

DECLARATION OF JUDGE GAJA

In the three Judgments concerning the cases filed by the Republic of the Marshall Islands the Court finds for the first time that it cannot entertain a case because there was no dispute between the Parties on the date when the Application was filed. Having reached this conclusion, the Court decides that it does not need to examine the other objections raised by the respondent States. This approach may be viewed as an application of the principle of judicial economy. However, judicial economy may also require the Court to take a decision on certain issues that were raised by the respondent States and which are likely to have to be litigated again in new proceedings between the same Parties, when these proceedings are a distinct possibility.

As Judge Sir Hersch Lauterpacht noted in his separate opinion in the *Certain Norwegian Loans* case,

“[t]here may be force and attraction in the view that among a number of possible solutions a court of law ought to select that which is most simple, most concise and most expeditious. However . . . such considerations are not, for this Court, the only legitimate factor in the situation.” (*Judgment, I.C.J. Reports 1957*, p. 36.)

With regard to the matters addressed in the present cases, disputes have clearly arisen since April 2014 as a result of the Applications and of the respondent States’ reactions. The Judgments of the Court thus leave the Marshall Islands with the apparent option to start new judicial proceedings concerning the same matters.

Should one of the other objections raised by a respondent State have been upheld, the Court’s Judgment would have in practice induced the Marshall Islands not to file a new application against that State.

On the other hand, if the Court had rejected other objections, the Court’s Judgment would have prevented the formulation of the same objections in new proceedings. In the best scenario for the Marshall Islands, the case could then have to be examined on the merits.

The discussion in the written and oral proceedings in the present cases would not have to be repeated. It would have therefore been preferable for the Court to continue its examination of the objections after finding that there were no disputes at the time of filing the Applications.

(Signed) Giorgio GAJA.
