

Follow-up to UNGA Res 75/138 (“Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts”)

Submission from Georgia on new developments and activities undertaken during the reporting period June 2020 – June 2022

I. Current status of the Geneva Conventions of 1949, their Additional Protocols and other relevant international humanitarian law (IHL) treaties:

Core IHL treaties

1. Georgia, after obtaining independence acceded and consequently ratified all four Geneva Conventions and Additional Protocols I and II thereto together (Succession/Ratification: 20.07.1993, Entry into Force: 14.09.1993). At a later stage in 2007, Georgia ratified Additional Protocol III to the Geneva Conventions (Succession/Ratification: 07.12.2006, Entry into Force: 19.03.2007). Up to date, Georgia is party to all Geneva Conventions and all their Additional Protocols, which generally establish the standards of international law and almost entirely constitutes customary international law.

Other relevant International Humanitarian Law treaties

2. Below is the list of International treaties relating to IHL, which Georgia is party to:
 - Convention on the prohibition of the development, production and stockpiling of bacteriological (Biological) and toxin weapons and on their destruction, opened for signature at London, Moscow and Washington. 10 April 1972 (Accession/Ratification: 06.03.1996);
 - Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993 (Accession/Ratification: 09.03.1995);
 - Convention on the prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects. Geneva, 10 October 1980 (Accession/Ratification: 02.04.1996);
 - Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects. Geneva, 10 October 1980, Amendment Article 1, 21 December 2001 (Accession/Ratification: 24.03.2009);
 - CCW protocol on non-detectable fragments (Protocol I), Geneva, 10 October 1980 (Accession/Ratification: 24.04.1996);

- CCW protocol (II) on prohibitions or restrictions on the use of mines, booby-traps and other devices, Geneva, 10 October 1980 (Accession/Ratification: 24.03.2009);
- Protocol on prohibitions or restrictions on the use of incendiary weapons (protocol III), Geneva, 10 October 1980 (Accession/Ratification: 29.04.1996);
- CCW protocol on blinding laser weapons (Protocol IV to the 1980 Convention), 13 October 1995 (Accession/Ratification: 13.10.2005);
- CCW protocol on explosive remnants of War (Protocol V to the 1980 CCW Convention), 28 November 2003 (Accession/Ratification: 21.10.2008);
- Convention for the protection of cultural property in the event of armed conflict, The Hague, 14 May 1954 (Accession/Ratification: 07.06.1957, 04.11. 1992 after the dissolution of the Soviet Union);
- Protocol for the protection of cultural property in the event of armed conflict, The Hague, 14 May 1954 (Accession/Ratification: 04.11.1992);
- Second protocol to the Hague convention of 1954 for the protection of cultural property in the event of armed conflict, The Hague, 26 March 1999 (Accession/Ratification: 21.10.2008);
- Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, 26 November 1968 (Accession/Ratification: 09.03.1995);
- Rome Statute of the international criminal Court, 17 July 1998 (Accession/Ratification: 16.07.2003);
- Amendment to the Rome Statute of the international Criminal Court on War crimes. Amended Article 8, 10 June 2010 (Accession/Ratification: 25.12.2014);
- Amendment to the Rome Statute of the International Criminal Court on the Crime of Aggression, Articles 8BIS, 15BIS and 15TER, 11 June 2010 (Accession/Ratification: 01.10.2014);
- Convention on the prevention and punishment of the crime of Genocide, 9 December 1948 (Accession/Ratification: 18.05.1993);
- International Convention against the recruitment, use, financing and training of mercenaries, 4 December 1989 (Accession/Ratification: 18.05.1993);
- Arms trade treaty (Accession/Ratification: 25.09.2014 signature);
- Convention on the rights of the child, 20 November 1989 (Accession/Ratification: 21.04.1994);
- Optional protocol to the Convention on the rights of the child on the involvement of children in armed conflict, 25 May 2000 (Accession/Ratification: 03.08.2010).

