

## DECLARATION OF JUDGE KOROMA

While I concur with the Court's findings in the operative paragraph of the Judgment, I nevertheless consider it important to stress the following.

What the Court was asked to determine and has, in fact, ruled on during this phase of the proceedings is the issue of *jurisdiction*.

The Applicant, the Government of Serbia and Montenegro, requested the Court, *inter alia*, to adjudge and declare in respect of its *jurisdiction ratione personae*.

For its part, the Dutch Government requested the Court to adjudge and declare: that the Court had no *jurisdiction* or should decline to exercise *jurisdiction* either because the Parties in fact agreed that the Court was without jurisdiction or because there was no longer a dispute between the Parties on the *jurisdiction* of the Court; or, alternatively, that the Court had no jurisdiction over the claims brought against the Netherlands by Serbia and Montenegro.

Thus, neither Party called upon the Court to uphold its jurisdiction or asserted that it was entitled to enter into the merits of the case, but rather requested it to decide on its jurisdiction and to determine whether, as a matter of law, the Applicant was entitled to bring a claim before the Court. This Judgment is the response to the question about jurisdiction. As the Court has stated (para. 37), the function of a decision of the Court on its *jurisdiction* in a particular case is solely to determine whether or not it may entertain the case on the merits and not to make any determination on *substantive issues*. The Court is obliged to discharge this function before entering into the merits of a case. Moreover, this function to decide on its jurisdiction is both primary and imperative. It is at one and the same time both determined and limited by the Charter of the United Nations and the Statute of the Court. The Court cannot emancipate itself from this statutory requirement. It is therefore not only in conformity with the Statute of the Court but also by the force of logic that the point of departure for the Court in responding to that question would have to be the determination of its jurisdiction *ratione personae*.

It is within this paradigm that the Judgment should be understood: as a decision by the Court on its jurisdiction, without any position being taken on the merits of the dispute.

Finally, with respect to paragraph 115 of the Judgment, I remain unpersuaded by the jurisprudential basis offered for the conclusion reached.

(Signed) Abdul G. KOROMA.