

INTERNATIONAL COURT OF JUSTICE



GEORGIA V. RUSSIAN FEDERATION: APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

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Welcome!

Dear Delegates,

It is an honor for me to welcome you to the International Court of Justice at the 67th session of Berkeley Model United Nations. My name is Ashwin Srikanth, and I will be serving as your head chair for the ICJ, a unique specialized committee with incredibly fast paced debate. I am currently a sophomore at the University of California Berkeley studying Molecular and Cellular Biology and Public Health. I'm originally from San Jose, California but grew up moving around the world in Finland, Brazil, and finally China where I finished High School. Though my major may have little to do with international law, I have always been fascinated with law as a field that is both precise and extremely far-reaching and I knew that the ICJ was the committee for me when I took part in it as a delegate. Outside of MUN, I sing bass in chamber choir, am an avid fan of basketball and football, and love watching TV shows like Game of Thrones and Suits. I'm incredibly excited to be your head chair this year and hope that you will all enjoy the ICJ as much as I do.

Hey Delegates!

My name is Alexandra (Ali) Maloney, and I am incredibly excited to be one of your vice-chairs for ICJ this year. I am a junior at UC Berkeley studying English Literature with law school aspirations and am originally from Greenwich, Connecticut. This is my third year in BMUN and my third year doing a court committee; as you can probably guess, I'm deeply interested in legal issues and how the law can be applied on an international scale. I genuinely believe that court committees are among the most enjoyable and unique experiences you can have in Model UN for a variety of reasons, something I learned firsthand as a delegate. For one, the opportunity to interact with and cross-examine witnesses adds a layer of excitement to the committee, as testimony can rapidly change the course and pace of the courtroom. The ICJ also provides a unique opportunity to decide for yourself what you consider to be a fair and just ruling through the verdict process, meaning that you can actually issue a verdict that can have tangible impacts on international law (in comparison

to a typical General Assembly committee where delegates can only make non-binding suggestions), and hopefully after committee you will see why I've decided to stick with court committees for the past three years. In my free time, I love to read, write, watch football and artistic gymnastics, and investigate places to eat around the Bay Area. I'm so excited to see where your research takes you and can't wait to see all of your hard work come to fruition in March. See you then!

Incia Haider is a freshman at UC Berkeley studying Global Studies and is one of the Vice-Chairs for this year's ICJ committee. She is originally from Orange County, California and has participated in Model UN for three years, as well as chairing two committees previously. Outside of BMUN, Incia is involved in Phi Alpha Delta, which is a Pre-Law co-ed fraternity on campus. While she is not studying or partaking in her extra-curricular activities, she enjoys watching anything on YouTube, spending too much money on food, or traveling with family and friends. She also thoroughly enjoys shopping at Zara and Adidas. She is extremely excited to moderate debate for the International Court of Justice committee and is looking forward to hearing the unique standpoints of all the delegates!

Amanda Ostrom is a freshman at Cal and will be a Vice-Chair for the ICJ. She is planning to major in Economics or Business Administration. Amanda has been involved with MUN for three years and is very excited for her first year on BMUN. In her free time, Amanda likes to drink coffee, pet dogs, and support the San Francisco Giants. Amanda looks forward to sharing her love of MUN with others and hearing creative debate and solutions from the delegates.



Ashwin Srikanth

Head Chair, International Court of Justice

Berkeley Model United Nations, Sixty-Seventh Session

OVERVIEW OF THE ICJ AT BMUN

Introduction to the Court

The International Court of Justice (ICJ) was founded in June of 1945 as part of the Charter of the United Nations and serves as its primary judicial and legislative authority. The ICJ, headquartered in the Peace Palace in The Hague, Netherlands, is one of the six principal organs of the UN and is comprised of all 193 UN member states. The court is composed of 15 judges selected from any of the member states who are elected by the Security Council and General Assembly to serve 9-year terms. While the UN charter and the statute of the court outline the structure and function of the ICJ, judges have the freedom to employ international conventions, laws, and treaties in order to aid in making rulings (“How the Court Works”).