II. Adoption of national legislation to implement the above-mentioned instruments:

Hierarchy of Normative acts

3. Article 6, Para. 2 of the Constitution of Georgia provides for the supremacy of international treaties over the national laws: “A treaty or international agreement of Georgia, unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia, shall take precedence over domestic normative acts.” Law on Normative Acts, Article 7, proclaims in its para. 1 that international treaties of Georgia are also normative acts of Georgia. In the hierarchy of normative acts, given in the same article, para. 3, the international treaty of Georgia stands above the Organic Law of Georgia, ordinary laws, decree of the President and Rules of Procedure of Parliament.
4. When Talking about the role of treaties in the legislation of Georgia, the Law on International Treaties of Georgia declares in its art. 6, that treaties shall be an integral part of the legislation of Georgia. Moreover, provisions of the officially published treaties determining the specific rights and obligations and not requiring transposition in the domestic legislation by adopting specific acts, shall be directly applicable in Georgia. It means that the national institutions, especially national courts of Georgia are bound to apply the provisions of such treaties, and if they are in collision with the national legislation the treaty provisions will still prevail. With the obvious intention to stress the importance of human rights, Article 7 of the Constitution provides: the State shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State shall be bound by these rights and freedoms as directly applicable law.

Criminal Code of Georgia

5. XLVII chapter of the Criminal Code of Georgia covers: “Crime against the peace of humanity, security and International Humanitarian Law.” Aforementioned chapter criminalizes crimes such as: the planning, preparation or carrying out the aggression (Article 404); Call for planning, preparation, beginning or carrying out of the act of aggression”; Creation, purchase, sale, transportation or transit of the Mass-destruction weapons (Article 406); Genocide (Article 407); Creation, purchase, sale, transportation or Crime against humanity (Article 408); Ecocide (Article 409); Participation of mercenaries in an armed conflict or military operations (Article 410); Intentional breach of the rules of International Humanitarian Law during an armed conflict (Article 411); Intentional breach of the rules of International Humanitarian Law during an international or non-international armed conflict that entails the threat to health or physical mutilation (Article 412); Other breaches of International Humanitarian Law (Article 413).

III. Adoption of other measures of implementation and for the dissemination of IHL:

Promotion and Dissemination of International Humanitarian Law

6. The National IHL Commission in Georgia was created upon the Governmental Decree No. 408 on October 28, 2011¹. The National Inter-agency Coordination Commission is a permanent governmental body that coordinates the work of different governmental agencies in this field. Its aim is to effectively implement and ensure the respect of International Humanitarian Law. The Commission comprises of deputy ministers of the key ministries and representatives of the National Security Council of Georgia as well as the Parliament of Georgia. Moreover, the invited membership of the IHL Commission is open to recognized academic experts in Public International Law, IHL and International Criminal Law. The ICRC and the Georgia Red Cross Society are granted the observer's status with due regard to their mandates and expertise. In addition, representative of the Parliament of Georgia may be requested to participate in the work of the present IHL Commission. According to the Statute of the IHL Commission, the latter is working under the aegis of the Ministry of Justice and the Minister her/himself chairs the IHL Commission.
7. For the purpose of providing organizational support to the IHL Commission, a Secretariat is established under the Ministry of Justice. The secretariat is asked to:
 - 1) provide organizational-technical support to the IHL Commission;
 - 2) coordinate the IHL Commission's work on daily basis;
 - 3) support drafting of the action plans and annual reports of the IHL Commission;
 - 4) monitor the implementation of the IHL Commission's recommendations and instructions by relevant agencies;
 - 5) ensure archiving the decisions and reports prepared by the IHL Commission;
 - 6) provide other functions as entrusted to the Secretariat for the effective functioning of the IHL Commission.
8. According to the Governmental Decree No. 408, the main functions of the Commission are:
 - a) To prepare and present advisory opinions to the Government on IHL issues;
 - b) To prepare and present advisory opinions to the Government on IHL issues;
 - c) To prepare and present proposals to the Government of Georgia in order to ensure compliance of Georgian legislation with international obligations undertaken by Georgia in the field of IHL;
 - d) To promote implementation of IHL programs and various educational activities in cooperation with the International Committee of the Red Cross (ICRC);
 - e) To report on national achievements to the International Conference of the Red Cross, the UN Secretary General and the meetings of National Committees for

¹Document number 408, 28/10/2011 , Parliament of Georgia, available in Georgian at the official page of the Legislative Herald of Georgia at <https://matsne.gov.ge/ka/document/view/1501363>

IHL.

