HamMUN 2018

"Reflect the Past. Reshape the Future."

INTERNATIONAL COURT OF JUSTICE

Hamburg Model United Nations

29th November – 2nd December

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INTRODUCTORY LETTER

Distinguished delegates,

Welcome to HamMUN 2018, the 10th annual conference hosted at the Hanseatic City.

The ICJ is at the intersection of politics and law in a forum, which tries to remain rational and objective in face of international instabilities. This allows it to approach the issues the world faces in a way which varies greatly from what is generally at the forefront of political discourse. It is a fantastic tool to approach contemporary issues in innovative and limitless ways and provides methods to evaluate angles, which often are not considered in regular committees. Through the simulation of the ICJ, we hope to show you how exciting the path to creating arguments from different perspectives can be.

We expect you to work hard and use your personal skills in order to help you discover innovative methods of argumentation. Try to be creative with the facts and perspectives you bring before the court while still basing these arguments in international law. Through this conference, we hope to help you perfect your argumentation skills while providing an academically challenging experience.

We look forward to seeing the outcome of your investigations and the creative solutions and answers you will be providing. This HamMUN should provide you with a rewarding experience which inspires excitement and motivation for the subject matters which are going to be discussed.

See you in November!

Anna Lisa Schäfer Gehrau and Ana Popova

ABOUT THE CHAIRS

Anna Lisa Schäfer Gehrau is greatly looking forward to the wonderful opportunity of chairing the International Court of Justice (ICJ) in a Moot Court-like simulation at this year's HamMUN conference. She is a third year European Law student at Maastricht University in the Netherlands and through her studies has obtained a strong appreciation for the international legal order. Last year she attended HamMUN as a delegate and participated in that year's rendition of the ICJ, which made her greatly appreciate the more creative aspects of international law.

Ana Popova is a third year law student at the Ludwig-Maximilians-University in Munich. Currently devoting most of her time to her specialization in european and international public law, she still finds time for the never-ending passion of attending MUNs and supports her

beloved MUNAM – the biggest Munich MUN society. In her free time she enjoys playing the piano and swimming in the seas surrounding her Balkan homeland. Regardless of the importance she attaches to rules and precision, the amount of fun she has dealing with legal questions can be seriously contagious!

THE INTERNATIONAL COURT OF JUSTICE

The sectoral resolution of international law has led to a division of the jurisprudence over different legal disputes between various international institutions. Among all established courts, the International Court of Justice (ICJ) has been vested with the mandate under the United Nations (UN) Charter to deal with the legal problems of the international community as a whole. It presents a key part of the mechanism for maintaining international peace and security.

The establishment of a jurisdictional body with such a substantial mandate has always been a cumbersome endeavor. Efforts towards the creation of permanent international jurisdiction during the Hague Conventions of 1899 and 1907 did not lead to a consensus. Against the background of the First World War, the predecessor of the ICJ was earmarked by Article 14 of the Covenant of the League of Nations. The Permanent Court of International Justice was finally established in 1921/1922.

Despite the close connection of the Court to the League of Nations (LoN), it was not an organ of the LoN due to its later establishment. This is one of the main differences between the ICJ and its predecessor. Article 7 of the Charter of the UN names the Court as one of its principal organs and Article 92 calls it the "principle judicial organ of the United Nations". However, its importance does not end within the UN. The jurisdiction of the Court comprises all cases, which the parties refer to it[1], regardless of their membership in the UN. With regards to the ICJ, there is a difference between access to court and jurisdiction. Access to the Court is given to the state parties to the ICJ statute, or those States which are referred to the court by the Security Council.[2] The question of Jurisdiction is governed separately in Article 36 of the Statute of the ICJ.

