> Law of Georgia on, Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia, Kutaisi, 6 February 2014

Available on: <http://mra.gov.ge/res/docs/201406171444442634.pdf>

<sup>102</sup> Ibid, Article 15 part 1

<sup>103</sup> Megan J. Ballard, "Pre-Planning for Post-Conflict Property Remedies: A Case Study from Georgia", 43 Geo. Wash. Int'l. Rev. 43, p 61, 2011.

Available on: Heinonline database, Accessed on November 7, 2017

negotiations are still ongoing in Geneva, where the representatives of the Russian Federation and Georgia meet each other. Although these discussions have long been underway and some of the agreements on security issues have been reached, major issues, such as return of internally displaced persons (IDPs) to their homes and maintenance of their property rights, could not have been resolved. Due to the prolonged process, we can say that reaching an agreement on these issues in the near future is a very difficult matter.

As regards the property restitution for IDPs mentioned above, since the Georgian government is incapable of controlling the occupied territories and is unable to return the internally displaced persons to their homes (because the breakaway regions are controlled by the Russian Federation), it should compensate for the property deprived of them. This represents one of the means of property restitution. The houses that the Georgian authorities had built after the war and transferred to the families of IDPs can be considered as restitution.

### 2.3. The deprivation of liberty of civilians

After the 2008 Russian-Georgian military conflict, the situation has become so hard along the so-called Administrative Boundary Line dividing Georgia from the territories occupied by Russia that violations of civilians' rights, including the "illegal deprivation of liberty of civilians", are evident at the occupation line on a daily basis.

Since 2008, the arbitrary detentions of ethnic Georgians on the occupied territories had been very frequent incidents. Moreover, the Russian officers were arbitrarily arresting civilians along the occupation line and accusing them of illegally crossing of the border. There were also occasions, when the Russian officers arbitrarily crossed the occupation line, moved to the territory controlled by the central government of Georgia, detained the local residents for "illegally crossing of the border" and brought them to the occupied territory. Those persons were placed in detention isolator in Tskhinvali (occupied South Ossetian administrative center) and they would have been released just after paying a fine imposed on them. The term of detention frequently lasted from one week to several years. The detainees could not enjoy a fair trial. From 2009 through 2015, the number of those arrested by the Russian officers for "illegally crossing of the border" amounted to 2117 persons, including 1416 people were detained at the occupation line of Abkhazia, while 701 – near the so-called administrative border of South Ossetia<sup>104</sup>.

One of the most important cases of the local residents' illegal detentions was the incident that occurred on January 4-5, 2016 in the Bershueti village, which is located on the territory of Gori municipality near the occupation line. On January 4, the Russian servicemen detained two local residents on charges of "illegal crossing of the border" while entering the local church. One of the detainees managed to flee from the occupants later<sup>105</sup>, while the other was transferred to Tskhinvali. He was released only a week later after paying a fine. "According to the representative of the local municipality, the church is situated on the territory controlled by the

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<sup>104</sup> MFA of Georgia, Second Quarterly report (Aprile – June 2015) on the Human Right Situation in the Occupied Regions of Georgia

Available on: <http://mfa.gov.ge>

<sup>105</sup> MFA of Georgia, First Quarterly report ( January – March 2016) on the Human right Situation in the Occupied Regions of Georgia

Available on: <http://mfa.gov.ge>

central government of Georgia. Therefore, it is clear that the Russian servicemen detained the residents of the Bershueti village (and transferred them to Tskhinvali) as a result of crossing the occupation line and moving to the Georgian-controlled territory.

According to Section 1 of Article 5 of the European Convention on Human Rights<sup>106</sup>, "everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law". Consequently, the Russian troops violated Article 5 of the above-mentioned Convention by their actions, namely, moving to the "administrative border" from the occupied territory, illegally detaining the citizen on the territory controlled by the Georgian authorities and taking him to the occupied territory. This action was not responded by the Russian authorities and the offenders were not brought to justice.

According to Article 6 of the European Convention<sup>107</sup>, "everyone has the right to a fair trial". This principle was violated against each person detained on charges of "illegal crossing of the border". All the accused were deprived of the right to a fair trial on the occupied territories. Their trials had not even been held, because the Russian servicemen's goal was to directly extort money from the detainees as a fine. It is also noteworthy that the term of detention of the locals frequently increases without any trial, which poses a threat to the right to liberty and security of person. According to the statement of the Public Defender of Georgia<sup>108</sup>, "in 2016, a person was illegally detained for "illegal crossing of the border" and was sentenced to 20 years' imprisonment by the de facto authorities of Tskhinvali. From the current year, the de facto authorities of Abkhazia increased sanctions due to illegal border crossing. On April 5, 2017, the Russian and Abkhazian militaries detained the father and his son at the dividing line between Abkhazia and Georgia and filed charges against them for illegal crossing of the so-called border and resisting the border guards. They were sentenced to two years' imprisonment by the Abkhazian de-facto court".

