

AMITY INTERNATIONAL MOOT COURT COMPETITION 2018

IN THE INTERNATIONAL COURT OF JUSTICE



AT THE PEACE PALACE THE HAGUE,

THE NETHERLANDS

CASE CONCERNING THE ORUKAIN REFUGEES

THE STATE OF ANTOLIA

V.

THE STATE OF VARYS

WRITTEN MEMORIAL ON BEHALF OF THE STATE OF
ANTOLIA

(APPLICANT)

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STATEMENT OF JURISDICTION

The Applicant has the honour to submit the dispute to the honorable court, the memorandum for the Applicant under the jurisdiction of the International Court of Justice.

The State of antolia has submitted the application instituting the proceeding in the case of orukian refugees against Thestate of varyspursuant to Article 36 and Article 40 of the statute of International Court of Justice¹. Excepting the jurisdiction of the Rules of Court as compulsory. A preliminary objection under Article 79 of The Rules of The Court² has been submitted to the registrar of the I.C.J requesting the court to hear the matter to be without jurisdiction to hear the matter submitted by the State of Antolia.

The present Memorandum sets forth the facts, issues and arguments in the present case sets forth the facts, issues and arguments in the present case.

¹ Statute of the International Court of Justice

²RULES OF COURT OF MARCH 11th, 1936

QUESTIONS PRESENTED

ISSUE:-1

WHETHER THE NOTIFICATION DATED JUNE 6, 2018 ISSUED BY THE VARYSIAN GOVT. IS VIOLATION UNDER THE INTERNATIONAL LAW?

ISSUE:-2

WHETHER THE ORUKAINS WHO ENTERED VARYS FROM ANTOLIA ARE REFUGEES OR THEY ARE CITIZENS OF ANTOLIA UNDER INTERNATIONAL LAW?

ISSUE:-3

WHETHER THE ANTOLIA IS LIABLE TO ACCEPT THE DEPORTED ORUKAINS OR NOT?

STATEMENT OF FACT

The statement of facts are explained in three fold

I.FACTS:

1. Tahoma is a multi-religious nation with a population of approximately 5 Million Majority of its population follows Orukains, apart from Orukains Tahoma recognizes three other religions namely Gashun, Phikam, Ralek. 90% of the government offices, judicial posts, and major businesses were constituted by Phikams, which was minority but very influential to whole nation.
2. In recent years the government tried to make Tahoma a centre for tourism purposes. But it was against the religious beliefs and tenets of Orukains. A group of Orukains launched a peaceful protest against government .The vitriolic messages on social media led to minor scuffle between Orukains and non-Orukains on 6th January 2018. This circulated message was a conspired act of acclaimed atheist group known as ‘Pralash’ which was later on found to be carried by Phikams as per few relevant media reports.
3. These conflicts started increasing on 5th February 2018 there was a major riot happened in Woka where several Orukains and non Orukains were injured. The government primarily arrested several Orukains charged with non-bailable offence of rioting and causing damage to public property. Some are given to death sentence arbitrarily. Only individual of Phikam religion arrested and later released on ground of insufficient evidence which led to widespread dissent among Orukains.

II.REPORTS

Several relevant media reports confirmed this reporting that several Phikams in government higher officials maliciously wanted to portray Orukains as anti-nationals. According to international reports, the accused Orukains were not being given right to defend themselves and the judiciary was biased against Orukains.

III.ANTOLIA

1. Tahoma shares its western border with republic of Antolia. Antolia is an underdeveloped nation primely getting financial aid from Varys for its substantial needs. The new government formed in 2017 has implemented new policies to develop the country as well as to elevate its HDI ranking which was contemporarily 151 considered to be very miserable.

