ΔΙΕΘΝΗΣ ΦΟΙΤΗΤΙΚΗ ΠΑΡΟΥΣΙΑ ΤΗΣ ΕΛΛΑΔΑΣ

Η American Model United Nations (AMUN) είναι μια οργάνωση που πραγματοποιεί, σε ετήσια βάση, εξομοιώσεις συνεδρίων των πολιτικών, οικονομικών και δικαιοδοτικών οργάνων των Ηνωμένων Εθνών.

Σ' αυτές τις συνεδρίες συμμετέχουν φοιτητές, κυρίως Αμερικανοί, αλλά και από όλο το κόσμο και τα θέματα που επιλέγονται να συζητηθούν είναι στην πλειοψηφία τους φλέγοντα ζητήματα που είτε στην πραγματικότητα βρίσκονται ενώπιον αυτών των οργάνων για επίλυση είτε αναμένεται να αχθούν εκεί και πάντως έχουν απασχολήσει τη διεθνή κοινή γνώμη.

Από τις 14 έως τις 17 Νοεμβρίου 1996 φιλοξενήθηκε στο Σικάγο των ΗΠΑ η ετήσια σύνοδος της AMUN όπου μεταξύ των 600 συμμετεχόντων φοιτητών έλαβε μέρος και μια ελληνική αποστολή 7 φοιτητών, από τους οποίους 4 του Τμήματος Διεθνών Ευρωπαϊκών, Οικονομικών και Πολιτικών Σπουδών του Πανεπιστημίου Μακεδονίας υπό την επιστημονική καθοδήγηση της *Παρούλας Νάσκου-Περράκη*, ως εικονικοί εκπρόσωποι της Ελλάδας στα πολιτικά και οικονομικά όργανα του ΟΗΕ και 3 του Τμήματος Νομικής του Δημοκρίτειου Πανεπιστημίου Θράκης, (Γιάννης Βιρβίλης, Μιχάλης Χατζηφώτης και Αντώνης Αντωνιάδης), που υπό την επιστημονική καθοδήγηση της *Αναστασίας Στρατή* και του *Κωνσταντίνου Αντωνόπουλου* από τον Τομέα Διεθνών Σπουδών με διευθυντή τον καθηγητή Κρατερό Ιωάννου, εκπροσώπησαν της χώρας μας στην εικονική 6η (Νομική) Επιτροπή της Γενικής Συνέλευσης αλλά και στο εικονικό Διεθνές Δικαστήριο της Χάγης, το υπέρτατο δικαιοδοτικό όργανο του Οργανισμού Ηνωμένων Εθνών.

Η πρώτη υπόθεση που συζητήθηκε ήταν η υπόθεση Ελλάδας εναντίον Τουρκίας για τη βραχονησίδα Ίμια. Το θέμα αυτό όπως ήταν φυσικό απασχόλησε τα ελληνικά ΜΜΕ (MEGA, ΑΝΤ1, ΩΜΕΓΑ, TV 100) αλλά και το Υπουργείο Εξωτερικών το οποίο μάλιστα χρηματοδότησε την αποστολή.

Στη συζήτηση της υποθέσεως η Ελλάδα εκπροσωπήθηκε από τους φοιτητές της Νομικής Δ.Π.Θ *Μιχάλη Χατζηφώτη*, ως συνήγορο και *Αντώνη Αντωνιάδη*, ως δικαστή. Η απόφαση που εκδόθηκε αναγνώρισε ομόφωνα (με 13 ψήφους) την νήσο Ίμια ως ανήκουσα στην Ελλάδα.

Κάθε επιστημονική προσέγγιση του φλέγοντος αυτού εθνικού θέματος, έστω και από φοιτητές, είναι ασφαλώς ενδιαφέρουσα. Παρατίθενται λοιπόν εδώ τα δικόγραφα με τα επιχειρήματα των δύο πλευρών, το κείμενο της αποφάσεως καθώς και οι αποκλίνουσες στην αιτιολογία (σύμφωνες στο διατακτικό) γνώμες των δικαστών.

Εκτός από αυτό το ζήτημα «εκδικάστηκαν» και οι υποθέσεις Καναδά εναντίον Ισπανίας για την αλιεία στο ΒΔ Ατλαντικό και Ρωσίας εναντίον Ουκρανίας για τη χερσόνησο της Κριμαίας.

Αξίζει να σημειωθεί, ότι κατά το τέλος των εργασιών του συνεδρίου και σε ειδική τελετή απονεμήθηκε από τους οργανωτές στον *Αντώνη Αντωνιάδη* το βραβείο του καλύτερου δικαστή (Best Judge Award).

American Model United Nations International

THE INTERNATIONAL COURT OF JUSTICE

GREECE v. TURKEY
(The Case of Imia Rocks)

JUDGEMENT OF 15 NOVEMBER 1996

Declaration;
President Scott Amendola
Separate Opinions;
President Scott Amendola
Justice Lipper
Justice Antoniadis
Justice Scott

JUDGEMENT

Present: Justice Amendola of India, Justice Tsonis of Poland, Justice Antoniadis of Greece, Justice Batliboi of Iran, Justice Birdwell of Monaco, Justice Bonick of Egypt, Justice Corkrum of Malaysia, Justice Heymann of Canada, Justice Lipper of Bosnia, Justice Scott of Libya, Justice Silk of Israel, and Leake of Japan.

