



SOFIMUN
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"Search Of Future Ideas, Models Us Now"

COMMITTEE:
INTERNATIONAL COURT OF JUSTICE

CHAIRPERSON:
LENA BORTH & IVA BJELINKSI

TOPIC: (A)
A JUST WAR OR JUST A WAR? LEGALITY
OF THE USE OF FORCE

INTERNATIONAL COURT OF JUSTICE (ICJ)



The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York (United States of America).

The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. It is assisted by a Registry, its administrative organ. Its official languages are English and French.

More at: <http://www.icj-cij.org/court/index.php?p1=1>



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Topic A: A Just War or Just a War? Legality of the Use of Force - SUMMARY



Šbarkia ("the Applicant") is bringing a case before the International Court of Justice against United Whallands ("the Respondent") in accordance with Art. 40 (1) of the Statute of the International Court of Justice for breach of the prohibition of the use of force.

In 2000, the autonomy of the Koikodians, a people in the country of Šbarkia, was abolished. This act being strongly opposed by the Koikodians was followed by suppression and severe and systematic human rights violations by Šbarkia. The international community became increasingly aware of and concerned with the escalating conflict and the humanitarian consequences, expressing their concern in several UN Security Council resolutions. The TUNA, an intergovernmental military alliance consisting of 11 states, among them the United Whallands, attempted to mediate between Šbarkia and the Koikodians. Peace talks remained fruitless, however.

The situation deteriorated further and violence escalated on both sides. Šbark military and police forces committed acts of ethnic cleansing, tens of thousands of people began to flee their homes in the face of this systematic offensive. In 2009, final diplomatic attempts were made to persuade the government of Šbarkia to stop attacks and human rights violations on the Koikodians or face imminent TUNA air strikes. After the refusal of the Šbark government to comply, order was given to commence air strikes. The TUNA military campaign was not authorised by the Security Council. After an 11-week bombing campaign of the TUNA forces, the Šbark government agreed to TUNA's demands by accepting to withdraw their troops from the Koikodian region.



The Case will focus on the highly controversial question of the legality of use of force in order to avert a humanitarian catastrophe but in absence of a Security Council mandate.



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1. Case

1.

Šbarkia ("the Applicant") is bringing a case before the International Court of Justice against United Whallands ("the Respondent"), in accordance with Art. 40 (1) of the Statute of the International Court of Justice, for the violation of the prohibition of the use of force.

2.

The Koikodians, with a population of approximately 2 million, are a people living in the province Koikodia of the state of Šbarkia. Being a mere province without self-governing rights at first, their status was slowly enhanced over the years until they were eventually granted autonomy in 1990.

Tensions between Koikodians and Šbarks rose in the late 90s due to the Koikodians demand for a further upgrade of the status of Koikodia to a republic within the Šbark Federal System and the Šbark opposing position. After the election of a new, extreme Šbark nationalist government, the process to abolish Koikodians autonomy began. In 2000, the Koikodian parliament and government were dissolved, thereby effectively terminating its autonomy. This act being strongly opposed by the Koikodians was followed by suppression and severe and systematic human rights violations by Šbarkia.

3.

After some time of peaceful resistance by the Koikodians, they turned towards more aggressive methods, launching a guerilla war and a terror campaign. Šbark oppression escalated in response. Acts of ethnic cleansing of the Koikodians by the Šbark forces were committed. Houses were destroyed, people were raped, murders committed, causing hundreds of thousand people to flee and leaving 400'000 Koikodians displaced.

In 2005, the TUNA, an intergovernmental military alliance consisting of 11 states from the same region as Šbarkia, among them the United Whallands, attempted to mediate between Šbarkia and the Koikodians. Peace talks remained fruitless, however.

4.

Due to the efforts made by TUNA member states, the international community became increasingly aware of and concerned with the escalating conflict and the humanitarian consequences.

In 2008 the Security Council passed resolution 10245 and recognized thereby the conflict in Koikodia as a threat to peace under Chapter VII of the UN Charter, condemning the excessive use of force by Šbark police forces against civilians in Koikodia and calling on Šbarkia for



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a peaceful settlement. The resolution had little effect however, and the fighting in Koikodia continued.

Also resolution 15234, adopted several months later, defined Šbark activities in Koikodia as a threat to the peace and demanded that Šbarkia, "cease all action by the security forces affecting the civilian population and order the withdrawal of security units used for civilian repression," and "facilitate ... the safe return of refugees." Furthermore, it warned that, "should the measures demanded in this resolution...not be taken", "to consider further action and additional measures to maintain or restore peace and stability in the region". However, it stopped short of authorizing force. Rather, the resolution reaffirmed the sovereignty and territorial integrity of Šbarkia.

Throughout 2008, TUNA members in the Security Council had tried informally to secure a Chapter VII resolution authorizing the use of force in order to prevent further ethnic cleansing in Koikodia by Šbark forces. Russia and China, however, made it equally clear that they would sanction any use of force against Šbarkia because they considered the crisis in Koikodia as an internal problem of the Šbark Republic.

Nevertheless, Security Council Resolution 15234 seemed to have the desired affect. The situation calmed down and many of the refugees were able to return home.

5.

After several months the situation deteriorated again and violence escalated on both sides. Šbark military and police forces committed more acts of ethnic cleansing, destroyed property, raping, torturing and killing systematically. Tens of thousands of Koikodians began to flee their homes.

