DECLARATION OF JUDGE CHARLESWORTH

Concurrence with the Court's findings in relation to two submissions — Disagreement with the Court's conclusion that the remaining claims and counter-claims no longer have any object — Complexity and uncertainty introduced by the Judgment in relation to the legal consequences of the disappearance of a dispute — Distinction between the disappearance of a claim's object and the convergence of the parties' positions.

Nuclear Tests *cases — Object of the claim achieved through a party's unilateral undertaking — Difference from the present case — No finding concerning the legally binding effect of the Parties' statements — Permissibility of a legally binding judgment in the absence of legal commitments by the parties.*

Lack of convergence of positions between the Parties — Duty to issue a declaratory judgment.

Permissibility of judgments recording an agreement arrived at after the Court's seisin — The role of a declaratory judgment in ensuring that the parties commit to their positions — Practical consequence of declaratory judgments in removing uncertainty from the parties' legal relations.

I. Introduction

1. As indicated by the title of the case, today's Judgment is meant to resolve a "dispute over the status and use of the waters of the Silala", the international watercourse shared between the Parties. The Court addresses five claims made by the Applicant and three counter-claims made by the Respondent and, in the Judgment's operative paragraph, it rejects one of the Applicant's claims and one of the Respondent's counter-claims (Judgment, para. 163 (5) and (8)). I concur with both these rejections.

2. The remaining claims and counter-claims concern several other important aspects of the Parties' relations as riparian States. I am in full agreement with the Court's reasoning in respect of the rights and obligations of States sharing an international watercourse. And yet, despite its thorough analysis, the Court neither upholds nor rejects any of the remaining claims and counter-claims. Instead, regarding each of them, the Court examines the Parties' pleadings and final submissions with a view to ascertaining whether the Parties "have come to agree in substance" (Judgment, para. 46). After affirming the Parties' convergence of positions, the Court concludes that each of these claims and counter-claims "no longer has any object", which in turn entails that the Court "is not called upon to give a decision thereon" (Judgment, para. 163). Rather than resolving the dispute brought before it, the Court has thus shifted its attention to the question — at issue between the Parties — as to whether that dispute persists.

3. To my regret, I cannot join the Court in its diversion to this "meta-dispute", nor in its method of approaching this question, nor in the answer at which it arrives. In my view, the Court's analysis introduces new uncertainties into the concept of a dispute (II). The concept of the convergence of positions finds no basis in the Court's jurisprudence (III), and it does not fit the facts of these proceedings well (IV). Finally, it seems to me that the Court's reasoning underestimates the contribution a declaratory judgment may make in this case (V).

II. Disappearing disputes

4. A central tenet of the Court's jurisprudence is that the exercise of the Court's jurisdiction rests on the existence of a dispute[1]. As a matter of principle, the elements on which the Court's jurisdiction depends must be fulfilled at the time of the institution of proceedings[2]. The existence of a dispute is no different[3]. This is illustrated in *Obligation to Prosecute or Extradite* and *Frontier Dispute (Burkina Faso/Niger)*, in which the Court had to ascertain whether a disagreement between the parties — if one had ever existed — had disappeared by the time that the Court was seised[4]. Unlike the present case, the question in those cases was not whether the parties' positions on a legal issue converged after the institution of proceedings, but rather whether they had converged beforehand. They were then standard cases where the existence of a dispute was ascertained with reference to the date of the institution of proceedings.

5. By contrast, the Court has rarely dealt with a dispute's disappearance in the course of the proceedings, or with the consequences of such disappearance. On a few occasions the Court has contemplated the possibility that a dispute might disappear in the course of the proceedings[5], but it has never identified the grounds for such disappearance nor its legal consequences. Even in *Nuclear Tests* the decisive feature precluding a judgment on the merits was not the disappearance of the dispute as such, but rather the fact that the object of the claim had been achieved, as I explain below.

6. This Judgment expands the concept of the disappearance of a dispute and, in doing so, it separates the dispute requirement from all other jurisdictional elements. The fulfilment of all other preliminary requirements at the time of the institution of proceedings is, in principle, a necessary but also a sufficient condition for the establishment of the Court's jurisdiction. For example, lapse of the jurisdictional title after the institution of proceedings does not deprive the Court of jurisdiction over pending cases[6]. When it comes to the existence of a dispute, however, according to the Judgment, fulfilment of the requirement at the time of the institution of proceedings is a necessary but not a

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[1] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 441, para. 45; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I)*, p. 269, para. 33.

