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| Codebook |
| Draft 2 |
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# Codebook

## General Coding Remarks

* Reasonable inferences are to be drawn if there are no explicit or direct statements by the Court on a specific question – an option must be more likely than not in comparison with every other option (including uncertain, other, and not applicable). The comment will note it if there are to be deviations from that: It may demand an explicit statement in that regard or presume a certain option unless stated otherwise, if a violation of the related obligation would mean a violation of the overarching obligation.
* The section that is primarily coded is the Court’s legal assessment of the facts with regards to the substantive obligations under Article 2 (often labelled “application to the facts”) but at times the section setting out the facts may need to be consulted.
* Because this research project is concerned with the Court’s assessment of the substantive obligations under Article 2, the question will normally be coded based on the Court’s position on that question. The only exception to that rule are factual questions if these are not answered in the Court’s assessment (such as the number of deaths). For instance, perceptions may be invalidated by the Court and the coding will be based on that.
* When the codebook mentions the applicants, this refers to the ones who have been recognized to be direct victims under Article 34 for the purposes of the proceedings and whose fate, thereby, is subject to the evaluation of the Court. Hence, it includes the applicants where they have survived or the victim(s) on whose behalf the applicants bring a claim as indirect victims.

## 1. Basic Case Information

### Q1. What is the case name?

Variable: case

Text.

### Q2. What is the year of the decision?

Variable: year

Numerical.

### Q3. What are the names of the respondent governments?

Variable: respondent

Text.

### Q4. Is this a Grand Chamber decision?

Variable: gc\_dec

Nominal.

Codes:

0 = No

1 = Yes

### Q5. Was the case referred to the Grand Chamber?

*Code if Q4 = 0: The decision is not a Grand Chamber decision itself.*

Variable: gc\_ref

Nominal.

Codes:

0 = No

1 = Yes

-99 = Not applicable

## 2. The Court’s Specific Holding

### Q6. What is the number assigned to the holding in the dispositif section?

Variable: h\_num

Numerical.

Comment: Consult the dispositif section of the Court’s decision, normally labelled with “For These Reasons, the Court”, and jot down the number of the holding that is being coded.

### Q7. What is the Court’s holding being coded?

Variable: h\_viol

Nominal.

Codes:

0 = No violation

1 = Violation

### Q8. How is the holding differentiated from other substantive Article 2 holdings of the case?

Variable: h\_diff

Nominal.

Codes:

0 = Not differentiated (e.g. a general Article 2 holding)

1 = Based on the applicants

2 = Based on the legal issues

3 = Both

-88 = Uncertain

Comment: Determination is made based on what is discussed on the merits. May only be coded 1, 2 or 3 when there is more than one holding on the substantive obligations under Article 2. Hence, 0 also holds if other applicants have been struck out of the list or other applicants or claims have been dismissed on the admissibility stage.

### Q9. What legal obligations were part of the holding and what did the Court decide?

Variables: h\_force, h\_operation, h\_law

Nominal.

Codes:

0 = Not related

1 = Related but no violation of this obligation

2 = Related and violation of this obligation

-88 = Uncertain

Comment: The text of the decision should be consulted to determine whether the specific obligation is part of the assessment and has been violated. The determination is based on the actual application of the law to the facts, so code 0 in cases where the legal principles of an obligation are mentioned without applying them.

## 3. Court’s Approach to the Assessment

### Q10. Does the standard of scrutiny applied by the Court differ from the typical standard?

Variable: scrutiny

Nominal.

Codes:

0 = No

1 = Lower

2 = Higher

-88 = Uncertain

Comment: Codes whether the Court invokes that it is using a lower or higher standard of scrutiny than typical for Article 2 for any part of its assessment by, for instance, providing the government with more leeway. To be certain in a differing standard, the Court should invoke the standard of scrutiny, the margin of appreciation, or phrases clearly referring to the concepts in the application of law. For a lower standard, the Court may, for example, reference a difficult situation and how, in light of that, the obligations should not be interpreted in a way which does not impose an impossible or disproportionate burden on the State.

### Q11. Was there an active armed conflict in the area?

Variable: ac

Nominal.

Codes:

0 = No

1 = Yes

-88 = Uncertain

Comment: This question aims to determine whether the rules of international humanitarian law (IHL) may apply. Although the Court rarely uses the language of conflict (e.g. “widespread unrest”, “disturbances”, etc.), the determination can be based on the descriptions as well as the involvement of military units and weapons. Care should be given to use of similar language in situations where IHL would not be readily applicable.