The Court further has a crucial role in the system of the UN due to its competence to give advisory opinions on any legal questions. Article 96 of the UN Charter allows the General Assembly or the Security Council to request the International Court of Justice to give such an advisory opinion. Furthermore, other organs of the UN and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.[3] The General Assembly has been practicing this competence very generously throughout the years. With the exception of the Universal Postal Union, all of the specialized agencies in the treaty pursuant to Article 63 of the UN-Charter have been authorized to request advisory opinions from the ICJ.[4]

[1] Article 36 Nr.1 of the Statute of the International Court of Justice.
[2] Article 35 of the Statute of the International Court of Justice.
[3] Article 96 Nr.2 of the Statute of the International Court of Justice.
[4] *Oellers-Frahm* in Simma, Art. 96 margin 18.

THE INTERNATIONAL COURT OF JUSTICE SIMULATION AT HAMMUN 2018

STRUCTURE

The HamMUN 2018 International Court of Justice simulation is organized on the basis of a Moot Court. The Chairs – Anna and Ana - are going to take the role of judges and leave the joy of pleading to you, our delegates. Advocate teams are assigned alternating positions as Applicant and Respondent parties. The Senior Advocate of each team is expected to lead their team, delegating the tasks regarding research, development and presentation of the arguments in the Court. The procedure of the simulation will ensure that both Senior and Junior Advocates address the court evenly during each case. It is obligatory that advocate teams work together prior to the conference and create the necessary Memorials and Stipulations as a team.

OUR PENDING CASES

The Court may entertain two types of cases. The first type are contentious cases and entail legal disputes between States submitted to the Court by these States. The second are requests for advisory opinions on legal questions and can be referred to the Court by United Nations organs and specialized agencies.

CASE A

Case A is going to be based on the procedures stipulated in Article 65 of the Statute of the Court. The following question will be dealt with:

"When does a unilateral declaration or a claim of independence in a territory, which displays evidence of internal self-determination, result in statehood for that territory?"

CASE B

During the procedures of Case B, the ICJ Simulation at HamMUN 2018 is going to follow the procedures laid down in Article 36 of the Statute of the Court (and the following). Since it is a contentious case, only States may apply to and appear before the Court. The ICJ has no jurisdiction to deal with applications from individuals, from non-governmental organizations or private groups and it rules only on the rights and obligations of States.

Interveners are going to be involved pursuant to Article 62 of the Statute. The former governs instances where a State believes that it has an interest of a legal nature that may be affected by

the decision in a case, while the latter refers to situations where the construction of a treaty, to which States other than those concerned in the case, are parties are in question.[5]

[5] *Rosenne*, Intervention in the International Court of Justice, Arbitration International Vol. 10, Issue 1, p.114.

PROCEDURE

In this chapter you will find information about the necessary documents that you have to submit prior to the opening of proceedings on the first day of the conference and the course of the procedure during the conference.

PROCEEDINGS PRIOR TO THE HEARING

This first part provides you with all necessary information about the documents you are expected to submit prior to the conference.

MEMORIAL

Advocate party applications to the Court are submitted in the form of Memorials. Memorials shall indicate the party making it, the State against which the claim is brought, and the subject of the dispute.
All parties are expected to communicate to the Court in writing facts which they consider to be of possible relevance to the application of the provisions of the Statute.

STIPULATIONS

Before judicial proceedings are officially opened by the Members of the Court, the Senior Advocates of all parties must accept a series of facts considered by the Court to be of fundamental validity. These facts are referred to as *Stipulations*, and constitute facts that, once accepted, can no longer be contested while the Court is in session. These stipulations are drawn up by advocates of all parties, and are presented to the Chamber following their prior approval by the Members of the Court.

MATERIAL EVIDENCE

Material evidence is evidence that consists of material objects in any form (such as documents, audio and visual recordings, news and NGO reports). Advocate teams must submit a minimum of six objects of material evidence, which must be supplied to the Registrar for authentication prior to the opening of proceedings. So that authentication is possible, all evidence must be supplied with the original author and source. In the event that evidence is presented in a foreign language, that evidence must be submitted with a verified translation. The Registrar will be responsible for the documenting of material evidence and record of its presentation. The validity and relevance of material evidence will be evaluated by the Judges in their final deliberation of the case