In accordance with Article 36, paragraph 1 of the ICJ Stature, the Court convened in the city of Chicago to settle the dispute brought before it by the Hellenic Republic (Greece) against the Turkish Republic. After having examined the memorials, heard oral arguments, declared that it is competent to adjudge and declare upon the case, the Court decides that;

By a unanimous vote,

The Imia/kardak islet, hereafter referred to as the Imia islet, is a part of the Greek territory and falls under Greek sovereignty.

In accordance with the ICJ stature, Article 38, the Court exercised its competence to apply various sources of law on the adjudication of the present dispute, specifically international conventions and custom.

In particular, in reading Articles 12, 15, and 16 of the 1923 Lousanne of Peace between Greece and Turkey renounced in favor of Italy all territories beyond a distance of three nautical miles from the Anatolia Coast which includes the Imia islet, a part of the Dodecanese island complex.

Additionally, according to Article 14, paragraph 1 of the 1947 Peace Treaty, the Imia islet was ceded to Greece by Italy. The Court recognizes the Imia islet as one of the adjacent islets to the Dodecanese island complex.

The Court reviewed the State practice of the parties to the dispute, in particular the Imia islet and determined the following;

(1) Greece exercised full and uninterrupted sovereignty since 1948 by virtue of opinio juris in that;
   (a) it provided for the administration of the Dodecanese island complex in decree 547/1948, and
   (b) the implementation of various research, environmental, and ecological programs sponsored by the European community.

(2) Turkey acquiesced to the exercise of Greek sovereignty over the Imia islet by;
   (a) not challenging Greece's presence during a period of 48 years, and
   (b) depicting the island as belonging to Greece on official navigational maps.

SEPARETE OPINION (by judge Antoniadis)

Although I am certain that the Court dealt efficiently with all the aspects of the present dispute I would like to deliver my personal opinion on an issue of international law that I find crucial in the present dispute.

Concurring with the Court's opinion I find that the 1932 Protocol has binding legal effects and that its lack of registration with the Secretarial of the League of Nations does not affect its legal merits. Article 18 of the League of Nations Statute states that «no international legal engagement will be binding until so registered». My belief is that Article 18 has to be interpreted through its purpose. It is generally acknowledged that the purpose of this provision was to limit secret diplomacy and the conclusion of secret treaties. It is evident that non registered threaties always developed legal obligations between the signatory states. It was the third states that could not take advantage of the unregistered treaty, since they didn't know it.

In this sense, and as it is clarified by the exchange of letters between the ministers of Foreign Affairs of Italy and Turkey, and the subsequent state practice both states, namely Italy and Turkey and later on Greece and Turkey based their policy in the region on the legal bond created among them by the 1932 Protocol. Consequently from a legal point of view it is not the Protocol per se that it is binding between the parties but the customary rule that it is based thereon. This is analyzed in state practice (Greece's administration of the Imia rock, its environmental and ecological programs and Turkey's absence of the area respectively) and the opinio juris that is expressed by the actual belief in the binding legal obligation that the 1932 Protocol confers.

SEPARATE BUT CONCURRING OPINION

President Scott Amendola and Justice Jason Scott, respectively of India and Libya, submit the following;

By providing his written materials after the Court - established deadline had passed, without first securing the consent of the Court, the Turkish advocate violated the words and spirit of the 1996 AMUN Rules and Procedures (Page 18, «Preparation of Materials») as well as the Statute of the International Court of Justice (Article 43, Section 3). In recognition of such, we treat the factual and legal points relied on by the Greek advocate as uncontested. Accordingly, we concur in the result reached unanimously by the Court.

SEPARATE BUT CONCURRING OPINION

Justice Gregory Lipper (Bosnia - Herzegovina) submits the following;

In the matter *Greece v. Turkey*, this Justice agrees with the majority with respect to the use of international conventions to support Greece's territorial claim over Imia.

However, this Justice does not agree that customary law also supports the Greek claim. When attributing state practice to customary law, it is crucial that the distinction be made between actions taken be a state due to habit and actions taken due to a belief of legal obligation. Because Turkey did not protest Greece's occupation of Imia for forty-nine years, Greece argues that Turkey has implicitly recognized Greek control over the island. Nevertheless, Turkey argues that it remained silent out of courtesy. Taking into account the relative strategic unimportance of Imia, it is not for the Court to question Turkey in this matter. The fact Turkey has waited so long to challenge Greek control also must be placed in the context of possible new discoveries of natural resources, specifically oil, which give Turkey reason to change its habit. All in all, Turkey's previous lack of protest demonstrates only habit, not legal belief.