### Q13. Has the Court previously made a determination on the same facts in another case?

Variable: f\_prev

Ordinal.

Codes:

0 = No

1 = Yes, with regard to some legal or factual issues (e.g. framework)

2 = Yes, with regard to most or all legal or factual issues

-88 = Uncertain

Comment: Code 1 or 2 if the Court explicitly refers to a previous case on which it can (partially) built because it relates to the same or similar facts.

### Q14. Are the facts in dispute between the two parties to the case?

Variable: f\_dispute

Ordinal.

Codes:

0 = No

1 = The accounts conflict in some parts

2 = The accounts diverge widely or fundamentally

-88 = Uncertain

Comment: Difference between 1 and 2 largely lies in whether all or most of the facts (2) or only some facts (1) relevant to the Court’s assessment are in dispute. Although the court will often explicitly find 2, for 1 the whole text of the application may need to be considered.

### Q15. Does the evidentiary situation inhibit the Court from establishing the true circumstances surrounding the use of force?

Variable: f\_lack

Nominal.

Codes:

0 = No

1 = Yes

-88 = Uncertain

Comment: This question relates to the evidentiary or factual basis available to the Court for conducting its assessment. The reasons that lead to such a situation can be manifold, but two common ones are an earlier finding of an inadequate investigation or a government’s failure to submit all necessary evidence to the Court.

### Q16. Are the applicants members of a recognized national minority?

Variable: minority

Nominal.

Codes:

0 = No

1 = Yes

-88 = Uncertain

Comment: This includes ethnic minorities as well as refugees, immigrants and other foreign nationals and is determined on the basis of the facts available in the judgment. Common groups include Kurds, Chechens or Roma. A clue is whether the applicant raised a claim under Article 14. The “minority” status is determined against the State whose use of force is in question (one of the respondents), not the State on whose *de jure* territory the violation occurred. This question does not consider skin color because that information is not included in judgments.

## 4. Permitted Exceptions to Article 2

### Q17. Under which legitimate aims is the use of force considered by the Court?

Variables: aim\_2a, aim\_2b, aim\_2c

Nominal.

Codes:

0 = No

1 = Yes

-88 = Uncertain

Comment: 1 may be coded upon explicit invocation of the subparagraph or also upon a more implicit reference to the respective subparagraph using keywords related to the respective exception (e.g. “insurgency”, “defense” or “arrest”).

### Q18. Was the use of force in line with the domestic framework on the use of force?

Variable: uof\_lawful

Nominal.

Codes:

0 = No

1 = Yes

-77 = Other

-88 = Uncertain

Comment: Code 0 only when the Court considers the use of force to be contrary to the domestic guidelines or framework on the use of force, often relying on or referring to domestic decisions. Lacking indications to the contrary, presume 1.

### Q19. Who was the use of force aimed at?

Variable: uof\_target

Nominal.

Codes:

0 = The threat or target that may fall under one of the permitted exceptions

1 = A third party

2 = Both

-77 = Other

-88 = Uncertain

Comment: 0 is coded when the target may fall, in accordance with the submissions by the parties and the considerations of the Court, under one of the permitted exceptions as a legitimate target, i.e. because it constitutes a threat. Hence, 0 is also coded when the Court does not accept the use of force to be justified under that exception or does not perceive the threat to rise to the level of a threat to life or limb. 1 is coded when the target of the use of force is not part of the potentially legitimate target (i.e. threat), e.g. by being a bystander or non-threatening demonstrator at a (violent) protest or by being a civilian in an armed conflict.

### Q20. Was there was a perceived threat to life?

Variable: threat

Nominal.

Codes:

0 = No

1 = To third parties (civilians, bystanders, hostages, other officers, etc.)

2 = To the State agents using force

3 = To both

-77 = Other

-88 = Uncertain

Comment: The Court must establish that there was such a valid, perceived threat to life at the moment of the use of force. Hence, a prior threat that did not exist anymore at the point the lethal force in question was used would be coded 0. This threat may, inter alia, be perceived by State agents faced with the perpetrators or by the State authorities planning an operation. Claims of a perceived threat held to be not honestly believed or to be invalid would be coded as 0.

### Q21. Was the threat posed by the applicants?

*Code if Q20 = 1, 2, or 3: There is a perceived threat.*

Variable: t\_appl

Nominal.