2. Varys, lead by VNC government elected newly in February 2018. It was a developing and multi-religious nation. Majority of its population is Phikam and the other faiths belong to minority religion.
3. VNC government passed a legislation titled 'Population Control Act 2018' to make one child policy a norm and to tax individuals who chose to have more than one child. However the couples already having a child were allowed to adopt children from orphanages and government rehabilitation centers, which was slightly unjustifiable in accordance to human rights declared under Article 3 & 12 UDHR. Another important legislation passed by VNC government was 'National Security Act 2018' it was proposed to have a national directory of citizens so that government had data of all its citizens. This act was also amended and process of acquiring citizenship was made stringent.
4. Under the new rules, only men could pass citizenship to their children. This move was made to prevent children of refugees or illegal immigrants from automatically getting citizenship. The concept of birthright citizenship was diluted to that extent that children born on Varys territory will not automatically granted citizenship unless their biological father is a citizen of Varys and the parents are married.
5. On April 24, 2018, the leading newspaper reported that thousands of Orukains from Antolia were migrating to Varys who were the citizens of Tahoma who fled to Antolia fearing persecution by Tahomian government however due to lack of employment opportunities and resource scarcity they got compelled to leave Antolia also and enter Varys for better opportunities .
6. On June 6 2018, the Varys government issued a notification setting up of tribunals for detection and deportation of all illegal migrants in country. They also detected and passed orders for deportation of thousands of undocumented persons.
7. The government of Varys, however clarified that according to findings of tribunals, these people had entered Varys from Antolia. They will be deported to Antolia and not to Tahoma. On July 12, 2018, the Ambassador of Antolia met Minister of External Affairs for Varys and conveyed that Antolia government is not responsible towards any of these people detected as there's no concrete proof that they are citizens of Antolia or have entered from Tahoma through Antolia, they would qualify as refugees seeking asylum from persecution and Varys has an obligation to protect them. Even women who had given birth in Varys. The Varysian law refused to grant such children citizenship leaving them stateless.

THE DISPUTE

Concerned with the aggravating situation, Varys and Antolia initiated several diplomatic negotiations to settle their disputes and consequently parties agreed to submit the matter of disputes to the international court of justice under a special agreement Article 40 (1) of ICJ statute.

SUMMARY OF ARGUMENTS

ISSUE:-1

WHETHER THE NOTIFICATION DATED JUNE 6, 2018 ISSUED BY THE VARYSIAN GOVT. IS VIOLATION UNDER THE INTERNATIONAL LAW?

The notification clearly stated and ordered administration of Varys to setup a tribunal to detect and deport all the illegal immigrants urgently and the basis of deportation and detection was solely dependent upon unavailability of specified documents of citizenship with them.

In pursuance of which administration dynamically within a span of one month deported thousands of undocumented persons among which 98% were orukains. This act was unjustifiable in accordance with various international law i.e. UDHR, UN Convention on rights of child 1989, UNHCR, statute of ICJ.

It clearly signifies the massive violation of human rights which is making thousands of stateless people's life miserable. As per the joint statement and facts of case state of varys is not the signatory of united nation convention of refugees but as per the provision of article 35 UNHCR binds state of varys to cooperate with the actions of UN General assembly resolutions and actions of security council. Hence the notification and its execution is the unambiguous violation of international laws.

ISSUE:-2

WHETHER THE ORUKAINS WHO ENTERED VARYS FROM ANTOLIA ARE REFUGEES OR THEY ARE CITIZENS OF ANTOLIA UNDER INTERNATIONAL LAW?

The Orukains who entered varys from Antolia are refugees under international law. If we throw light towards the circumstances of Orukains faced by them during the course of facts the threats and conditions to which they are subjected make them fall under the category of refugee under the provisions of UNHCR convention 1951 and the Constitution of the International Refugee Organisation, the contention of facts clears that the refugees are the liability of the state in which they are seeking asylum.

There is no reason in the part of varysian govt. for refusal of granting asylum to the Orukains entering in its territory. Apparently it is stated in facts the socio-economic conditions of applicant is not good enough to provide the resources as well as opportunities even of substantial level although the economy of applicant is primly dependent on the financial aid provided by the respondent, due to which orukian refugees departed towards the respondent state to seek asylum and resources and opportunity for their survival and better standard of living.

This departure to the respondent state somehow binds the respondent lawfully as well as morally to provide asylum to all the refugees. As per the international laws it is the legal right of refugees to seek asylum in any nation, precisely it is the duty of all the peace loving states to grant asylum to the refugees.

ISSUE:-3

WHETHER THE ANTOLIA IS LIABLE TO ACCEPT THE DEPORTED ORUKAINS OR NOT?