The more time goes by, the more situation worsens in the border regions or villages that leads us to disastrous consequences. By such an act, Russia is trying to provoke the Georgian government and people without a gunshot to incite the conflict and gain control over the entire Georgia. This circumstance threatens the locals residing near the conflict zones; they live in fear every day, because they do not know, when they will be detained by the occupants for illegally crossing of the so-called border. There is also a serious situation inside the occupied territories in terms of human rights protection.

Considering the unresolved conflict and the difficult situation created in Abkhazia and the Tskhinvali region, the civil society's involvement in the resolution of the existing problems and challenges is of particular importance. Frequent attacks of the de facto and Russian government officials on civil activists are also disturbing<sup>109</sup>. In June 2017, a civil activist - T.M. was kidnapped from the occupied town of Akhagori; the Abkhazian separatist authorities launched a campaign against undesirable NGOs and civil activists involved in various peacekeeping projects. Such a policy causes fear and weakens the civil society; it has already negatively impacted the fundamental human rights in this region. Therefore, it is obvious that violations of the law against civilians are taking place not only in the border villages, but also on the occupied territory, where the de facto authorities are restricting the rights of the people living there.

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<sup>106</sup> ECHR, Article 5 part 1

Available on: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>107</sup> Ibid, Article 6

<sup>108</sup> Public Defender of Georgia, "Public Defender's Statement on 9th Anniversary of August 2008 War", 07 August 2017

Available on: <http://www.ombudsman.ge/en/news/public-defenders-statement-on-9th-anniversary-of-august-2008-war.page>

<sup>109</sup> Ibid

According to Article 10 of the European Convention on Human Rights<sup>110</sup>, "everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". This Article is a guarantee of protection of the civil activists and NGOs' right to freedom of expression. The scope of their work is to publicly express their opinions regarding a certain political or social situation.

Therefore, no one shall be kidnapped or detained for expressing their own opinions, regardless of their location. Consequently, the representatives of the de facto authorities and Russia are violating not only the right to "liberty and security of person", but also the right to freedom of expression on the occupied territories, which creates concerns and tensions.

The illegal deprivation of liberty by the Russian militaries is directly related to the "creeping occupation", because, while relocating the barbed wire fences to the Georgian-controlled territory due to the "creeping occupation", part of the population residing directly at the administrative border of the occupied territories can find themselves in Georgia's breakaway zones; the occupants will accuse them of illegal crossing of the border and even detain them later with great likelihood. Today, the so-called "creeping occupation" represents the process headed by one state, in particular, it depends on the will of Russia as to how many meters deeper it will move its border into the territory of Georgia and where it will install the barbed wire fences.

## 2.4. The restriction of free movement

According to Article 2 of Protocol IV to the European Convention on Human Rights, "every person lawfully in the territory of a State has the right to liberty of movement and freedom to choose his or her residence". Accordingly, this right cannot be restricted illegally. Freedom of movement is a necessary precondition for human development that is provided by the above-mentioned basic human rights. On February 11, 1998, the UN Commission on Human Rights adopted a Resolution<sup>111</sup> on "Guiding Principles on Internal Displacement". The Principles adopted by the United Nations are aimed at protecting the rights of internally displaced persons around the world during their forced displacement and their return to homes. Stemming from Principle 14, "every internally displaced person has the right to liberty of movement and freedom to choose his or her residence". Under these Principles, it is prohibited to deliberately deprive the internally displaced persons of their property, appropriate and use it as a protective means during military operations. Depending on the reality of Georgia, Principle 28 can be considered as one of the most important ones, which states that "competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence"<sup>112</sup>. Consequently, the IDPs' rights are internationally protected and no one has the right to violate them. However, despite all this, the situation in the occupied territories of Georgia is radically different.

The movement to the occupied territories and Georgian-controlled regions is vital for people living along the boundary line. Actually several times a week, people living there have to

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<sup>110</sup> ECHR, Article 10

Available on: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>111</sup> UN, Commission on Human right, Report of the Representativ of the Secretary-General, Mr Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, E/cn.4/1998/53/Add.

Available on: <http://www.un-documents.net/gpid.htm>

<sup>112</sup> Ibid

cross the so-called administrative boundary line and move to the Georgian-controlled area from the occupied territories to get medical services and food products. After the 2008 military conflict, the de-facto authorities had fully banned the movement to the Georgian-controlled zone from the occupied territories. Although this restriction is no longer imposed on the locals today, but it is still related to certain problems. For example, let's consider such a fact: with the support of the Russian occupants, the separatist regime of Abkhazia set a Regulation, as per which, the de facto authorities should issue a 24-hour permit<sup>113</sup> to a person for moving to the Georgian-controlled territory from Abkhazia and then this or that person will be entitled to cross the so-called administrative border. This Regulation directly violates Article 2 of Protocol IV to the European Convention on Human Rights<sup>114</sup>, which implies freedom of movement. Since Abkhazia is regarded as an integral part of Georgia and is supported and recognized as the territory of Georgia by most countries of the world, the de facto authorities have no legitimacy to impose such restrictions on a person residing on the territory of Georgia.

