



THE SECRETARY-GENERAL

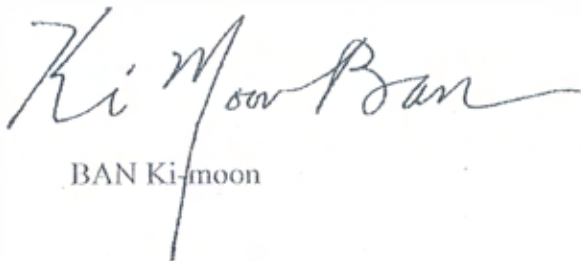
Security Council  
ICJ  
Georgia  
Russia

21 October 2008

Dear Mr. President,

Upon request of the Registrar of the International Court of Justice and in accordance with paragraph 2 of Article 41 of the Statute of the Court and Article 77 of the Rules of Court, I have the honour to transmit herewith the official text, in English and French, of the Order of the Court, made on 15 October 2008. The Order of the Court indicates provisional measures in the case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russian Federation*). The above-mentioned texts have recently been received from the Registry of the Court.

Please accept, Mr. President, the assurances of my highest consideration.

  
BAN Ki-moon

His Excellency  
Mr. Zhang Yesui  
President of the Security Council  
New York

28-12226



To: Mr. Nambiar,

Please find attached for your approval and SG's signature a letter addressed to the President of Security Council transmitting the official text of the Court's Order indicating provisional measures in the Case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation).

Nicholas Haysom

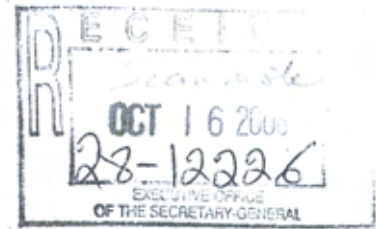
17 October 2008

cc: KWS

Apparently OHA are sending  
an opinion on the impact of  
this judgement, on which  
28-12226  
I have already commented  
in Update 13th Oct.

ACTION  
COPY

ICJ  
Georgia  
Russia



**Note to Mr. Vijay Nambiar**

Order dated 15 October 2008 of the International Court of Justice indicating provisional measures in the Case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation) – communication to the President of the Security Council

- 28-12200
1. By his letter of 15 October 2008 (copy attached), the Registrar of the International Court of Justice (ICJ) informed the Secretary-General of the ICJ's Order indicating provisional measures in the Case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation).
  2. The Registrar further requested that the Secretary-General transmit the official text of the Court's **Order** to the Security Council. This transmission is in accordance with Article 41 (2) of the Statute of the Court which provides that "notice of the measures suggested shall forthwith be given to...the Security Council", and Article 77 of the Rules of the Court which provides that "any provisional measures indicated by the Court...shall forthwith be communicated to the Secretary-General of the United Nations for transmission to the Security Council".
  3. In pursuance of the above, please find attached a letter addressed to the President of the Security Council **transmitting** the official text of the Court's Order, for the Secretary-General's signature.
  4. For ease of reference, please find also attached my Note to the Secretary-General of 15 October 2008, summarizing the ICJ's Order for provisional measures.

  
Peter Taksøe-Jensen  
16 October 2008

## **Note to the Secretary-General**

**Through Mr. Vijay Nambiar**

### Georgia's request before the International Court of Justice (ICJ) for the Indication of Provisional Measures against Russia for violations of the 1965 Convention on the Elimination of All Forms of Racial Discrimination

1. This is to inform you that today the ICJ rendered an Order, by 8 votes in favour and 7 against, on provisional measures in the above-referenced case of Georgia v. Russia.
2. The ICJ has decided that both Parties, within South Ossetia and Abkhazia and adjacent areas in Georgia, shall:
  - refrain from any act of racial discrimination against persons, groups of persons or institutions;
  - abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations;
  - whenever and wherever possible, ensure, without distinction as to national or ethnic origin: security of persons; the right of persons to freedom of movement and residence within the border of the State; and the protection of the property of displaced persons and of refugees;
  - ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions;
  - facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination;
  - refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve; and
  - inform the Court as to their compliance with the above provisional measures.
3. With regard to the legal effect of provisional measures taken by the Court, we would like to advise that pursuant to Article 94(1) of the UN Charter, "[e]ach Member of the United Nations undertakes to comply with the decision of the International Court of

## COUR INTERNATIONALE DE JUSTICE

## INTERNATIONAL COURT OF JUSTICE

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Par télécopie

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## COPIE

A : 00 2 212 963 21 55

De : 00 31 70 364 99 28

133303

Le 15 octobre 2008

Monsieur le Secrétaire général,

J'ai l'honneur de vous informer que, ce jour, la Cour a rendu son ordonnance sur la demande en indication de mesures conservatoires présentée par la Géorgie en l'affaire relative à l'Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie).

Le texte du dispositif de l'ordonnance est le suivant :

«LA COUR, rappelant aux Parties leurs obligations découlant de la convention internationale sur l'élimination de toutes les formes de discrimination raciale,

Indique à titre provisoire les mesures conservatoires suivantes :

A. Par huit voix contre sept,

Les deux Parties devront, en Ossétie du Sud, en Abkhazie et dans les régions géorgiennes adjacentes,

- 1) s'abstenir de tous actes de discrimination raciale contre des personnes, des groupes de personnes ou des institutions ;
- 2) s'abstenir d'encourager, de défendre ou d'appuyer toute discrimination raciale pratiquée par une personne ou une organisation quelconque ;

/.

Son Excellence  
Monsieur Ban Ki-moon  
Secrétaire général des Nations Unies  
New York,  
Etats-Unis d'Amérique

## COUR INTERNATIONALE DE JUSTICE - 3 - INTERNATIONAL COURT OF JUSTICE

POUR : Mme Higgins, président ; MM. Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor, juges ; M. Gaja, juge *ad hoc* ;

CONTRE : M. Al-Khasawneh, vice-président ; MM. Ranjeva, Shi, Koroma, Tomka, Bennouna, Skotnikov, juges, »

/. Conformément à l'article 41, paragraphe 2, du Statut et à l'article 77 du Règlement de la Cour, je vous fais tenir ci-joint, pour transmission au Conseil de sécurité, le texte intégral de cette ordonnance, en français et en anglais, le texte français faisant foi. Le texte imprimé de l'ordonnance vous sera transmis dès que possible.

/. Vous trouverez également ci-joint, en français et en anglais, le texte du communiqué de presse n° 2008/35, en date de ce jour, ainsi qu'un résumé (n° 2008/4) de l'ordonnance, auquel sont annexés des résumés des opinions accompagnant ladite ordonnance.