The court entertains two different types of legal cases: legal disputes between member states known as contentious cases, and requests for advisory opinions on legal proceedings referred to the court by UN organs or other official bodies known as advisory proceedings. A contentious case culminates in a final judgement on the case and is legally binding on both parties. This means that, whatever the outcome, both parties must abide by the decision of the court (Koroma). On the other hand, the court provides advisory opinions on legal issues at the request of the UN organs or other affiliated organizations. An advisory opinion is not binding, but the requesting organ or state can choose whether or not to implement the opinion (“Advisory Jurisdiction”). Both types of cases hold great sway in setting precedent for the course of international law, but the ICJ at BMUN will concern itself primarily with one particular contentious case. Note that any contentious case is only heard by the court after each member state submits to the court’s jurisdiction and authority (“How the Court Works”). The rulings of the court themselves can take many forms. Rulings can deal with issues of definition, such as ruling that an action constituted genocide or a breach of sovereignty, but often take the form of more actionable judgements such as the payment of reparations, official orders, or even delineating new maritime boundaries.

Legal proceedings for a contentious case in the ICJ are typically initiated through an application to the court submitted by one member state against another regarding a particular legal dispute. The applicant party, who submits the application to the court,

presents the grounds for its accusation, while the respondent party, who is a defendant in this case, must defend against the accusation in court. Before the court can officially try the case, the respondent party may submit preliminary objections to the application if they feel that the court does not have jurisdiction to rule on the case. The court will initially hear these objections and rule on their validity. If the objections are found to be valid, the case will not be heard; however, if the objections are found to lack strength, as is the case in many situations, the case will be fully tried in front of the court (“Statute of the International Court of Justice”).

Preliminary Objections: Article 36 of the Statute of the ICJ states that in the event of a dispute about the jurisdiction of the court, the respondent party may submit preliminary objections in their response to an application to the court instituting proceedings. Objections can be made on any legal grounds, but are most commonly made in terms of: Admissibility of evidence, improper subject matter (*Ratione Materiae*), inability to rule due to political passage of time (*Ratione Temporis*), or lack of jurisdiction based on territory not covered by the court (*Ratione Loci*).

Overview of Procedure and Conditions

The ICJ at BMUN presents experiences and situations unique to this committee. You are now esteemed judges from a particular country expected to react to evidence about a real-life situation to create an argument grounded in legal precedent and exercise your judgement in response to important historical crises. The chairs for the committee will be acting as lawyers for both sides of the case to present evidence and to maintain the constant flow of debate. As such, debate will primarily revolve around the discussions that you, the judges of the court, will have regarding various aspects of the case by employing legal arguments to determine the merit of evidence and to ultimately determine a verdict for the outcome of the case.

Though general BMUN parliamentary procedure will apply throughout committee,

the ICJ will proceed with additional specialized procedure. The ICJ will not have a speakers list, but will include additional moderated and unmoderated caucuses in its place. This is so that individual aspects of the case take precedence. The start of debate will be preceded by a short 'evidence presentation' phase in which dais members representing both sides of the contentious case will come forward with key pieces of evidence for consideration. During this short period of time, you will deliberate on these pieces of evidence and weigh them in terms of validity and relevance to the case in order to help inform your verdicts at the end of the committee.

One of the aspects of the ICJ that distinguishes it from a typical Bloc A or B committee is that the ICJ will call upon witnesses to provide testimony before the court. Witnesses, like in a court of law, are called upon by both sides of the case to argue in favor of their side. It's your job to interpret their testimony in relation to the facts of the case. Ten to twelve witnesses representing both sides will enter the committee throughout the duration of the conference and will provide initial testimony in response to questions by the dais. As judges, you will be allowed to cross-examine witnesses and ask them questions. During this time, your research into the topic and your quick-thinking will come into play as you attempt to press witnesses for more information.