WITNESS TESTIMONIALS

Testimonials made by qualified and pre-prepared witnesses are an integral part of the ICJ proceedings. It is essential for advocates to prepare a list of witnesses and to send it to the Members of the Court at least a week before the conference. It will then be confirmed that these witnesses will be present at the HamMUN conference, and they can subsequently be prepared by the requesting advocate party of the questions they will be asked when summoned to the Court. Witnesses will be summoned to the Court by the Registrar, and will then be required to affirm their sworn testimony before the Court. The requesting party may then proceed with questioning as needed, bearing in mind that direct interrogation pursued by the requesting

advocate may not take the form of tendentious questions (a question that is strongly suggestive of a particular response due to its syntactic form). Following direct interrogation the witness shall be relieved of his or her summons and may return to their committee. However, the witness should be prepared to be recalled by the Court in the event that they are required during the Respondent party's rebuttal and cross-examination. During cross-examination, questions asked must be related to those asked by the Applicant advocate during direct interrogation, and the Respondent advocate must understand that the summoned witnesses are not infallible experts on the facts of the case. Tendentious questions are permitted during cross-examination, but only to reaffirm the previous statements of the witness in direct interrogation. At both the end of direct interrogation and cross-examination, Judges may put questions to the witness. All witness testimonies and related questions by other parties are recorded by the Members of the Court.

PROCEEDINGS IN THE CASE OF ADVISORY OPINION

OPENING OF THE COURT

Once the court is in session each interested party to the question raised will present their Memorial to the court orally. The court will hear the opinions of the parties in alphabetical order. Each party to the proceedings will have a maximum of 5 minutes for this presentation of the Memorial. However, since it is most important that the relevant information and a clear position of the party are presented, this speaking time can be extended on the discretion of the chairs. Since the States are represented by teams of two, it is possible for these to alternate within the guaranteed time.

PLEADINGS

Once the Memorials have been read the court will be in session. Here it is very important for the delegates to address the court rather than the other State parties. With regards to the proceedings, the rules of procedure are similar to those of a moderated caucus. See the Rules of Procedure for HamMUN for specifics on how moderated caucuses function.

Once the chairs have called upon the delegates to speak, however, it is possible for the chairs to ask questions and interject with points of clarification. When a question is asked by one of the chairs the time will be stopped. It will be re-started immediately when the delegate begins to answer the question. This will require delegates to be more flexible and interactive when speaking.

PROCEEDINGS IN THE CONTENTIOUS CASE

OPENING OF THE COURT

At the opening of the Court, the Applicant party shall lead in presenting their Memorial to the Court. The Respondent party shall then proceed to do the same. The Memorials, read in full, serve to establish the positions of both sides of the case prior to the opening of judicial proceedings, and can be considered equivalent to the opening speeches or position papers of traditional MUN delegates. Following the reading, Judges will be given the opportunity to ask questions, but these questions will not be directly answered by the advocate parties. Following the questions of the judges, all intervener parties will each have 5 minutes for an opening statement.

PLEADING

Following the above formalities, the Members of the Court shall open proceedings, inviting the arguing parties and the interveners to make their case. These proceedings can be considered equivalent to the moderated caucus during traditional MUN sessions. The party members may rotate during this process, with different members contributing to the overall presentation of the case throughout the process. It is at the discretion of the respective party to select which member(s) of the team lead this address, with the condition that the remaining member(s) are selected at later stages in proceedings. When making their respective cases, advocates are encouraged to make as persuasive a case as possible, using the full resources available to them. To this end, advocates can substantiate their claims through the use of both material evidence and witness testimonials.

During the case presentations of all parties, the listening party may not interject, with the exception of points of clarification on the procedure of the Court or in instances of irrelevance or unverified evidence. The latter instance is of grave importance to the Court, and a failure to verify evidence will be taken into account during the Judges' deliberations.

Both Applicant and Defendant parties, as well as all Intervener parties will have the opportunity to make a Closing Statement at the end of each session.

SPEAKING TIME

Time restrictions will be established prior to the conference based on the official conference schedule, and these limits will be enforced by the Members of the Court to the best of their ability.

REQUESTS

All communications to the Court shall be addressed to the Members of the Court. Any request made by a party shall likewise be addressed to the Members of the Court unless made in open court in the course of the oral proceedings. The Members of the Court are the judges.