Veuillez agréer, Monsieur le Secrétaire général, les assurances de ma très haute considération.

Le Greffier de la Cour,  
  
Philippe Couvreur.



1. Whereas by an Application filed in the Registry of the Court on 12 August 2008, the Government of Georgia instituted proceedings against the Russian Federation for alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "CERD");

2. Whereas Georgia, in order to found the jurisdiction of the Court, relied in its Application on Article 22 of CERD which provides that:

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

3. Whereas in its Application Georgia states that:

"The Russian Federation, acting through its organs, agents, persons and entities exercising elements of governmental authority, and through South Ossetian and Abkhaz separatist forces under its direction and control, has practised, sponsored and supported racial discrimination through attacks against, and mass-expulsion of, ethnic Georgians, as well as other ethnic groups, in the South Ossetia and Abkhazia regions of the Republic of Georgia",

and that the Russian Federation seeks to consolidate changes in the ethnic composition of South Ossetia and Abkhazia resulting from its actions "by preventing the return to South Ossetia and Abkhazia of forcibly displaced ethnic Georgian citizens and by undermining Georgia's capacity to exercise jurisdiction in this part of its territory"; whereas Georgia contends that "[t]he changed demographic situation in South Ossetia and Abkhazia is intended to provide the foundation for the unlawful assertion of independence from Georgia by the *de facto* South Ossetian and Abkhaz separatist authorities";

4. Whereas Georgia explains the origin of the conflict in South Ossetia as follows:

"On 10 November 1989, the Regional Public Council of the South Ossetian Autonomous District [which formed part of the Georgian Soviet Socialist Republic] formally requested the Georgian Supreme Soviet to upgrade the status of the District to 'Autonomous Republic'. After the Georgian Supreme Soviet refused, on 28 November 1990, the Regional Public Council of the South Ossetian Autonomous District re-named the District the 'Soviet Republic of South Ossetia', and scheduled elections for a new Supreme Council to be held on 9 December 1990 . . .

On 11 December 1990, the Georgian Supreme Soviet declared the 9 December elections illegitimate . . . , annulled the results, and abolished the Autonomous District of South Ossetia and its Regional Public Council.

Following these events, violent conflict broke out . . . Throughout 1991, coinciding with Georgia's Declaration of Independence on 9 April, over 1,000 people

whereas it claims that the Russian Federation “has supported the South Ossetian and Abkhaz separatists’ quest for independence from Georgia”; and whereas Georgia concludes that “[a]chieving this goal necessarily implies the expulsion of ethnic Georgians and other populations from their homes, and denial of their right to return to their homes and to live in peace within the sovereign territory of Georgia”;

11. Whereas Georgia asserts that, as part of its policy of racial discrimination, the Russian Federation “has consistently frustrated the return of Internally Displaced Persons (IDPs) since the conflicts of 1991-1994” and that, as a consequence, “demographic changes forced upon the population by the South Ossetian and Abkhaz separatists with Russian support are more likely to become permanent”;

12. Whereas, in its Application, Georgia points out that in furtherance of its policy to support “South Ossetian and Abkhaz separatists”, the Russian Federation has taken other actions that violate CERD; whereas, by way of example, Georgia contends that “the Russian Federation has conferred its citizenship upon almost the entire non-ethnic Georgian population of South Ossetia and Abkhazia” and that ethnic Georgians remaining in South Ossetia and Abkhazia “who have refused to renounce their Georgian citizenship in favour of Russian citizenship, have faced active intimidation and harassment by soldiers associated with [the] armed forces of the Russian Federation”;

13. Whereas Georgia asserts that “the *de facto* separatist authorities of South Ossetia and Abkhazia enjoy unprecedented and far-reaching support from the Russian Federation in the implementation of discriminatory policies against the ethnic Georgian population” and that this support “has the effect of denying the right of self-determination to the ethnic Georgians remaining in South Ossetia and Abkhazia and those seeking to return to their homes in South Ossetia and Abkhazia since the ceasefires of 1992 and 1994, respectively”; and whereas it claims that “by recognizing and supporting South Ossetia’s and Abkhazia’s separatist authorities, the Russian Federation is also preventing Georgia from implementing its obligations under CERD, by assuming control over its territory”;

14. Whereas in its Application Georgia claims that “the Russian Federation has also systematically attempted to undermine Georgia’s territorial sovereignty” by taking steps to recognize the independence of South Ossetia and Abkhazia; and whereas it adds that these acts have “significantly escalated tensions in South Ossetia and Abkhazia, and opened the door to further conflict”;

15. Whereas Georgia claims that, as from April 2008, in addition to the measures designed to strengthen the legitimacy of the *de facto* institutions of the separatist authorities, “the Russian Federation [has] also increased its military activities in both regions as a prelude to its invasion of Georgia in August 2008”; and whereas, according to Georgia, “Russia’s military build-up was accompanied by a campaign of discrimination against ethnic Georgians and others who might be opposed to the extension of Russian influence in South Ossetia and Abkhazia”;



- (b) widespread and systematic denial on discriminatory grounds of the right of South Ossetia's and Abkhazia's ethnic Georgian and other refugees and IDPs to return to their homes;
- (c) widespread and systematic unlawful appropriation and sale of homes and other property belonging to South Ossetia's and Abkhazia's ethnic Georgians and other groups forcibly displaced during the conflicts of 1991-1994, 1998, 2004 and 2008 and denied the right to return to the South Ossetian and Abkhaz regions;
- (d) the continuing discriminatory treatment of ethnic Georgians in South Ossetia and in the Gali District of Abkhazia, including but not limited to pillage, hostage-taking, beatings and intimidation, denial of the freedom of movement, denial of their right to education in their mother tongue, pressure to obtain Russian citizenship and/or Russian passports, and threats of punitive taxes and expulsions for maintaining Georgian citizenship;
- (e) the sponsoring, defending, and supporting of ethnic discrimination by the *de facto* South Ossetian and Abkhaz separatist authorities and the recognition as lawful of a situation created by a serious breach of Russia's obligations under CERD and of its obligations *erga omnes*, namely recognition in whole or in part of the South Ossetian and Abkhaz separatist entities amounting to recognition of a situation created by 'ethnic cleansing' constituting the crime against humanity of persecution and systematic discrimination on ethnic grounds;
- (f) preventing the Republic of Georgia from exercising jurisdiction over its territory in the regions of South Ossetia [and] Abkhazia in order to implement its obligations under CERD; and
- (g) the launching of a war of aggression against Georgia with the aims of (i) securing ethnically homogeneous allies in South Ossetia and Abkhazia free from Georgian political, social and cultural influence; (ii) permanently denying the right of displaced ethnic Georgians to return to their homes in South Ossetia and Abkhazia; and (iii) permanently denying all the people of Georgia their right to self-determination in accordance with CERD";