Additionally, rather than writing resolutions to an issue, judges will work on verdicts which they will present at the end of the committee to inform an overall consensus for the court. The verdicts are not written using traditional resolution formatting either, but are rather written as a judicial ruling including justification for the verdict based on evidence presented to the court. In committee, verdicts will be written in groups of four or five and will be presented at the end of committee. Afterwards, the verdicts will be collected by the chairs and compiled into a final consensus of the court.

BACKGROUND INFORMATION

Timeline of Events

Note that Georgia's application to the court delineates Russia's intervention in the regions of South Ossetia and Abkhazia into three phases. Georgia claims that Russia played a key role

in inciting these conflicts with the goal of destabilizing the region and eventually annexing the regions of South Ossetia and Abkhazia. While the 'third phase,' which predominantly occurs in 2008, is more pertinent to this case directly, the other two will be included in this section for further background and historical context ("International Court of Justice").

Phase 1

1990: The Nationalist Coalition, led by the nationalist Round Table- Free Georgia Party, wins a multi-party victory in elections for parliament in Georgia. People were galvanized by a main nationalist narrative promoting historical and religious slogans with the message of independence, freedom, and sovereignty (Toal, Gerard, and John O'Loughlin). This nationalist movement laid the groundwork for Georgia's eventual secession from the Soviet Union. On another political aspect, growing aspirations in the region of South Ossetia to secede from Georgia led to an increase in violence between Ossetian separatist forces and Georgian military forces causing hundreds of deaths and thousands of refugees to flee the conflict (Roudik).

1991: Georgian parliament votes for secession from the Soviet Union after the motion for independence is supported by an overwhelming majority in a referendum. Note that this referendum, detailing the secession of Georgia from the Soviet Union, was officially recognized and Georgia now exercises autonomy as its own sovereign nation.

January 1992: South Ossetians vote for independence from Georgia in a referendum that remains officially unrecognized further inciting tensions.

July - August 1992: Abkhaz militants attack government buildings in the city of Sukhumi, the capital of the Abkhazian region after tensions over autonomy reach a critical stage. On July 23, the Abkhazian government proclaims independence from Georgia, though the declaration remains unrecognized. On August 14, Georgian police and National Guard units are dispatched to restore control over Abkhazia. Fighting breaks out in Abkhazia between Georgian forces and separatist forces. On August 22, the Confederation of Mountain Peoples

of the Caucasus, a militarized political organization that aided South Ossetia and Abkhazia in their efforts to secede from Georgia, ordered:

1. "To declare all people of Georgian ethnicity on the territory of Confederation as hostages.
2. All type of cargoes directed to Georgia shall be detained" (Matsaberidze).
3. On August 26th, Chechens fighting for Abkhazia engaged in vicious looting, pillaging, numerous rapes of Georgian teenagers, assault, and murder.

September 1993: Separatist forces in Abkhazia drive Georgian military forces out of the region.

1994: The government of Georgia and Abkhazian separatists sign a ceasefire agreement and allow Russian peacekeeping forces to be deployed throughout the region. Russia is, at this point, seen as a neutral party to this conflict and thus allowed to enter the region to exercise military-authorized "peacekeeping missions." Georgia later asserts in their application to the court that this was simply another ploy for Russia to gain a foothold in the region.

Phase 2

Throughout the conflicts incited by this war, thousands of Internally Displaced Persons (IDPs), were forced out of their homes either as refugees or as prisoners of war. The destruction of Georgian homes and neighborhoods in South Ossetia and Abkhazia resulted in over 192,000 displaced persons ("Ethnic Cleansing of Georgians..."). Georgia claims that between the years of 1994 and 2008, Russia has, instead of exerting influence over separatists to return IDPs to their respective homes, adopted a policy of slow annexation of both South Ossetia and Abkhazia. Georgia further claims economic and political sabotage by Russia in the region through a series of unlawful investments in South Ossetia and the acquisition of property belonging to displaced people in the region, in addition to undermining Georgia's national sovereignty in the region ("International Court of Justice").

