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Russo-Georgian War of 2008: Legality and Illegality of Russia's Operations

Did human rights violations committed by the Russian Armed forces against ethnic Georgians rise to the level of crimes against humanity? Before answering this question, first it is important to understand what the Russians have done during the War with Georgia in 2008 and how their actions were equivalent to either or the universal crimes noted in international law. After Russia invaded neighboring Georgia in early August of 2008, the Russian Armed Forces used unconventional methods of warfare and systematically abused groups of ethnic Georgians in the breakaway regions of Abkhazia and South Ossetia. In the midst of the five-day war, the Russian military attacked civilians in all parts of Georgia, both through aerial strikes and ground assaults. Many lives were lost and although a cessation of hostilities was achieved by both combatants, the latter resulted in tens of thousands being displaced while hundreds being killed, causing a dramatic spike towards the overall death toll. Georgian authorities complained that Russia's actions were indiscriminate and systemic violations of international law.

The Georgian government noted that Russia, from their activities in Georgia, breached numerous international conventions ranging from the Convention on the Elimination against All Forms of Racial Discrimination(CERD), Convention on the Prohibition of Torture, and the European Convention on Human Rights. In response to those contraventions, Georgia sued the Russian Federation and that lawsuit was eventually litigated towards the International Criminal Court for review. Given the countless number of assaults the Russian military had committed against Georgians during the Russo-Georgian War of 2008, it demonstrates that Russia's actions against ethnic Georgians indeed rose to the level of crimes against humanity due to Russia's

misuse of their extraterritorial jurisdiction principles and the discriminatory practices the Russian Armed Forces pursued towards Georgian communities in Abkhazia and South Ossetia.

Historical Context

In response to an artillery assault launched by the Georgian forces in Tskhinvali, South Ossetia, the Russian military began pursuing a series of indiscriminate attacks and abuses against innocent civilians, both in undisputed Georgian territory as well as in South Ossetia. This was launched in an effort to protect Russian peacekeepers and nationals stationed in those regions however, it was only till the day following the Russian counteroffensive that set the stage towards Russia's brutal conflict with the Republic of Georgia in 2008. Beginning on August 8, Russian ground forces from the 58th Army crossed into South Ossetia and Russian artillery and aircraft hit targets in South Ossetia and other undisputed territories around Georgia(HRW, 5). The Georgian forces were forced to surrender by August 10th however two days following that ultimatum, the Russians moved into occupied territory south of the administrative border with South Ossetia. Russian troops eventually moved near the breakaway region of Abkhazia and soon laid siege towards strategically important cities near western Georgia. Russia announced that its forces completed their withdrawal near undisputed territory on October 10th, in accordance to a ceasefire agreement brokered by France and the European Union, however Georgia disputed that claim(HRW, 8). Along with diplomatic ties being severed between Russia and Georgia, the Georgian government accused the Russian military for pursuing discriminatory attacks against ethnic Georgians, both in western Georgia and in the breakaway regions.

Legal Framework

The accusations between Russia and Georgia soon carried over to the International Court of Justice after the Georgian government filed an Application Instituting Proceedings against the Russian Federation, accusing them for committing actions likened to crimes against humanity.