[2] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, pp. 437-438, paras. 79-80; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 115, para. 31.

[3] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 85, para. 30; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I)*, p. 271, para. 39; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment of 22 July 2022* (not yet reported), para. 64.

[4] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, pp. 442-443, para. 48; *Frontier Dispute (Burkina Faso/Niger), Judgment, I.C.J. Reports 2013*, p. 71, para. 52; see also *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 874, para. 138.

[5] For example, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 146, para. 112; *Legality of Use of Force (Serbia and Montenegro* v. *Belgium), Preliminary Objections, Judgment, I.C.J. Reports 2004 (I)*, pp. 294-295, paras. 34-36; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I)*, p. 272, para. 40.

[6] *Nottebohm (Liechtenstein* v. *Guatemala), Preliminary Objection, Judgment, I.C.J. Reports 1953*, pp. 122-123; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 18, para. 33.

sufficient condition because the dispute must continue to exist at the time of adjudication (Judgment, para. 147; see also para. 41).

7. The Judgment does not explain why the existence of a dispute should differ from all other jurisdictional requirements in this respect. Nor does the Judgment indicate the precise legal effects of the disappearance of a dispute, in particular whether such disappearance deprives the Court of its jurisdiction, perhaps even retroactively, or whether it renders the application inadmissible. While this issue is without practical effect in the present case, the Court's pronouncement may be put to the test where the Court's jurisdiction has been affirmed through a binding judgment (for example, on preliminary objections), only to be later called into question owing to the dispute's disappearance in the meantime[7].

8. There is no doubt that the Court's function in contentious cases is "to decide . . . disputes"[8]. Appeal to this proposition, however, does not provide any helpful conclusions as to the Court's role in ascertaining the continued existence of a dispute. More importantly, to the extent that a dispute persists, albeit in a reduced form, adjudication does not run counter to the Court's function. Any risk of judicial overreach is sufficiently addressed through the application of other principles, notably the *non ultra petita* principle, according to which the Court is only entitled to decide on questions submitted to it[9].

9. In my view, the Court's analysis adds an unnecessary level of complexity and uncertainty to the jurisprudence on the concept of a dispute. There is also a certain inconsistency in the Court's appreciation of events taking place in the course of the proceedings, in so far as the existence of a dispute is concerned. Whereas the Court has lately been reluctant to accept that a dispute may crystallize through the exchanges between the parties in the course of the proceedings[10], it is prepared to accept that such exchanges may serve to shrink or extinguish a dispute.

10. The Court's entire analysis today is based on the premise that it is possible for "specific claims [to] have become without object as a consequence of a convergence of positions or agreement between the Parties, or for some other reason" (Judgment, para. 42). The Court's reasoning, in my view, leads to the merger of two quite distinct issues: the first concerns the circumstances under which a claim is deprived of its object, while the second concerns the legal effects of a convergence of positions between the parties to a dispute. I will examine these two issues separately in turn.

III. The disappearance of the object of a claim

11. The Judgment points out that the Court may refrain from rendering a judgment where an application has become without object (Judgment, para. 41). The jurisprudence cited by the Court, however, does not illuminate the grounds on which an application might lose its object; in particular,

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[7] Compare *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 94, para. 123.

[8] Art. 38, para. 1, of the Statute; see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment of 22 July 2022* (not yet reported), para. 88.

[9] See for example *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, p. 19, para. 43

[10] See *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I)*, p. 272, para. 40; see also *ibid.*, declaration of President Abraham, pp. 279-280, paras. 4-8; compare *ibid.*, dissenting opinion of Judge Crawford, pp. 515-521, paras. 7-18.

it provides no support for the proposition that the convergence of the parties' positions, or the shrinkage of a dispute, constitutes a ground that deprives an application of its object. Even less so does this jurisprudence indicate that the convergence of the parties' positions on a specific *claim* deprives that claim of its object.

12. The passages from *Border and Transborder Armed Actions*[11] and *Arrest Warrant*[12] cited in the Judgment affirm that events subsequent to the filing of the application may render that application without object. The events envisaged (explicitly or implicitly) in those cases did not however concern a convergence of the parties' positions with respect to the questions previously dividing them. The Judgment also relies on *Northern Cameroons*, in which the Court declined to adjudicate the application brought before it by Cameroon seeking a declaration that the United Kingdom had failed to respect various terms of the Trusteeship Agreement for the Territory of the Cameroons under British Administration[13]. The Court took this course, however, not because the applicant's claim had become without object, but rather because any *judgment* that the Court might pronounce would be without object on account of the intervening termination of the Trusteeship Agreement[14]. In any event, that case did not involve a situation where the positions between the parties had converged.

