



American Model United Nations

ICJ

IN THE INTERNATIONAL COURT OF JUSTICE

GEORGIA V. RUSSIAN FEDERATION

MEMORIAL OF THE RUSSIAN FEDERATION

Subject of the Dispute

Georgia contends that the Russian Federation violated articles 2,3 and 5 of the 1965 Committee on Elimination of Racial Discrimination (CERD).

Statement of Facts

Since the beginning of the 1990's, Georgia has been engaged in a conflict with Abkhazia and South Ossetia, and during this conflict Russia has played the role of a facilitator in accordance with Georgia's discretion and the discretion of the other parties engaged in the conflict.

During the breakup of the Soviet Union Abkhazia and South Ossetia viewed the new Georgian President's views as a threat to their rights and remained in favor of staying with the USSR, but kept their aspirations of establishing their own respectable power structures. They did so because on 11 December 1990 the Georgian Supreme Soviet declared the elections illegitimate that, and then the results of the election were consequently annulled, along with the Autonomous District of South Ossetia and its Regional Public Council being abolished. Both South Ossetia and Abkhazia declared their independence to escape direct control from Georgia. Georgia attempted to restore its territorial integrity several times after this with military force. The first time in South Ossetia and the second being in Abkhazia. However, Georgia's attempts to regain power failed, and in turn resulted in the fleeing of tens or hundreds of thousands of people outside of these regions, including ethnic Georgians.

In 1990-1992 a conflict in the Tskhinvali region of South Ossetia estimated displacement of 60,000 persons, including about 10,000 ethnic Georgians. The vast majority of the displaced people were to be South Ossets, most of whom fleeing to North Ossetia in the Russian Federation region. The South Ossetians were moved as a direct consequence of fighting in the region. In November of 2003 the regime change in Georgia lead to a more belligerent approach to South Ossetia and Abkhazia resulting in a rapid destabilization of the region.

In June 2004 Georgia began a military operation against the Tskhinvali region.

In July 2006 Georgia sent troops to the Kodori Gorge, located in the northeastern part of

Abkhazia, and lead to severe tension in the region. The tension of this invasion was severe enough for the United Nations Security Council to issue a resolution on the situation.

In 2007 Georgia had already brought force upon both South Ossetia and Abkhazia, but still had committed to minimal negotiations amongst the parties. From 2007 to 2008 the Georgian military buildup was apparent. In 2008 the Secretary General took note of the conflict by assigning observers to both Georgia and Abkhaz side. In 2008 Georgia strongly protested Russia's "authorizing direct relations with the Abkhaz and South Ossetian de facto authorities in a number of fields," which was considered by Georgia as a blatant violation of Georgia's sovereignty and territorial integrity, amounting to the legalizing a factual annexation of Abkhazia and South Ossetia."

According to the Independent International Fact Finding Mission on the Conflict in Georgia found as follows, "open hostilities began with a large-scale Georgian military operation against the town of Tskhinvali and the surrounding areas, launched in the night of 7 to 8 August 2008. Operations started with a massive Georgian artillery attack." Paragraph 19 states, "there is the question of whether the use of force by Georgia in South Ossetia, beginning with the shelling of Tskhinvali during the night of 7/8 August 2008, was justifiable under international law. It was not." Also paragraph 20 of that report states, "as far as the initial phase of the conflict is concerned, an additional legal question is whether the Georgian use of force against Russian peacekeeping forces on Georgian territory, i.e. in the South Ossetia, might have been justified. Again the answer is in the negative. There was no ongoing armed attack by Russia before the start of the Georgian operation. Georgian claims of a large-scale presence of Russian armed forces in South Ossetia prior to the Georgian offensive on 7/8 August could not be substantiated by the Mission."

HISTORY OF RUSSIAN FEDERATION AND CERD

In December of 1991, the President of the Russian Federation notified the Secretary-General that membership of the Union of the Soviet Socialist Republics (USSR) is being continued by the Russian Federation. Subsequently the Russian Federation maintains full responsibility for all the rights and obligations of the USSR under the treaty of the United Nations and Multilateral treaties deposited with the Secretary-General. "The Court first ascertains that both Georgia and the Russian Federation are parties to CERD. It observes that Georgia deposited its instrument of accession on 2 June 1999 without reservation and that the Union of Soviet Socialist Republics (USSR) deposited its instrument of ratification on 4 February 1969 with a reservation to Article 22 of the Convention but that this reservation was withdrawn by the USSR on 8 March 1989. The Court adds that the Russian Federation, as the State continuing the legal personality of the USSR, is a party to CERD without reservation."