The situation is also critical in the territory of South Ossetia, especially, in the frontier villages. Movement to the Georgian-controlled zone from the occupied territories represents a great difficulty, as well. In 2011, the de facto authorities of South Ossetia imposed a time interval on the border checkpoints (for both entering and exiting the country) of the city of Akhagori and during this period, the population could leave South Ossetia. The time interval was specified from 06:00 am till 10:00 am and from 16:00 pm till 18:00 pm. The movement within the limited time was associated with certain difficulties and the population was trying to use the bypass road, which ended with regrettable consequences several times. They were detained for "illegal crossing of the so-called border". It is known that the interference with freedom of movement in accordance with the law is possible to prevent the offense directed against a state security. The representatives of the de facto government's law enforcement agencies were taking advantage of this reason, while civilians, who are simply trying to get medical care and buy food products on the Georgian-controlled territory, are becoming the victims of this charge. Such actions lead us to reach the conclusion that the rule of law is not protected on the occupied territories.

One of the significant issues is the topic of return of internally displaced persons to their homes. Despite the fact that freedom of movement constitutes a guaranteed right under the European Convention on Human Rights as well as the Resolution adopted by the United Nations Commission on Human Rights on February 11, 1998, the Georgian citizens - several thousand people<sup>115</sup> - internally displaced from the occupied territories are still unable to return to their homes of origin. This was stipulated by the fact that the de facto authorities had repeatedly discriminated against ethnic Georgians, which means the ethnic cleansing. We can also stress that the Russian and Ossetian servicemen robbed, destroyed, burnt, etc., the houses owned by the Georgian nationals. The fact is that several thousand people no longer have houses there. Nevertheless, the main obstacle for refugees and internally displaced persons to return to their homeland lies in the fact that they are being forced to refuse a Georgian citizenship and acquire the passports applicable to the Russian or Russian-occupied territories and that is yet purposefully being implemented. As for the protection of the security of the population, there are no such guarantees, especially, for ethnic Georgians on the occupied territories. This is expressed in the destruction of their property and inhuman treatment toward several families. Although the

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<sup>113</sup> Coalition for Justice. "Violation of Human Rights on occupied territories of Georgia", Report. PP 23. 2011. (Own translation)

Available on: <http://en.calameo.com/read/000953612f9017b7b894f>

<sup>114</sup> ECHR, Protocol 4, article 2

Available on: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>115</sup> HRW report, "Humanitarian Law Violation and Civilian Victims in the Conflict over South Ossetia", January 2009, pp 152.

Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>

Commissioner for Human Rights of the Council of Europe, **Thomas Hammarberg**<sup>116</sup>, stated after the 2008 conflict that the de facto authorities of South Ossetia had expressed readiness and willingness to let the internally displaced persons, including ethnic Georgians, return to a safe environment, the de facto authorities are still intentionally pursuing a policy that creates a sense of fear and vulnerability among the civilians. The steps taken by Ossetian separatists aim at preventing the IDPs from voluntarily returning to their homes. Of course, the return of refugees to their places of origin is really impossible in this situation. It is obvious that the de facto authorities of South Ossetia are restricting the right to freedom of movement and the right to choose a place of residence, especially towards ethnic Georgians.

The "creeping occupation" represents one of the disturbing circumstances for freedom of movement and choosing a place of residence that we have discussed above. We will add to the previously said that the "creeping annexation" is so rapidly improving and the Georgian-controlled territory is being captured so quickly that a person, who left his/her own home, might not be able to return there again and their property might be found beyond the barbed wire fences. It is not excluded that they may also have to refuse a Georgian citizenship in order to live at their homes again, otherwise, the locals will not be able to cross the so-called border.

In the post-conflict period, the ethnic Georgians remaining on the occupied territories had to face a very tense situation. If it is not possible to resolve certain issues through negotiations during a conflict situation between two or more countries, there are the international courts that are competent at solving certain issues without "gunshot". After the war, ethnic Georgians were being persecuted and harassed so massively and openly on the occupied territory that in 2010 the International Court of Justice (ICJ) **called on**<sup>117</sup> both sides – Georgia as well as the Russian Federation - "to refrain from racial discrimination, to ensure the safety of people, the right to freedom of movement and the right to choose a place of residence within the country and the protection of the IDPs' properties on the occupied territory". This fact indicates that the situation in the occupied territories was not subject to control and the ethnic Georgians were being intentionally persecuted and discriminated.