This legal dispute between Georgia and Russia connected to the events that unfolded in the Russo-Georgian War and dealt with two principles of international law subjected to debate, use of extraterritorial jurisdiction and human rights. On top of that, the practices fulfilled by the Russian military against ethnic Georgians during the conflict connects with two international conventions that help determine the legality behind Russia's actions in the war along with whether or not Russia's actions against the Georgian community were deemed discriminatory. The first is the Convention on Elimination against All Forms of Racial Discrimination(CERD) while the second is the European Convention on Human Rights(ECHR). The International Convention on the Elimination of All Forms of Racial Discrimination, or CERD, was a multilateral convention adopted in 1965 and came into force in 1969. A treaty represented as a declaration of intent, CERD was ratified by 182 states for the purpose of establishing protection and enforcement for the right against racial discrimination. It remains as a principle international human rights instrument defining and prohibiting racial discrimination in all sectors of private and public life(McDougall, 1). By principle international human rights instrument, this multilateral convention is at the cornerstone for upholding basic principles of human rights along with ensuring that states respect racial inclusivity rather than inequity. As mentioned previously, CERD is represented as a declaration of intent rather than a self-executing, meaning that this legal convention requires additional executive and legal action to be put into place, once entered into force. After a state becomes a party to CERD, states have declared that racial discrimination should be outlawed and have pledged themselves to abide by the terms of the Convention(McDougall, 1). The international convention, being an instrumental source for preventing racial discrimination, best illustrates a brief definition of racial discrimination under Article 1, which states that "racial discrimination is any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or

effect of nullifying or impairing the recognition, enjoyment of exercise, or an equal footing, of human rights, fundamental freedoms in the political, social, economic, cultural, or any other field of public life”. This provision is at the heart of CERD and it basically signifies that any form of division, marginalization, polarization based on race, religion, color, nationality, and ethnic origin is best identified as racial discrimination. Along with Article 1, there are additional obligations that CERD provides for States to comply with. These include States being responsible for implementing any practice necessary for ending racial discrimination, whether it be legislations, policies, or guardrails imposed. Each State party to the convention must act to end racial discrimination “in all its forms”, to take no action as a State, and to ensure that no public entity does so whether national or local. States must not sponsor, defend, or support racial discrimination in any way(McDougall, 3). Article 1 along with these obligations enshrined for States to abide by are not just instrumental behind eradicating racial discrimination globally but are applicable towards the central question of this paper, which is whether or not Russia’s actions against ethnic Georgians during the War in Georgia rose to the level of crimes against humanity? Russia and the Republic of Georgia are parties to this convention and given that these countries signed the treaty, implies that the provisions listed are binding to both.

Along with the Convention on Elimination of All Forms of Racial Discrimination, another convention also applicable to the central topic of this paper is the European Convention on Human Rights. The European Convention on Human Rights, or ECHR, is an international human rights convention that came into force on November 4, 1950 with an intent to facilitate the promotion of human rights across Europe. This convention was ratified by 47 countries, each serving as member states within the Council of Europe, and governments that signed the treaty made a commitment to abide by certain standards on protecting basic human rights and freedoms of ordinary individuals. The development of ECHR led to the creation of the European Court of

Human Rights, an instrumental legal institution responsible for upholding the commitment put forth by party states on the purpose of safeguarding human rights across the European continent. The ECHR was created through an idea proposed while World War II was reverberating across the world in the early 1940s and was being developed for the purpose of ensuring governments to never dehumanize and abuse people's rights with impunity (Amnesty International, 14). The European Convention on Human Rights entails a series of rights and freedoms each enshrined through provisions or articles vested in the treaty. For instance, article 2 of ECHR grants individuals the right to life, while articles 3 and 4 grant individuals the right to be protected from torture as well as freedom from slavery. Article 9 provides individuals the freedom of thought, conscience, and religion, while articles 10 and 11 illustrate both freedom of expression along with freedom of assembly. These key provisions embodied in ECHR are what make this convention instrumental towards protecting individual freedoms along with safeguarding human rights throughout Europe. The articles mentioned along with the provisions implemented both draw some applications towards Russia's involvement in the 2008 Russo-Georgian War. More than just the applications, the provisions also help to legally justify Russia's actions against Georgians in the breakaway provinces and whether their military activities towards this ethnic community equate to the universal offense of crimes against humanity.