13. This brings me to the *Nuclear Tests* Judgments, to which both Parties[15] and the Court (Judgment, paras. 41 and 43) turn in support of the proposition that the disappearance of a dispute precludes adjudication by the Court. On my reading, those cases are quite distinct from the situation here. In *Nuclear Tests*, the dispute brought before the Court by each applicant (Australia and New Zealand) essentially consisted of a single claim: a request for a declaration on the unlawfulness of atmospheric testing of nuclear weapons by the respondent (France)[16]. The Court's reasoning unfolded in three steps. First, the Court "ascertain[ed] the true object and purpose of the claim"; in the Court's view, the object of the claim was "to obtain a termination of those tests" by the respondent[17]. Second, the Court affirmed that the respondent had made a legally binding undertaking outside the Court to terminate its nuclear testing[18]. Indeed, a considerable part of the *Nuclear Tests* Judgments is devoted to an exposition of the indicators of a unilateral act's legally binding character and to an analysis of France's statements against that background[19]. It was only after that finding that the Court, at a third stage, concluded that the dispute between the parties had disappeared "because

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[11] *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 95, para. 66.

[12] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, pp. 14-15, para. 32.

[13] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment*, *I.C.J. Reports 1963*, p. 15.

[14] *Ibid.*, p. 38.

[15] CR 2022/7, p. 48, para. 35 (Forteau); CR 2022/13, p. 43, para. 10 (Pellet); CR 2022/9, p. 14, para. 17 (Boisson de Chazournes).

[16] *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 460, para. 11; *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 256, para. 11; note, in particular, that Australia's claim was interpreted as a single submission: *ibid.*, p. 260, para. 25.

[17] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 263, para. 30; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 467, para. 31.

[18] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 270, para. 52; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 475, para. 55.

[19] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, pp. 267-270, paras. 42-51; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, pp. 472-475, paras. 45-55.

the object of the claim ha[d] been achieved by other means"[20]. The Court thus essentially held that any legally binding judgment that it might deliver in favour of the applicants would be redundant, because the respondent had already undertaken a legally binding obligation *erga omnes* to the same effect. In other words, the respondent's legally binding undertaking was a substitute for the legally binding judgment that the applicants sought to obtain[21]. The same underlying idea emerges from *Fisheries Jurisdiction*, where the Court indicated that a legally binding agreement outside of Court might render a judgment by the Court without object[22].

14. This case is quite different. First of all, it is common ground that the dispute concerns the status and use of the waters of the Silala. Unlike *Nuclear Tests*, there is no suggestion by the Court, or indeed by the Parties, that either Party pursues a different "true" object when advancing its claims or counter-claims. Second, and more importantly, there is no indication in the Judgment that the object of any claim or counter-claim has been achieved by other means, or specifically that an intervening act had a similar effect to that of France's unilateral undertakings in *Nuclear Tests*. Consequently, the Court's leap directly to the third step of the *Nuclear Tests* reasoning — namely to a finding that a claim (or counter-claim) has become without object — is puzzling.

15. It is true that the Judgment attaches great weight to the statements made by the Parties in the course of the proceedings. The Court correctly observes that it presumes the "good faith" of the parties in making statements before it (Judgment, para. 46). At various other places, the Court "takes note" of the fact that a Party has accepted the soundness of the other Party's argument (Judgment, paras. 58 and 75), and it states that one Party "may rely" on the position adopted by the other Party in the course of the proceedings (Judgment, para. 146). That a statement is made in good faith, however, does not necessarily imply that the State making it intends to be legally bound by it[23]. Besides, the Court stops short of explaining the legal effect of a Party's reliance in its counterpart's representations, or indeed of a subsequent shift in the Parties' positions. In doing so, the Judgment raises questions such as whether a Party would be precluded from reverting to the position that it has now abandoned[24], and whether this bar would operate in the context of judicial proceedings only, or whether it would extend to any bilateral negotiations between the Parties.