## **Chapter III**

### **3. Prevention of the International Court**

#### **3.1. The UN International Court of Justice**

The UN International Court of Justice (ICJ) plays an important role in The Hague with regard to a peaceful resolution of conflicts. In particular, it provides for adopting judgment on legal issues.

Based on the consequences of the 2008 war, the freedom of movement was restricted on the occupied territories of Georgia, which greatly harms the refugees, because they cannot dispose their property. This issue is a big problem for both the state and the people. Moreover, due to the so-called "creeping occupation", the residents of the villages located at the

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<sup>116</sup> Ibid, pp 152-153.

<sup>117</sup> Dr. Christopher P.M. Waters, "The Legalization of the Georgia-Russia Conflict of 2008", Journal of Parliamentary and Political Law, October 2009

Available on: WESTLAW database, Accessed November 07, 2017

Administrative Boundary Line (ABL) are losing the land and houses of their possession on a daily basis.

We can rarely find the similar precedents in the international practice.

In the case of the Palestinian-Israeli dispute, the issue lay in the fact that Israel had occupied the Palestinian territory and started to build a wall along the captured zone. Consequently, there were specific legal violations and the International Court of Justice had also confirmed that. **The Court established<sup>118</sup>** that the wall included 80 percent of the occupied Palestinian residents, which violates the right to self-determination of a person. According to the Israeli officials, this wall was built only for security purposes, but the International Court of Justice explained that the measures and decisions taken for a country's security should not be contrary to the International Conventions. The Court also stated that Israel should respect the right to self-determination of the Palestinian people and correct this illegal act by an immediate destruction of the above-mentioned wall. Besides, Israel should reimburse the damage inflicted to the properties of physical and legal entities. The Court called on both sides to protect the International Conventions and resolve the dispute through peaceful means.

The events that took place between Israel and Palestine are similar to the current situation between Georgia and Russia, because the barbed wire fences are installed along the so-called administrative border separating the Georgian-controlled territory from the occupied zones. Accordingly, like the Palestinian wall, the barbed wire fences create the resistance, which results in certain offenses. Both the wall and the barbed wire fence violate Article 2 of Protocol IV to the European Convention on Human Rights, which envisages the right to freedom of movement. In addition to this circumstance, the so called "creeping occupation" is another problem – through the barbed wire fences existing at the border of the occupied territories (i.e. the ABL-Administrative Boundary Line), Russia is slowly invading the Georgian-controlled territory and expanding the occupied areas. Accordingly, the right to property of the residents residing near the so-called border is being violated, because, currently, the barbed wire fences are stretched along the section of the land that was previously used for agricultural purposes and was in their possession. In the near future, it is not excluded that their homes may be found on the occupied territory and they may also be detained on charges of "illegal crossing of the border". Unfortunately, such a situation negatively affects a numerical index of internally displaced persons, since their number increases, which will eventually lead Georgia and the Georgian population to grave consequences.

Therefore, the activity and involvement of international organizations is needed to eliminate this problem. Otherwise, the occupied territory will expand day by day.

### **3.2. The role of the International Criminal Court in The Hague**

The war crimes and crimes against humanity were committed during the 2008 Russian-Georgian military conflict.

In accordance with Article 15 of the **Rome Statute<sup>119</sup>**, the Prosecutor of the International Criminal Court in The Hague is entitled to initiate an investigation within the jurisdiction of the Court on the basis of the crime-related information. Such a message was the foundation for launching an investigation into the 2008 Russian-Georgian war case, which became known

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<sup>118</sup> ICJ, "LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY", Advisory Opinion, 2004.

Available on: <http://www.icj-cij.org/en/case/131>

<sup>119</sup> Rome Statute of the International Crime Court, Article 15

Available on: [http://legal.un.org/icc/statute/99\\_corr/cstatute.htm](http://legal.un.org/icc/statute/99_corr/cstatute.htm)

following **the public statement**<sup>120</sup> made by the Prosecutor of the International Criminal Court, Fatou Bensouda, on October 3, 2015. The Prosecutor believes that "there is a reasonable basis to proceed with an investigation into the Situation of Georgia in relation to alleged crimes committed in the context of the August 2008 armed conflict". This statement determines the circumstance, as per which, the crime was committed against Georgia and Georgians, which led to the initiation of the investigation. Consequently, after the International Criminal Court renders the decision, it will become known what crime was committed, in particular. This decision is of paramount importance to Georgia, because it would bring all uncertain circumstances to light and the international community would see the lawfulness of the steps taken by the Georgian authorities.

