

International Law Moot Court Competition

“Asia Cup 2018”

The Case Concerning the Armed Activities in the Border Area and the Gufa

(Acotango/Resago)

1. Acotango is a developing country facing the Olkaria Sea. It shares its eastern border with Resago. Lolo, the capital city of Acotango, is located in the western part of the country. Acotango’s citizenry is composed mainly of two ethnic groups: the Marapi and the Nazko. The Marapi people constitute close to 60% of the population, whereas the Nazko comprise a little less than 30%. The Marapi and the Nazko share a language called Acotanese. Since the 18th century, the Marapi have engaged in agriculture, while the Nazko are nomads.
2. Colachi colonized Acotango in 1860. Although neither the Marapi nor the Nazko had formed their own ethnic identities before colonization, the colonial Government of Colachi issued identification certificates describing their ethnicities and accorded preferential treatment to the Nazkos both politically and economically. While Acotango gained formal independence from Colachi in 1960, this social hierarchy remained, and a dictatorship led by the Yunaska family from the Nazko race has since been in power. The incumbent president, Mr. Yasur Yunaska, is the direct grandson of the president at the time of Acotango’s independence.
3. Resago is also a developing country. Its territory includes a coast on the Olkaria Sea. Resago had been a colony of Dana since 1860 but achieved its independence in 1960. The nation has maintained stable economic growth since then as a result of its successful industrialization policies. Its political system is based on parliamentary democracy.

4. Colachi is a developed country facing Acotango and Resago from across the Olkaria Sea. The coasts of Colachi and Acotango are separated by a distance of about 500 nautical miles.
5. The Pacaya region, located in the eastern part of Acotango, is rich in mineral resources such as diamonds and rare metals. An armed conflict between the Marapian Liberation Force (MLF), fronted by Marapis militants, and the Nazko Assembly for Democracy (NAD), led by Nazko militia, has intensified in this area after the year 2000.
6. In October 2001, the MLF established its control over several villages in the Pacaya region, which contains major diamond mines. The MLF called for the Pacaya region's independence from the central Government of Acotango and, in doing so, caused indiscriminate killing and violence against Nazko civilians in the area. The Government of Acotango sent troops to the Pacaya region, but failed to regain its control. Since this event, the Government of Acotango has lost its control over the Pacaya region. In the same month, the MLF declared the entire Pacaya region's independence from Acotango. However, no state has recognized its autonomy.
7. Since its establishment, the NAD has distanced itself from President Yunaska and the central Government of Acotango because of ideological differences. It has been trying to achieve autonomy for the Pacaya region. The NAD survivors of the battle of October 2001 have gained a stronghold in the northern part of the Pacaya region and are continuing their resistance against the MLF.
8. In October 2001, The Parliament of Acotango enacted "the Terrorism Support Prevention Act." This act prohibits any natural or legal persons from providing funds and arms to terrorist organizations designated by the Government and provides for the criminal punishment for its violations. At the time of the enactment of this legislation, the Government of Acotango duly designated the MLF and the NAD as terrorist organizations in accordance with the Act.

9. The Tepi region in Resago adjoins the Pacaya region. It is also rich in mineral resources like diamonds. Since 2010, members of the NAD have repeatedly entered the Tepi region every few months to attack and rob the villages in this area and subsequently retreated into the Pacaya region. According to a report by Amnesty International, such activities include the rampant killing and raping of villagers, and the setting houses on fire. From September 15 to 20, 2017, the NAD attacked a village called Ubinas in the Tepi region. In this incident, the NAD injured or killed about 80 villagers and destroyed around 20 wooden houses.

10. At 10 a.m. local time on October 1, 2017, Prime Minister Zapatera of Resago issued the following statement to the Government of Acotango:

The Government of Resago will no longer tolerate the repeated acts of violence conducted by the NAD. Unless the Government of Acotango takes effective measures to stop the NAD's violence within 72 hours, the Government of Resago will take necessary measures for self-defense in accordance with Article 51 of the Charter of the United Nations.

11. In response, President Yunaska stated as follows:

While we deplore the actions of the NAD, the situation in the Pacaya region is an internal affair of Acotango, interference with which is impermissible under the Charter of the United Nations and Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

12. At noon, local time, on October 4, 2017, fifteen members of the Resago Army Special Forces intruded into the Pacaya region with helicopters. They bombed a building which was used as the NAD base and withdrew immediately the same day. This operation killed ten official members of the NAD, but caused no casualties or injuries to civilians. The Government of Resago reported this measure to the Security Council of the United Nations in accordance with Article 51 of the Charter of the United Nations. The Government of Acotango issued an immediate protest against the acts of the Government of Resago.

