

IN THE INTERNATIONAL COURT OF JUSTICE

**THE REPUBLIC OF GEORGIA,
APPLICANT**

V.

**THE RUSSIAN FEDERATION,
RESPONDENT**

MEMORIAL OF THE REPUBLIC OF GEORGIA

COMES NOW the Republic of Georgia and for their Memorial to the Court states the following:

STATEMENT OF LAW:

1. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the General Assembly on 21 December and brought into force 4 January 1969. Both Georgia and Russia are parties to CERD without reservation, as the USSR signed the treaty and Russia assumed the USSR's treaty obligations.
2. The CERD defines racial discrimination as “any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment of exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.”
3. Article 2, Section 1, Subsection C states each “State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”
4. Article 5, Section b states that the persons have the right to protection from violence and bodily harm relating to race or ethnicity.

STATEMENT OF FACT:

The Republic of Georgia believes it to be fact that South Ossetia and Abkhazia remain within its sovereign territory, and thus function as the territory of Georgia. This is the believed framework despite the rejection of these tenets by separatists and other agents acting within the territories of South Ossetia and Abkhazia, which have been at work since 1991 for South Ossetia

and 1992 for Abkhazia. It is believed to be fact by the applicant that the respondent has directly given instruction to separatists and other agents within the aforementioned territories of Georgia.

Due to periods of armed conflict within the aforementioned territories of Georgia, a ceasefire was negotiated in 1994. The tenets of this ceasefire include the permittance of peacekeepers from the Russian Federation to remain within the aforementioned territories of Georgia during periods of armed conflict. Such periods occurred between 2008 and 2011. It is on the record for the applicant that the respondent's peacekeepers downed an unmanned drone over Abkhazia on April 21st, 2008. Within eight days, the respondent accused the applicant of garnering the necessary forces to attack Abkhazia, and thereafter increased the peacekeepers within the region. By May 30th, 2008, additional troops had amassed in Abkhazia, citing necessary railway repairs. The applicant has suggested that the respondent performed such measures as a means of planning an invasion.

The attack of South Ossetian separatists on Georgian peacekeepers resulted in the mobilization of armed forces and tanks into Georgian territories in August of 2008. A plan to defuse the ongoing tension was formed two days later, which allowed for the withdrawal of troops and the halting of hostilities. Following the plan's development, the respondent acknowledged the independence of South Ossetia and Abkhazia formally, with the applicant acknowledging the regions of South Ossetia and Abkhazia as independently administered territories. Throughout the 1990's, the actions of the respondent included the removal of Georgians from their homes, the murder of civilians, and refusals to allow Georgians to return to their homes.

At this time, the fostered closer ties between South Ossetia and Russia are viewed by Georgia as the beginning of a process of effective annexation. Much of the ethnic Georgians have been displaced from the region by the two conflicts, effectively cleansing this Georgian territory of the ethnicity entirely. Abkhazia has, in 2009, signed a five year agreement with Moscow allowing Russia to take formal control of its frontiers with Georgia proper.

STATEMENT OF JURISDICTION

1. The application is brought under Article 36, Paragraph 1 of the Statute of the court: "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".
2. Article 22 of the CERD states "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." A dispute between

the parties over Articles 2 through 6 therefore falls within the compulsory jurisdiction of the court.

3. The CERD entered into force on 4 January 1969 and has been binding on both parties since. It remains in force given it has not been superseded by a definitive agreement or withdrawn from by 12 months' notice from either parties, pursuant to Article 21 of the Convention.
4. Due to the role of the Court in determining the interpretation of a treaty without special agreement (Statute of the International Court of Justice, Article 36, Section 1, Subsection A), the Republic of Georgia believes the Court has a role in the determination of the definition of CERD regarding the question of self determination and territorial integrity posed by this case.
5. As the Court maintains its right to determine its own jurisdiction, Statute of the International Court of Justice, Article 36, Paragraph 6, it is within the Court's purview to discuss the preliminary filings of this case, as an appropriate contest of required arrangements for preliminary filings were not followed.

ARGUMENTS

1. The actions performed by Russia, including dislocation and killings of ethnic Georgians, constitute ethnic cleansing under its accepted definition, defined by the United Nations Commission of Experts on ethnic cleansing as "...a purposeful policy designed by one ethnic group to remove by violent and terror-inspiring means the civilian population of another ethnic group from certain geographic areas." The Republic of Georgia believes that its right to protect these individuals within their own borders falls under the purview of Article 5 Section B.
2. It follows the logic of the intention of the CERD to believe that conspiracy to perform actions prohibited by CERD are also prohibited, which would include conspiracy to interfere with the sovereignty or borders of the Republic of Georgia as well as conspiracy to commit ethnic cleansing.
3. By means of Article 5, Russia interfered with the autonomy of the Republic of Georgia by preventing the State from protecting its citizens from ethnically motivated violence.
4. Russia has blatantly violated its obligations under the CERD Article 2 and Article 5 by means of the dislocation of and violence toward ethnic Georgians.
5. Through Article 22 of the Convention, in an effort to protect Georgians from future discrimination after previous attempts to resolve the dispute independent of the Court, the applicant is calling upon the Court.
6. The Republic of Georgia views Article 2 Section C as a discussion of governmental policy, and does define the current military actions of Russia as intrinsically governmental policy, regardless of whether it occurs within the borders of the nation in question.

7. Due to the intention of the protection of human rights within the CERD, the Republic of Georgia believes a narrow interpretation of the document to be restrained to domestic governmental policy without the inclusion of military policy is contrary to the inherent purpose of the document.
8. The Republic of Georgia has the right to seek relief from the actions that have occurred due to Article 6 of the CERD, in which the ethnic cleansing of Georgians from the territories of South Ossetia and Abkhazia determines that the Russian Federation is acting in contrary to the CERD.

SUMMARY AND REQUESTS

Procedurally, the Republic of Georgia asks that the court evaluate the fact that the Russian Federation violated the CERD due to South Ossetia and Abkhazia remaining beneath the status of territory of the Republic of Georgia. The Republic of Georgia calls upon the Court to recognize that the respondent has committed actions that fall within the definition of ethnic cleansing, placing this case within the purview of the International Court of Justice without exhausting all other measures to resolve conflict under Article 22.

Substantively, the Republic of Georgia further requests the Court recognize the territorial integrity of the region, recognizing the status of South Ossetia and Abkhazia as independently administered territories within Georgia. Thus applicant respectfully requests this court adjudicate in applicants favor, that Russian Federation's actions violated the CERD, and grant relief the court deems proper.