



*American Model United Nations*  
**ICJ**

## International Court of Justice

IN THE  
INTERNATIONAL COURT OF JUSTICE  
OF THE  
AMERICAN MODEL UNITED NATIONS

Georgia  
v.  
Russian Federation

Argued: 21 November 2010  
Decided: 22 November 2010

The Majority opinion was signed by and agreed to by Justice Caro, Justice Nelson, Justice Sideras, Justice Nace, Justice Schneider, Justice Berman, Justice West, Justice Van Sant, Justice Whitlock, Justice Kildahl, and Justice Barclay.

The court finds that in the case of Georgia v. The Russian Federation it clearly has jurisdiction as established by the following articles: Article 36 Paragraph 2A of the Statute of the Court, which gives the court jurisdiction over treaty disputes when both parties consent to it. Further, both states are parties to the Convention on the Elimination of All Forms of Racial Discrimination (hereafter referred to as CERD) and are parties without reservation to Article 22 which grants us jurisdiction over disputes that have not been resolved or settled by negotiations or by the procedures provided in CERD. However, the court finds that neither negotiations nor the utilization of the provided procedures are necessary for establishing jurisdiction. The language of Article 22 states that the court has jurisdiction over any dispute ‘which is not settled by negotiation or by the procedures expressly provided for in this convention,’ this is not a requirement that negotiations or procedures actually be attempted. Rather, the court finds it has jurisdiction under CERD as long as the dispute has been referred to the International Court of Justice and has not been resolved by the aforementioned procedures. Additionally, the language of the procedures provided in Articles 11-14 do not require states to request review by the CERD committee.

Although such negotiations are not necessary as a prerequisite to jurisdiction the court has found such negotiations have occurred between the two parties regarding the occupation of South Ossetia and Abkhazia, but these negotiations have continually failed and have

been suspended at this time. Currently the Russian Federation refuses to partake in further negotiations, which Georgia has been willing to participate.

Furthermore, the court finds that are numerous provisions of CERD that are in dispute:

Article 2 Paragraph 1 Provision (a)  
Article 2 Paragraph 1 Provision (b)  
Article 2 Paragraph 1 Provision (d)  
Article 3  
Article 5 Paragraph 1 Provision (a)  
Article 5 Paragraph 1 Provision (b)  
Article 5 Paragraph 1 Provision (d) (i)  
Article 5 Paragraph 1 Provision (d) (ii)  
Article 5 Paragraph 1 Provision (d) (iii)  
Article 5 Paragraph 1 Provision (e) (i)  
Article 5 Paragraph 1 Provision (e) (iii)  
Article 5 Paragraph 1 Provision (e) (iv)  
Article 5 Paragraph 1 Provision (e) (v)  
Article 5 Paragraph 1 Provision (e) (vi)  
Article 6

Before addressing the merits, the Court feels the need to address the defense offered by the Russian Federation in which the Respondent contests that Georgia began this military conflict that is ongoing in the regions of South Ossetia and Abkhazia and thus has no legitimate claim under CERD. The Court rejects this contention. This point may have some relevance to violations of CERD that occurred while the Republic of Georgia and the Russian Federation were in a state of conflict, but it has no bearing on alleged violations that have occurred since the cessation of hostilities. The identity of the originator of the 2008 hostilities in no way excuses potential violations of CERD by either country.

The opinion of the Court on these alleged violations is as follows:

The court finds that the Russian Federation is in violation of CERD in relation to Article 2 Paragraph 1 Provisions (a), (b) and (d). By preventing natives of South Ossetia from returning, the Russian Federation is discriminating on the basis of national origin, and is not taking steps sufficient to end such discrimination. Pursuant to Article 1 Paragraph 1 this constitutes racial discrimination.

In relation to Article 3, which requires that states work to prevent and prohibit racial segregation and apartheid, the court finds no proof of discrimination reaching the level of racial segregation and apartheid by the Russian Federation within the regions of South Ossetia and Abkhazia. As no evidence of forced use of separate institutions or facilities has been presented, the discrimination that the court has found does not reach this level.

There is clear evidence to the point that both parties have violated CERD in relation to Article 5 Paragraph 1 Provision (b), which guarantees protection against bodily harm. The court finds that the militaries of both nations have struck civilian targets, resulting in bodily harm and the loss of life.

The court finds that the Russian Federation is in violation of CERD in relation to Article 5 Paragraph 1 Provision (d)(i), which guarantees the right of all people to freedom of movement within the borders of a country. The court finds that, as defined by the international community, the borders of Georgia include the regions of South Ossetia and Abkhazia. While applying this finding it becomes apparent through facts presented that the right of free movement within these regions is being infringed upon.

The Court finds that the Russian Federation is in violation of CERD in relation to Article 5 Paragraph 1 Provision (d) (ii), which guarantees the right to leave any country, including one's own, as well as the right to return to one's country. There is no disagreement between the parties that thousands of displaced Georgian citizens in Russia have been prevented from returning to their homes by the Russian Federation.