22. Whereas, at the end of its Application, Georgia asks the Court to adjudge and declare that:

"the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of or under the direction and control of the Russian Federation, has violated its obligations under CERD by:

- (a) engaging in acts and practices of 'racial discrimination against persons, groups of persons or institutions' and failing 'to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation' contrary to Article 2 (1) (a) of CERD;

- (f) not to recognize in any manner whatsoever the *de facto* South Ossetian and Abkhaz separatist authorities and the fait accompli created by ethnic cleansing;
- (g) not to take any measures that would discriminate against persons, whether legal or natural, having Georgian nationality or ethnicity within its jurisdiction or control;
- (h) allow Georgia to fulfil its obligations under CERD by withdrawing its forces from South Ossetia and Abkhazia and allowing Georgia to restore its authority and jurisdiction over those regions; and
- (i) to pay full compensation to Georgia for all injuries resulting from its internationally wrongful acts”;

24. Whereas, on 14 August 2008, Georgia, referring to Article 41 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court, submitted a Request for the indication of provisional measures, pending the Court’s judgment in the proceedings instituted by Georgia against the Russian Federation, in order to preserve its rights under CERD “to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries”, including

“unlawful attacks against civilians and civilian objects, murder, forced displacement, denial of humanitarian assistance, and extensive pillage and destruction of towns and villages, in South Ossetia and neighbouring regions of Georgia, and in Abkhazia and neighbouring regions, under Russian occupation”;

25. Whereas Georgia observes that “[t]he continuation of these violent discriminatory acts constitutes an extremely urgent threat of irreparable harm to [its] rights under CERD in dispute in this case”;

26. Whereas, in its Request for the indication of provisional measures, Georgia refers to the basis of jurisdiction of the Court invoked in its Application, and to the facts set out and the submissions made therein;

27. Whereas Georgia reiterates the contention made in its Application that

“beginning in the early 1990s and acting in concert with separatist forces and mercenaries in the Georgian regions of South Ossetia and Abkhazia, the Russian Federation has engaged in a systematic policy of ethnic discrimination directed against the ethnic Georgian population and other groups in those regions”;

and that these actions have “directly or indirectly resulted in the death or disappearance of thousands of civilians and the internal displacement of approximately 300,000 persons”, whose right of return is being denied;

33. Whereas Georgia claims that “the rights which are the subject of the dispute are set forth in Articles 2; 3, 4, 5 and 6 of CERD”; whereas Georgia further claims that the rights under CERD that Georgia seeks to protect with its Request “arise from the obligations of the Russian Federation to prevent acts of ethnic discrimination”, including:

- “(a) the right to ensure that the Russian Federation and separatist authorities under its direction and control refrain from any further act or practice of ethnic discrimination against Georgian citizens and that civilians are fully protected against such acts in territories under the occupation or effective control of Russian forces, pursuant to Article 2 (1);
- (b) the right to ensure that the Russian Federation and separatist authorities under its direction and control refrain from any further acts resulting in the recognition of or rendering permanent the ethnic segregation of Georgian citizens through forced displacement or denial of the right of IDPs to return to their homes in South Ossetia, Abkhazia, and adjacent territories under the occupation or effective control of Russian forces, pursuant to Article 3;
- (c) the right to ensure that the Russian Federation and separatist authorities under its direction and control refrain from any further acts violating the enjoyment by Georgian citizens of fundamental human rights including in particular the right to security of the person and protection against violence or bodily harm, the right to freedom of movement and residence within the borders of Georgia, the right of IDPs to return to their homes under conditions of safety, and the right to protection of homes and property against pillage and destruction, pursuant to Article 5; and
- (d) the right to ensure that the Russian Federation and separatist authorities under its direction and control refrain from any acts denying to Georgian citizens under their jurisdiction effective protection and remedies against ethnic discrimination and violations of human rights pursuant to Article 6”;

34. Whereas Georgia accordingly requests the Court “as a matter of utmost urgency” and “in order to prevent irreparable prejudice to the rights of Georgia and its citizens under CERD”, to order the following measures:

- “(a) the Russian Federation shall give full effect to its obligations under CERD;
- (b) the Russian Federation shall immediately cease and desist from any and all conduct that could result, directly or indirectly, in any form of ethnic discrimination by its armed forces, or other organs, agents, and persons and entities exercising elements of governmental authority, or through separatist forces in South Ossetia and Abkhazia under its direction and control, or in territories under the occupation or effective control of Russian forces;

Georgia, in these territories ethnic Georgians have been subjected to systematic discriminatory acts, including physical violence and the plunder and destruction of their homes; and whereas it is stated that “[t]he manifest objective of this discriminatory campaign is the mass-expulsion of the ethnic Georgian population from South Ossetia, Abkhazia, and other neighbouring areas of Georgia”;

43. Whereas Georgia submits that in a number of specific areas of Georgia allegedly under Russian control, “widespread and systematic acts of violent racial discrimination” have been committed against ethnic Georgians; and whereas it adds that “[a] particular cause for concern is the Russian occupation of [the] Akhgori District, outside and to the east of South Ossetia, and previously under Georgian Government control”;

44. Whereas it is contended in the Additional Request that the Russian Federation has consolidated its “effective control” over the occupied “Georgian regions of South Ossetia and Abkhazia, as well as adjacent territories” which are situated within “Georgia’s internationally recognized boundaries”; and whereas therefore, for the purposes of the fulfilment by the Russian Federation of its obligations under CERD, “South Ossetia, Abkhazia, and relevant adjacent regions, fall within the Russian Federation’s jurisdiction”;

45. Whereas Georgia asserts in its Amended Request that it requests the Court to indicate provisional measures in order to prevent irreparable prejudice “to the right of ethnic Georgians to be free from discriminatory treatment, in particular violent or otherwise coercive acts . . . and other acts intended to expel them from their homes in South Ossetia, Abkhazia, and adjacent regions located within Georgian territory” and “to the right of return of ethnic Georgians to South Ossetia and Abkhazia”;

46. Whereas Georgia alleges that, owing to the Russian Federation’s continuing discrimination against ethnic Georgians in Abkhazia, South Ossetia and neighbouring areas,