CASE BACKGROUND INFORMATION

In this section you will find both cases and basic research sources. The herein given information is not exhaustive.

CASE A:

The question of statehood is the starting point of international law since States are the primary actors of international law and all rights which exist on an international level are derived from statehood, since it is the State which initially accepts the rights and obligations international law applies. This can be seen in article 2 subsection 1 (a) of the Vienna Convention on the Law of the Treaties (VCLT) which states that treaties can only be entered into by States or those individuals who are acting on behalf of, or in function of the State (Article 2 subsection 1 (c) VCLT). The VCLT reflects and clarifies customary law. It was drafted by the International Law Commission, which the ICJ has accepted as codifying customary law on various occasions[6]. Additionally, the rights, which come with statehood are the most extensive, as a State is, in principle, free from any foreign intervention or imposition of obligations by any other external entity.[7] This can be seen in article 8 of the Montevideo Convention (1933)[8] ensures the right of preservation of sovereignty for states. This, of course, is reduced to any limitation on sovereignty that the State itself accepts on its sovereign rights. Article 1 of the United Nations (UN) Charter guarantees the sovereign equality of states and therefore enshrines this right in the primary legal document of international law. Article 103 of the UN Charter ensures this, as it states that the Charter shall prevail in case of conflicting legal obligations. This means that the content of the Charter in its entirety is given legal priority in case of an international dispute. The requirements for statehood, since they provide valuable powers and rights, are greatly disputed and often emerging states are reluctantly granted these rights as they generally mean the loss of powers and rights of an existing sovereign state.

The part of this study guide which relates to case A (the Advisory Opinion) will first discuss the theoretical perspectives on what statehood is and will then move into the current status of international law. Then, the difficulties relating to that current perspective will be reviewed and finally, it will cover what this means for the rights of a seceding State (e.g. what the requirements for and consequences of secession are). This means that the idea of self-determination and what sort of rights arise based on self-determination will be considered. At the end of the study guide, we will provide you with an outline of what we want you to look at for the ICJ committee at Hammun 2018.

THEORETICAL PERSPECTIVES ON STATEHOOD

The two main theoretical views on the requirements of statehood are the declaratory and the constitutive view. The declaratory view considers the legal requirements (which will be

[6] The Genocide Convention Case (2007), paragraph 401; North Sea Continental Shelf Case (1968), paragraph 95.
[7] Article 2 (1) and (7) of the UN Charter.
[8] The Montevideo Convention of 1933 is reflective of customary law: Hersch Lauterpacht *Recognition in International Law* (1947).

discussed in the coming section) to be the determining factor in the determination of the existence of a State. This means that irrespective of recognition, a State is created when the given legal requirements are met. It also means that the effectiveness of the disputed entity in exercising the requirements of statehood is the most important in determining whether those requirements have been met.[9]

The constitutive view places the recognition of statehood by other States at the center of the acquisition of statehood. This means that in order for a State to be recognized as such, it needs to be recognized by the international community as a State. This is important when it comes to the interaction of states between each other and the

Both perspectives have their benefits and their drawbacks. These will be discussed in turn.

First of all, a benefit of the declaratory view is that it provides legal certainty to the idea of statehood as a legal concept. It stipulates clear guidelines and boundaries for a matter which in practice is very uncertain. A limitation of the declaratory view is that it is not applied consistently at all and fails to consider different circumstances and practice.

The constitutive view requires recognition of statehood by other states, however, with this view there is much uncertainty. For example, the question of how many states are sufficient for the constitutive view to be fulfilled is often raided. A benefit of this view is that it is more realistic in the international setting where international relations are based on recognition of statehood and it is almost impossible for a State to function completely independently of other states.

REQUIREMENTS FOR STATEHOOD

The most important legal basis for the requirements of statehood can be found in the Montevideo Convention (1933), which also forms a part of customary international law.[10] Four main requirements are listed in article 1 of the convention. These requirements are cumulative.

