



American Model United Nations International

THE INTERNATIONAL COURT OF JUSTICE

November 23, 2004

Benin v. Niger

PRESENT: President: Goodwin, Vice President: Sahai, Justices: Birach, Choate, Cottingham, Davis, Essenberg, Filippova, Morozink, Rahmani, Schiwek, Schroeder, Simpson, Wagner.

*To Court,
composed as above,
delivers the following Judgment:*

1. The first issue before this court is jurisdiction. According to Article 36 of the Statute of the International Court of Justice, “the states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto*...the jurisdiction of the Court.” By signing Cotonou Agreement on 11 June 2001, both applicants expressly agreed to accept the jurisdiction of the International Court of Justice.
2. Benin refers to the ruling of the International Court of Justice in *Spain v. Morocco* which ruled that occupation is “an original means of peacefully acquiring sovereignty over territory.” Niger contends that it is impossible to determine which people were the first to discover and settle on the island, and therefore, it is equally impossible to determine the original ownership to the island of l’Ete.
3. Benin cites Article 30, section 5 of the Vienna Convention on the Succession of States, which states that a treaty signed by a State remains valid in regards to newly successor states. Niger states that the only treaty that should be taken into consideration by this Court is the Act of 1960 being the first agreement created after former French colonies gained their independence, and all documents existing prior to that time should be disregarded as invalid, since they were signed prior to Benin and Niger gaining their independence.
4. Benin brings to the Court’s attention Article 10, Paragraph 2 of the Draft Articles on the Law of the Non-Navigational Uses of International Watercourses, which states that conflicts regarding the use of the watercourses should be resolved with special regard to vital human needs. Niger did not express their stance on this issue.
5. Niger refers to the Yamoussoukro decision of 1965 which was signed by Benin and Niger in their agreement to the joint exploitation of the island of l’Ete.
6. Benin claims under Article 6 of GA Res 15/1514 (Declaration on the Granting of Independence to Colonial Countries and Peoples) that “attempts to disrupt national unity is incompatible with the purposes and principles of the Charter of the United Nations.” Niger contends that both Niger and Benin nationals have lived on the island for generations. Because the islands are inhabited by both Benin and Niger citizens and that it is impossible to determine who first inhabited the islands the above resolution cannot be applied for purposes of granting sovereignty.

THE COURT

Unanimously

Finds that the Act of 1960, signed by the outgoing colonial government of the Republic of France, which *inter alia* awarded the ownership of the island of l'Ete to Niger is not binding due to the fact that this Act was not signed by Benin.

THE COURT

Unanimously

Accepts the French Statute of 1947. which returned borders to a 1938 colonial statute that grants sovereignty of the island l'Ete and other small islands in question to Benin. Even though the Statute granting ownership of the territories to Benin was signed prior to Benin gaining independence from France, the Statute is valid to this date pursuant to customary law. Though the French Statute of 1947 is not a treaty *per se*, the Court finds the actions of both parties established under the 1938 statute represent a sound basis for customary law.

THE COURT

Unanimously

Finds that GA RES 15/1514 cannot be applied to this case for purposes of granting sovereignty.

THE COURT

Unanimously

Finds that the waters surrounding the islands are the shared internal waters of both Benin and Niger according to the 1982 Law of the Sea article 8 (1), and as such, should be equally accessible by both countries for exploitation.

THE COURT

Finds that the Yamoussourko agreement dealing with joint exploitation of the island, though only signed and not ratified by both parties, testifies to the general custom of mutual exploitation of the island's resources. For this reason, both parties have the right to exploitation of the island in question.