According to Georgia's position, Tbilisi focuses mostly on the illegal actions carried out after the conflict. In the previous months leading to the August 2008 conflict, particularly, **"throughout July 2008"**<sup>121</sup>, there were reports of armed clashes, detention of Georgian military personnel by South Ossetian forces, shelling and firing on Tskhinvali and southern environs causing several casualties and property damage... It turns out that after the ceasefire, **the measures of repression**<sup>122</sup> were taken by the occupants against the civilian population. Georgia claims that the attack against the civilian population resulted in between 51 and 113 cases of deliberate killings of ethnic Georgians and the displacement of between 13,400 and 18,500 ethnic Georgian inhabitants from villages and cities in South Ossetia and the "buffer zone".

Stemming from the facts, Russia is appealing mainly to the unlawful military actions carried out before the beginning of the open conflict, while considering the criminal offences committed by the Georgian side. According to the Russian officials, Georgia started the war with South Ossetia, on the basis of which, Russia had to protect its citizens and engage in this war. Moreover, as the Russian side states, prior to the start of the war, Georgia was carrying out artillery shelling on the South Ossetian villages, resulting in the deaths of several civilians.

Depending on the positions of both sides, there is an assumption that both Georgia and Russia have allegedly committed certain crimes. The Prosecutor of the International Criminal Court has launched an investigation into the crimes allegedly committed from August 7 to October 10, 2008. This includes the period, when the ethnic Georgians were being persecuted and their houses and property were being damaged and misappropriated on the occupied territories. During this period, the internally displaced persons from the occupied zones were being massively moved to and established on the territory controlled by the Georgian government. Accordingly, the decision made by the International Criminal Court will play an important role both in determining the truth and in restoring justice.

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<sup>120</sup>ICC, PUBLIC NOTICE OF THE ICC PROSECUTOR: Victims of the violence committed in the context of the August 2008 armed conflict in Georgia have 30 days to make representations to the ICC in the Hague on the opening of an investigation, 13 October 2015.

Available on: [https://www.icc-cpi.int/iccdocs/otp/Article\\_15\\_Application--Notice\\_to\\_victims-ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/Article_15_Application--Notice_to_victims-ENG.pdf)

<sup>121</sup> ICC, PRE-TRIAL CHAMBER, SITUATION IN GEORGIA, NO.:ICC-01/15, 27 January 2016, pp 5-6.

Available on: [https://www.icc-cpi.int/CourtRecords/CR2016\\_00608.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_00608.PDF)

<sup>122</sup>Ibid, p 9.

### 3.3. The international legal perspective of de-occupation of the Georgian territories

The restoration of the territorial integrity of Georgia represents the crucial problem for the country today.

How is the current situation in this direction?

A) After the 2008 Russian-Georgian military conflict, diplomatic relations between the two countries have been cut off. According to the Vienna Convention on **Diplomatic Relations**<sup>123</sup>, a third party Switzerland has held a protective mandate - it represents Georgia's interests in Russia. The broken diplomatic relations extremely complicate the start of negotiations on the de-occupation of the Georgian territories. In addition, normal economic relations have been developed between the two countries in recent years, moreover, the Georgian side has canceled the visa regime for the citizens of Russia;

B) The military bases of the Russian armed forces are deployed in the occupied Abkhazia and South Ossetia - Georgia's breakaway regions, promoting the "creeping occupation-annexation" and, consequently, the Georgian citizens' (including refugees and internally displaced persons) rights are being violated;

C) The Georgian side firmly protects the Ceasefire Agreement signed with Russia in August 2008. According to Paragraph 5 **of the Agreement**<sup>124</sup>, „the Russian troops should have taken the positions they had already seized before the start of the conflict," but the Russian Federation did not fulfill this part of the Agreement and did not withdraw the army from the territory of Akhalkalaki District, which was under the Georgian government's control prior to the war. Also, the Russian Federation refused to allow the representatives of the international observation missions, such as the UNOMIG and the OSCE, to enter the occupied territories.

D) Diplomatic negotiations (the so-called "Geneva format") are permanently held in Geneva, however, without any significant result;

There is a paradoxical situation in the Russian-Georgian relations: on the one hand, it includes simultaneously almost belligerent environment, lack of political ties with each other, the "creeping occupation-annexation" of the Georgian territory, rough violations of human rights, and on the other hand - normal economic and humanitarian-cultural contacts.

And yet what perspective can be seen?

The best solution for the de-occupation of the country is to take peaceful diplomatic steps that would restore the territorial integrity of Georgia within its internationally recognized borders. First of all, this means the policy that would be pursued by Georgia towards Russia and vice versa.