13. Mr. Hekla, a Colachian national, is the Chief Executive Officer of the Imbabura Co. Ltd. (“Imbabura”), one of the biggest manufacturer of arms in Colachi. Imbabura is incorporated under the Colachian law. His great-grandfather was a Marapi originally born in the Pacaya region, who migrated to Colachi at the beginning of the 20th century. Mr. Hekla has continuously financed the MLF and has supplied its militants with weapons.
14. The Acotango Security Intelligence Service (ASIS), the national intelligence agency of Acotango, detected that the MLF has been receiving continuous support from Mr. Hekla across the Olkaria Sea. Since then, ASIS has closely monitored the activities of Mr. Hekla and Imbabura.
15. In early October 2017, ASIS obtained information that M/V *Gufa* (“the *Gufa*”), a Resago-registered ship owned by Imbabura, was about to leave for the Pacaya region. In response to this intelligence, the Acotango navy vessel, the *Arenales*, was deployed to patrol the waters around the Pacaya region. At around 10 a.m. on October 20, 2017, the *Gufa* was found sailing around 45 nautical miles away from Acotango’s baseline. At this point, the fact that the *Gufa* was registered to Resago was clear from the display on the body of the ship, and the *Gufa* had not committed piracy, transported slaves, or engaged in any unauthorized broadcasting as defined under the United Nations Convention on the Law of the Sea.
16. The *Arenales* approached the *Gufa* and radioed the ship to confirm its destination. It halted the *Gufa* because the reply from its bridge was ambiguous, and requested the Resago authority for permission to board and to inspect the ship. After waiting for eight hours without any response from the authority, the commander of the *Arenales* and his unit boarded the ship and inspected it with the master’s consent. The unit uncovered weapons manufactured by Imbabura and US\$100,000 in cash on board. The commander notified the master of the *Gufa* that persons supporting the MLF would be penalized under the Terrorism Support Prevention Act and ordered the *Gufa* to divert its course to Colachi. Even though the Government of Resago was aware of these developments on that day, it did not take any action against the *Gufa*.

17. At 9 a.m. on October 21, 2017, Mr. Uliaga, the Foreign Minister of Resago, summoned Acotango's ambassador to Resago, Mr. Jaraguay, and told him:

It is highly regrettable that the Government of Acotango conducted a boarding inspection and diverted the ship registered to Resago without the authorization of Resago. The measures taken by Acotango constitute a violation of the freedom of navigation, the most fundamental principle of the law of the sea. We call for Acotango's effective actions to prevent a recurrence of such incidents.

18. At 2 p.m. on October 21, 2017, Ms. Koro, the official spokesperson of the Acotango Government, released the following statement:

The *Gufa* was approaching the Pacaya region for the purpose of supplying the MLF, a terrorist organization which has been committing atrocities targeting innocent civilians. Our navy tried to communicate with the authority of Resago, but received no response. We had no alternative but to safely implement appropriate measures, under the consent of the *Gufa*'s master. The Government of Resago, as a State party to the International Convention for the Suppression of the Financing of Terrorism, should make sincere efforts to prevent a recurrence of such a situation in the future.

19. On April 1, 2018, Acotango and Resago agreed to refer the dispute concerning the activities of October 4, 2017 by the army of Resago in the Pacaya region as well as the measures taken by Acotango's navy against the *Gufa* on October 20 to the International Court of Justice (the Court), in accordance with Article 36(1) of the Statute of the International Court of Justice.

20. Acotango and Resago both became Member States of the United Nations in 1960, and are parties to the Statute of the International Court of Justice, the Vienna Convention on the Law of Treaties, the United Nations Convention on the Law of the Sea, and the International Convention for the Suppression of the Financing of Terrorism. In 1982, both states established 12-nautical-mile territorial seas, 24-nautical-mile contiguous zones, and 200-nautical-mile exclusive economic

zones from each baseline. Acotango and Resago are not parties to any other treaties of potential relevance to this case.

21. The Government of Acotango respectfully requests that the Court adjudge and declare that:

- (1) The activities undertaken by Resago's army on October 4, 2017 in the Pacaya region constituted an illegal use of force against Acotango;
- (2) The boarding inspection and the diversion of the *Gufa* by Acotango on October 20, 2017 were consistent with international law.

22. The Government of Resago respectfully requests that the Court adjudge and declare that:

- (1) The activities undertaken by Resago's army on October 4, 2017 in the Pacaya region were an exercise of its right of self-defense as defined in Article 51 of the Charter of the United Nations and, therefore, were consistent with international law;
- (2) The boarding inspection and the diversion of the *Gufa* by Acotango on October 20, 2017 constituted a violation of international law.