9. One of the main areas of the work of the IHL Commission is the promotion of IHL through different types of outreach and educational activities in cooperation with the International Committee of the Red Cross. The cooperation is carried out in the form of organization of mutual law programs and various educational activities.
10. The Commission conducts its working process in line with the National Action Plans (NAP), which focuses on raising awareness activities for various target groups, including journalists and Law enforcements. Protection of vulnerable groups, especially IDPs and conflict affected persons, women and children, and providing them with state run services, remains the main priority for Georgian authorities. Currently, Georgia is in the process of adopting the new National Action Plan for 2022-2023. The main activities covered by the plan contribute towards achieving the following aims: 1) analysis and improvement of the national legislation in pursuit of implementation and dissemination of the IHL; 2) awareness-raising about IHL; 3) events aimed at the development of qualification standards in International Humanitarian Law; 4) Tracing of persons who went missing as a result of armed conflict and protection of personal information; 5) elimination and prevention of the sexual or gender-based violence during or after conflict or disasters; 6) preparation of medical or non-medical personnel (including the personnel of the disaster-management centers) in emergency medical services; 7) management and prevention of emergencies; 8) security of the volunteers; 9) measures for identification and protection; 10) strengthening international co-operation and reporting.

It needs to be noted that on the 33rd International Conference of the Red Cross and Red Crescent the National IHL Commission of Georgia and the Red Cross Society of Georgia have jointly pledged to continue close cooperation to promote respect for and implementation of IHL, by promoting dissemination and awareness raising in the field of IHL. Besides, Georgia has signed an open pledge titled “Protect the Rights of Children Effected by Armed Conflicts” submitted by the Republic of Italy at the 33rd International Conference of the Red Cross and Red Crescent and among others has undertaken a commitment to conduct awareness campaigns in cooperation with other relevant stakeholders, about the importance to prevent the recruitment and use of children during armed conflicts and to organize specific training sessions for the national military forces on the rights of the children in armed conflicts.

IV. Activities carried out by national commissions or committees to support the implementation or dissemination of IHL:

Annual national competition in IHL

11. Dissemination of IHL through annual national competition is an activity that is included in the IHL National Action plan which is adopted for 2 year time period by the IHL Inter Agency Commission. Each year the Ministry of Justice of Georgia, in close cooperation with LEPL Training Center of Justice and International Committee of the Red Cross organizes national IHL competitions for students. Based on the statistics, the number of participants increases every year. It needs to be noted that all participating students receive additional preparation before the competition takes place. Lectures are delivered in different topics of IHL and IHL related fields in order to better prepare students for the competition. Despite COVID-19 restrictions cumulative number of the registered students for the last two competitions equals to 132. Competitions of both 2020 and 2021 turned out to be successful and demonstrated a high level of knowledge of the participants. Currently the next national IHL competition is being organized.

V. Other relevant initiatives to promote respect for the 1949 Geneva Conventions, their Additional Protocols and other relevant instruments:

Persons who went missing as a result of armed conflict

IHL Inter-Agency Commission for International Humanitarian Law actively co-operates with the International Committee of the Red Cross to address the gaps in national legislation and to develop new initiatives directed at the improvement of current legislation or awareness-raising in IHL. One of the most recent activity conducted by ICRC is a study on the Legal Framework on the Missing Persons in Georgia. The study analyses the relevant national legislation of Georgia and international treaties Georgia is party to, as well as institutional approaches and capacity of the country for dealing with the missing persons as a result of armed conflicts and their families.

Currently ongoing discussions are taking place among the members of IHL Inter-Agency Commission about the findings and recommendations provided by the study.

VI. The current state of the legal proceedings initiated by Georgia against the Russian Federation before the International Courts

Apart from measures taken on the domestic level, Government of Georgia spares no efforts to protect the rights and interests of the victims of the aggression of the Russian Federation on international level. In this regard, Georgia has several international legal proceedings against Russia in the European Court of Human Rights (ECtHR) and International Criminal Court (ICC).