The issue of the conflict resolution in Georgia is always put on the agenda of international organizations, such as the UN, the EU, the Council of Europe, NATO and so on. They greatly support and assist Georgia. This is confirmed by the meeting of the Ministers' Deputies of the Council of Europe held on November 8, 2017, where the Secretary General of the Council presented the consolidated report on the Conflict in Georgia. The report stated that "the informal talks of Georgian Prime Minister's Special Representative for Relations with Russia and Russia's State Secretary and Deputy Foreign Minister are recognised to have a positive effect on the process of normalisation of bilateral **economic ties**"<sup>125</sup>. Also, attention was

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<sup>123</sup> Vienna Convention on Diplomatic Relations 1961, Article 45.

Available on: [http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf)

<sup>124</sup> Embassy of France in Washington, D.C., Peace agreement between Russia and Georgia, 14 August 2008.

Available on: <https://franceintheus.org/spip.php?article1101>

<sup>125</sup> COUNCIL OF EUROPE, "Consolidated report on the conflict in Georgia", SG/Inf(2017)38, 31 October 2017.

Available on: <https://rm.coe.int/1680763063>

paid to the cases of human rights violation in the occupied territories of Georgia, namely, "there has been no change for the better in the Abkhazian region, but some of the observers think that the intensive military exercises in Abkhazia have exacerbated a syndrome of vulnerability and fear among the locals"<sup>126</sup>. Also, the situation has remained unchanged regarding the property rights of ethnic Georgians and the right to freedom of movement. As regards South Ossetia, the report emphasized the so-called "borderization"<sup>127</sup>, which implies the "creeping occupation". "It is mentioned that the "borderization" violates the right to property and the right to freedom of movement of local residents." It was also noted that the Georgian government still continued educational, healthcare and other programs free of charge for civilian inhabitants, who had moved to Georgia voluntarily from the conflict zone.

Depending on this report, the current negotiations between Russia and Georgia positively affect the Russian-Georgian relations, while the situation in South Ossetia and Abkhazia remains unchanged.

As we have already mentioned, the Russian Federation is trying to gain control of its neighboring countries (the so-called Near Abroad Countries), which is evidenced by the developments unfolded in Georgia and Ukraine. Georgia and Ukraine are also striving for NATO and the EU-membership, which will guarantee the safety for both countries. In the case of NATO membership, NATO servicemen will defend the security and territorial integrity of both countries; the Russian Federation perceives this fact as its threat and spares no efforts to resist these developments. The 2008 military conflict can be also considered in the same way, because the confrontation began after the Bucharest Summit, where the NATO leaders reaffirmed<sup>128</sup> that "Georgia will become member of NATO". This statement irritated the Russian Federation.

In fact, we can conclude that the Georgian territories can be de-occupied, if Georgia rejects its aspirations and obey Russia, but considering the current political developments, even if Georgia accepts orders from Russia (in exchange for the abolition of recognition of the independence of Abkhazia and South Ossetia) and retreat from the Euro-Atlantic integration, it will be still difficult to resolve the issue of de-occupation of the territories. Consequently, Georgia can be de-occupied and united only with the help of international organizations. Georgia is not going to reject the values that are called the EU and NATO.

It is necessary to find the ways for communication with Russia and direct contacts with the Russian leaders.

It is also needed to activate direct contacts with the Abkhaz and Ossetian population and organize informal meetings with the mediation and promotion of NGOs of Western countries.

The international legal status of Abkhazia and South Ossetia must be defined, which would be a kind of innovation in comparison with earlier proposed one (for example, taking Andorra's precedent into account).

There is still a chance to restore Georgia's territorial integrity, but we must analyze that the more time goes by and the more generations change, the more difficult and eventually impossible it will become to solve the problem. That is why it is necessary to reach consensus and important compromises.

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<sup>126</sup> Ibid

<sup>127</sup> Ibid

<sup>128</sup> Office of State Minister of Georgia on European & Euro-Atlantic Integration, "Georgia and the Nato".

Available on: <http://www.eu-nato.gov.ge/en/nato>

## Conclusion

The current problem in Georgia caused due to the relocation of the Russian-occupied-territory, namely, the so-called "administrative boundary" of South Ossetia and Abkhazia Regions to the territory controlled by the Georgian authorities is put on the agenda of the state government and international organizations. This unprecedented international legal phenomenon is known as the "creeping occupation", which violates Georgia's territorial integrity and breaches its sovereignty and the rights of local civilians. On the basis of certain facts and through citing the International Conventions, the present master's thesis responds to the question of the research – specifically, what kind of criminal offenses have taken place during the "creeping occupation."

First of all, the survey includes a historical aspect of the Georgian-Russian military conflicts (in 1921, 1992, 2008), resulting in the occupation of the Georgian territories. The thesis also represents the criminal acts committed by both Georgian and Russian troops before and during the 2008 military conflict, causing the death of civilians and the destruction of their property. In the course of the air attacks (on medical units and civilians), the Russian army had been widely using the so-called "cluster bombs", which led to violation of certain Articles of the International Conventions and humanitarian law.