Greece also refers to Turkey's lack of response to several Greek requests for negotiations over Imia's status. Nevertheless, this also fails to prove legal acceptance of Greek control. Because Turkey believed, however incorrectly, that it legally controlled Imia, it felt no obligation to respond to these negotiations. Indeed, there is no international obligation for states to reassert territorial claims once they have been made. Because Turkey believed that it was the legal owner of Imia, its failure to respond to Greek negotiation requests again signifies only habit, and not legal acceptance of Greece's territorial claim.

Greece has also brought to this Court several maps for the purpose of illustrating international recognition of Greek control over Imia. However, in the opinion of this Justice, and, according to the criteria for the establishment of custom, the recognition of a few states is insufficient to establish complete international recognition. When establishing custom, the actions of a few states never, in and of themselves, signify international state practice.

Since Greece has not demonstrated that state practice, derived from a sense of legal obligation, constitutes international recognition of its territorial claim, customary law should not be due to the international conventions cited by the majority, Greece is the legal owner of the Imia territory.

MEMORIAL
to the International Court of Justice, submitted
by the Hellenic Republic.

1) a) According to Article 62 par. 2 of the 1969 Vienna Convention on the law of treaties;

«A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing a treaty

a) if the treaty establishes a boundary;»

b) According to Article 11 of the1978 Vienna convention on succession of states in respect of treaties;

« A succession of state does not as such affect;

a) a boundary established by a treaty;

b) obligation and rights established by a boundary treaty and relating to the regime of a boundary.»

Both Articles embody a fundamental principle of international Law, that a boundary agreements are governed by the principle of stability and are permanent and unchangeable.

Moreover, in the Libyan Arab Jamahiriya-Chad territorial dispute case, the International Court Of Justice affirmed that «once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of boundaries. {...} {A} boundary established by a treaty thus achieves a permanence which the treaty itself doesn't necessarily enjoy.»

2) a) According to Article 12 of the 1923 Lausanne Treaty of Peace with Turkey;

«The decision taken on the 23rd February 1914, by the Conference of London, in virtue of Article 5 of the Treaty of London of the 17th - 30th may 1913 and 15 of the Athens of the 1st - 14th November 1913 which decision was communicated to the Greek Government on the 13th February 1914, regarding the sovereignty of Greece over the islands of the Eastern Mediterranean other than the islands of Imbros, Tenedos and Rabbit Islands, particularly the islands of Lemnos, Samothrace, Mytilene, Chios, Samos and Nikaria, is confirmed, subject to the provisions of the present treaty respecting the islands placed under the sovereignty of Italy which form the subject of article 15.

Except where a provision to the contrary in the present treaty, the islands situated at less than three miles from the Asian coast remain under Turkish sovereignty.»

b) According to Article 15 of the said treaty;

«Turkey renounces in favor of Italy all titles over the following islands; Stampalia (Astrapalia), Rhodes (Rhodos), Chalki (Kharki), Scarpanto, Cassos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi) and Cos (Kos), which are now occupied by Italy, and the islets dependent thereon, and also over the island of Castellorizzo (see map No. 2)»

c) According to Article 16 of the said treaty;

« Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present treaty and the islands other than those over which her sovereignty is recognized by the said treaty, the future of these territories and islands being settled or so to be settled by the parties concerned.»

3) According to Article 2 par. 2 number 30 of the 1932 Ankara Protocol between Italy and Turkey;

« Apres quoi deux Delegations d' une commun accord ont trace sur les cartes hydrografiques anglaises Nos 2367.872, 1546. Laq ligne frontiere qui passe par les points suivants; {...}

30.- a moitie distance entre Kardak (rks) et Kato I. (Anatolie)»

4) According to article 14 par. 1 of the 1947 Paris Treaty of Peace with Italy;

« Italy renounces in favor of Greece all rights and title over the following islands of Dodecanese named herein below; (Astypalaia), Rhodes (Rhodos), Chalki, Scarpanto (Karpathos), Casso (Kassos), Piscopis (Tilos), Misiros (Nisyros), Calimnos, (Kalymnos), Leros, Patmos, Lipsos (Lipsi), Simi (Symi), Cos (Kos) and Castellorizzo (Kastelorizos) and the islets dependent thereon.»

5) According to the fundamental principle of International Law with respect to territorial sovereignty, the principle of Acquiescence, affirmed by the International Court of Justice in the Temple of Preah Vihear territorial dispute case, the absence of protest by a state, when an other state exercises sovereignty over certain territory, infers acquiescence of sovereignty to the competitor state.

In addition, with respect to territorial disputes, initial acquiescence, in appropriate condition will have the affect of the fundamental principle of Estoppel. In the Temple case, the Court held that by her conduct Thailand had recognized the frontier line invoked for by the Cambodia in the area of the Temple, thus estopping Thailand from challenging the border's binding effect. In other words, the lack of protest, with respect to the existence of a territorial right of the other party to a territorial dispute creates an Estoppel.

Finally, according to the doctrine of International Law, as it stands at present, cession constitutes a mode of acquisition of territory. It consists on the sovereignty over a part of territory by one state to an other state. The state, which cedes territory, transfers no more and no less sovereignty than it possessed in the time of the cession.