“the remaining ethnic Georgians in South Ossetia, Abkhazia, and adjacent regions, are at imminent risk of **violent** expulsion, death or personal injury, hostage-taking and unlawful detention, and damage to or loss of their homes and other property”;

and whereas it adds that “the prospects for the return of those ethnic Georgians who have already been forced to flee are rapidly deteriorating”;

47. Whereas Georgia states that it urgently requests the indication of provisional measures

right of return to South Ossetia, Abkhazia, and adjacent regions by ethnic Georgians and any other persons who have been expelled from those regions on the basis of their ethnicity or nationality;

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

49. Whereas, on 4 September 2008, Georgia communicated to the Court “Observations on Provisional Measures” consisting of a set of documents relating to Georgia’s Amended Request for the indication of provisional measures; and whereas, on 5 September 2008, the Russian Federation communicated to the Court the “Contribution of the Russian Federation to the hearings on provisional measures” also consisting of a set of documents;

50. Whereas, at the public hearings held on 8, 9 and 10 September 2008, in accordance with Article 74, paragraph 3, of the Rules of Court, oral statements on the Request for the indication of provisional measures were presented by the following representatives of the Parties:

*On behalf of Georgia:*

H.E. Ms Tina Burjaliani,  
Mr. James R. Crawford,  
Mr. Payam Akhavan,  
Mr. Paul S. Reichler;

*On behalf of the Russian Federation:*

H.E. Mr. Roman Kolodkin,  
H.E. Mr. Kirill Gevorgian,  
Mr. Alain Pellet,  
Mr. Andreas Zimmermann,  
Mr. Samuel Wordsworth;

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51. Whereas, in its first round of oral argument, Georgia restated the position set out in its Application and in its Amended Request for the indication of provisional measures, and indicated that the requirements for the indication by the Court of the provisional measures requested have been met in the present case;

52. Whereas Georgia claimed that “the discrimination against the ethnic Georgian communities in Abkhazia, South Ossetia and the Gori district gained momentum” following 8 August 2008; and whereas it asserted that “in the last month, more than 158,000 ethnic Georgians have been added to the number of internally displaced persons in Georgia” which meant that “10 per cent of the Georgian population is now living in exile in their own country”;

explained that ethnic tensions in the Georgian autonomous regions, in particular in Abkhazia and South Ossetia, had been exacerbated in the late 1980s with the coming to power in Georgia of nationalists seeking independence, such as Zviad Gamsakhurdia, the first President of Georgia, who launched a political programme with the slogan “Georgia for Georgians”; whereas the Russian Federation contended that Georgia took steps to deprive Abkhazia and South Ossetia of their respective autonomous status, which actions “provoked a reaction on the part of the Abkhazians and Ossetians”; whereas the Russian Federation claimed that “Tbilisi responded by sending military and paramilitary forces to Tskhinvali, the capital of South Ossetia, in January 1991” leading to a state of civil war; whereas, according to the Russian Federation, while on 9 April 1991 Georgia declared its independence, it denied the right of self-determination to Abkhazia and South Ossetia; and whereas, the Russian Federation added that a civil war broke out in 1992 in Abkhazia, with “the clashes between the Georgian forces and the Abkhaz militia caus[ing] many deaths on both sides”;

59. Whereas the Russian Federation indicated that “the violent phase of the conflict in South Ossetia” came to an end by the signing on 24 June 1992 of the Treaty between the Russian Federation and Georgia on the principles of the settlement of the conflict; whereas the Russian Federation explained that, under this Treaty, a joint peacekeeping force consisting of three battalions — Russian, Georgian and Ossetian — was deployed in the region; and whereas, according to the Russian Federation, “in the Georgian villages, it was the Georgian forces that carried out the peacekeeping duties”;

60. Whereas the Russian Federation claimed that the hostilities in Abkhazia were for the most part halted following the deployment of a Russian contingent acting as the Collective Peacekeeping Force of the Commonwealth of Independent States set up under the Moscow Agreement on a Ceasefire and Separation of Forces signed between Georgia and Abkhazia in 1994, “under the aegis of Russia”; whereas it added that in August 1993, the United Nations Security Council, by its resolution 858 (1993), had decided to establish the United Nations Observer Mission in Georgia (UNOMIG), whose task was to verify respect for an earlier ceasefire agreement of 27 July 1993; and whereas on 4 April 1994 Georgia, Abkhazia, the Russian Federation and the United Nations High Commissioner for Refugees signed the quadripartite agreement on the voluntary return of displaced persons;

61. Whereas the Russian Federation contended that “the mechanisms for peacekeeping and negotiation received the support of international governmental organizations such as the United Nations and the OSCE, and of Georgia itself”;

62. Whereas the Russian Federation maintained that “progress was made in the peace process until Mr. Saakashvili came to power [in Georgia] at the end of 2003”; whereas it asserted that, from May 2004, troops and special units of the Georgian Ministry of the Interior were moved into the Georgian-Ossetian zone of conflict, reserved strictly for the peacekeeping forces, and that in August 2004 these troops bombarded Tskhinvali in an attempt to invade it; whereas the Russian Federation claimed that in February 2005 President Saakashvili formally renounced the ceasefire “which had been concluded between the parties in November 2004 through the active mediation of Russia”; and whereas, according to the Russian Federation, in Abkhazia “progress in the settlement process was abruptly halted by the deployment of the Georgian contingent in the Kodori gorge in 2006, in violation of all the agreements and of the decisions of the United Nations”;



“(1) non-use of force; (2) the absolute cessation of hostilities; (3) free access to humanitarian assistance; (4) withdrawal of the Georgian armed forces to their permanent positions; (5) withdrawal of the Russian armed forces to the line where they were stationed prior to the beginning of hostilities; pending the establishment of international mechanisms, the Russian peacekeeping forces will take additional security measures; (6) an international debate on ways to ensure security and stability in the region”;

and whereas the Russian Federation stated that “the agreement protocol laying down these principles was signed in turn by the parties to the conflict, namely the leaders of South Ossetia, Abkhazia and Georgia, through the intermediary of Russia and in the presence of the OSCE and the European Union”;

68. Whereas the Russian Federation claimed that it “immediately began to implement these six principles”; whereas it explained that the ceasefire was announced on 12 August 2008, and that on 16 August 2008, the Russian forces began their withdrawal which was completed around 2 September 2008; whereas, according to the Russian Federation, at the current time, “there is no military presence outside the security zones established in accordance with the fifth Medvedev-Sarkozy principle, all the more so because those zones coincide with the areas of responsibility of the peacekeeping forces as defined before Georgia launched its offensive”;