16. If anything, the *Nuclear Tests* Judgments illustrate that the Court should exercise great caution when ascertaining whether a claim has become without object by the time of the Court's judgment. Where the parties have committed to legally binding obligations (whether unilaterally or in concert) outside the Court, it may be unnecessary for the Court to discharge its function through a legally binding judgment, because the parties' undertakings offer the requisite legal security; this is effectively the situation in *Nuclear Tests*. In the absence of legally binding commitments, however, it is difficult to see why the exercise of the Court's jurisdiction runs counter to the Court's judicial function. Quite to the contrary, the Court held "that there [was] no incompatibility with its judicial function in making a pronouncement on the rights and duties of the Parties under existing international law" in *Fisheries Jurisdiction*, even though the parties had concluded an interim

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[20] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 271, para. 55; similarly in *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 476, para. 58.

[21] See, to the same effect, *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 577, para. 46.

[22] *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 468, para. 88; the Court ultimately did not pronounce on this point.

[23] Compare *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 267, paras. 43-44; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, pp. 472-473, paras. 46-47.

[24] Compare *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Judgment, I.C.J. Reports 2018 (II)*, p. 558, para. 158.

agreement while the case was pending[25]. In reaching this conclusion, the Court emphasized the provisional and temporally limited character of the interim agreement, which did not provide a waiver of claims by either party in respect of matters in dispute[26].

IV. Ascertaining the convergence of positions between the Parties

17. While *Nuclear Tests* refer to the dispute having "disappeared", the reason for such "disappearance" was not the convergence of the parties' positions on issues that divided them at the time of the institution of proceedings. Rather, France's undertaking to cease atmospheric nuclear testing bypassed the need to rule on any potential divergence of those positions. In fact, in no case has the convergence of the parties' positions led to a conclusion that a dispute has disappeared, nor have such far-reaching conclusions been drawn from a disappearance.

18. The Court here adopts a rather impressionistic approach to ascertain whether the Parties are in agreement or not[27]. Invoking its power to interpret the submissions of the Parties, the Court ventures to establish why, despite their ostensible disagreement, the Parties in substance have come to agree on several questions previously dividing them. Yet it is one thing to interpret the Parties' final submissions, but it is quite another to overlook them entirely, as if they were abandoned in the course of the proceedings. The Court has cautioned that "[a]bandonment cannot be presumed or inferred; it must be declared expressly"[28]. Indeed, the oral proceedings revealed that there remains some ambiguity about the extent of the agreement between the Parties on particular issues: the concessions by each Party with respect to its counterpart's submissions tended to be carefully qualified. Despite the explanations given orally, none of the Parties' submissions was formally withdrawn or amended significantly.

19. Given that the Court has a "duty . . . to reply to the questions as stated in the final submissions of the parties"[29], in my view it should have done so here through a declaratory judgment, as it has done on multiple occasions in the past[30]. Declarations clarifying the legal situation between the parties can assist in stabilizing the legal relations between them. Unlike the situation in *Northern Cameroons*, such a judgment in the present case would have "practical consequence[s] in the sense that it c[ould] affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations"[31].

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[25] *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 19, para. 40.

[26] *Ibid.*, pp. 18-19, para. 38.

[27] Compare *Southern Bluefin Tuna (Australia v. Japan; New Zealand* v. *Japan), Jurisdiction and Admissibility, Award of 4 August 2000*, United Nations, *Reports of International Arbitral Awards*, Vol. XXIII, pp. 37-38, paras. 45-46.

[28] *Certain Norwegian Loans (France* v. *Norway), Judgment, I.C.J. Reports 1957*, p. 26.

[29] *Request for Interpretation of the Judgment of 20 November 1950 in* the Asylum Case (Colombia/Peru) *(Colombia/Peru), Judgment, I.C.J. Reports 1950*, p. 402.

[30] See for example *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 53, para. 101, and *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Judgment, I.C.J. Reports 2020*, p. 338, para. 126 (1); see also *Certain German Interests in Polish Upper Silesia, Merits, Judgment, 1926, P.C.I.J. Series A, No 7*, pp. 18-19.

[31] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 34.

V. The consequences of a convergence of positions

20. Even if it is established that the Parties' positions have converged in the course of the proceedings, in my view it was necessary and appropriate for the Court to issue a declaratory judgment recording the Parties' agreement, as the Permanent Court did in similar situations. It is relatively rare, of course, that the parties should come to an agreement in the course of the proceedings but not seek to discontinue the case under Article 88 of the Rules of Court[32]. Within this atypical set of cases, however, judgments recording the parties' agreement seem not only unexceptional but also the most reasonable course of action. A case in point is *Société Commerciale de Belgique*, in which the Permanent Court noted, in the operative clause of its Judgment, the agreement that had been reached in the course of the proceedings[33]. The Court's predecessor has affirmed that such judgments were in line with the spirit of its Statute[34]. This suggests that it was not only within the Court's power but also its duty to issue such judgments, to the extent that they facilitated the direct and friendly settlement of disputes between the parties[35].