The Hellenic Republic would like to begin by stressing the fact that the Hellenic Republic exercised peaceful and undisputed and uninterrupted possession over the Imia Rocks since 1947, when the republic of Italy ceded the sovereignty of the Dodecanese Island Complex to the Hellenic Republic.

The Imia Rocks, part of the Dodecanese Island Complex, lie at a distance of 1.9 nautical miles from the Greek islands of Kalolimmos, 5.3 n.m. from the Greek island of Kalymnos, 3.65 n.m. from the Turkish coast and 2.3 n.m. from the Turkish island of Cavus (former island of Kato).

According to the decree 547/1948 A' 39 of 14/2/1948, the Imia Rocks were included into the municipality of Kalymnos Island. Since then, the Hellenic Republic, from 1984 and here after, with respect to the Imia Rocks, engaged in ecological research activities through both national and European Community's action programs the initiative of ecological organizations. The Imia Rocks are a national and European community protected wild Life area;

THE CORINE PROGRAM

The Imia Rocks have been declared a protected wildlife area belonging to the area «Arki and Lipsi islands» that has been registered with the Community's environmental protection program CORINE. The «Arki and Lipsi island» area comprises 42 islets and rocks of a total area of 30 square kilometers. It should be noted that a research program concerning the area has begun in 1984 within the framework of the Community and a preliminary study was completed in 1986. The research program continued in 1989 by the National Technical University and was completed in 1994.

E.C. DIRECTIVE 92/43 and the NATURA 2000 network.

In the framework of the European Communities Directive 92/43 and the European Communities program Natura 2000 roughly 296 areas been registered by the National center for wildlife and marine wildlife areas. Amongst them is the area Lipsi, Arki, Agathonisi, and islets (registration number A42100010) in which the Imia Rocks are included.

-ACTIVITIES OF THE GREEK ORNITHOLOGICAL SOCIETY

The Imia Rocks have been studied by the Greek Ornithological society which sent a team of researchers in April and June for this purpose.

-ACTIVITIES OF THE UNIVERSITY OF PATRAS

Since 1982, the Biology Department of the University of Patras has engaged in studies for the flora of the islands of the Eastern Aegean with funding from the National program PENED. In this framework personnel from the university of Patras has repeatedly visited the area included the Imia Rocks for the purpose of studying its flora.

The Hellenic Republic wishes to submit that in the period 1932-1947 and thereafter, until the Imia incident the Turkish Republic has never challenged the Hellenic's Republic sovereignty over the Imia Rocks. The same holds true for the Republic of Italy for the period during which this state exercised sovereignty over the Dodecanese Islands Complex. The Turkish Republic's acceptance of the boundary of 1932 is evidenced by both regional air navigational agreement of the second Middle-East regional air meeting in Istanbul in 1950, as adopted by the ICAO Council, under which the Athens-Istanbul borderline coincides with the Turkish western frontiers in the area and, the official Turkish international air navigation map of 1953. Such maritime delimitation is also depicted on the official Turkish map attached to the annual report of 1953 on the navigation of ships across «the strait of Istanbul, the strait of Canakkale and the Marmara sea» in accordance with the 1936 Montreaux Convention regarding the regime of straits. On all these maps as well as on other Turkish and international official maps such as the USAF and the US Navy, the British Navy and the Russian Navy maps, the Imia rocks are depicted belonging to the Hellenic Republic.

The Hellenic Republic wishes, further on, to submit with respect to the Imia incident on January of 1996, that tension escalated as a result of Turkish Republic's arrogant challenge of Hellenic sovereignty over the Imia Rocks.

On the 25th of December 1995, the Turkish cargo ship «Figen Akat» ran aground on one of the Imia Rocks. Although the accident occurred in Hellenic territorial waters, the captain of the ship refused assistance from the competent Hellenic authorities, claiming that he was within Turkish territorial waters. Despite assurances to the contrary, the captain sought assistance from the Turkish authorities. Finally, in agreement with the Turkish holding company, the ship was set free with the aid of a Hellenic tug boat, owner by the Matsas Star, and towed to the Turkish port of Gulluk.

The tension over the Imia Rocks began to escalate on the 27th of January, when Turkish citizens who claimed to be journalists from the newspaper Hurriet took down the Hellenic flag from the larger of the two Rocks and raised the Turkish flag. On the 28th of January a Hellenic navy detachment replaced the Hellenic flag.

Initially, there were no naval units in the area except one Hellenic unit and a Turkish torpedo boat. On January 30th, however the Turkish Republic sent several ships to the area prompting The Hellenic Republic to send an equal number. A Turkish frigate violated Hellenic territorial waters targeting a Hellenic gunboat that was patrolling the area. A Turkish helicopter taking off from one of the Turkish frigates flew over the Imia Rocks. At the same time, Turkish warplanes violated repeatedly Hellenic airspace.