It is humbly submitted before the Hon'ble Court that the state of Antolia is not liable to accept the deported orukains on the following grounds:-

- a. Tahomian refugees came to Applicant state for seeking immunity from the persecution in their home country and for better employment opportunities and better standard of living by their own will.
- b. They were welcomed by the applicant state in accordance to its capacity but refugees did not get adequate amount of opportunities and resources there, as there's a scarce of resources, their life became more miserable due to the contemporary socio-economic conditions of applicant state and its poor economy.
- c. Moreover applicant state arranged relief camps for refugees in association with UNHCR, but that was also not enough for refugees, as it was a mass influx.
- d. So, refugees decided to leave applicant state and departed to respondent state where they got adequate amount of employment opportunities and substantial level of life with their own will
- e. As per the provisions of international laws related to refugee laws and conventions of united nations they have right to move to any nation or organization to seek help accordance of their requirements and wanted standard of living.
- f. Respondent state is bound to grant asylum to the orukain refugee by both moral as well as legal aspect. Many provision i.e. UNHCR, UN CONVENTION AGAINST TORTURE etc binds respondent state to provide the asylum.
- g. The notification leading to deportation of refugees is clearly a violation of international laws as well as basic human rights
- h. Hence antolia is not liable for deported orukains

PLEADINGS

ISSUE:-I

WHETHER THE NOTIFICATION DATED JUNE 6, 2018 ISSUED BY THE VARYSIAN GOVT. IS VIOLATION UNDER THE INTERNATIONAL LAW?

1. The notification clearly stated and ordered administration of Varys to setup a tribunal to detect and deport all the illegal immigrants urgently and the basis of deportation and detection was solely dependent upon unavailability of specified documents of citizenship with them.

In pursuance of which administration dynamically within a span of one month deported thousands of undocumented persons among which 98% were orukains. This act was unjustifiable in accordance with various international law i.e. UDHR, UN Convention on rights of child 1989, UNHCR, statute of ICJ.

2. It clearly signifies the massive violation of human rights which is making thousands of stateless people's life miserable. As per the joint statement and facts of case state of varys is not the signatory of united nation convention of refugees but as per the provision of article 35 UNHCR binds state of varys to cooperate with the actions of UN General Assembly resolutions and actions of security council. Hence the notification and its execution is the unambiguous violation of international laws.
3. It is humbly submitted before the honorable court that the notification issued by the government of varys is a clearly infringement of human rights including civil as well as the political rights. Every individual has right to liberty of movement and choose his own residence and every individual has right to leave his country or territory.³

3.1 In UDHR, it is clearly states that it is an absolute violation of international law that violence was wrong it was utmost biased as they discriminated orukains in respect of nationality. While Article 2 of UDHR i.e. *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty*, empowers the refugees to stay in territory of varys lawfully.

3.2. Setting tribunals for detection and deportation of thousands of orukains which is against of their rights under Article 3 of UDHR i.e. *Everyone has the right to life, liberty and security of person*, empowers the refugees to avail their right against the respondent state even though they are maltreated by the varysian government.

1. ³Universal declaration of Human rights

4. Respondent state chose to violate the law by not only against the rules of international law but also against the Articles stated specifically enumerated as below:

4.1 Under Article 3 of UDHR states that every individual has the right to life, liberty and security of person.

4.2 Under Article 5, No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

4.3 Under Article 13 of UDHR

4.3.1 Everyone has the right to freedom of movement and residence within the borders of each State.

4.3.2 Everyone has the right to leave any country, including his own.

4.4. Under Article 15 of UDHR, Every individual has the right to a nationality.

4.5. Under Article 9 of ICCPR, Every individual has the right to liberty and security of person.

5. As per the facts the aforementioned notification massively effects the life of thousands of children, which resulted in clear and massive violation of provisions of various international laws and provisions dedicated to protection of child and his rights,

5.1. According to the provisions of *the Convention on the Rights of Child*;

The child is defined in **Article 1 i.e. (Definition of the child)**: The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

5.2. According to **Article 3 of the Convention on the Rights of the Child i.e. (Best interests of the child)**: The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

It was moral as well as legal duty of respondent state to make the policy and administer the govt. in such a manner that might be best for the children but their act was contrary to law as well as humanity.

5.3. Varysian government has discriminated orukains in terms of their religion as orukains belongs to low community this is why they are not considered them in varys as there's a disparities among different religion if they are of phikam community so they may not be treated like this. This specified act was also a violation of child rights as **Article 2 i.e. (Non-discrimination)**: The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

According to the above mentioned convention the children who are in refuge gets special protection.

In **Article 22 (Refugee children)**: Children have the right to special protection and help if they are refugees (if they have been forced to leave their home and live in another country), as well as all the rights in this Convention. For which the responsibility lies to the state.

But here the all the acts of respondent state were wholly contrary to its legal responsibility and expectations instead of giving the respondent state is deporting them to a place from where they escaped in need of survival. These differences created a dispute between different religions.