Republic of Georgia Legal Arguments

To vindicate the legality behind Russia's military activities against ethnic Georgians during the Russo-Georgian War, it is important that we look at what the government of the Republic of Georgia argued regarding their justification over Russia's actions in the conflict of 2008. For that purpose, we turn to a case heard by jurists of the International Court of Justice that entailed some of the legal arguments stressed by the Georgian government as well as the Russian Federation on this dispute. The case, Georgia v. Russian Federation, was reviewed by the ICJ

after an application of institutional proceedings was filed by senior officials of the Georgian government on Russia's actions within Georgian territory following the invasion they authorized. From there, the Georgians argued that Russia's activities against civilians alongside ethnic Georgians were not only indiscriminate but legally, they had breached key provisions outlined in the Convention on Elimination of All Forms of Racial Discrimination(CERD) and the European Convention on Human Rights. Regarding the application of CERD, the Georgian government argued that in accordance to the application they submitted towards the ICJ, Russia acted sycophantic towards separatist movements that unfolded in the *de-facto* breakaway states of Abkhazia and South Ossetia and mobilized troops to the regions as part of their efforts to "restore order". Georgia contends that Russia, both through its organs and through South Ossetian and Abkhaz separatist forces under Russia's direction and control, improperly interfered in these regions by engaging in widespread and systematic discrimination, including attacks against and mass expulsion of South Ossetia's and Abkhazia's ethnic Georgian populations, in violations of articles 2, 3, 4, 5, 6 of CERD(Buys, 3). Earlier, we mentioned Article 1 being the key provision of CERD that defines racial discrimination but more than Article 1, articles 2, 3, 4, 5, 6 are also at the heart of this convention as they work to prevent any act of racial discrimination committed based on race, nationality, or ethnic origin. What the Georgian government argued is that Russia's ill-treatment of ethnic Georgians in Abkhazia and South Ossetia, along with occupied territory outside the breakaway states were breaches of articles 2 and 6 of the convention. The Georgians contended that Articles 2 and 6 were the most relevant provisions to justify Russia's actions in the war and from there, applied these articles towards the military activities committed by the Russians in the breakaway states, following their invasions. The Georgian government mentioned the artillery assaults and aerial bombardments launched by Russia against Georgians during the Battle of Tskhinvali as an example of how Russia violated

Article 2 of CERD, which states that “each state undertakes to engage in no act or practice of racial discrimination against persons, groups of persons, or institutions”. On top of article 2, the Georgian government also noted Russia’s activities against Georgians as a violation of Article 6, which addresses that “states parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this convention”. The Republic of Georgia stressed that Russia’s alleged acts of discrimination include murder, torture, rape, deportation and forcible transfer, imprisonment, hostage taking, enforced disappearance, and unlawful appropriation of property not justified by military necessity(Buys, 3). These arguments delivered by the Georgian government on Russia’s alleged use of murder and deportation against ethnic Georgians in the breakaway states that the Republic of Georgia concludes Russia’s activities as discriminatory and represented as gross violations of international law, after breaching key provisions responsible for preventing States from committing discriminatory actions in the future.

Along with Georgia’s application of CERD, the Georgian government also drew up the European Convention on Human Rights as part of determining the legality behind Russia’s actions against ethnic Georgians in the Russo-Georgian War. From there, the Georgian government accused the Russian Federation of committing systemic human rights violations against civilians in the breakaway regions over the course of the 2008 conflict. As part of justifying their contention, the Republic of Georgia used the assaults committed by Russia at the Battle of Tskhinvali as a source of evidence to prove that Russia’s actions from the battle were not only indiscriminate but noted as egregious abuses of human rights principles. Georgia noted that after their artillery units attacked South Ossetia’s administrative capital Tskhinvali, Russian forces entered the breakaway regions and erratically attacked the civilians there. Authorities of

