

DECLARATION OF JUDGE *AD HOC* FLEISCHHAUER

I agree with the Court's decision to uphold the second preliminary objection of Germany and with the Court's reasoning that led to this decision, as expressed in paragraphs 28 to 52 of the Judgment. Having upheld Germany's second preliminary objection, it follows logically that the Court is not required to consider Germany's third, fourth, fifth and sixth preliminary objections "and that it cannot rule on Liechtenstein's claims on the merits" (Judgment, para. 53).

I have, however, some remarks to make on the considerations which brought the Court to the conclusion that "there is a legal dispute" between Liechtenstein and Germany (Judgment, para. 25). Here I would like to state that the finding of the Court that there is a legal dispute between Liechtenstein and Germany does not of course imply that Liechtenstein's position in this dispute is in any way better than Germany's position. This does not follow from the text of the decision and was not a point to be decided at the present stage of the proceedings.

Moreover, I cannot follow the Court where it says that it

"further notes that Germany's position taken in the course of bilateral consultations and in the letter by the Minister for Foreign Affairs of 20 January 2000 has evidentiary value in support of the proposition that Liechtenstein's claims were positively opposed by Germany and that this was recognized by the latter" (*ibid.*).

I think that these words would reveal themselves as introducing too low a standard into the determination of the existence of a dispute and therefore have negative effects on the readiness of States to engage in attempts at peaceful settlements of disputes.

(Signed) Carl-August FLEISCHHAUER.

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