69. Whereas, during the first round of oral argument, the Russian Federation stated that, at that time, there were 3,750 Russian peacekeeping soldiers in Abkhazia and 3,700 Russian troops in South Ossetia; whereas it pointed out that in South Ossetia 272 soldiers were stationed at observation posts along the perimeter of the security zone and, in addition, 180 soldiers were divided among ten observation posts along the border between South Ossetia and Georgia, while the remaining troops were engaged “in mine clearing, assembling and evacuating military equipment, rebuilding civilian infrastructure damaged in the hostilities... distributing humanitarian aid and providing medical assistance” in order “to help South Ossetia to return to normal life, including those Ossetian villages inhabited by Georgians”; whereas, the Russian Federation indicated that, in accordance with the fifth Medvedev-Sarkozy principle, “the additional security measures taken by the Russian forces will be ended when an international mechanism is put in place” and added that “Russia is involved in intensive negotiations on the creation of such a mechanism”;

70. Whereas the Russian Federation contended that, until the present crisis, it merely played the role of an impartial mediator in the ethnic conflicts in the Caucasus, acting as a guarantor of peace and security in the region, and had never “practised, encouraged or supported racial discrimination in South Ossetia and Abkhazia”; and whereas it asserted that “the present dispute between Georgia and Russia has nothing to do with racial or ethnic discrimination”;

71. Whereas the Russian Federation stressed that, as was apparent from the factual context of the case, the dispute brought by Georgia before the Court did not relate to racial discrimination; and whereas the Russian Federation claimed that, in the absence of a dispute between the Parties relating to the interpretation or application of CERD, the Court manifestly lacked jurisdiction to deal with the merits of the proceedings and thus the Request for the indication of provisional measures should be rejected;

proceedings under Article 41 is to avoid prejudging in any manner whatsoever the outcome of the claim on the merits”; and whereas the Russian Federation added that “the very purpose of Article 41 is to preserve the respective rights of both parties”;

78. Whereas the Russian Federation requested the Court “to declare that it has no jurisdiction to adjudicate upon the Application of Georgia, to reject the Request for provisional measures and to remove this case from the General List”;

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79. Whereas, in its second round of oral argument, Georgia restated its position that “Georgia’s claims in its Application and the rights it asserts in both the initial and amended Requests are grounded in the 1965 Convention and in that Convention alone” and that “Georgia makes no claim here under international humanitarian law or the *jus ad bellum*”; and whereas Georgia affirmed its position that “the evidence that has been submitted is more than sufficient to establish the facts of ongoing ethnic cleansing for the purposes of a provisional measures hearing” and that “the risk of irreparable harm to the ethnic Georgians who still remain in the Akhagori district of South Ossetia, the Gali district of Abkhazia, and the portion of the Gori district that Russian military forces still occupy as their so-called ‘buffer zone’”, is real and grave;

80. Whereas at the end of its second round of oral observations Georgia requested the Court

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

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

“European Union Monitors: 200 European Union monitors to deploy to regions surrounding South Ossetia and Abkhazia by October 1.

Russian Withdrawal: Russian peacekeeping forces to withdraw from posts outside the Black Sea port Poti and the area near the town of Senaki within seven days, on condition Georgia signs a pledge not to use force against the breakaway province of Abkhazia. Full withdrawal of Russian peacekeepers from regions surrounding South Ossetia and Abkhazia will take place within ten days of deployment of EU monitors.

Georgian pullout: Georgian troops must return to their barracks by October 1.

International talks: International talks to begin on October 15 in Geneva; agenda to include security and stability in South Caucasus and the question of return of refugees”;

whereas the Russian Federation submitted to the Court the full text of the plan; whereas it contended that the number of Russian troops stationed at observation posts along the perimeter of the security zone had been reduced to 195 since 8 September 2008; and whereas it stated that refugees and displaced persons were returning to their places of residence;

83. Whereas at the end of its second round of oral observations the Russian Federation summarized its position as follows:

“First: The dispute that the Applicant has tried to plead before this Court is evidently not a dispute under the 1965 Convention. If there were a dispute, it would relate to the use of force, humanitarian law, territorial integrity, but in any case not to racial discrimination.

Second: Even if this dispute were under the 1965 Convention, the alleged breaches of the Convention are not capable of falling under the provisions of the said Convention, not the least because Articles 2 and 5 of the Convention are not applicable extraterritorially.

Third: Even if such breaches occurred, they could not, even *prima facie*, be attributable to Russia that never did and does not now exercise, in the territories concerned, the extent of control required to overcome the set threshold.

Fourth: Even if the 1965 Convention could be applicable, which . . . is not the case, the procedural requirements of Article 22 of the 1965 Convention have not been met. No evidence that the Applicant proposed to negotiate or employ the mechanisms of the Committee on Racial Discrimination prior to reference to this Court, has been nor could have been produced.

Fifth: With these arguments in mind, the Court manifestly lacks jurisdiction to entertain the case.

87. Whereas Georgia asserts that, as regards the Court's jurisdiction *ratione personae*, both Georgia and the Russian Federation are Members of the United Nations and parties to the Statute of the Court; whereas it further states that both Georgia and the Russian Federation are parties to CERD, Georgia having deposited its instrument of accession on 2 June 1999 and the Russian Federation "by virtue of its continuation of the State personality of the USSR" which has been a party to CERD since 1969; and whereas Georgia adds that "neither party maintains any reservation to article 22 of the Convention";

88. Whereas Georgia contends that, as regards the Court's jurisdiction *ratione materiae*, the object and purpose of CERD is to eliminate racial discrimination in "all its forms and manifestations"; whereas it states that the principle of non-discrimination on racial, including ethnic, grounds is "concerned not merely with discrimination against individuals but with collective discrimination against communities and with fundamental issues relating to the composition of territorial communities, including the granting and withdrawal of nationality"; whereas Georgia points out that Article 22 of CERD confers upon the Court jurisdiction over "any dispute . . . with respect to the interpretation or application of this Convention"; whereas it stresses that the term "any dispute" concerns either the "interpretation or application" of the Convention; whereas it concludes that the Court has therefore "jurisdiction to pronounce on the scope of the rights and responsibilities set out in the Convention but also upon the consequences of breach of those rights and responsibilities";