the Georgian government complained of systemic violations of European Convention of Human Rights along with breaches towards articles 2(right to life), 3(prohibition of torture), 5, the right to liberty(Dzehtsiarou, 288). Each of these articles mentioned are key provisions vested at the heart of the European Convention on Human Rights and as part of proving how Russia had breached these articles, the Georgian government listed several occasions in the conflict where Russia violated articles 2, 3, and 5. The Georgian government, regarding their complaints, noted events during the war that helped justify Russia's breaches of these provisions. Georgia used the military operations committed by Russian and South Ossetians forces during the conflict as an example of an occurrence where Russia had breached Article 2, the right to life. The Georgian government mentioned about the illegal detainment from South Ossetian forces of 160 civilians in indecent conditions for approximately fifteen days and some of those detainees had been ill-treated, which amounted to violations of Articles 3 and 5 of the Convention, the rights to liberty and security(Lambert, 4). The arguments presented by the Georgian government regarding Russia's breaches towards central provisions enshrined in the European Convention on Human Rights not only underscores the egregious violations of international law but more importantly elucidates how Russia's actions in the Russo-Georgian War were likened to the degree of crimes against humanity.

Russian Federation Legal Arguments

The contentions delivered by the Russian Federation on the legality of their activities in Georgia were undoubtedly contrary to those presented by the Georgian government, as they countered most of the arguments that the Russians provided regarding whether their actions corresponded to the legal framework established for this case. On top of the legal arguments provided, the Russians refuted many of Georgia's complaints over their involvement in committing irreconcilable and discriminatory practices against the ethnic communities based in

Abkhazia and South Ossetia. In response to Georgia's allegations, Russia contended that Georgia failed to respect the people's right of self-determination in the regions of Abkhazia and South Ossetia and that Georgian President Sakashvili impeded the peace process(Buys, 4). Russia further alleged that Georgia suddenly aggravated the situation by bombing Tskhinvali during the first week of August 2008(Buys, 4). Alongside the lines of defense laid by Russia for justifying their non-involvement in provoking the start of the Russo-Georgian War, the Russian also repudiated the breaches they allegedly committed towards articles 2, 3, 4, 5, 6 of CERD. Russia denied any claims from the Georgian governments that it has engaged in discrimination of the Georgian peoples and went beyond the provisions vested in CERD that prevent acts of discrimination from being pursued. Instead, Russia claims that it has acted as a mediator and guarantor of peace and security in the region as part of a collective peacekeeping force(Buys, 4). This rebuffing displayed by the Russian government over their alleged involvement in discriminatory activities against the ethnic Georgian community helps to address the political arguments made by the Russians regarding their actions during the war in Georgia but as part of the legal arguments delivered, there is one key provision in CERD that Russia used to help build upon their arguments over Georgia's complaints on Russia's alleged discriminatory practices their military committed over the course of the war. This provision of CERD that is central towards Russia's dispute towards the complaints submitted by the Georgian government is Article 22, the jurisdiction-oriented provision for the convention. Article 22 states that "any dispute between two or more State parties with respect to the interpretation and application of this Convention, which is not settled by negotiations or by the procedures expressly provided for in this Convention, shall at the request of any parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement". What this essentially addresses is that there are a series of conditions or

prerequisites that State parties to dispute are required to fulfill, if they wish to seek the International Court of Justice to help enforce their ruling of the dispute, following their legal interpretation to it. For the case of Article 22 towards Russia's dispute with Georgia, Georgia submitted an application for the International Court of Justice to review that each listed their complaints pertaining to Russia's violations of international law along with infringements towards provisions of CERD and ECHR. The Georgian government contended that they met the preconditions over requesting the ICJ to exercise jurisdiction in the case however, the Russians argue that despite CERD being applicable in this case, the Georgians weren't successful in meeting the precondition requirements for enabling ICJ to enforce a decision over the dispute. It argued that Georgia had failed to provide evidence that it had attempted to negotiate as required by the provision, nor had it positively indicated that it had employed in some form the mechanisms provided for by the CERD Committee before referring the dispute to the International Court of Justice(Okowa, 746). Russia's repudiations over the Republic of Georgia's complaints, legally and politically, addresses the fact that Russia continues to deny the discriminatory activities their military allegedly partook in and has repeatedly refuted the evidence submitted by the Georgian government on their possible violations of key provisions in CERD and ECHR.