Phase 3

April 2008: Russia begins full cooperation with the regional governments of South Ossetia and Abkhazia, enraging the Georgian government. The Georgian minister for reintegration, Temur Yakobashvili said in an official statement "We see a blatant attempt by Russia to carry out some form of annexation – in this case more in Abkhazia than in the Tskhinvali region [South Ossetia]."

July 8th 2008: Russian Military Aircraft enter Georgian airspace over South Ossetia prior to the arrival of US secretary of state Condoleezza Rice who was inbound acting in an advisory capacity. Her arrival in Tbilisi served as an indicator of other nations' growing concerns with the aggression of Russia in the region. Moscow's official statement regarding the presence of the aircraft indicated that it was meant to deter potential Georgian offensives, while the Georgian government claims that it was open aggression.

July 9th 2008: Abkhaz and Georgian forces clash resulting in numerous injuries and rising tensions on both sides of the issue.

August 1 2008: A roadside bomb allegedly placed by South Ossetian separatists injures several Georgian separatists.

August 7 2008: The President of Georgia Mikheil Saakashvili announces a unilateral ceasefire. A mere three hours after this, Russian attacks against Georgian villages significantly increase. Human Rights Watch, Amnesty International, and eyewitness testimony indicate reports of mass destruction of Georgian villages in South Ossetia and closely linked nearby regions. Furthermore, the destruction and looting of civilian property appears to have transformed the formerly ethnic Georgian areas into ghost towns. Data from the United Nations Operational Orbital Satellite Program (UNOSAT) further corroborated the extent of damages incurred by several Georgian villages around the city of Tskhinvali.

August 8 2008: Georgian troops proceed to the capital of the self proclaimed Republic

of South Ossetia, Tskhinvali. The troops are assaulted by Russian military claiming to be conducting 'peace enforcement' in the area.

August 10-11 2008: Georgian forces withdraw from South Ossetia. This retreat was caused by a naval standoff between Russian and Georgian warships. Russian forces that were deployed in Abkhazia advance into western Georgia.

August 12-15 2008: Georgians are forced out of South Ossetia and Abkhazia. Russian President Dimitry Medvedev claims to have ordered a cessation of hostilities; however, Russian air raids continue unabated in Georgia. A Russian tank battalion occupies the central strategic city of Gori. The self proclaimed President of South Ossetia, Eduard Kokoity, who was supported by Russia, claimed that the destruction of Georgian enclaves was conducted with the specific purpose of not allowing Georgian displaced persons back into the area, but rather to only allow displaced South Ossetians back into the area.

Georgia submits its initial **application to the ICJ** instituting proceedings against Russia for violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and further accusing them of perpetrating ethnic cleansing of Georgians in the regions of South Ossetia and Abkhazia.

August 16 2008: Georgia and Russia sign a peace deal, negotiated by French president Nicolas Sarkozy as the EU president, that stipulates that their respective armed forces must be removed. Russia does not fully comply with this and keeps some military assets in South Ossetia and Abkhazia.

August 19th 2008: Russian forces take 21 Georgian soldiers prisoner and grabbed five US humvees from Poti, Georgia. These soldiers were exchanged for prisoners of war with Georgia.

August 26th 2008: Russian president Medvedev signs decrees that recognize South Ossetia and Abkhazia as sovereign and independent states.

September 2008: US Vice President Dick Cheney arrives in Tbilisi and promises \$1billion to Georgia to “work to overcome the invasion of your sovereign territory.” Russia later signs treaties with South Ossetia and Abkhazia to maintain military bases there.

Overview of the Case and International Proceedings

In August 2008, Georgia instituted proceedings against the Russian Federation in the ICJ, alleging that Russia had violated its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and had attempted ethnic cleansing of Georgians in the regions of South Ossetia and Abkhazia. Georgia claimed that Russia was responsible for:

“Widespread and systematic discrimination against South Ossetia’s and Abkhazia’s ethnic Georgian population and other groups... reflected in acts including murder, unlawful attacks against civilians and civilian objects, torture, rape, deportation and forcible transfer, imprisonment and hostage-taking, enforced disappearance, wanton destruction and unlawful appropriation of property not justified by military necessity, and plunder” (International Court of Justice)

It is important to note that the regions of South Ossetia and Abkhazia had seen Russian intervention and have had histories of separatist leanings since the fall of the Soviet Union. Georgia’s application to the court merely comes in the wake of direct military and annexation efforts in the region.

