

DECLARATION OF JUDGE KOROMA

These are perhaps the most serious cases to come before the Court for injunctive relief. Under Article 41 of the Statute of the Court, a request for provisional measures should have as its purpose the preservation of the respective rights of either party to a dispute pending the Court's decision. Jurisprudentially, the granting of such relief is designed to prevent violence, the use of force, to safeguard the peace, as well as serving as an important part of the dispute settlement process under the Charter. Where the risk of irreparable harm is said to exist or further action might aggravate or extend a dispute, the granting of the relief becomes all the more necessary. It is thus one of the most important functions of the Court.

However, the indication of such relief by the Court can take place only in accordance with the Statute. In this regard *prima facie* jurisdiction has come to be regarded by the Court as the criteria for granting such relief, and where, in the Court's view, this is found not to exist, or other circumstances predominate, the Court according to its jurisprudence will not indicate the requested relief.

On the other hand, the conclusion reached by the Court that the dispute between Yugoslavia and some of the respondent States arose before 25 April 1999 and accordingly does not come within the scope of the compulsory jurisdiction of the Court as accepted by Yugoslavia under the terms of its declaration, does not appear to me to be correct, let alone legally tenable. The correct legal position, in my view, is as reflected in Draft Article 25 on State Responsibility of the Report of the International Law Commission. The Article states as follows:

“The breach of an international obligation, by an act of the State composed of a series of actions or omissions in respect of separate cases, occurs at the moment when that action or omission of the series is accomplished which establishes the existence of the composite act. Nevertheless, the time of commission of the breach extends over the entire period from the first of the actions or omissions constituting the composite act not in conformity with the international obligation and so long as such actions or omissions are repeated.”
(*Yearbook of the International Law Commission*, 1978, Vol. II, Part Two, Art. 25, p. 89.)

In other words, and as stated in the commentary on the Article, the time

of the Commission of this breach is not limited to the moment at which the act begins, but extends over the whole period during which the act takes place and continues contrary to the requirements of the international obligation. Therefore, the Court's finding that Yugoslavia had not established the existence of a specific dispute, distinct from the preceding one, which arose after 25 April 1999 does not appear to me tenable in law.

Nevertheless, the Court, as the principal judicial organ of the United Nations, whose primary *raison d'être* remains the preservation of international peace and security, is under a positive obligation to contribute to the maintenance of international peace and security and to provide a judicial framework for the resolution of a legal dispute, especially one which not only threatens international peace and security but also involves enormous human suffering and continuing loss of life as well as the disintegration of normal society. Given the prevalence of these circumstances in this dispute, the Court has decided, rightly in my view, not to remain silent. I have therefore joined with other Members of the Court in calling for the peaceful resolution of this conflict pursuant to Article 33 of the Charter, and in urging the Parties not to aggravate or extend the dispute and to respect international law, including humanitarian law and the human rights of all the citizens of Yugoslavia.

(Signed) Abdul G. KOROMA.