International Community Perspective

On top of the dissensions put forth by the Russian Federation along with the Republic of Georgia, regarding possible discriminatory activities and crimes against humanity committed by the Russian military during the August War of 2008, it is also important to note that outside of the State parties to the dispute, other legal institutions in the global community stepped up to provide their legal evidence over whether Russia's actions against ethnic Georgians likened to the degree of crimes against humanity. For this case, we look at two international and regional

bodies that played a role in reviewing the dispute. The first being the International Court of Justice(ICJ), while the second being the European Court of Human Rights(ECtHR). As part of their review, the Court first looked at Russia's preliminary objection on whether it was verified that the Russian military's activities went beyond the provisions vested in CERD. The Court found out that there was in fact a dispute about the interpretation of CERD since the parties disagreed about whether Russia had violated Articles 2 and 5 of CERD. The Court also claimed that CERD did not include a territorial restriction, thus it was inconsequential that the racial discrimination occurred outside of Russia's territory(Lucak, 11). On top of the disagreement from the CERD provisions, the Court reviewed Russia's second objection, which was Georgia's application of Article 22 and whether they satisfied the requirements of consulting the ICJ to enforce their jurisdiction over the dispute. In interpreting the statement, the Court considered "the ordinary meaning of the terms in their context and in light" for the purpose of CERD(Lucak, 14). The Court noted that when interpreting other treaties with a similar jurisdiction clause, the Court had interpreted any reference to other methods as a precondition to Court's ability on exerting jurisdiction over the case. For these reasons, the Court concluded that negotiations provided were "preconditions" for finding jurisdiction(Lucak, 14). From the interpretations provided by the ICJ, both on Russia's breaches to CERD and objection over Georgia's use of Article 22, the Court came to a conclusion that some areas of universal crimes were identified and that Russia's actions against ethnic Georgians in the conflict were not recognized, but nearly confirmed to them being equated as crimes against humanity.

Regarding the European Court of Human Rights' involvement, this institution began reviewing the application of jurisdiction both from the Georgian military and the Russian military. The Court looked at military operations pursued by both sides in the dispute and assessed whether the Georgians and Russians misused their extraterritorial jurisdiction from

executing these activities in the war. The Court considered that a distinction needed to be made between the military operations carried out during the active phase of hostilities and the other events, which it is required to examine in the context of present armed international conflict, including those which occurred during the “occupation” phase after the active phase of hostilities had ceased, and the detention and treatment of civilians along with prisoners of war(Duffy, 6). In addition to military operations, the European Court also investigated the alleged killings committed by the Russians as well as the Georgian military but more importantly, looked to see whether or not there were crimes against humanity committed by either of the two State parties. Reading the judgment as a whole, the Court detected that key provisions of CERD and ECHR were breached and accepted that there were civilians detained, raped, beaten, and shot to death in villages(Duffy, 7). Out of all the arguments and interpretations displayed by the ECtHR, the Court was able to identify that such atrocities were committed against civilians during the conflict but given their third-party stance they took, the Court still wasn’t able to confirm definitively that the Russian military’s actions against ethnic Georgians rose to the level of crimes against humanity.

Conclusion and Legality

Throughout this paper, there were arguments and sources of evidence used to justify whether Russia’s actions in the August War of 2008 are examples of crimes against humanity. As part of answering the central question, we looked at the Georgian government’s side, the Russian government’s view, as well as the perspectives and interpretations put forth by global and regional legal institutions involved. Yet despite differences in opinion laid out by the State parties, despite differences in opinion laid out, it was clear that Russia committed egregious activities against ethnic Georgians and their actions towards this given ethnic community were

not only deemed discriminatory but more importantly equivalent to the level of crimes against humanity.

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