Prior to a full trial of the case, however, the court first heard the preliminary objections raised by Russia against Georgia’s application according to procedure. The first stated that Russia and Georgia did not have a dispute at all regarding the interpretation of CERD and the second stated that the procedural conditions of Article 22 of CERD had not been fulfilled by Georgia. Article 22 of the CERD was employed in Georgia’s application to the court as justification for the ICJ’s jurisdiction and as an additional reason for why the case was

brought to the ICJ. 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" ("International Convention on the Elimination of All Forms of Racial Discrimination").

In essence, Article 22 provides that after appropriate negotiations, a dispute regarding violations of CERD may be brought to the court. Georgia claims that negotiations had been attempted with Russia, while Russia claims that such negotiations did not occur. Again, note that even international treaties such as this are subject to vastly different interpretation in legal arguments. After deliberation, the ICJ voted with a slim majority to uphold the second preliminary objection of the Russian Federation which stated that:

"the interpretation [or Article 22] is also in line with the case law of the Court, according to which —before a dispute can be made the subject of an action at law, its subject matter should have been clearly defined by means of diplomatic negotiations. For its part, the interpretation alleged by Georgia would be tantamount to imposing on the Court the heavy burden of determining a dispute the contours of which the Parties have not determined" ("Preliminary Objections of the Russian Federation")

Because the preliminary objection was upheld by the court, the case was dismissed on the grounds of a lack of jurisdiction. Regardless of the court's decision in real life, the ICJ at BMUN will proceed as though this objection was dismissed during this procedure.

THE CASE IN COMMITTEE

Key Legal Issues and Terms to Discuss

There exist some fundamental questions that lie at the heart of this case: Is Russia responsible for violations of the CERD? And does this matter exceed the lawful jurisdiction of the court? In order to answer these fundamental questions, and more importantly pose some of your own, you, as ICJ justices, must grapple with definitions of terms and various legal issues that could ultimately determine the outcome of the case.

At the heart of this case lies the allegation that Russia engaged in racial discrimination against ethnic Georgians in their campaigns in South Ossetia and Abkhazia. Article 1 of 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 or exercise, on an equal footing, of human rights and fundamental freedoms..." ("International Convention on the Elimination of All Forms of Racial Discrimination")

Thus, in attempting to prove that Russia acted with racial discrimination as its intent, Georgia must ensure that it adheres to a definition of the term that aids its arguments. Indeed, the convention does not distinguish between direct and indirect discrimination or other such actions and is therefore still subject to interpretation. Another key aspect of the case is the allegation that Russia engaged in Ethnic Cleansing of Georgians in South Ossetia and Abkhazia and aided in other militant organizations in doing so. The seriousness of such an allegation demands that the court give time to defining precisely what ethnic cleansing is. The United Nations Commission of Experts, which was originally given the task of examining violations of international law in the territory of former Yugoslavia, concluded in their final report that:

"ethnic cleansing is a purposeful policy designed by one ethnic or

religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. To a large extent, it is carried out in the name of misguided nationalism, historic grievances...This purpose appears to be the occupation of territory to the exclusion of the purged group or groups" ("Ethnic Cleansing").

While this analysis provides a compelling definition for the motivations behind ethnic cleansing, it is important to take multiple perspectives into consideration before committing to an interpretation, particularly when such a decision can have far reaching implications such as in the ICJ. When ruling on Russia's culpability for the events in South Ossetia and Abkhazia, one must consider how they define such terms.