Legal proceedings against the Russian Federation (ECtHR)

12. *“Georgia v. Russia (II)”* - On 21 January 2021 the ECtHR adopted the landmark Judgment on the case of *“Georgia v. Russia (II)”*.² In its judgment the ECtHR legally established and unequivocally confirmed the fact of Russia’s occupation and effective control over Abkhazia and Tskhinvali regions of Georgia; Russia’s responsibility for killing, torture, ill-treatment, and arbitrary detention of Georgian civilians and military personnel, looting and burning of houses of Georgians and inhuman treatment of Georgian population *“targeted as an ethnic group”*. Russia was also found responsible, as an occupying power, for the inability of Georgian IDPs to return to their homes. On 20 January 2022 the Georgian Government submitted to the Court its position on the “Just Satisfaction” (compensation for the victims) together with complex supporting evidence. The execution of the Court’s above judgment shall be supervised by the Committee of Ministers of the Council of Europe and the Government of Georgia shall continue engaging every effort to ensure that the serious violations committed against Georgian population during and after the August 2008 war do not go unpunished.
13. *“Georgia v. Russia (IV)”* - On 22 August 2018 the Government of Georgia lodged a new inter-State application against Russia with the ECtHR - the so called *“continuous occupation case”*. The Georgian Government claims, *inter alia*, that Russia has engaged (and continues to engage) in an administrative practice of harassing, unlawfully arresting and detaining, assaulting, torturing, murdering and intimidating ethnic Georgian population residing adjacent to the occupation line in the territories of Abkhazia and South Ossetia. Within the application the Georgian Government devoted special attention to individual cases of abduction, torture and murder of three Georgians - Archil Tatunashvili, Giga Otkhozoria and Davit Basharuli. On 25 May 2021 the Court renewed the proceedings on the aforementioned inter-state application, after their temporal suspension pending the adoption of judgment on the *Georgia v. Russia (II)*. On 15 December 2021 and 25 February 2022 Georgian Government presented their observations on the admissibility of the case accompanied with complex evidentiary material.³ Currently, the case is in the active phase of adjudication.

Legal proceedings against the Russian Federation (ICC)

² *Georgia v. Russia (II)*, application no. 38263/08, Judgment of 21 January 2021, available at: <https://hudoc.echr.coe.int/fre#%7B%22docname%22:%5B%22Georgia%20v%20Russia%22%5D%2C%22documentcollectionid%22:%5B%22JUDGMENTS%22%5D%2C%22itemid%22:%5B%222001-207757%22%5D%7D>

³ *Georgia v. Russia (IV)*, application no. 39611/18, available at: <https://webcache.googleusercontent.com/search?q=cache:e6wvVlOOcfUJ:https://hudoc.echr.coe.int/app/conversion/pdf/%3Flibrary%3DDECHR%26id%3D003-6176209-8005403%26filename%3DNew%2520inter-state%2520application%2520brought%2520by%2520Georgia%2520against%2520Russia.pdf+%26cd=1&hl=ka&ct=clnk&gl=ge>

14. In 2016, Pre-Trial Chamber I granted the ICC's Prosecutor's request to open an investigation *proprio motu* in the situation in Georgia, in relation to crimes against humanity and war crimes within the jurisdiction of the International Criminal Court ("The ICC") in the context of an international armed conflict between 1 July and 10 October 2008.⁴ The Government of Georgia undertakes intensive efforts on a daily basis to match the increasing needs of the investigation. On 10 March 2022 ICC Prosecutor, Karim A.A. Khan QC, announced application for arrest warrants in the Situation in Georgia against high officials of the *de facto* "South Ossetian administration" for allegedly committing crimes of unlawful confinement, torture; inhuman treatment; outrages upon personal dignity; hostage taking and unlawful transfer – **against ethnic Georgian civilians in the context of an occupation by the Russian Federation**. As the Prosecutor announced the investigation also uncovered the alleged role of Vyacheslav Borisov, Major General in the Armed Forces of the Russian Federation and Deputy Commander of the Airborne Forces at the time of events, who is believed to have intentionally contributed to the execution of some of these crimes, and is now deceased.⁵ This fact further proves that the serious violations committed against the population of Georgia during the August War will be attributed to specific representatives of the Russian Federation and the occupation regimes.

⁴ Available at: <https://www.icc-cpi.int/georgia>

⁵ Available at: <https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-announces-application-arrest-warrants-situation-georgia>