Codes:

0 = No

1 = Yes, the applicants were part of a larger group posing a threat

2 = Yes, the applicants solely constituted the threat

-77 = Other

-88 = Uncertain

-99 = Not applicable

### Q22. What was the nature of the perceived threat?

*Code if Q20 = 1, 2, or 3: There is a perceived threat.*

Variable: t\_nature

Nominal.

Codes:

0 = Principally verbal threat of use of force (e.g. shouting or spitting)

1 = Brandishing weapons

2 = Attempted assault without weapons (e.g. using cars)

3 = Attempted assault using weapons (e.g. shooting)

4 = Harmed or killed State agents or third parties

5 = Hostage situation

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: Code what the nature of the threat was at the moment of the use of force. For example, in a siege situation, if the suspect fired previously at officers but is now just coming out, code 0 or 1.

### Q23. Was the threat or situation such that precipitate action was required from the State agents?

Variable: precip\_act

Nominal.

Codes:

0 = No

1 = Yes

-77 = Other

-88 = Uncertain

Comment: Includes, inter alia, both situations where State agents had to react in the heat of the moment and where a planned operation was faced with an immediate threat requiring intervention.

### Q24. Who was perceived to be the potentially legitimate target (i.e. threat)?

Variable: t\_who

Nominal.

Codes:

0 = Individuals

1 = Barely organized or spontaneous groups (e.g. protesters)

2 = Organized or stable groups (e.g. terrorists, insurgents, other armed groups)

-77 = Other

-88 = Uncertain

Comment: The key difference between 1 and 2 is whether the group has some form of organization and hierarchy as well as whether the group can be said to persist beyond (before or after) the single event (e.g. terrorist cell) or if it’s a spontaneous formation (e.g. rioters). Those coded 2 are often referred to as non-state armed groups or actors in international relations and international law.

### Q25. How were those perceived as potentially legitimate target (i.e. threat) armed?

Variable: t\_arms

Nominal.

Codes:

0 = Not armed with potentially lethal weapons

1 = Armed with potentially lethal, non-ranged weapons (e.g. knives)

2 = Armed with firearms

3 = Armed with combat or other heavy weapons (e.g. explosive devices, machine guns)

-77 = Other

-88 = Uncertain

Comment: Like in Q20-Q24, this is based on the ex-ante assessment of the involved State agents, as validated by the Court. The perpetrators must be armed for them to be coded with anything but 0, so, for instance, a car, although potentially lethal, would be coded 0 because it is not a weapon.

### Q26. If attempting an arrest, what is the nature of the offense the fugitive is suspected of?

*Code if Q17 aim\_2b = 1: Permitted exception in Article 2(2)(b) considered.*

Variable: 2b\_offense

Nominal.

Codes:

0 = Not suspected of having committed an offense

1 = Suspected of having committed a nonviolent offense

2 = Suspected of having committed a violent offense

-88 = Uncertain

-99 = Not applicable

Comment: This refers to a prior offense by the target that may legitimate the use of force under sub-paragraph (b), effecting a lawful arrest.

### Q27. Is the unrest or protest characterized as a riot or as insurrection?

*Code if Q17 aim\_2c = 1: Permitted exception in Article 2(2)(c) considered.*

Variable: 2c\_type

Nominal.

Codes:

0 = Neither

1 = Riot or violent protest

2 = Insurrection

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: Coded based on the Court’s characterization. As the Court rarely uses the word “riot” unrest that is accepted under subparagraph (c), close synonyms are also coded as 1.

### Q28. What is the nature of the group’s behavior?

*Code if Q17 aim\_2c = 1: Permitted exception in Article 2(2)(c) considered.*

Variable: 2c\_behavior

Nominal.

Codes:

0 = Peaceful and compliant

1 = Resistance against authority or government (e.g. defying orders)

2 = Property damage and sporadic or light acts of violence

3 = Widespread or heavy violence against police or bystanders

4 = Armed, organized and violent resistance against authority or government

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: The group refers to the group, which is considered as to whether its behavior raises an Article 2(2)(c) claim.

## 5. State Agent Use of Lethal Force

### Q29. Who were the involved State agents?

Variable: uof\_sa

Nominal.

Codes:

0 = Regular police or security forces (e.g. patrol officers, prison staff)

1 = Special security forces (e.g. SWAT, military police, anti-terrorist units)

2 = Military forces

-77 = Other

-88 = Uncertain

Comment: 1 refers to units specifically trained or equipped to deal with special situations.

### Q30. What is the nature of the lethal force used by the State agents?

Variable: uof\_nature

Nominal.