The tension reached its peak in the early morning hours of January 31, when Turkish army landed some men on the smaller of the Imia Rocks. After a special session of the Government's National Security Council in the early hours of January 31, the Ministers of Defense and Foreign Affairs announced that an understanding had been reached by means of American mediation. Both sides would withdraw their forces from the area of Imia and the situation would return to its previous condition (the «status quo ante»).

The Hellenic Republic would like to begin by stressing out that Turkish allegations with respect to the Hellenic sovereignty over the Imia Rocks lack legal or substantial basis. On the contrary, the Hellenic Republic's sovereignty over the rocks is firmly established both in case and law.

At least three international agreements establish unambiguously the Hellenic Republic's ownership of the Imia Rocks.

The first is the 1923 Lausanne Treaty, which limits Turkish sovereignty - with the exception of Imbros, Tenedos and the Rabbit Islands - explicitly only over islands lying within a three-mile limit off the Turkish coast (Art. 12). As noted above, however, Imia are 3.65 n.m. off the Turkish coast. Under Art. 16 of the said treaty, Turkey «renounces all rights and title whatsoever over or respecting the territorials situated outside the frontiers laid down by the present treaty and the islands other than those over which her sovereignty is recognized by the said treaty the future of these territorials and being settled or to be settled by the parties concerned. «Therefore, according to the said treaty, the Turkish Republic ceded to the Republic of Italy the Imia rocks (Art.15).

The second treaty is the January 4, 1932 Agreement between the Italian and Turkish Republic and its supplementary agreement of December 28, 1932. More specifically, the 04/01/1932 Agreement set down with precision the maritime between the island of Castellorizo and the Turkish coast. The day this agreement was no difference between as to their respective territorial sovereignty, and called for a Italo-

Turkish technical committee to be set up for the purpose of precisely delimiting the rest of the maritime boundary between the Dodecanese and the Turkish coast.

In accordance with this agreement, the representatives of the two parties signed in Ankara, on December 28, 1932, a supplementary agreement by which the rest of the maritime frontier between the Dodecanese and the Turkish coast was precisely delimited. Point 30 of this Agreement states that the maritime frontier north of Kalymnos will pass at a median distance between the Imia Rocks (on the Italian side) and Kato island (on the Turkish side). Thus Italian sovereignty over Imia is confirmed by explicit reference made to it in the text itself.

The third international agreement the Paris Treaty of 1947, signed between the Italian republic and the Allied Powers of World War II. In that Treaty, the Italian republic ceded the Dodecanese Islands and all adjacent islets to the Hellenic Republic. As it is well known, under international law, the successor state automatically assumes all rights and obligations that have been established by international treaty between the initial possessor state and every third party, (in this case the Italian and the Turkish Republic).

The Hellenic Republic wishes to submit with respect to the Turkish allegations the following;

The 28/12/1932 agreement was supplementary to that of 04/01/1932, which set the maritime frontier between Castellorizo and the Turkish coast and settled an issue concerning the sovereignty of some islets around Castellorizo, over which there was a difference of opinion between the two sides. The 28/12/1932 agreement did not aim at settling any territorial difference between the two countries, as was stated both in the text of the agreement itself and in the letters exchanged on the 04/01/1932, between the then Turkish Minister of Foreign Affairs and the then Italian Ambassador in Ankara, by which the two parties declared that there existed no difference as to the territorial sovereignty of each side. The December Agreement merely sets with precision the remaining maritime frontier between the Dodecanese and the Turkish coast. For this reason it did not need separate registration with the Secretariat of the League of Nations. It is thus not surprising that the delimitation of the frontier set by this agreement was never in the past contested by the two states, even after the Dodecanese was ceded to the Hellenic republic.

In fact, the Turkish Republic recognized officially the delimitation issuing the map attached to the !950 ICAO Regional Agreement adopted by the Council of the Organization and also the official Turkish map included in the 1953 edition of the Turkish Ministry of Foreign affairs on Navigation through the Straits.

Finally, the fact that the Hellenic and the Turkish Republic considered the agreements of 1932 as valid and binding is shown by the Hellenic Republic was the country that exercised sovereign rights over the Imia Rocks all this time without the Turkish republic ever rising any protest. Thus, the Turkish Republic acquiesced the Hellenic sovereignty over the Imia Rocks and now is estopped to dispute it.

Therefore the Hellenic Republic requests from the Court to adjudge and declare that Imia Rocks are under Hellenic Sovereignty.

MEMORİAL
to the International Court of Justice, submitted
by the Turkish Republic

Comes now Turkey and for its memorial to the International Court of Justice states the following:

Legal Background

Decision of Six Powers

The 1914 Athens Decision of Six Powers names, One by one, the islands whose sovereignty is thereby transferred to Greece. These islands are Lemnos, Samothrace, Mytilene, Chios, Samos and Nikaria. There is no mention of the islets or rocks. The same decision limits sovereignty of these islands by placing them under demilitarized status.

-The Lausamne Peace Treaty's articles 6, 12, 15 and 16 are of particular interest concerning sovereignty of the Eastern Aegean islands as well as the Dodecanese.

