

**RESPONSE TO THE QUESTION PUT TO GREECE
BY JUDGE CANÇADO TRINDADE**

1. It should first be recalled that the Special Supreme Court (SSC) does not rank as a supreme court within Greece's legal order. The SSC has a *sui generis* legal status in the Greek system of courts. With its dual jurisdictional role under Article 100 of the 1975 Greek Constitution, the SSC is regarded as an independent, non-permanent organ which is "a special court rather than hierarchically supreme"¹ or, to put it differently, does not form part of the hierarchy of the Greek court system as a whole. Moreover, it is not a constitutional court².

2. As part of its function of removing uncertainty as to the existence of a generally accepted international norm at a particular time, the SSC identifies or defines a customary rule of international law "in the present state of development of international law"³. In this area of the SSC's action, its judgments have only limited effects. In practice, an SSC judgment is binding on the other courts which have raised the specific question posed concerning the identification of norms of international law, either by referral from those courts or at the request of the parties to a case before them.

3. A judgment of the SSC does not have the force of *res judicata erga omnes* in terms of the existence and content of the emerging international rule in question, perceived as such at a particular point in time and in the context of the continuing development of international law. It is thus for the ordinary courts or the SSC to determine subsequently whether there has been any change in the assertion that a customary norm exists.

4. There is an *erga omnes* obligation in so far as the judgment of the SSC is binding on any court or administrative organ before which the same legal question is raised as that brought before the SSC, namely that of identifying, "at the same point in the development of international law, a rule of a customary character". In other words, an SSC judgment always reflects the considerations of an *opinio juris* expressed "at the same temporal stage of development of international law and of its generally accepted rules".

5. The judgment of the SSC in *Margellos and Others*, No. 6/2002, concerned the massacre at Lidoriki. It can hardly have any effect, and indeed has no effect whatever, on the judgment of the Areios Pagos in the *Distomo Massacre* case, No. 11/2000, which was rendered prior to the SSC's judgment and concerned a different case. The *Margellos* judgment can thus have no legal implications for the judgment of the Areios Pagos, delivered two years previously.

6. Judgment No. 11/2000 of the Greek Court of Cassation, which upheld judgment No. 137/1997 of the Livadia Court of First Instance, is final and irrevocable. It is in force and produces legal effects within the Greek legal order, remaining pending of execution.

¹See J. Iliopoulos-Strangas, "Les décisions de la Cour suprême spéciale grecque et leur mise en oeuvre", at: http://www.tribunalconstitucional.ad/docs/coloqui_justicia/10-JULIA%20ILIOPOULOS.pdf.

²See M. Kypraios, "The Special Supreme Court", *The Constitution* (journal), 1997, pp. 252, 278 and 279 (in Greek); V. Skouris, "The settlement of constitutional conflicts in Greece", 2, *The Constitution*, 1986, p. 187 (in Greek); D. Tsatsos, *Constitutional Law*, Sakkoulas, 1993, 527 (in Greek); Houvardas, "The Special Supreme Court", *Nomiko Vima* (journal), 1976, p. 1045 (in Greek).

³See this wording in judgments Nos. 46/199 and 6/2002.

7. While the Minister of Justice has not yet authorized the enforcement of the judgment of the Livadia court — which remains an action for the Government — that does not signify that the judgment is emptied of meaning and unenforceable. The fact is that the *Distomo* judgment remains open.
