

SEPARATE OPINION OF JUDGE KOROMA

Agree with dispositif — But need to make distinction between justiciability of a dispute and jurisdiction of the Court — Court forbidden to exercise jurisdiction where parties not given consent — Judgment not an abdication but a reflection of system within which Court called upon to render justice — Judicious to remind parties of obligation to settle disputes by peaceful means.

I entirely agree with the dispositive findings of the Court in this phase of the proceedings and the reasoning which underpins them. There is, however, one aspect of the matter which, in my view, also deserves a response in the light of the importance of this dispute. Pakistan, in its Memorial and in the course of the oral hearings, contended that the destruction of its aircraft by India on 10 August 1999, with the attendant loss of life, and the violation of its territorial integrity by India were in breach of the United Nations Charter, the relevant rules of customary international law and treaties, and accordingly rendered the dispute justiciable.

Thus formulated, there can be no doubt that the acts complained of by Pakistan, and their consequences, raise legal issues involving a conflict of the rights and obligations of the Parties, a conflict capable of being settled by applying international law, which the Court, as a court of law, would have been entitled to do were it competent to do so (Article 38 of the Statute).

However, it is to be observed that it is one thing whether a matter before the Court is justiciable and quite another whether that matter is properly before the Court for it to be entitled to exercise its jurisdiction. In this regard, whether the Court should perform its judicial function in a given dispute or whether it should adjudicate such a dispute on its merits depends entirely on the consent of the parties, which they must have given prior to the institution of the proceedings or in the course of the proceedings themselves.

In other words, the issue whether there is a conflict of legal rights and obligations between parties to a dispute and the application of international law (justiciability) is different from whether the Court has been vested with the necessary authority by the parties to a dispute to apply and interpret the law in relation to that dispute. The Court is forbidden by its Statute and jurisprudence from exercising its jurisdiction in a case in which the parties have not given their consent. It is on this basis that the Court has reached its Judgment. Accordingly, although the function

of the Court is to apply the law, it cannot impose its jurisdiction on parties. As Judge Lachs stated in another case which came before the Court, such judgment should not be seen as an abdication of the Court's function, but rather a reflection of the system within which the Court is called upon to render justice (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, separate opinion of Judge Lachs, p. 139). On the other hand, the Court is an integral part of the United Nations system; it is entitled to contribute to the peaceful settlement of disputes. Guided by the Charter and its jurisprudence, the Court has judiciously reminded the Parties of the obligation to settle their disputes by peaceful means.

(Signed) Abdul G. KOROMA.