

IN THE INTERNATIONAL COURT OF JUSTICE

GEORGIA

V.

RUSSIAN FEDERATION

MEMORIAL OF THE RUSSIAN FEDERATION

STATEMENT OF LAW:

1. Under the International Convention of Elimination of Racial Discrimination (CERD), Article 22 states 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.”

2. Article 9 of the CERD states ...
 - “1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and

 - (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.”

3. Article 14 of the European Court of Human Rights (ECHR) states “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

STATEMENT OF FACT:

Beginning in the 1990's, with the dissolution of the Soviet Union, Abkhazia and South Ossetia each began their own respective wars with the Republic of Georgia to separate and form their own nations. During 1998 and 2001 the tension between Georgia and both South Ossetia and Abkhazia translated into short armed conflicts. Trying to restore peace in the region, the newly formed Russian Federation sent peacekeepers rather than military troops, hoping to bring peace to the region and prevent a destabilization of an already weakened area. While the

conflicts were resolved with ceasefire, the peace agreement correlating with these ceasefires permitted Russian peacekeepers to remain in the contested territories.

The Georgian Government for several years actively lobbied for the replacement these Russian peacekeepers deployed in Abkhazia and South Ossetia. It has been recognized that the arguments presented by Georgian Republic have been overwhelmingly political, rather than practical. In 1992, Georgian Republic attacked the Russian peacekeepers deployed in South Ossetia, causing the Russian Federation to intervene in the clashes between Georgia and South Ossetia.

On 12 August 2008, the Republic of Georgia instituted proceedings before the Court against the Russian Federation.

STATEMENT OF JURISDICTION

1. The memorial presented by Georgia does not fit the qualifications established by Article 22 of CERD, particularly relating to the clause stating, “which is not settled by negotiation or by the procedures expressly provided for in this Convention.”
2. Had Georgia presented issues of racial discrimination, either through Article 14 of the ECHR or Article 22 of the CERD, it would have presented its concerns utilizing Article 9, stating,

“States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.”

3. Without documentation of Georgia’s prior legal claims of racial discrimination on the part of Russia in the South Ossetia and Abkhazia territories, the International Court of Justice cannot make a determination in accordance with Article 22 as to whether such discrimination occurred

ARGUMENTS

1. Negotiations between Georgia and The Russian Federation have taken place involving several matters of importance to the relationship between the countries, the status of Abkhazia and South Ossetia, the territorial integrity of Georgia, the threat or use of force, the alleged breaches of international humanitarian law and of human rights law by Abkhaz or South Ossetian authorities and the role of the Russian Federation’s peacekeepers. However, there have been no dispute relating to matters falling under CERD prior to August 2008, when Georgian Republic presented the case to the ICJ.
2. Georgia’s only intention in this dispute is using Article 22 to reach the courts, but they fail to meet the second requirement that requires prior negotiation on the issue at hand. Despite meeting with Russia for several years on to discuss the South Ossetia and Abkhazia regions,

racial discrimination was never discussed, and Georgia has only brought up this issue to reach the ICJ.

3. Russia believes the ICJ should dismiss the case on the basis that Georgia has no legal basis on its court case, and has grossly misrepresented Article 22 of CERD.

SUMMARY AND REQUESTS

Having revealed an egregious disregard for international law, in an attempt to reach the ICJ, Georgia's case against Russia should be dismissed on the basis of being out of the purview of the ICJ and international law. Rather than present a case with evidence of years of racial discrimination, Georgia has submitted a memorial based on Article 22 out of spite for losing its war to reclaim South Ossetia and Abkhazia. Article 22 establishes that there must have been dialogue between two nation-states prior to the case in order for a nation-state to accuse another of racial discrimination. Despite being in talks for numerous years, and Georgia submitting reports on the territories mentioned through Article 9, racial discrimination has never been brought up. The courts should immediately dismiss the case so as to preserve international law.