6.

In February 2009, negotiations between the Republic of Šbarkia and the Koikodians under the auspices of TUNA where held in Malev, Switzerland. It was proposed to have Koikodia as an entity with a very high degree of self-government though legally still within the international borders of Šbarkia and to authorize TUNA to place an observer force in Koikodia to monitor the situation. The Koikodians representatives signed the agreement but the Šbark government refused.

7.

At the beginning of November 2009, the Šbark armed units launched another offensive, driving thousands of Koikodians out of their homes and villages, setting fire to many houses and systematically torturing, raping and murdering Koikodians.

After a year of repeated attempts for peaceful resolution of the Koikodian conflict one last diplomatic attempt was made in January 2010 to persuade the government of Šbarkia to stop attacks and human rights violations on the Koikodians or face imminent TUNA air strikes.



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The evening before the Ultimatum ran out, United Whalland's Foreign Minister stated in a press conference the necessity of the intervention in order to halt and avert further ethnic cleansing in Koikodia and diminish the threat to regional stability.

After the refusal of the Šbark government to comply and the continuation of use of force against the Koikodians, order was given to commence air strikes.

TUNA intervened in February 2010 by launching a military campaign against Šbarkia.

The TUNA member states were clearly superior in weapons and military equipment.

8.

In response to the TUNA bombings, Šbark forces drove out Koikodians, displacing around 800,000 people into the neighboring countries, killing an estimated number of 3000 people. After an 11-week bombing campaign of the TUNA forces, however, the Šbark government agreed on 22nd April to TUNA's demands by accepting to withdraw their forces from the Koikodian region.

9.

TUNA's actions were neither explicitly authorized nor condemned by the Security Council.

Although without mandate by the Security Council, TUNA sought as much UN legitimacy for its actions as possible during the military campaign, cooperating closely with the UNHCR in caring for Koikodian refugees.

Also, the TUNA campaign put an end to the atrocities and mass human rights violations committed by Šbark forces.

However, the TUNA bombings killed 1000 Šbark civilians. Šbark forces, on the other hand, had killed an estimated number of 9000 Koikodians since 2000.

After the war TUNA troops restored peace in Koikodia in accordance with a UN Security Council resolution.

10.

On 1st May 2010, Šbarkia decided to bring a case against United Whallands before the International Court of Justice (ICJ). Both parties have accepted the compulsory jurisdiction of the ICJ without reservations. Both states are members of the United Nations.

Therefore,

The Applicant (The Republic of Šbarkia) requests the Court to adjudge and declare that:



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"invading Šbarkia was a violation of Šbark sovereignty (Art. 2 (1), (7) UNC), the principle of non-intervention and the prohibition of the use of force (Art. 2 (4) UNC) and consequently a violation of international law and even *ius cogens*";

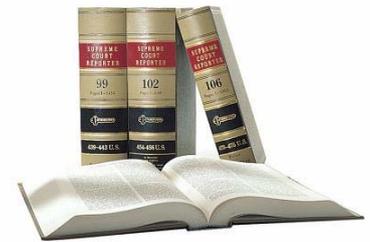
The Respondent (United Whallands) requests the Court to adjudge and declare that:

... since Šbarkia violated its international obligation under SC Resolution 10245 and 15234 by continuing severe human rights violations and ethnic cleansing, the invasion of Šbarkia by the TUNA members including United Whallands constituted a humanitarian intervention and thus justified the use of force.

Suggested Reading and Additional Sources

Topic A: A Just War or Just a War? Legality of the Use of Force

For a better understanding of the issue, the following sources should be consulted, but they are not exhaustive, therefore it is recommended that the delegates research the topic on their own, both through academic sources, as well as informal channels.



Mandatory

The following materials should be read by the participants in order to gain an in-depth view on the issue.

1. The use of force in international relations, edited by Hans Köchler (Google Books)
2. The Role of Humanitarian Intervention: Guarantee or Threat?, (by Lyal S. Sunga), compulsory: pp. 53-80
3. [The Legality of Humanitarian Intervention \(LLM theses\), by Eric Adjei, University of Georgia School of Law, 2005](#)
4. [Humanitarian Intervention, NATO and international law – Can the institution of humanitarian intervention justify unauthorized action?, Carla Portela, Berlin Information-center for transatlantic security \(BITS\), 2000](#)
5. [NATO and Operation Allied Forces](#)
6. [The responsibility to protect – Report of the International Commission on Intervention and State Sovereignty](#)
7. [Implementing the responsibility to protect – Report of the Secretary General](#)

Suggested

For information on the topic these links might be useful. Also search the sites for additional articles on the subject.

8. [Humanitarian Intervention – Ethical, Legal and Political dilemmas, edited by J. F. Holzgrefe and Robert O. Keohane](#)
9. The use of force in international relations, edited by Hans Köchler, (Google Books)



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10. The Role of Humanitarian Intervention: Guarantee or Threat?, (by Lyal S. Sunga), recommended: p. 41-52, (Google Books)
11. Oxford Institute for Ethics, Law and Armed Conflict, „Who should intervene? The agents of humanitarian law and the responsibility to protect“, 17/02/2009, (Free download on iTunes)
12. Check the information provided by the national authority of the state which you represent or the cooperation with the NGO which you represent.
13. Any other relative materials.