89. Whereas Georgia argues that ethnic discrimination is and has been a key aspect in the conflicts in South Ossetia and Abkhazia; whereas it further argues that this case is, in particular, about the ethnic cleansing, as a form of racial discrimination, of ethnic Georgians and other minorities from regions within Georgian territory, in particular, for present purposes, the regions of Abkhazia, South Ossetia and the adjacent Gori district; whereas it alleges that ethnic Georgians have been "targeted, and forcibly expelled from these regions in great numbers and denied the right to return over the course of more than a decade"; whereas it claims that the discrimination against the ethnic Georgians communities in the said regions has escalated following 8 August 2008;

90. Whereas Georgia contends in particular that, as a result of the Russian Federation's direct involvement in these ethnic conflicts and its essential support for the separatist *de facto* authorities and militias in South Ossetia and Abkhazia, "ethnic Georgians have been denied their fundamental rights under Article 5 of the Convention" (see paragraph 107 below); whereas, according to Georgia, the ethnic conflicts have escalated since August 2008 and the situation concerning internally displaced persons in the affected regions has significantly deteriorated; whereas Georgia contends that it "advances claims against Russia based upon obligations contained in the Convention on Racial Discrimination" and in this context "the means by which Russia has apparently breached its obligations under the Convention are irrelevant to the Court's jurisdiction"; whereas Georgia states that during the "Third Phase" of Russia's intervention, that allegedly commenced on 8 August 2008, "the means by which Russia has apparently acted in violation of its obligations under the Convention" have included, *inter alia*, the use of military force; and whereas Georgia concludes that, in its Application, it "does not invoke as a cause of action any claim that that force is unlawful under other instruments; it is pursuing remedies based on claims arising in relation to Russia's apparent breaches of this Convention";

designed to be exclusive or compulsory in respect of disputes concerning the subject-matter of the Convention”; whereas, according to Georgia, “there is no indication in the Convention that all the procedures in Part II are to be exhausted before recourse is made to this Court” and therefore “it is not a condition precedent for the Court’s jurisdiction”; and whereas Georgia adds that, in any event, there have been extensive bilateral contacts between the Parties and thus that, even if Article 22 of CERD were considered to lay down a condition precedent for the seisin of the Court, that condition has been satisfied;

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95. Whereas the Russian Federation, referring to the basis of jurisdiction invoked by Georgia, namely Article 22 of CERD, states that the dispute which Georgia has brought before this Court is not a dispute on racial discrimination under the said Convention, but rather a dispute relating to the use of force, the principles of territorial integrity and self-determination, non-interference in the internal affairs of States, armed activities and international humanitarian law; and whereas, accordingly, the Russian Federation is of the view that “the Court manifestly lacks jurisdiction in the present case”;

96. Whereas the Russian Federation asserts that the object of the dispute which Georgia seeks to have adjudicated by the Court “is not at all alleged violations by Russia of its obligations under the 1965 Convention”, but rather solely “allegations of unlawful actions in violation of international humanitarian law in South Ossetia and Abkhazia”;

97. Whereas the Russian Federation stresses that, in the Applicant’s presentation of the supposedly relevant facts, the latter deals only with the various phases “of Russia’s intervention” in South Ossetia and Abkhazia and that “it is indeed this ‘intervention’ which Georgia seeks to have condemned by the Court”; and whereas the Russian Federation adds that Georgia’s “Observations” concern only armed attacks, indiscriminate attacks on civilians, the use of cluster bombs, declarations and recognition of independence and the plight of refugees and displaced persons, but not issues of racial discrimination; and whereas, according to Russia, the dispute between the Parties relates to “the intervention that Georgia blames the Russian Federation for undertaking in response to its own action with respect to Abkhazia and South Ossetia and the alleged violations of the rules of humanitarian law on that occasion”;

98. Whereas the Russian Federation asserts that, while “there is unquestionably a dispute (or more than one dispute) between the Parties”, this dispute does not concern the interpretation or application of CERD; whereas, according to the Russian Federation, this follows from “the pleadings submitted by Georgia and the file it has produced” as well as from “the attitude taken by the Respondent since the very early 1990s”; whereas the Russian Federation claims that, despite Georgia’s contention that a dispute relating to CERD has existed between Georgia and the Russian Federation since 1991, the Georgian Government has failed to mention this dispute for 18 years in its relations with Russia, in the Security Council or the OSCE, in the organ established under the

102. Whereas the Russian Federation claims that, in the present case, “there has never been the slightest negotiation between the Parties on the interpretation or application of the Convention on the elimination of racial discrimination”, that the procedures laid down by CERD have not been initiated either by the Russian Federation or by Georgia and that “even after the start of hostilities, Georgia did not refer the matter to the [Committee on the Elimination of Racial Discrimination] under Article 11 of the Convention”; whereas, according to the Russian Federation, the question of whether the negotiations and recourse to the Committee are cumulative or alternative preconditions is irrelevant because “there has been neither negotiation nor recourse to the procedure in Article 11 (or Article 14)” of CERD; and whereas the Russian Federation asserts consequently that, as the preconditions in Article 22 have not been met, Georgia has “no possibility of unilaterally seising the Court” and that the Court thus has no jurisdiction;

103. Whereas the Russian Federation concludes that, in the absence of a dispute relating to CERD, the Court manifestly lacks jurisdiction and that, even if such a dispute existed, in view of the fact that “it has in any case never given rise to the slightest attempt to reach a settlement between the Parties” and that “before Georgia filed its Application with the Court, on 12 August last, the Russian Federation never even suspected its existence”, the lack of jurisdiction would also be manifest since the preconditions for the seisin of the Court laid down in Article 22 have not been met;

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104. Whereas Article 22 of CERD, which Georgia invokes as the basis of jurisdiction of the Court in the present case, reads as follows:

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

105. Whereas, according to the information available from the Secretary-General of the United Nations as depositary, Georgia and the Russian Federation are parties to CERD; whereas Georgia deposited its instrument of accession on 2 June 1999 without reservation; whereas the Union of Soviet Socialist Republics deposited its instrument of ratification on 4 February 1969 with a reservation to Article 22 of the Convention; whereas, by a communication received by the depositary on 8 March 1989, the Government of the Union of Soviet Socialist Republics notified the Secretary-General that it had decided to withdraw the reservation relating to Article 22; and whereas the Russian Federation, as the State continuing the legal personality of the Union of Soviet Socialist Republics, is a party to CERD without reservation;

106. Whereas the definition of racial discrimination in Article 1, paragraph 1, of CERD is as follows:



in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;

covered by other rules of international law, including humanitarian law; whereas this is sufficient at this stage to establish the existence of a dispute between the Parties capable of falling within the provisions of CERD, which is a necessary condition for the Court to have *prima facie* jurisdiction under Article 22 of CERD;