-Article 12 confirms the 1914 decision. It gives sovereignty of all the situated within 3 miles from the Turkish coast to turkey whereas it confirms Greek sovereignty over the Eastern Aegean islands by naming one by one.

-Article 16 which the Dodecanese Islands is crucial in that Turkey renounces all its rights to islands outside the 3 mile zone without specifying the beneficiary. There is no mention of Greece or Italy. Greek sovereignty over the Dodecanese is not in the picture as far as Lausanne is concerned. The article is also crucial in that it stipulates islands mention of islets or rocks. Thus it does rule on Turkey's rights on the islets and/or rocks. The. sovereignty issue has been or is being settled with this treaty, should be resolved by the parties involved. Therefore the article does not make mention of the islets or rocks, but also foresees the settlement of their future by the parties involved.

-The word "islets" is not mentioned in Article 16; however in Article 15, title over the Dodecanese islands is extended to "islets" depended on any of the islands listed in Article 15 to be placed under Italian Sovereignty.

-The Lausanne Treaty not only confirms the demilitarization status of the islands, but also is more specific in its attribution of a "degree of demilitarization" for different groups of islands.

-Later, a dispute arises between Turkey and Italy over Castellorizo (Meis). The two sides entered into negotiations with a view to settling this dispute. Note: These negotiations may be considered as an application of Article 16 of Lausanne mentioned above. This protocol is duly ratified by both sides. Ratified January 1932.

-Upon Italy's request the two sides reentered negotiations later in 1932. A protocol was signed in December 1932. The protocol leaves Kardak on the Italian side. It was never ratified nor is there reference to the previous protocol of January 1932.

-After World War II, Greece acquired the Dodecanese islands in the 1947 Paris Peace Treaty. Article 14 of the Treaty reads as follows:

«i) Italy hereby cedes to Greece in full sovereignty over the Dodecanese islands indicated hereafter, namely Stampalia (Astropalia), Rhodes (Rhodos), Calki (Kharki), Leros, Patmos, Lipsos (Lipso), Simi (Symi), Cos (Kos) and Castellorizo, as well as the abjacent islets.

ii) These islands shall be remain demilitarized».

Note – There is no reference to the protocol of the 1932 Paris Peace Treaty.

Relevant Facts

-In 1950, 1953, 1955 and 1956 Greece requested negotiations to be reopened to determine the status of the islands. Turkey declined.

-Geographically the islands are five and one - half nautical miles from any other Greek island.

-From the coast of Turkey the islands are 3.8 nautical miles away.

-The Law of the Sea came into effect last year allowing Greece to expand its territorial waters to twelve nautical miles.

-Turkey does not recognize this decision.

-If Greece is allowed to expand its territorial sea to 12 nautical miles hinder Turkey' s open access to the high seas. In short Turkey will be Land Locked.

Jurisdiction

Both Turkey and Greece have agreed to give jurisdiction to the International Court Justice is this case.

Argument

The Treaties are very specific and clear as to what islands are included. In 1914 the islands are named one by one. There is no mention of islets or rocks. In the same respect demilitarization is clear.

Article 12 of the Lausanne confirms the 1914 decision giving all of the islands within 3 miles of the Turkish coast to Turkey. Again it names one by one the islands ceded to Greece.

Four times Greece asked to renegotiate the area, Turkey declined because they knew the rocks were theirs.

If Turkey ratified the Law of the Sea it would more than cover the areas in question.

Greece has already broken the treaties and entered the demilitarized area with troops on the said islands of the treaties.

If given the opportunity, what would keep them from occupying the rocks in question with more troops.

Summary

With the expansion of their territorial seas and the international disregard for the treaties, Greece is starting to show signs of past imperialism. They are also using the Law of the Sea to disregard international waters. It is blatantly obvious that these rocks are now, and have always been, the property of Turkey. Knowing this, we ask that the International Court of Justice return the rocks to their rightful owners.

THE INTERNATIONAL COURT OF JUSTICE

SPAIN v. CANADA

JUDGEMENT OF 17 NOVEMBER 1996

Declaration:
Justice Silk
Separate Opinions:
Justice Heymann
Justice Bonick
Justice Bentley
Justice Leake
Justice Corkrum
Justice Tsonis
Dissenting Opinions:
Justice Lipper
President Amendola
Justice Antoniadis

JUDGEMENT

Present: President Amendola of India, Justice Batliboi of Iran, Justice Antoniadis of Greece, Justice Leake of Japan, Justice Lipper of Bosnia, Justice Bonick of Egypt, Justice Heymann of Canada, Justice Corkrum of Malaysia, Justice Silk of Istrael, and Justice Bentley of Germany.

In accordance with Article 36, paragraph 1 of the ICJ Statute, the Court convened in the city of Chicago to settle the dispute brought before it by Spain against Canada. After having examined the memorials, heard oral arguments, declared that it is competent to adjudge and declare upon the case, the Court decides that:

By a vote of 8 to 3, the International Court of Justice finds for Canada in this matter.

