

*Documents concerning the Organization of the Court, Third Addendum to No. 2*, pp. 313 *et seq.*) said that he "wished to change the heading of the whole section. The word 'agreement' was not sufficiently explicit as an indication of its contents." He was of the opinion that the section should have been headed: "Settlement *and* abandonment of proceedings."

The emphasis on the settlement of the dispute in Article 68 and in the heading of the section was to all appearances not accidental. Generally speaking, the main task of the Court is to *settle* disputes between States. Article 33 of the Charter in the section headed "Pacific settlement of disputes" provides that "the parties to any dispute . . . shall . . . seek a solution by [among the peaceful means mentioned there] *judicial settlement*".

In Article 68 settlement occupies the first position. In the light of the Court's task in the settlement of disputes, we have to resolve the procedural questions in this case, especially the question of the consequences of the discontinuance of the proceedings, the question of the permissibility of a reinstatement of the proceedings after discontinuance.

The discontinuance of the proceedings in this case was in a sense a conditional one. Though the Belgian Government made no reservation of its substantive rights the conditionality of the discontinuance is evident. One may consider this conditionality as tacit (from a formal point of view), implied, but the documents show that a withdrawal of the proceedings instituted before the Court was demanded of Belgium as a precondition for the opening of negotiations proper (Preliminary Objections, Introduction, paragraph 4, and Observations, paragraph 25); it was then evident that the demand was related to Belgium's Application to the Court, but not to the substantive right, about which the proceedings were instituted. About what then was it intended to carry on negotiations if it be considered that the Belgian Government, by the withdrawal of its Application, decided not to remove an obstacle to promising negotiations but to abandon even its (and its nationals') substantive rights? If no substantive rights existed there would be no subject for negotiations. And we may conclude that discontinuance of the proceedings does not involve an abandonment of a corresponding substantive right. Discontinuance even by mutual agreement is not necessarily a *pactum de non petendo*, which supposes not only discontinuance of a given action but an obligation not to sue at all, which is tantamount to the abandonment of the claim. And it has not been proved in this case that the renunciation of a substantive right has taken place.

Judge JESSUP makes the following declaration :

I am in full agreement with the Court that no one of the Preliminary Objections could be upheld at this stage, and that the first two must

be rejected now for reasons stated in the Judgment. I am also in accord with what the Court has to say about the general considerations which govern a decision to join a preliminary objection to the merits. I agree that those general considerations require that the third and fourth Preliminary Objections should be joined to the merits. Consequently, in order to be consistent with those general considerations, conclusions of law applicable to arguments involved in those two objections; even though I would find them capable of formulation now, may appropriately be deferred until a subsequent stage of the case.

Vice-President WELLINGTON KOO and Judges TANAKA and BUSTAMANTE Y RIVERO append Separate Opinions to the Judgment of the Court.

Judge MORELLI and Judge *ad hoc* ARMAND-UGON append Dissenting Opinions to the Judgment of the Court.

(Initialled) P.S.

(Initialled) G.-C.