113. Whereas the Court, having established that such a dispute between the Parties exists, still needs to ascertain whether the procedural conditions set out in Article 22 of the Convention have been met, before deciding whether or not it has *prima facie* jurisdiction to deal with the case and accordingly has also the power to indicate provisional measures if the circumstances are found so to require; whereas it is recalled that Article 22 provides that a dispute relating to the interpretation or application of CERD may be referred to the Court if it “is not settled by negotiation or by the procedure expressly provided for in this Convention”; whereas Georgia claims that this phrase is descriptive of the fact that a dispute has not so been settled and does not represent conditions to be exhausted before the Court can be seized of the dispute; and whereas, according to Georgia, bilateral discussions and negotiations relating to the issues which form the subject-matter of the Convention have been held between the Parties; whereas, for its part, the Russian Federation argues ~~that~~ pursuant to Article 22 of CERD, prior negotiations or recourse to the procedures under CERD constitute an indispensable precondition for the seisin of the Court; and whereas it stresses that no negotiations have been held between the Parties on issues relating to CERD nor has Georgia, in accordance with the procedures envisaged in the Convention, brought any such issues to the attention of the Committee on the Elimination of Racial Discrimination;

114. Whereas the structure of Article 22 of CERD is not identical to that in certain other instruments which require that a period of time should have elapsed or that arbitration should have been attempted before initiation of any proceedings before the Court; whereas the phrase “any dispute . . . which is not settled by negotiation or by the procedure expressly provided for in this Convention” does not, on its plain meaning, suggest that formal negotiations in the framework of the Convention or recourse to the procedure referred to in Article 22 thereof constitute preconditions to be fulfilled before the seisin of the Court; whereas however Article 22 does suggest that some attempt should have been made by the claimant party to initiate, with the respondent party, discussions on issues that would fall under CERD;

115. Whereas it is apparent from the case file that such issues have been raised in bilateral contacts between the Parties, and, that these issues have manifestly not been resolved by negotiation prior to the filing of the Application; whereas, in several representations to the United Nations Security Council in the days before the filing of the Application, those same issues were raised by Georgia and commented upon by the Russian Federation; whereas therefore the Russian Federation was made aware of Georgia’s position in that regard; and whereas the fact that CERD has not been specifically mentioned in a bilateral or multilateral context is not an obstacle to the seisin of the Court on the basis of Article 22 of the Convention;

116. Whereas Article 22 of CERD refers also to “the procedures expressly provided for” in the Convention; whereas, according to these procedures, “if a State Party considers that another

- (c) the right to ensure that the Russian Federation and separatist authorities under its direction and control refrain from any further acts violating the enjoyment by Georgian citizens of fundamental human rights including in particular the right to security of the person and protection against violence or bodily harm, the right to freedom of movement and residence within the borders of Georgia, the right of IDPs to return to their homes under conditions of safety, and the right to protection of homes and property against pillage and destruction, pursuant to Article 5; and
- (d) the right to ensure that the Russian Federation and separatist authorities under its direction and control refrain from any acts denying to Georgian citizens under their jurisdiction effective protection and remedies against ethnic discrimination and violations of human rights pursuant to Article 6”;

121. Whereas in its Amended Request (see paragraph 41 above), Georgia, referring to Articles 2 and 5 of CERD, states that it seeks to protect “the right to security of person and protection against violence or bodily harm” and “the right of return” provided for in the above-mentioned Articles of the Convention;

122. Whereas, in its Amended Request, Georgia argues with regard to these rights, in particular, as follows:

“By its Application filed on 12 August 2008, Georgia is seeking, *inter alia*, the Court’s order directing the Russian Federation to take all necessary measures to ensure that the remaining ethnic Georgian populations of South Ossetia and Abkhazia are not subject to discriminatory treatment contrary to Articles 2 and 5 of CERD. Pending the Court’s consideration of the merits of Georgia’s claims and its request for relief, Georgia respectfully requests the Court to indicate provisional measures to prevent irreparable prejudice to the right of ethnic Georgians to be free from discriminatory treatment, in particular violent or otherwise coercive acts, including but not limited to the threat or infliction of death or bodily harm, hostage-taking and detention based on ethnicity, the destruction and pillage of property, and other acts intended to expel them from their homes in South Ossetia, Abkhazia, and adjacent regions located within Georgian territory.

.....

In its Application, Georgia seeks, *inter alia*, the Court’s order to direct the Russian Federation to take all necessary measures to permit and facilitate the return of displaced ethnic Georgians to South Ossetia and Abkhazia in conditions of safety and security in recognition of the right of return guaranteed under Article 5 of CERD. Pending the Court’s consideration of the merits of Georgia’s claims under CERD and its request for relief, Georgia respectfully requests the Court to indicate provisional measures to prevent irreparable prejudice to the right of return of ethnic Georgians to South Ossetia and Abkhazia”;

obligations of States parties under CERD and the right of States parties to seek compliance therewith; whereas in the view of the Court the rights which Georgia invokes in, and seeks to protect by, its Request for the indication of provisional measures have a sufficient connection with the merits of the case it brings for the purposes of the current proceedings; and whereas it is upon the rights thus claimed that the Court must focus its attention in its consideration of Georgia's Request for the indication of provisional measures;

127. Whereas the Court, having established the existence of a basis on which its jurisdiction might be founded, ought not to indicate measures for the protection of any disputed rights other than those which might ultimately form the basis of a judgment in the exercise of that jurisdiction; whereas accordingly the Court will confine its examination of the measures requested by Georgia, and of the grounds asserted for the request for such measures, to those which appear to fall within the scope of CERD (cf. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, *Provisional Measures*, Order of 8 April 1993, *I.C.J. Reports* 1993, p. 19);

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128. Whereas the power of the Court to indicate provisional measures under Article 41 of its Statute "presupposes that irreparable prejudice shall not be caused to rights which are the subject of a dispute in judicial proceedings" (*LaGrand (Germany v. United States of America)*, *Provisional Measures*, Order of 3 March 1999, *I.C.J. Reports* 1999 (I), pp. 14-15, para. 22);

