

**THE PHILIP C. JESSUP INTERNATIONAL LAW MOOT
COURT COMPETITION**

1966

**Case Concerning the Killing of a
Government Leader by a United
Nations Force, United Nations v.
Afrania, 1966.**

Problem

BEFORE AN ARBITRAL TRIBUNAL

Governed by

the Rules of

THE INTERNATIONAL COURT OF JUSTICE

(March-April, 1966)

The United Nations,

Petitioner

v.

Afrania,

Respondent

More than fifty years ago, Europa, a west European state, proclaimed its sovereignty over a portion of the African continent now known as Afrania. Europa's claim to sovereignty was never seriously challenged by other states. In 1964, Afrania continued to be administered as a colony, although Europa exercised full control over its external relations with other states. Afrania had a colonial legislature, but Europa retained significant legislative powers over the colony. Afrania has a large negro population which significantly outnumbers the white population living there. Prior to 1964 there had been a number of demonstrations and considerable unrest deriving from negro claims to better representation in the government of the country. The colonial legislature and the local governmental administration, however, were selected substantially by and from the ranks of the white population.

On 1 February 1964, pursuant to a resolution adopted in the colonial legislature by an almost unanimous vote, Afrania declared itself independent of Europa and the leader of the majority party in the legislature was confirmed by the legislature as premier of the state. The European Government immediately denounced the Afranian declaration as an unlawful attempt to seize power by a minority of the people of Afrania and requested a meeting of the United Nations Security Council. Forty-eight hours later, the Security Council met and debated the crisis. Those heard by the Security Council included representatives from the negro population of Afrania, the premier and representatives from the Afranian legislature, representatives from Europa and other interested states. Several spokesmen before the Security Council stressed the danger of a negro uprising within Afrania to resist the alleged usurpation of power by the white controlled legislature. Several also stressed the danger of other negro

states on the continent supplying military and economic aid to the negro population of Afrania and the consequent threat of a civil war which could easily become internationalized.

Europa indicated a willingness to recognize Afrania's independence if and when adequate guarantees for recognition of political rights of the negro population were provided. Since such guarantees had not been given, however, Europa claimed that the declaration of independence was illegal and that she was still the government with sovereign power over the territory of Afrania. Accordingly, Europa requested the Security Council to act and, if necessary, to send a "peace force" to prevent bloodshed. The Security Council adopted a resolution calling on the parties involved to maintain the status quo and to take no further steps pending a fuller investigation by an observation group which the Security Council then appointed. The resolution was adopted unanimously.

The Afranian government claimed an interference by the Security Council in the domestic affairs of Afrania and refused to allow the observation group to enter. The Security Council met again and unanimously adopted a resolution urging the Afranian government to take no further action to perfect its claim to independence pending further investigation and urging the Afranian government to permit entry by the observation group.

The same resolution also provided that unless the Afranian government indicated, within forty-eight hours, its intention to abide by the terms of the Security Council resolution, member states should make forces available to be sent to Afrania in order to prevent bloodshed. The Secretary General was requested by the resolution to make immediate arrangements for the deployment of this force under his command and

authority but subject to Security Council supervision. He was instructed to use the force solely for the purpose of preventing bloodshed and not to undertake positive military action against the government of Afrania.

The Afranian government immediately rejected the resolution and said that it would resist any attempted entry of United Nations forces which it denounced, in advance, as aggression. Rioting then broke out in Afrania and was repressed in several areas, but only after hundreds of rioters had been killed by Afranian government forces.

Six states responded to the resolution and made contingents available. Command was assumed by an officer appointed by the Secretary General. The force entered about one week after the adoption of the resolution and occupied key positions in Afrania without meeting any substantial resistance from government forces. The Secretary General then went to Afrania to negotiate with the Afranian government, representatives of the negro population, and representatives from Europa. His avowed object was to negotiate constitutional guarantees that the political rights of the negro population would be recognized. These negotiations were frustrated by the intransigence of the Afranian premier. While these negotiations were going on, a major in charge of a detachment of the United Nations force, contrary to orders, arrested the Afranian premier. In the course of a melee which then ensued between Afranian and United Nations forces, the premier was shot by a soldier belonging to the detachment commanded by the major.

With the death of the premier, negotiations became more fruitful and within a month, the adoption of a constitutional guarantees was agreed on and the Secretary General, pursuant to a further resolution of the General Assembly, directed the withdrawal of the United Nations force.

In the course of this withdrawal, Afranian forces seized United Nations equipment worth about one half million dollars and refused to return it. Shortly after this seizure, the New Afranian premier declared that the United Nations property would be confiscated in satisfaction of Afrania's right to damages against the United Nations for the wrongful killing of his predecessor.

The Secretary General made representations to the Afranian government demanding return of the equipment or, in the alternative, compensation. These demands were rejected, but after considerable negotiation, agreement was reached on submitting the dispute to arbitration by a three-man panel. The submission agreement, signed on behalf of the Afranian government and the Secretary General, set forth an agreed statement of facts as set out above. It recited the claims of both parties, namely: on behalf of the Secretary General, that the equipment had been illegally seized and that it should be returned, or in the alternative compensation should be paid; and on behalf of Afrania, that the seizure was legal, or in the alternative that Afrania was entitled to the property or its value as a set off or counterclaim for compensatory and punitive damages for the wrongful murder of the Afranian premier by forces illegally stationed in Afrania, and under United Nations command. The tribunal was directed to adjudicate these claims in accordance with the provisions of Article 38, paragraph 1 of the Statute of the International Court of Justice.

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This year's problem is set before an arbitral tribunal rather than in the International Court of Justice. The rules established for the conduct of the moot court define the requirements for written submissions and oral argument. Any question of procedure not therein provided for shall

be governed, as nearly as possible, by the procedure which would be followed before the International Court of Justice.

It should be noted that Europa is, of course, a Member of the United Nations. Afrania has not, as yet, been admitted as a Member.

COMMUNICATIONS

Communications for interpretation of the problem should be addressed to Mr. Robert M. Sielaty, National Administrator, International Law Moot Tribunal, the George Washington University Law School, 720 20th Street, NW, Washington, DC 20006. Such communications will be directed to the scholar for his consideration.