The Court finds that the Russian Federation is in violation of CERD in relation to Article 5 Paragraph 1 Provision (d) (iii), which guarantees the right of nationality. It has been brought to the Court's attention that Russia is only allowing displaced Georgians to travel if they first obtain a Russian passport. By requiring that native Georgians accept Russian credentials in order to gain basic travel rights, the Russian Federation is infringing on the right of those Georgians to choose their nationality.

The Court finds that the Russian Federation is in violation of CERD in relation to Article 5 Paragraph 1 Provision (e) (i), which guarantees the right of protection from unemployment. The Court holds that by bombing civilian targets and forcibly displacing Georgians from their homes, while not allowing them to return, the Russian Federation has caused these persons to become unemployed and thus has violated their right to protection from unemployment.

The Court finds that both the Russian Federation and the Republic of Georgia are in violation of CERD in relation to Article 5 Paragraph 1 Provisions (e) (iii), (e) (iv), (e) (v) and (e) (vi). The Court finds that military attacks by both countries on civilian areas, specifically the burning of villages and displacement of civilians, has significantly disrupted the day to day activities of these people. In so doing, these military actions have infringed upon the rights of those individuals to housing, health, education, and participation in cultural activities.

Finally, the Court finds that the Russian Federation is in violation of CERD in relation to Article 6, which guarantees effective protection by the courts against any acts of racial discrimination or the violation of human rights or fundamental freedoms. The court has been presented with no information asserting that displaced persons have access to

effective Russian judicial institutions.

Order of the Court:

The court orders that the Russian Federation return to the negotiation table and the court also suggests that a neutral third party decided on by the CERD committee mediate these negotiations. Required of these negotiations is the resolution of funding and execution of clean up of debris and military ordinance. The court further orders that both countries cease aggressive military actions, allow freedom of movement, and create tribunals to address issues of reparations including the just compensation and/or restoration of the lost individual and community property. Additionally, the court orders both states to cease and desist support of paramilitary operations within the regions of conflict.

Justice Nelson

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Justice Kildahl

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Justice Barclay

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Justice Caro

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Justice Sideras

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Justice Berman

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Justice Nace

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Justice Schneider

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Justice West

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Justice Van Sant

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Justice Whitlock

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### **Concurring Opinion of Justice Augustynowicz and Justice Gideon**

We are in concurrence with the ruling of jurisdiction handed down by the Court. Yet we would include the additional amendment pertaining to Article 5 Paragraph 1 Provision (a) of the Convention on the Elimination of all Forms of Racial Discrimination which states: "The right to equal treatment before the tribunals and all other organs administering justice" whereas the Russian Federation failed to justify the distinction between citizens and "trouble makers" during the respondents' presentation. We find that this omission provides additional claims for jurisdiction under the International Convention on the Elimination of all Forms of Racial Discrimination.

Justice Augustynowicz \_\_\_\_\_

Justice Gideon \_\_\_\_\_

### **Dissenting Opinion of Justice Manetta**

1. Justice Manetta voted against the majority opinion in the case because of dissenting opinion on the interpretation of the jurisdiction set out in Article 22 of the CERD and the failure of Georgia to bring up Russia violation of CERD to the Committee on the Elimination of Racial Discrimination or in any other form of negotiation.

2. The Court has no jurisdiction because no dispute existed between the states “with respect to the interpretation or application” of this convention that has been presented to the proper channels of dispute resolution and negotiations have been held with to the convention. (Article 22 of CERD)
3. The underlying dispute between the states (of refugees, not concerning CERD) has not been settled “by negotiation or by the procedure expressly provided for in this convention”. (Article 22 of CERD).
4. The author of this dissent explains that disputes on CERD must be present before the Court has jurisdiction. And this Justice thinks that the bilateral talks between the nations are not sufficient in this regard. The negotiations must consist of the dispute on CERD specifically. And this Justice believes that sufficient negotiations have not been held specifically on this issue (refugees and violation of CERD). Whether there have been any results and would there have been results if the negotiations were specific to CERD is what the Justice asks.
5. The issue and dispute over the refugees concerning CERD has not matured enough to bring the dispute to the International Court of Justice (ICJ). This Justice would agree with the opinion of the majority on the orders if proper jurisdiction had been found. This Justice believes that a dispute of the interpretation on the wording of Article 22 of CERD is allowing a technicality and ignoring the intent and purpose of the Article itself.
6. The purpose of Article 22 of CERD is so that states try negotiation before coming to the ICJ, even so far as to expressly provide and set up a committee on disputes of the convention in the convention itself as explained in Articles 8-16. States should take advantage of this committee before coming to the ICJ as the Articles of the creation and structure of the committee takes up 9 of the 25 Articles in CERD.
7. The dissenting Justice prays that both parties take up negotiations with the Committee on the Elimination of Racial Discrimination and other UN bodies before coming to the ICJ again. Justice Manetta reiterates that states should use negotiations and diplomatic means before coming to the Court as matter of principle.

Justice Manetta

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