6. Orukains should be recognized as either citizens or asylum holder of various states as they came for refuge as well as better employment opportunities and better standard of living

Under ICCPR, Article -2(3) i.e. *Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.* provides every individual for adequate standard of living.

ISSUE:-2

WHETHER THE ORUKAINS WHO ENTERED VARIOUS STATES FROM ANATOLIA ARE REFUGEES OR THEY ARE CITIZENS OF ANATOLIA UNDER INTERNATIONAL LAW?

1. The Orukains who entered various states from Anatolia are refugees under international law. If we throw light towards the circumstances of Orukains faced by them during the course of facts the threats and conditions to which they are subjected make them fall under the category of refugee under the provisions of UNHCR convention 1951 and the Constitution of the International Refugee Organization, the contention of facts clears that the refugees are the liability of the state in which they are seeking asylum.

As per the definition of **refugee under refugee convention 1951**.

A person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his or her nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country"⁴

Refugee protection is ensured not only by the traditional curative measures of "asylum" and non-refoulement. In the long run it is ensured by preventing the major cause of mass displacements of people viz. despotic governance and criminal acts of some governments against their own people. This can only be prevented by some innovative measures. If conditions are fulfilled then they will be considered as refugees. The Refugee Convention of 1951 had turned a little sour almost at the start - it gave recognition and protection only to a person who as a result of events occurring before 1-1-1951 (and owing to a well founded fear of being persecuted for reasons of race, religion, nationality etc.), was outside the country of his nationality and unable or unwilling to avail himself of its protection.

2. There is increasing public perception in many countries of refugees being criminals, and attempts are made to create links (often unwarranted) between them and terrorism - and this comes at a time when asylum seekers are already facing difficulties in gaining access to asylum procedures and overcoming

⁴ Refugee 1951 Convention and 1967 Protocol

<http://ocw.ihsph.edu/courses/RefugeeHealthCare/PDFs/Lecture11.pdf>

suspicion about their ethnicity.⁵ Which has drawn the circumstances miserable for all the refugees in present case.

3. Similarly in Adan Case - *that there was no material distinction between a country where there is no government and one in which the government is unable to afford necessary protection to its citizen*⁶
4. There is no reason in the part of varysian govt. for refusal of granting asylum to the Orukains entering in its territory. Apparently it is stated in facts the socio-economic conditions of applicant is not good enough to provide the resources as well as opportunities even of substantial level although the economy of applicant is primly dependent on the financial aid provided by the respondant, due to which orukian refugees departed towards the respondent state to seek asylum and resources and opportunity for their survival and better standard of living.
5. UNHCR has argued that such people should "receive all necessary assistance and be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities (ICESCR)⁷ in following given articles:

5.1. Article 11(I) - *right to an adequate standard of living could provide particular protection to those having some form of temporary status in a country of asylum, on the basis of general comments of the HRC*

The unhrc Rights in areas of prevention, such as early warning, monitoring and identification.

5.2. Article 14:

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or acts contrary to the purposes and principles of the United Nations

5.3. Article 14 of the 1948 Universal Declaration of Human Rights, that the state's right to grant asylum prevails over any right of a person to be granted asylum, or to "enjoy it." This is suggested in article 14 itself as the "right to seek" prevails grammatically and legally over any right of enjoyment.⁸

6. When we relate the above mentioned articles to the present case it can be clearly stated that refugees are not the citizens of antolia but actually they clearly fall under the category of asylum seeker

⁵ Wells C. Klein, Mass Asylum, 5 In Defense of the Alien 19 (1982)

⁶ Wells C. Klein, Mass Asylum, 5 In Defense of the Alien 19 (1982)

⁷ Fali S. Nariman, Refugee Protection, 2 ISIL Y.B. Int'l Human. & Refugee L. 7 (2002)

⁸ Geneva protocol 1925

7. By the above contentions respondent state has done a massive infringement of rights of all the refugees for which they are legally entitled to have but respondent has tried its best to make the refugees the condition of statelessness⁹, drawn the lives of thousands of refugees miserable

8. hence, the Orukains, if any, who entered Varys from Antolia are refugees under international law, irrespective of their nationality, and Varys ought to have granted asylum to them.

9. This departure of refugees to the respondent state somehow binds the respondent lawfully as well as morally to provide asylum to all the refugees. As per the international laws it is the legal right of refugees to seek asylum in any nation, precisely it is the duty of all the peace loving states to grant asylum to the refugees.

⁹⁹Oxford dictionary of law, pg. 592

ISSUE:-III

WHETHER THE ANTOLIA IS LIABLE TO ACCEPT THE DEPORTED ORUKAINS OR NOT?