Codes:

0 = Non-lethal means nonetheless resulting in death (e.g. arrest techniques)

1 = Less-lethal means carrying a risk to life (e.g. batons, strangleholds, rubber bullets)

2 = Targeted, precise and limited lethal force (e.g. non-automatic guns)

3 = Imprecise and less-limitable lethal force (e.g. machine guns, grenades)

4 = Heavy lethal weapons that could likely lead to collateral damage (e.g. bombs, RPGs)

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: Relates to the nature of the means used and their effects but less so to the specific consequences in the present case. Normally, the nature purely relates to the weapon used but may also relate to the manner of usage (e.g. erratic shooting). The most severe force actually used by the State agents is coded (e.g. when they mostly use pistols but also a grenade, code 3). How targeted or indiscriminate the use of force was does not matter for 0 and 1.

### Q31. How many died as a result of the use of force by the State agents?

Variable: uof\_deaths

Ordinal.

Codes:

0 = None

1 = 1-3 people

2 = 4-9 people

3 = 10-49 people

4 = 50+ people

-88 = Uncertain

Comment: Includes all victims of the State use of force, including other State agents and bystanders. If there are multiple death tolls and the Court makes no determination about the number of deaths, use the highest number in the judgment not explicitly rejected.

### Q32. Was any harm inflicted on third parties?

Variable: uof\_others

Nominal.

Codes:

0 = No

1 = Yes

-88 = Uncertain

Comment: Third parties are all those at whom the response was not aimed. Hence, when Q19 is answered with “a third party”, this party is excluded from the determination of this question.

### Q33. Did the State agents provide a prior warning about the use of lethal force?

Variable: uof\_warn

Nominal.

Codes:

0 = No

1 = Verbal warning

2 = Warning shot

3 = Both

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: The question includes both warnings provided directly before the use of force by State agents and authorities informing potential victims (e.g. civilians) of an operation involving lethal force (e.g. a bombing). 0 is presumed unless there are indications to the contrary. “Lethal force” refers to the force examined by the Court.

## 6. Planning and Conduct of the Operation

### Q34. Was the operation spontaneous or could the authorities prepare the operation?

Variable: o\_time

Nominal.

Codes:

0 = Spontaneous with little to no planning possible

1 = Authorities had adequate time and resources to prepare and plan

-88 = Uncertain

-99 = Not applicable

Comment: This question is not related to whether they actually did plan and prepare the operation adequately but rather whether they had the opportunity to do so.

### Q35. Did the State agents predict and plan for all reasonably foreseeable occurrences and developments related to the use of force or the operation?

Variable: o\_predict

Nominal.

Codes:

0 = No

1 = Yes, because they were largely unpredictable

2 = Yes, because they foresaw and planned for most or all probable occurrences

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: The question pertains to potential developments in regard to the operation or the situation that the State agents or authorities should have reasonably foreseen, including likely consequences of the use of force, probable reactions of the adversaries, or potential errors in their assessment.

### Q36. How much control did State agents have of the situation where violations occurred?

Variable: o\_control

Nominal.

Codes:

0 = Authorities had little to no control of the situation (e.g. public places, depending on police presence)

1 = Authorities had partial control (e.g. cordoned-off area, siege, checkpoint)

2 = Authorities had complete control or almost complete control (e.g. detention)

-88 = Uncertain

Comment: Relates to the control the authorities had over the development of the situation, i.e. how much they could affect and constrain potential outcomes and events. The Court often fails to explicitly mention it, so the overall operation may need to be assessed.

### Q37. Have the involved officers been provided with specific and clear instructions on the use of force?

Variable: o\_instr

Nominal.

Codes:

0 = No

1 = Yes

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: Lacking any indications to the contrary, it can reasonably be inferred that specific and clear instructions were given, so 1 is coded. The Court may mention that the State agents could operate in a vacuum due to a lack of clear instructions, which will be coded 0.

### Q38. Was a clear chain of command and decision-making apparatus maintained during the situation?

Variable: o\_command

Nominal.

Codes:

0 = No chain of command or decision-making system present in the situation

1 = Unorganized or unclear chain of command or decision-making system, or only partially maintained

2 = Clear chain of command and decision-making apparatus maintained at all times

-88 = Uncertain

-99 = Not applicable

Comment: The question does not per se pertain to whether the involved State agents are formally integrated into a chain of command but rather whether that chain of command was present in the specific situation. Henceforth, a lack of direct connections or means of communication between superior and subordinate agents will be coded 0 or 1. The Court may mention that the State agents could operate in a vacuum due to a lack of a chain of command, which will be coded 0.