Burden of Proof - Applicant Party Arguments

Because the ICJ has the power to establish the boundaries of international law and the extent to which countries must meet their obligations under the law, both parties must be able to provide sufficient evidence to leave the court without a doubt as to the validity of their claims to win the case. This, leads to a discussion of the standards for meeting and exceeding the burden of proof in the ICJ. As the applicant party, Georgia has alleged that Russia has not met its obligations under Article 22 of CERD and has attempted ethnic cleansing in South Ossetia and Abkhazia; thus, the primary burden of proof is placed on Georgia. Part of your jobs, as ICJ judges, will be to set the burden of proof and decide at what point you are satisfied with the evidence presented.

So, to what extent must Georgia prove its claims to meet the burden of proof, that is, to leave the court without any reasonable doubt? A successful prosecution of Russia must argue that the Russian government was connected with separatist forces fighting in South Ossetia and Abkhazia, that Russia had the intent to commit ethnic cleansing in the region, and that the preconditions for CERD had indeed been breached by Russia. The original court ruled by a slim majority to uphold the preliminary objections by Russia on the grounds that the preconditions for Article 22 of CERD, requiring negotiations between both parties, had

not been fulfilled. However, one can easily argue that the negotiations that occurred prior to the ceasefire and peace deal of August 16th 2008, indeed constituted sufficient negotiations and that the fact that Russia continued to escalate hostilities by taking 21 Georgian prisoners only exacerbated their breach of CERD.

Remember that the court can also consider events that occurred before, during, and after the original application to the court and therefore can also consider the actions of both parties after Georgia's application to the court. As such, Russia's statements in support of the separatist movements in South Ossetia and Abkhazia could be taken to prove intent to commit ethnic cleansing in the region.

In a legal dispute, the burden of proof is typically placed upon the prosecution of a case in order to prove the validity of their allegations. The burden of proof is satisfied when the court feels that a party has provided sufficient evidence to remove any reasonable doubt regarding the claims that they make. If the burden of proof is met, then the burden switches to the other side and so on and so forth until a conclusion can be reached. In this case, for example, if Georgia is unable to meet the burden of proof, then the case will be settled; however, if Georgia is able to provide sufficient evidence to satisfy the court, Russia must also be able to provide equally convincing evidence to the contrary in order for the hearing to move in their favor.

Burden of Proof - Respondent Party Arguments

As the respondent party, Russia's role in the case is to satisfy the court with evidence contrary to that presented by Georgia but with equal or greater merit in order to convince a majority of judges to rule in their favor. Though Georgia has the majority of the burden of proof placed upon it, it is Russia's responsibility to respond to all aspects of Georgia's application thoroughly and effectively enough to leave the court with no reasonable doubt as to their arguments. In order to be successful, a defense of Russia must focus closely on disputing the claim that Russia violated Article 22 of CERD and the use of indisputable fact to substantiate their arguments. After all, one can still condemn and punish the acts of violence

in South Ossetia and Abkhazia without necessarily finding Russia guilty of causing them. After all, it would be a serious miscarriage of justice to bend international law with the sole purpose of finding Russia guilty of the allegations presented to the court.

A successful defense must argue Russia's innocence from two primary perspectives: that Russia did not possess intent to commit ethnic cleansing, and that Georgia did not meet the preconditions of CERD before bringing their case to the ICJ. The fact that negotiations regarding supposed breaches of CERD did not occur between Russia and Georgia is enough grounds to disqualify the case as the ICJ cannot use Article 22 of CERD as a foundation when it lacks jurisdiction due to the inaction of the Georgian government.

QUESTIONS TO CONSIDER

1. Did Georgia meet its obligations in negotiations with Russia prior to instituting proceedings with Russia? How could this influence the court's ability to rule effectively on this case if at all?
2. How does the Convention on the Elimination of All Forms of Racial Discrimination aid or detract from Georgia's application to the court?
3. How could responsibility for the acts of racial discrimination be placed upon Russia? In other words, what constitutes sufficient evidence for Georgia to meet the burden of proof for this case?
4. What role, if any, should emotional or moral considerations play in the formation of verdicts in this case and in the ICJ as a whole?

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