With regard to this case and in accordance with article 38 of the ICJ statute the court believes that the general principle of Equity is the source of law through which

this case has to be examined. The use of Equity has been supported by prior international precedent and has been specifically applied to the delimitation of shared natural resources within the Icelandic Fisheries case. The Court views the principle of Equity as both a tool for international and as a law in and of itself.

The 1992 agreement between Canada and Spain rendered under the auspices of the 1992 North Atlantic Fisheries Organization (NAFO), which allows Canada increased inspection abilities in return for allowing Spain to fish within the Canadian Exclusive Economic Zone represents a diversion from strict marine boundaries and provides the evidence that both countries regard straddling fish stocks as a natural resource which belongs in both the EEZ and the high seas.

The Court finds that equity should be used in this matter due to the fact that the Canadian EEZ encompasses all but 10% of the Grand Banks and that the fish stocks in question live exclusively within the Grand Banks.

Consequently, Canada's extension of jurisdiction beyond the 200 mile EEZ limit was an equitable decision and thus legal.

DISSENTING OPINION (by Judge Antoniadis)

In my understanding of the case before the Court, I found myself questioning the role behind the Judge's position and the role of the International Court of Justice in general. In that end I found myself reaffirming that the ICJ interprets existing international law and it does not legislate as such.

JURISDICTION

Jurisdiction is a very important issue in this case. Since Canada deposited a reservation in her acceptance of true compulsory jurisdiction of the Court, on cases that have to do with NAFO regional agreement and its regulations. The Court was to define whether this case falls within the letter of the said reservation. In other words the Court is in the universal position to decide on the applicable law of the case prior to judging whether it has jurisdiction or not. In this sense, I find that *Spain v. Canada* fisheries case has far broader legal content than the NAFO regulations imply. It has to do with serious environmental questions, and legal consequences of the coming into force of the 1982 UNCLOS. Therefore, I find that the Court, according to Article 36(2) of its Statute is competent to decide upon the case.

THE LEGALITY OF THE CANADIAN CONDUCT

The most difficult issue this Court addressed was the legality of Canadian conduct. This has to be viewed through the legality of Spanish conduct on the one hand and on the other hand through international law. In the first case I find Spanish conduct legal on grounds of international law since the use of the objection procedure

by the EU (Article XI of the NAFO Agreement), is in accordance with its international obligations under the NAFO regulations. Within the context of an international treaty, it does not constitute bad faith the observing of a possibility legally given that in a sense contradicts the main procedure followed by the same agreement. It is also important to examine Spanish compliance with its environmental international obligations conveyed, especially, by the 1972 Stockholm Declaration on Human Environment. Although the Principal 21 of the aforementioned Declaration is found by this Court to consist international law it is not clear the content of its normative value. In this sense, I believe that it does not define concrete legal obligations for Spain that could be alleged as breached before this Court. For these reason, I believe that the Spanish conduct was legal on grounds of international law.

In this sense the Canadian conduct was to be viewed after a legal Spanish conduct and in both ways. First the adoption of the Amendment of the 1994 Coastal Fisheries Act and second the actual Estai catch. Although the principle of equity employed by this Court in the case is generally acknowledged to give an equitable interpretation of Articles 117 and 118 of the 1982 UNCLOS and Article 6(4) of the 1958 Geneva Convention on Fishing and Conservation of Living Resources on the High Seas, that provide for the taking of measures in the high seas, does not give a concrete content on the measures to be taken. This content was to be viewed through equity too. In this sense, a domestic law that could be enforceable outside the territory of the state that it regulated it has to conform with the actual content of the international rule. In this case, Canada's legislation crosses the line of the jurisdiction given by the international rule. An international rule could not legitimize the use of force as a way of resolving problems except for exceptional cases. Therefore, I find that the adoption of the Canadian legislation and the actual capture of the Estai are illegal on grounds of international law.

SELF - DEFENSE AND STATE OF NECESSITY

Both these principles can be named as circumstances precluding wrongfulness. Self defense provided in Article 51 of the UN Charter while state of necessity in Article 33 of the ILC Draft Articles on state liability. Irrespectively to whether self defense is applicable in cases other than armed aggression or ILC's rules son the state of necessity are binding, my personal belief is that the actual condition in Northwest Atlantic, does not pose a grave, imminent peril on the substance of the state, namely Canada and therefore the illegality of Canadian conduct cannot be excused.

DISSENTING OPINION

Justice Gregory Lipper (Bosnia - Herzegovina) submits the following:

In the matter of *Spain v. Canada*, the Court's jurisdiction has been established under Article 36(1) of the Statute of the ICJ in that both parties have referred the matter to the Court and accepted its jurisdiction. Spain argues that the seizing of its ship was illegal under international law, while Canada responds that Spain was in violation of several international laws involving the sea and fisheries.