The first is a permanent population, which means that the disputed territory has become a permanent home for someone. The ICJ found this in the Western Sahara Advisory Opinion (paragraph 152). While Advisory Opinions on their own are not binding, it is likely that the court will adopt a consistent interpretation in subsequent cases. This is because an Advisory Opinion is a question of law which the ICJ gives a reply to (Article 65 (1) ICJ Statute).

The second requirement is a defined territory, this requirement, however, is not absolute. For example, many states have a disputed border which does not take away from their status as a state. The most important factor is that there is an area of undisputed territory as was shown in paragraph 46 of the North Sea Continental Shelf case (Germany v Denmark and the Netherlands).

The third requirement is an effective government. This requirement, however, is most relevant when it comes to emerging states (a lack of effective governance cannot itself lead to the reversal of recognition). What it means is that there is a government in the relevant territory

[9] James Crawford, *The Creation of States in International Law* (2006) pg 4-6
[10] Ibid.

which has the capacity to exercise control through a stable political organization. This needs to happen without the assistance of an intervening state, as was determined in the International Committee of Jurists Advisory Opinion on the question of the Aaland Islands (1920). Thus, if there is foreign intervention in the assistance of exercising effective control within the relevant territory, this requirement is not met. As mentioned above, this does not have an impact on existing states, but more on the recognition of emerging states.

The final requirement of the Montevideo Convention is the capacity to enter into relations with other states and, according to the Island of Palmas case, this means that the State can act independently from any other State on the international and internal level. As stated in the PCIJ Case concerning the Customs Regime Between Germany and Austria (pg 58), this requirement is met when the entity is not under the 'legal authority' of any other state.

Aside from the Montevideo Convention, two further requirements can be derived from international law. First of all, statehood cannot arise from a flagrant violation of international norms. The principle this is based on is *ex injuria jus non oritur*, which is a fundamental principle of international law by which international rights cannot arise from an internationally wrongful act.

For example, if a State is created through the unlawful use of force (Which is prohibited in article 2 (4) of the UN Charter) in principle, that would prevent it from acquiring statehood. However, an exception to this is when the individuals who are claiming independence have been subjected to human rights violations by the government of the original state. An example of this being accepted is the creation of the Bangladeshi State where the independence was attained by an invasion. Now Bangladesh is a member of the UN which leads to the next added element of statehood.

Secondly, recognition of other states has an evidentiary value of statehood. While it is not itself a requirement, it can be proof that statehood has been attained. For example, while it is not a requirement for a State to be a member of the UN, membership is only open to states and therefore every member of the UN can be considered to be a state. This can be seen in Article 4 (1) of the UN Charter. Especially because states are the primary actors in the international system, recognition is important when it comes to the capacity of states to act as such in matters of international relations.

SOVEREIGNTY AND SELF-DETERMINATION

Sovereignty can be understood from two perspectives. The first is internal sovereignty which relates to the functions that the territory can exercise within the framework of another state. The Island of Palmas Case showed that internal sovereignty relates to the ability to exercise the functions of a State within a certain territory without interference by any other State (the territorial integrity of the State needs to be respected).

The second is external sovereignty which refers to the obligation of a State to refrain from exercising State-related powers in the territory of another state. Additionally, it provides for the ability of a State to express and protect its independence in the international community (The

Lotus Case). This is an obligation which in turn is a reciprocated right for that state, leading to other States refraining from the same.

When it comes to declarations of independence it mostly refers to states, which exhibit evidence of internal sovereignty, who wish to become externally sovereign and thereby fully independent in all respects of statehood. This issue will then relate to the self-determination of the people within that territory with a claim of independence. States will be more likely to give internal sovereign rights to territories within their framework than external rights.

Self-determination relates to the right of a people to determine their own political status and development without the imposition a certain status by anyone else. This is guaranteed in article 1 subsection 2 of the UN Charter. The right of self-determination is considered to be fundamental in international law (East Timor Case). For peoples who were under colonial rule this right is absolute, however, for other entities or peoples, the requirements are more uncertain. One judgment which can be seen to be reflective of customary law was in front of the Canadian Supreme court and related to Quebecois independence.[11] In this case, it was found that self-determination is the exception to sovereignty and can only be claimed if there has been a total denial of meaningful rights and extreme oppression. Under this, any State where the people are represented equally and without discrimination self-determination cannot result in independence.