129. Whereas the power of the Court to indicate provisional measures will be exercised only if there is urgency in the sense that there is a real risk that action prejudicial to the rights of either party might be taken before the Court has given its final decision (see, for example, *Passage through the Great Belt (Finland v. Denmark)*, *Provisional Measures*, Order of 29 July 1991, *I.C.J. Reports* 1991, p. 17, para. 23; *Certain Criminal Proceedings in France (Republic of the Congo v. France)*, *Provisional Measure*, Order of 17 June 2003, *I.C.J. Reports* 2003, p. 107, para. 22; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Preliminary Objections*, Order of 23 January 2007, p. 11, para. 32); and whereas the Court thus has to consider whether in the current proceedings such urgency exists;

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130. Whereas Georgia argues that, in view of the conduct of the Russian Federation in South Ossetia, Abkhazia, and adjacent regions, provisional measures are urgently needed because the ethnic Georgians in these areas "are at imminent risk of violent expulsion, death or personal injury, hostage-taking and unlawful detention, and damage to or loss of their homes and other property" and "in addition, the prospects for the return of those ethnic Georgians who have already been forced to flee are rapidly deteriorating";

136. Whereas, with reference to the events of August 2008, the Russian Federation argues that “the facts that can be relied on with reasonable certitude” go against the existence of a serious risk to the rights Georgia now claims, for the reasons that, first, armed actions have led to “deaths of the armed forces of all parties concerned, deaths of civilians of all ethnicities, and a mass displacement of persons of all ethnicities”, and, second, that “the armed actions have now ceased, and civilians of all ethnicities are returning to some, although not yet all, of the former conflict zones”; and whereas, so far as concerns the principle of return, the Russian Federation refers to the fact that “on 15 August, in discussions with the United Nations High Commissioner for Refugees, the Russian Foreign Minister stated his agreement on the principle of the non-discriminatory nature of the right of return for all civilians forced to flee”;

137. Whereas the Russian Federation asserts that “the case on urgency can only be built on the events subsequent to 7 August 2008” in light of the fact that before this date there was “evidently no urgency of the requisite degree — as Georgia had never even raised complaints of violations of the CERD with Russia”; whereas it further argues that any urgency to be found in the events occurring after 7 August 2008 relates to “the armed actions and their repercussions since that date”; whereas the Russian Federation explains that “major developments within the course of that period . . . tell against the case for urgency”; whereas it refers to the ceasefire announced by the Russian Federation on 12 August 2008 and to the six principles for the peaceful settlement of the conflict adopted by the Presidents of the Russian Federation and France on the same day and subsequently signed on 13-16 August 2008 by the President of Georgia and leaders of South Ossetia and Abkhazia, “through the intermediary of Russia and in the presence of the OSCE and the European Union”; and whereas the Russian Federation claims that since then “the armed actions are at an end and large numbers of IDPs have in fact already returned to Gori and villages nearby”;

138. Whereas the Russian Federation contends that Georgia’s assertions that the Russian Federation is continuing to discriminate against ethnic Georgians in Abkhazia, South Ossetia and neighbouring areas by threatening the rights of ethnic Georgians to security and the right of return, and that Russia is actively supporting groups or individuals that continue to perpetrate acts of violence against ethnic Georgians, are not supported by the documents submitted by Georgia itself;

139. Whereas the Russian Federation argues that “the case on urgency in relation to Abkhazia is built almost exclusively on inference, and that [this] is not a sound basis for a provisional measures award”;

140. Whereas the Russian Federation claims that its “positive démarches before the OSCE . . . with the European Union and President Sarkozy, are addressing precisely the problem that is being put before [the Court] as the basis for urgent provisional measures”; whereas the Russian Federation notes that, in accordance with the further principles announced on 8 September 2008, 200 European Union monitors will be deployed “into the South Ossetian and Abkhaz buffer zones, and Russian peacekeeping troops [will] make a full withdrawal ten days later”; whereas the Russian Federation asserts that “the plan provides that the United Nations and

Whereas, in light of the foregoing, with regard to these above-mentioned ethnic groups of the population, there exists an imminent risk that the rights at issue in this case mentioned in the previous paragraph may suffer irreparable prejudice;

144. Whereas States parties to CERD “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms”; whereas in the view of the Court, in the circumstances brought to its attention in which there is a serious risk of acts of racial discrimination being committed, Georgia and the Russian Federation, whether or not any such acts in the past may be legally attributable to them, are under a clear obligation to do all in their power to ensure that any such acts are not committed in the future;

145. Whereas the Court is satisfied that the indication of measures is required for the protection of rights under CERD which form the subject-matter of the dispute; and whereas the Court has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are in whole or in part other than those requested, or measures that are addressed to the party which has itself made the request; whereas Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court; and whereas the Court has already exercised this power on several occasions in the past (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Provisional Measures, Order of 1 July 2000*, *I.C.J. Reports 2000*, p. 128, para. 43; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Provisional Measures, Order of 15 March 1996*, *I.C.J. Reports 1996 (I)*, p. 24, para. 48; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, *Provisional Measures, Order of 8 April 1993*, *I.C.J. Reports 1993*, p. 22, para. 46);

146. Whereas the Court, having found that the indication of provisional measures is required in the current proceedings, has considered the terms of the provisional measures requested by Georgia; whereas the Court does not find that, in the circumstances of the case, the measures to be indicated are to be identical to those requested by Georgia; whereas the Court, having considered the material before it, **considers** it appropriate to indicate measures addressed to both Parties;

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147. Whereas the Court’s “orders on provisional measures under Article 41 [of the Statute] have binding effect” (*LaGrand (Germany v. United States of America)*, *Judgment*, *I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations which both Parties are required to comply with (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Judgment*, *I.C.J. Reports 2005*, p. 258, para. 263);

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B. By eight votes to seven,

Both Parties shall facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination;

IN FAVOUR: *President Higgins; Judges Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor; Judge ad hoc Gaja;*

AGAINST: *Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Tomka, Bennouna, Skotnikov;*

C. By eight votes to seven,

Each Party shall refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

IN FAVOUR: *President Higgins; Judges Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor; Judge ad hoc Gaja;*

AGAINST: *Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Tomka, Bennouna, Skotnikov;*

D. By eight votes to seven,

Each Party shall inform the Court as to its compliance with the above provisional measures;

IN FAVOUR: *President Higgins; Judges Buergenthal, Owada, Simma, Abraham, Keith, Sepúlveda-Amor; Judge ad hoc Gaja;*

AGAINST: *Vice-President Al-Khasawneh; Judges Ranjeva, Shi, Koroma, Tomka, Bennouna, Skotnikov.*

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this fifteenth day of October, two thousand and eight, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Georgia and the Government of the Russian Federation, respectively.

(Signed) Rosalyn HIGGINS,  
President.

(Signed) Philippe COUVREUR,  
Registrar.