The choice of 8 March to withdraw reservations was aimed at gaining support for this important treaty by leading with example.

Jurisdictional Statement

Georgia has laid this case before the Court following its apparent misreading of Article 22 of CERD which states,

“(1)Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, (2) **which is not settled by negotiation or by the procedures expressly provided for in this Convention**, (3) 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.”

The Russian Federation contends in order for the tertiary clause of Article 22, the clause that brings us before the court, to be in effect, the first two must be satisfied. They are not.

Other documents which support the Russian Federations assertion that Jurisdiction is lacking in this case are the Statutes of this Court, and the Charter of the United Nations. Paragraph 1 of Article 36 of the ICJ Statutes clearly reads,

“The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.”

Then Article 95 of the UN Charter lays out,

“Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.”

Jurisdictionally, Georgia’s claims under CERD fall short. When we ratified the treaty in full, without our previous reservations to Article 22, we accepted the jurisdiction of the Court under certain conditions. These conditions were not satisfied and jurisdiction is lacking.

Statement of Law

The obviously and most importantly is CERD. There are some important case-law examples of a *prima facie* ruling on jurisdiction being unsubstantial once examined further: *Anglo-Iranian Oil* 1952, *Aegean Sea and Continental Shelf* 1976 and most recently *Avena and Other Mexican Nationals (Mexico v. United States of America)* 2004.

Important cases that should be in the forefront of all of our minds are the 1962 judgment in the *South African Case*, and the 1963 *Cameroon v. United Kingdom*.

Detailed Arguments

The issue before the court is of grave importance. This Court and other bodies of the UN must not be used by military belligerents in an unjust and failed military campaign to seek righteousness. Georgia had a plethora of opportunities to bring up these concerns before now, but they failed to. They list complaints as far back as 1992, so where are their submissions to CERD for adjudication and relief? It was only after a disastrous military attempt by their government did they seek solace in the legal community, rather than before wasting the lives of, not just Georgians, not just Russians or South Ossetians or Abkhazians, but Citizens of the World. The distinctive lack of previous attempts by Georgia to diplomacy settle these and related issues are indicative of the fact that this is simply attempts of a nation to justify its own wrong doings. They have fallen victim to the idea of “let the tanks roll now and the courts decide if we did the right thing.”

By allowing them to get away with this flagrant affront to international law and order is a travesty that can mar this court's ability to effectively legislate in the future. Georgia bringing this matter before the court under Article 22, and circumventing Articles 10, 11, 12, 13 and 14, a clear and legally explainable breach of this treaty as the allegations they have improperly lodged against us. We ask this: “why enter into treaties if they can be arbitrarily broken?”

If Article 22 states that “the procedures expressly provided for in this Convention” need must be at least attempted, not even exhausted, before it becomes an ICJ matter, then this court must realize the dire situation arising from disrespecting that article in its entirety.

The ability for CERD to lay out its own, agreed upon measures is one of the foundational concepts that allows its necessity and existence; separate tribunals and committees can be created, maintained, and respected within the frame work of the UN. These distinct organs retain the power of jurisdiction, unless, in such as in the case of Article 22, they fail to internally deal with the conflict. CERD's mechanism for dispute resolution was never utilized by Georgia. The Human Rights Committee, Committee against Torture, Committee on the Elimination of Discrimination against Women, and Convention on the Rights of Persons with Disabilities all would be at grave risk if the court decided to seize their issues.

Summary and Prayer for Relief

The Court lacks jurisdictional ability to hear this case. We pray that they will see that the only reason we were brought before this court was to assuage the guilt of a warmongering nation who lost a battle to oppress another nation. We pray that an example be made of Georgia and the steps they took, of War first treaty and laws second. We come to the UN

to forsake our violent ways, not, as Georgia is attempting to do, justify them.