Based on the research, it becomes clear why and after what circumstances the Russian Federation launched the "creeping occupation". The reasons for the start of the "creeping occupation" and its legal definition are given here. During the open military confrontation with Georgia, the Russian authorities had become aware of the great support Georgia enjoyed from Europe and America. Accordingly, Moscow took advantage of the "silent" occupation policy that was called the "creeping occupation"/"borderization".

As a result of the "creeping occupation", the rights of local residents, in particular, the right to property and the right to freedom of movement were violated, civilians were illegally deprived of liberty and the reports of a number of international organizations and NGOs had also confirmed this.

The thesis also focuses on the property restitution for IDPs, which should be implemented in accordance with the Principles adopted by the United Nations Commission on Human Rights - "Housing and property restitution in the context of the return of refugees and internally displaced persons", which is also recognized by Article 15 of the Law of Georgia on IDPs.

We drew a parallel to the wall Israel had built on the occupied territory of Palestine; the case was considered by the UN International Court of Justice. As per this casus, the Israeli state built a wall on the territory (which belonged to Palestine before being occupied) captured by it and caused violation of basic human rights, in particular, Israel breached the right to self-determination and the right to freedom of movement. In the case of Georgia, the similar barrier is established by Russia as a movable barbed wire fence stretched across the so-called administrative border dividing the occupied zones from the Georgian-controlled territories and, accordingly, the Russian Federation violates the right to freedom of movement.

The thesis discusses the role of the International Criminal Court in The Hague (ICC) in the developments - in 2015 it launched an investigation into the case and obtained evidence of the war crimes and crimes against humanity committed during and after the 2008 Russian-Georgian hostilities. Therefore, the ICC's decision will play a crucial role in the restoration of justice.

As for the perspective of de-occupation of the Georgian territories, this thesis has thoroughly considered and determined the problem Georgia and its people are facing today and it

has also underlined how the international community is trying to solve this urgent issue along with Georgia through diplomatic ways, the outcome of which is evident.

While analyzing the present master's thesis, we can conclude the following: despite the fact that the Russian Federation has occupied part of the territory of Georgia and, like the latter, it undertakes certain obligations under the International Conventions, Moscow is not going to fulfill these liabilities. Besides, the Russian Federation is still carrying out the so-called creeping occupation and is not only posing a threat to the protection of the civilians' rights, but it is also directly violating the above-mentioned rights.

## **Bibliography**

### **Primary Sources**

#### **Conventions:**

1. Council of Europe, European Convention on Human Right and Fundamental Freedom. Available on: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)
2. International Committee of the Red Cross (ICRC) Commentary. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention 12 August 1949. Available on: [https://www.loc.gov/rr/frd/Military\\_Law/pdf/GC\\_1949-IV.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf)
3. International Committee of The Red Cross (ICRC) Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. Available on: <https://ihl-databases.icrc.org/ihl/INTRO/195>
4. International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Available on: <https://ihl->

[databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8A9E7E14C63C7F30C12563CD0051DC5C](https://databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8A9E7E14C63C7F30C12563CD0051DC5C)

5. International Committee of the Red Cross (ICRC), Protocols Additional, To The Geneva Conventions of 12 August 1949. Available on: [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf)
6. Vienna Convention on Diplomatic Relations 1961. Available on: [http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf)

#### **Cases:**

1. ECtHR Decision, Case no. 13255/07, Georgia v. Russia, 3 July 2014. Available on: [https://hudoc.echr.coe.int/eng#{"fulltext":\["13255/07"\],"itemid":\["001-145546"\]}](https://hudoc.echr.coe.int/eng#{)
2. ICJ, "LEGAL CONSEQUENCES OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY" Advisory Opinion, 2004. Available on: <http://www.icj-cij.org/en/case/131>

#### **Resolution:**

1. Committee on Migration, Refugees and Population, Rapporteur: Mrs Corien W.A. Netherlands, Groups of the European People's Party. The humanitarian consequences of the war between Georgia and Russia: follow-up given to the Resolution 1648(2009), April 2009. Available on: [https://www.ecoi.net/file\\_upload/470\\_1239711804\\_edoc11859.pdf](https://www.ecoi.net/file_upload/470_1239711804_edoc11859.pdf)
2. European Parliament resolution of 5 June 2008 on situation in Georgia. Available on: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0253&format=XML&language=EN>
3. OSCE PA, Resolution on the Conflict in Georgia, Available on: <https://www.oscepa.org/documents/all-documents/annual-%20sessions/2016-tbilisi/declaration-24/3371-tbilisi-declaration-eng/file>
4. UN, Commission on Human right, Report of the Representative of the Secretary-General, Mr Francis M.Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, E/cn.4/1998/53/Add. Available on: <http://www.un-documents.net/gpid.htm>
5. UN Resolution adopted by the General Assembly, 3314(XXIX). Definition of Aggression. Available on: <http://www.un-documents.net/a29r3314.htm>