The issue here is that the boundaries set by international law are very unclear and underdeveloped. Additionally, many legal bases offer conflicting perspectives on what the requirements are It will be your task to find the best possible place to draw the line for this issue.

OUTLINE FOR THE PROCEEDINGS OF CASE A

To reiterate, the question which will be posed to the court in Case A is: When does a unilateral declaration or a claim of independence in a territory which displays evidence of internal self-determination result in statehood for that territory?

As delegates, you will be representing a state's view on the question posed to the Court. Your job is to convince the Court in the abstract that your perspective is the correct one.

In order to determine your state's position, look at the history of your State in terms of self-determination. Has your State ever made a successful claim of self-determination? What made it successful? Has your State ever been subject to a claim of self-determination? How has it dealt/is it dealing with this claim?

Based on this answer the question, under what requirements would your State want a unilateral declaration of independence to be successful? When should it be possible for legal rights connected to statehood to arise for an area which declares its independence from a State which had sovereign rights over the same territory?

[11] Committee on the Elimination of Racial Discrimination on the right to self-determination (1996) UN Doc. A/51/18 paragraph 4

Is it sufficient to meet all the legal requirements? Should it never be possible? Or, is it somewhere in between? In the latter case please say what requirements your State would propose and why, with regard to the acquisition of statehood.

When looking at the question which will be presented to the court in Case A, please evaluate the relevant criteria for statehood (it is very important that you use acceptable sources under Article 38 of the ICJ Statute) and then discuss when it should be possible for a unilateral claim of independence to result in independence for the claiming entity. Is it enough that the people of the State want to be independent, based on the right of self-determination which is guaranteed in the UN Charter? Or is State sovereignty and stability more important?

CASE B:

The European state (Italy) deems itself exposed to a large stream of people caused by the refugee crisis. The mostly northern African refugees come to (Italy) through the Mediterranean.

The search and rescue ship “U2” (“The Unsinkable II”) drifting afloat the Mediterranean, with more than (600) onboard, was denied the right to dock in Italy and Malta. The ship was sailing under the flag of Spain. “U2” did not have sufficient capabilities to take care of the refugees on board - many of whom were in a bad condition. The captain of the ship wanted to bring the refugees to the nearest harbour in Italy, so he approached its territorial waters. The coast guard of Italy denied the ship access to its harbour. Whilst the captain was negotiating with the coast guard, the Unsinkable II had casted anchor approximately 20 sea miles away from the coast of Italy. Due to the catastrophic conditions on board, the captain decided to dock without permission. U2 was stopped by an Italian coast guard ship approximately 15 sea miles away from the coast of Italy. Soldiers took control of the ship and forced the captain to drive the ship back in direction of the high seas. In the end, U2 drove to Spain, where the refugees were admitted and taken care of and provided with sufficient medical aid. On the way from Italy to Spain, five refugees lost their lives.

The Minister of Foreign affairs of Italy, Satteo Malvini, makes the following statement in defence of the actions of its coast guards:

“It is important that people understand that our country has no obligation under International law to accept the rescued persons into our territory.”

In order to decrease the number of illegal immigrants coming through the Mediterranean, Italy - together with other European partners - has brought to life the border protection operation “Mediterranean Answer”. The main coordination is regulated by Frontex, a European Union agency which serves the protection of the EU borders headquartered in Warsaw. Before the coast guard ships set sail, they get instructions and an operation plan from Frontex. An agreement to the operation plan from the Member States has to be achieved in advance to any forthcoming operations. No Frontex staff participates in the execution of the operations. Accordingly, there are no representatives on the boards of the coast guard ships either. The ships are run solely by the command structure of the respective country.