21. The same principles apply to this Court[36]. Of course, if the parties arrive at an agreement prior to the Court's seisin, then there exists no dispute at the time of the institution of proceedings (see paragraph 4 above). In such a case, it is reasonable for the Court to refrain from recording in a judgment the parties' antecedent agreement, as is illustrated in *Frontier Dispute (Burkina Faso/Niger)* (see Judgment, para. 46). Nonetheless, as the Court observed in that case, a situation in which the parties seek a judgment recording an agreement that had been reached prior to the Court's seisin is readily distinguishable from a situation where the parties come to an agreement during the proceedings[37]. In the Court's terms, it is at the very least "understandable" for the Court to note, "in the operative part of its Judgment, [an] agreement arrived at between the Parties during the proceedings, an agreement whose existence [is] bound to influence the settlement on the merits of the dispute originally brought before the Court"[38].

22. A judgment recording the points of agreement is in the interest of legal certainty between the parties because it ensures that the parties commit to their positions. By contrast, if a judgment identifies the parties' positions as they stand at present but refrains from drawing consequences therefrom with respect to the parties' respective rights and obligations, there remains a risk that the parties might change their positions in the future. This risk was anticipated in *Nuclear Tests*, where the Court observed that "if the basis of this Judgment were to be affected", the applicants could

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[32] Examples of joint discontinuance owing to an agreement between the parties include *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Order of 10 September 2003, I.C.J. Reports 2003*, p. 149, and *Application for Revision of the Judgment of 23 May 2008 in the Case concerning* Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) *(Malaysia* v. *Singapore), Order of 29 May 2018, I.C.J. Reports 2018 (I)*, p. 284. I note that the Court does not lightly presume that a party, through some submission or argument, has discontinued the case: *Legality of Use of Force (Serbia and Montenegro* v. *Belgium), Preliminary Objections, Judgment, I.C.J. Reports 2004 (I)*, p. 294, para. 32; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 54, para. 24.

[33] *Société Commerciale de Belgique, Judgment, 1939, P.C.I.J., Series A/B, No. 78*, p. 178.

[34] See *Free Zones of Upper Savoy and the District of Gex, Order of 6 December 1930, P.C.I.J., Series A, No. 24*, p. 14.

[35] See *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A, No. 22*, p. 13.

[36] See *Aerial Incident of 10 August 1999 (Pakistan* v. *India), Jurisdiction of the Court, Judgment, I.C.J. Reports 2000*, p. 33, para. 52; also *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 20, para. 35.

[37] *Frontier Dispute (Burkina Faso/Niger), Judgment, I.C.J. Reports 2013*, p. 72, para. 55.

[38] *Ibid.*, para. 57.

request "an examination of the situation" underlying the case[39]. Leaving aside the question of whether the Pact of Bogotá or any other jurisdictional title between the Parties will remain in force in the future, the prospect of new proceedings for the resolution of questions that have already been put forward to the Court is in tension with the sound administration of justice.

23. States commonly assert rights for themselves or obligations for other States, which are equally commonly contested by those other States. In most cases both parties' positions in such situations are based on a reasonable appreciation of the law in good faith, even if both positions cannot be legally correct simultaneously. Where applicable jurisdictional requirements are fulfilled, a State finding itself in such a situation is able to seek judicial recourse before the Court and to have its dispute resolved by means of a legally binding judgment. In particular, a State claiming that it enjoys a right, or that its adversary bears an obligation, has an interest in having the claimed right or obligation definitively affirmed or rejected in a legally binding judgment by the Court possessing jurisdiction. Despite its careful elaboration of the customary law of international watercourses, the Court has not responded to this interest in the present case. In my view, the Court should have moored its sound analysis at its natural berth, the operative paragraph of the Judgment.

(Signed) Hilary CHARLESWORTH.

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[39] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 272, para. 60; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 477, para. 63; see also *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France) *Case (New Zealand* v. *France), Order of 22 September 1995, I.C.J. Reports 1995*, pp. 305-306, para. 62.