Because Spain is the petitioner in this case, the legality or illegality of its actions under international law relevant only to the extent that it may provide legal justification for the Spanish intervention. In my view, the Spanish actions, whether or not they were illegal, do not legitimize the Canadian ones. Canada argues that Spain violated several international agreements, such as the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the rules of the North Atlantic Fisheries Organization (NAFO). However, its advocate could not state to unilaterally enter international waters to enforce environmental laws.

I also find that the arguments used to justify the Canadian actions are without significant legal merit. The self defense provisions of Article 51 of the Charter of the United Nations were cited; however, these provisions refer only to armed attack. The proportionality and necessity doctrines, established by the Permanent Court of International Justice (PCIJ) in the 1938 Caroline Case between the United States and the United Kingdom, were also noted by Canada. However, the Caroline Case the self-defense in the Caroline Case was aimed at a more military target. Moreover, the self-defense clause of the 1945 UN Charter, specifying armed attack only, can be considered a codification of the customary law established in the Caroline case. This again demonstrates that under international law, both codified and customary, self-defense is reserved for armed attacks only. Other arguments have been cited by the majority which would grant Canada jurisdiction over the matter and, therefore, make the seizure of the Spanish ship legal. The passive personality principle, granting a state jurisdiction over actions which are harmful to its national interest, is not very well accepted under international law. To use it as grounds for a decision at this time is, in my opinion, premature. The universality principles, allowing any state to intervene anywhere to enforce any international law, has even less acceptance in the international community. Both the passive personality and universality principles are not sufficiently accepted to constitute of the Spanish actions, Canada acted illegally in its seizure of the Spanish ship. Therefore, in the case of *Spain v. Canada*, I rule for Spain.

SEPARATE DISSENTING OPINION

President Scott Amendola of India submits the following:

In the case of *Spain v. Canada*, Canada engaged in quasi-hot pursuit. Because it did so with insufficient justification, it did so wrongly, and Spain must prevail.

The general rule --that of flag - state jurisdiction—is nearly without exception. Generally, a ship on the high seas is subject only to the jurisdiction of the state whose flag she flies. Only in exceptional circumstances – primarily pirates, slave-traders, stateless vessels and hot pursuit – does international practice deviate from this basic rule.

As such, the practice Canada engaged in—pursuing a vessel, firing upon it, seizing it, and causing damage and loss—must be well - justified to be accepted. Factually, Canada fails to justify their response.

It cannot be demonstrated that Canada gave chase to a vessel which began within waters over which its jurisdiction and right of enforcement exists. It is only known that the vessel was eventually seized at a distance of at least 220 miles from the Canadian shore. Neither advocate can support an assertion regarding the point of initiation of the pursuit. Although the Canadian Coast Guard felt they had jurisdiction, this falls far short of proving that they indeed did so. Although the fish caught are predominantly found in Canadian territorial waters, this is insufficiently conclusive as to the likelihood that they could reasonably have been caught elsewhere.

Hot pursuit "is a continuation of an act of jurisdiction which has begun...within the territory itself..." in the words of legal scholar William Hall. As noted previously, it is a rare and exception situation which justifies this rare and exception remedy. From an evidentiary perspective, this instance does not rise to that level.

It is acknowledged that hot pursuit can arise in certain contexts. An observed delict is sufficient; reasonable suspicion of a delict is sufficient; an unpursued past delict may be pursued later should the violative entity return to jurisdictional waters. However, pursuits must begin in jurisdictional waters; they must take place through international waters; they must end if the territorial waters of the flag state of the pursued vellel or of a third state are crossed. And, a pursuit once terminated may not be resumed.

No matter how compelling the motivating delict, if it does not comport to the circumstances above, hot pursuit it inappropriate. The alleged conduct of Spain is recognized and resoundingly condemned. It is inconsequential, however, to the instant dispute.

All of international law prefers peaceful enforcement over violent enforcement. With regard to the rules of hot pursuit, that policy objective is preserved.

Canada is urged to pursue other remedies to its problem. Its chosen remedy in the case at hand is simply inappropriate under the Convention of the Law of the Sea, the High Seas Convention, the custom they embody, the practice they engender, and the spirit they embrace.

Spain should receive reasonable compensation for damage sustained by its vessel and for the loss of productivity resulting from its detention.

SEPARATE OPINION

In concurrence with the majority opinion, Canada should have legal jurisdiction in this matter for intervention. We believe that jurisdiction is given in regards to the principle of "*passive personality*". This principle details the idea that states have the right to act in cases where actions by another state have become a threat to national interest.

In the case of *Spain v. Canada*, we feel that Canada had proper cause to believe that Spain was not acting in accordance with the regulations set forth by the North Atlantic Fisheries Organization. Spain had been cause twice with nets that were in violation of above regulations. These nets, by catching *turbot* which have not yet reached reproductive age, are depleting the fish stocks in the Grand Banks. The Canadian economy is reliant on the fishing industry, especially that of the *turbot*. For

this reason, we believe that the threat to the Canadian economy and fish supply was great enough to justify the seizure of the Spanish, *Estai.*

For the reasons stated above, and in conjunction with the majority opinion, the justices of Canada, Germany and Japan find for Canada in this matter.