A couple of weeks after *Mediterranean Answer* has come into force, a skirmish occurs around 35 sea miles south of the Italian coast. Another ship sailing under Spanish flag with approximately 30 refugees on board attempts to dock in Italy. In order to prevent this from happening, the coast guard ship (Bynkershoek) interferes. (Bynkershoek) intercepts the refugee boat (Unsinkable III), takes the refugees on its board and sinks the (Unsinkable III) with its artillery. Contrary to the operation in the Frontex plan, the refugees are soon returned directly to Libya, with which Italy has a bilateral readmission agreement.

In defence of the actions of the coast guard, the Minister of foreign affairs of Italy, Satteo Malvini, refers to the obligation of the coast guard pursuant to maritime law to save people in need in the high sea. Furthermore, outside of Italian Territory, human rights obligations do not

bind any government officials. On top of that, it was an action according the Mediterranean Answer, which is a Frontex operation. In addition, the treaty signed with Libya ensures that no human right abuses would be committed after the readmission of the refugees.

Spain is shocked by the actions of the Italian officials. Spanish representatives are convinced that Italy has violated obligations under the law of the sea, refugee law and international human rights. In particular, "The Unsinkable II" was in the search and rescue region that would have been State A's responsibility. Furthermore, as this was a case of Italy having exercised full and exclusive control over the U2 and its crew, at least de facto, from the time of its interception, the applicants were effectively within Italy's jurisdiction.

For these reasons Spain submits the case to the ICJ.

Italy claims that no human rights abuses have been committed by its officials, especially not under its jurisdiction. According to Satteo Malvini, the action towards the "U3" occurred under the ultimate authority and control of Frontex.

SUGGESTIONS FOR FURTHER RESEARCH:

IMPORTANT LEGAL SOURCES

CASE A

- Convention on the Rights and Duties of States (Montevideo Convention) 1933
- Charter of the United Nations (1945).
- Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (GA Resolution 2625).
- Declaration on the Granting of Independence to Colonial Countries and Peoples (UN GA Resolution 1514).
- Declaration on the Rights of Indigenous Peoples (UN GA Resolution 61/295).
- Report of the Committee on the Admission of New Members Concerning the Application of Palestine for Admission to Membership in the United Nations (S/2011/705).
- Status of Palestine in the United Nations (GA Resolution 67/19).
- Resolution of the Council of the League of Nations giving an advisory opinion upon the legal aspects of the Aaland Islands question (1920).

CASE B

- United Nations Convention on the Law of the Sea (especially Article 122, 3, 8, 33, 55, 91, 92, 18, 98).
- International Convention on Maritime Search and Rescue.
- International Convention for the Safety of Life at Sea.
- Convention Relating to the Status of Refugees.
- European Convention on Human Rights (especially Article 1, 3) and its protocols, especially protocol 4 (Article 4).
- Convention relating to the Status of Refugees (especially Article 33).
- UN General Assembly Resolution 55/74, 12.02.2001.
- UNHCR Executive Committee, Intercpetion of Asylum Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach, UN-Doc. EC/50/SC/CRP.17, 9.6.2000 (margin 23).

NOTABLE CASES

CASE A

- Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion 2010)
- East Timor (Portugal v Australia) 1995
- Reference Re Secession of Quebec (Canadian Supreme Court) 1998
- Legal Status of Eastern Greenland (Norway v Denmark) 1993
- Customs Régime between Germany and Austria (Advisory Opinion PCIJ 1931)

CASE B

- ECtHR, Hirsi Jamaa and Others v. Italy, Appl. No 27765/09 (margins 75, 77).

- ECtHR, Banković and Others v. Belgium and Others, Appl. No. 52207/99.
- ECtHR, *Loizidou v. Turkey,* Appl. No. 15318/89.
- ECtHR, Al-Skeini and Others v. the United Kingdom, Appl. No. 55721/07.
- ECtHR, Medvedyev and Others v. France, Appl. No. 3394/03 (margin 67).
- ECtHR, Behrami and Behrami v. France & Saramati v. France, Germany and Norway, Appl. Nos. 71412/01 & 78166/01 (margin 128, 138).
- ECtHR, Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland, Appl. No. 45036/98.
- ECtHR, Soering v. The United Kingdom, Appl. No. 14038/88 (margin 102).

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