### Q39. Did the involved State agents properly consider alternative strategies that use less lethal force?

Variable: o\_alts

Nominal.

Codes:

0 = No, they failed to consider any or to have necessary alternatives available for consideration

1 = Yes, they considered or used alternative strategies before the use of force in question

-77 = Other

-88 = Uncertain

Comment: In order to be able to seriously consider the use of less lethal means, they must be available and usable, which is why a failure to have such means available is also included in 0. 2 is coded when the State agents made us of less lethal means or strategies before escalating and 1 when they considered them but did not use them because they, for instance, deemed them unsuitable.

### Q40. In a siege-like situation, did the authorities negotiate with the perpetrators or offer them the opportunity to surrender when possible?

Variable: o\_negot

Nominal.

Codes:

0 = No

1 = Yes

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: Negotiating will also meet the requirement for an alternative, less lethal strategy but it is separately inquired due to its important role in the Court’s jurisprudence.

### Q41. Did the authorities provide a justification for any extraordinary means used?

Variable: o\_justif

Nominal.

Codes:

0 = No

1 = Yes

-88 = Uncertain

-99 = Not applicable

Comment: This includes both the use of special or military forces as well as the use of heavy weapons, anything that might seems to be deemed highly unusual for the situation by the Court. Where both came into play, “no” if one was not justified and “yes” if both were justified. 1 is coded when there is a specific justification or positive explanation for the use of these means. The government will rarely explicitly provide reasons but rather it can be inferred from the Court’s discussion of the use of special forces or heavy weapons, e.g. when they were used in light of certain circumstances or when there is no apparent reason for their use.

### Q42. Was medical assistance promptly arranged and provided?

Variable: o\_med

Nominal.

Codes:

0 = No

1 = Yes but the Court found the medical assistance to be inadequate

2 = Yes and the medical assistance was adequate

-88 = Uncertain

-99 = Not applicable

Comment: When the operation could be prepared, then medical assistance needs to be arranged prior to the use of force; in any case, medical assistance must be provided afterwards. The distinction between 0 and 1 or 2 is a factual one, so that 1 is met as soon as there is an indication in the facts on the arrangement and/or provision of medical assistance. The distinction between 1 and 2 relies on the Court’s assessment and, without indications to the contrary, 2 will be presumed. This question, for instance, includes the presence of emergency medical services at the scene as well as State agents checking on the health of their victims and providing first-aid.

### Q43. In an armed conflict, did the authorities adequately distinguish between civilians and combatants during the planning of the operation?

*Code if Q11 = 1: There is an armed conflict.*

Variable: o\_distinct

Nominal.

Codes:

0 = No

1 = Yes

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: The question refers both to gathering sufficiently detailed information to distinguish civilians and combatants as well as their locations and to then plan the attack in accordance with that information. The question is closely related to IHL’s principle of distinction. Because of its central nature as an IHL principle, 1 is presumed unless there are indications to the contrary.

### Q44. In an armed conflict, did the authorities secure the evacuation of civilians?

*Code if Q11 = 1: There is an armed conflict.*

Variable: o\_evac

Nominal.

Codes:

0 = No

1 = Yes

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: The Court usually makes a determination of whether the measures amount to securing the evacuation of civilians. Otherwise, code -88.

## 7. Legal and Administrative Framework

### Q45. Does the legal framework incorporate the absolute necessity standard as the basis for assessing the need to use force?

Variable: l\_necessity

Nominal.

Codes:

0 = No

1 = Yes, in practice

-88 = Uncertain

-99 = Not applicable

Comment: This relates narrowly to assessments by the Courts on the incorporation of the absolute necessity standard, generally using that language in the discussion. Hence, a failure to, for instance, provide clear guidelines as part of the framework will have no effect on the coding of this question. If the framework is otherwise held to be in Convention compliance, 1 is presumed.

### Q46. Does the legal framework offer clear and sufficiently detailed guidelines on the use of force?

Variable: l\_clear

Nominal.

Codes:

0 = No

1 = Yes, in practice

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: If the framework is otherwise held to be in Convention compliance, 1 is presumed.

### Q47. Were the State agents sufficiently trained to deal with the specific kind of situation?

Variable: l\_train

Nominal.

Codes:

0 = No

1 = Yes

-77 = Other

-88 = Uncertain

-99 = Not applicable

Comment: Also includes situations were the authorities failed to call in personnel specifically trained to deal with this kind of situation as that implies that the State agents present were not adequately trained to deal with this kind of situation.