1. It is humbly submitted before the Hon'ble Court that the state of Antolia is not liable to accept the deported orukains on the following grounds:-
 - a. Tahomian refugees came to Applicant state for seeking immunity from the persecution in their home country and for better employment opportunities and better standard of living by their own will.
 - b. They were welcomed by the applicant state in accordance to its capacity but refugees did not get adequate amount of opportunities and resources there, as there's a scarce of resources, their life became more miserable due to the contemporary socio-economic conditions of applicant state and its poor economy.
 - c. Moreover applicant state arranged relief camps for refugees in association with UNHCR, but that was also not enough for refugees, as it was a mass influx.
 - d. So, refugees decided to leave applicant state and departed to respondent state where they got adequate amount of employment opportunities and substantial level of life with their own will
 - e. As per the provisions of international laws related to refugee laws and conventions of united nations they have right to move to any nation or organization to seek help accordance of their requirements and wanted standard of living.
 - f. Respondent state is bound to grant asylum to the orukain refugee by both moral as well as legal aspect. Many provision i.e. UNHCR, UN CONVENTION AGAINST TORTURE etc binds respondent state to provide the asylum.
 - g. The notification leading to deportation of refugees is clearly a violation of international laws as well as basic human rights
 - h. Hence antolia is not liable for deported orukains
2. Precisely the refugees were welcomed by the applicant state. The refugees have right to freedom. Refugees are not required to have come directly from their country of origin. Article 31 was intended to apply, and has been interpreted to apply, to persons who have briefly transited other countries, who are unable to find protection from persecution in the first country or countries to which they flee, or who have 'good cause' for not applying in such country or countries. The drafters only intended that immunity from penalty should not apply to refugees who had settled, temporarily or permanently, in another country.
3. States parties to the 1951 Convention/1967 Protocol undertake to accord certain standards of treatment to refugees, and to guarantee to them certain rights. They necessarily undertake to implement those instruments in good faith¹⁰.
4. Article 26 of the 1951 Convention prescribes such freedom of movement for refugees as is accorded to aliens generally in the same circumstances. Eight States have made reservations, six of which expressly retain the right to designate places of residence, either generally, or on

¹⁰United Nations Convention and Protocol related to the status of Refugees, 1951

grounds of national security, public order (ordre public) or the public interest. Several African countries have accepted Article 26, provided refugees do not choose to reside in a region bordering their country of origin; and that they refrain in any event, when exercising their right to move freely, from any activity or incursion of a subversive nature with respect to the country of which they are nationals. These reservations are reiterated in Articles II(6) and III of the 1969 OAU Convention, and are reflected also in Articles 7 and 8 of the 1954 Caracas Convention on Territorial Asylum¹¹. In accordance to this statute the applicant provided the space for asylum to refugees as per the limits of capacity of state.¹²

5. The fact signifies the maltreatment of refugees in the part of respondent while UNHCR Guidelines also draw on general international law in regard to the treatment to be accorded to minors, other vulnerable groups, and women, and to the conditions of detention, which should be humane and with respect shown to the inherent dignity of the person, which was completely tried to be fulfilled by applicant state.
6. As per the above contentions applicant state has tried its best in accordance to law to serve the humanity by serving the refugees in accordance to state's capacity. But still the refugees were not satisfied with the conditions of applicant state and willingly moved towards the respondent state, which makes respondent state to provide asylum to all the orukain refugees.
7. The act of deporting the refugees by varysian govt. is clear violation of Article 32 of UNHCR convention i.e

ARTICLE 32. EXPULSION¹. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national

- i. security or public order and in pursuance of a decision reached in accordance with the process of law.¹³

8. Hence antolia is not liable for deported orukains

¹¹United Nations Convention and Protocol related to the status of Refugees,1951

¹² Caracas convention ,1954

¹³United Nations Convention and Protocol related to the status of Refugees,1951

CONCLUSION AND PRAYER

Antolia respectfully requests that the Court adjudge and declare:

- a. The Notification dated June 6, 2018 issued by the Varysian government is in violation of the international law and thus, unsustainable.
- b. Alternatively, the Orukains, if any, who entered Varys from Antolia are refugees under international law, irrespective of their nationality, and Varys ought to have granted asylum to them.
- c. Antolia is not liable to accept the Orukains being deported by Varys.

Respectfully Submitted on behalf of the Applicant

Agents for Applicant.