#### **Other International Document**

1. CHARTER OF THE UNITED NATION, 1945. Available on: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>
2. Embassy of France in Washington, D.C. Peace agreement between Russia and Georgia, 14 August 2008. Available on: <https://franceintheus.org/spip.php?article1101>

3. Rome Statute of the International Criminal Court. Available on: [http://legal.un.org/icc/statute/99\\_corr/cstatute.htm](http://legal.un.org/icc/statute/99_corr/cstatute.htm)
4. UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations Treaty Series, vol. 999. Available on: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
5. UN, Security Council, New York, 8 August 2008, S/PV 5952. Available on: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/PV.5952](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5952)
6. UN Sub-Commission on the Promotion and Protection of Human Rights, Housing and property restitution in the context of the return of refugees and internally displaced persons, 28 June 2005, E/CN.4/SUB.2/2005/17. Available on: <http://www.unhcr.org/50f94d849.html>
7. Venice Commission, At its 78<sup>th</sup> Plenary Session, “Opinion On The Law Occupied Territories Of Georgia”, Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)015-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)015-e)

### **Georgian Documents**

1. Ministry of Foreign Affairs of Georgia. “On the Human Right Situation in the Occupied Regions of Georgia”, 2016. Available on: [http://smr.gov.ge/Uploads/VII\\_1b08da4c.pdf](http://smr.gov.ge/Uploads/VII_1b08da4c.pdf)

### **Secondary Sources**

#### **Secondary academic sources:**

#### **Books:**

1. Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the ‘Pinheiro Principles’, Inter-Agency, 2007 March. Available on: [http://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)
2. Jean-Marie Henckaerts and Louise Doswald-Beck, “Customary International Humanitarian Law” Britain 2009. Available on: <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>

## Articles:

1. Annual Human Rights Reports Submitted to Congress by the U.S. Department of State Vol. 32a. Available on: Heinonline database.
2. Coalition for Justice. "Violation of Human Rights on occupied territories of Georgia," Report, 2011. (Own translation). Available on: <http://en.calameo.com/read/000953612f9017b7b894f>
3. Dr. Christopher P.M. Waters, "The Legalization of the Georgia-Russia Conflict of 2008", Journal of Parliamentary and Political Law, October 2009. Available on: WESTLAW database
4. Independent International Fact-Finding Mission on the Conflict in Georgia, Report-Volume II, September 2009. Available on: [http://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_II1.pdf](http://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf)
5. Megan J Ballard. "Pre-Planning for Post-Conflict Property Remedies: A Case Study from Georgia". Geo. Wash. Int'l L. Rev. Vol. 43. 2011. Available on: HeinOnline database.

## Reports

1. COUNCIL OF EUROPE, "Consolidated report on the conflict in Georgia", SG/Inf(2017)38, 31 October 2017. Available on: <https://rm.coe.int/1680763063>
2. UNSC, Report of the Secretary-General on the situation in Abkhazia, Georgia, S/2008/480, 23 July 2008. Available on: <http://www.un.org/en/peacekeeping/missions/past/unomig/unomigDrp.htm>

## Secondary non-academic sources

1. CNN, "Returning home to find your house in a 'different country' ", 10 January 2017. Available on: <http://edition.cnn.com/2017/01/09/europe/georgia-south-ossetia-russia-border/index.html>
2. EUMM in Georgia, Press, "In Russia's 'Frozen zone', a Creeping Border With Georgia", 25.10.2016. Available on: [https://eumm.eu/en/press\\_and\\_public\\_information/features/5639/](https://eumm.eu/en/press_and_public_information/features/5639/)
3. HRW report, "Humanitarian Law Violation and Civilian Victims in the Conflict over South Ossetia", January 2009. Available on: <https://www.hrw.org/sites/default/files/reports/georgia0109web.pdf>
4. ICC, PRE-TRIAL CHAMBER, SITUATION IN GEORGIA, NO.: ICC-01/15, 27 January 2016. Available on: [https://www.icc-cpi.int/CourtRecords/CR2016\\_00608.PDF](https://www.icc-cpi.int/CourtRecords/CR2016_00608.PDF)
5. IDIF information, "Information Regarding the 2008 August War Between Russia and Georgia" Available on: <https://idfi.ge/en/information-about-war-between-russia-georgia-in-august-2008>

6. Public Defender of Georgia, “Public Defender’s Statement on 9<sup>th</sup> Anniversary of August 2008 War” 07 August 2008. Available on: <http://www.ombudsman.ge/en/news/public-defenders-statement-on-9th-anniversary-of-august-2008-war.page>