DISSENTING OPINION OF JUDGE BENNOUNA

[Translation]

The not exclusively preliminary character (Rules of Court, Art. 79, para. 2) of the objection raised by Colombia on the basis of Article VI of the Pact of Bogotá, excluding matters governed by agreements or treaties in force — The validity of the 1928 Treaty between Colombia and Nicaragua — Consideration of the issue of the invalidity of the 1928 Treaty, allegedly signed under coercion, falls within the merits of the case — The preliminary objection raised by Colombia to the Court's jurisdiction on the basis of the optional declarations of the Parties (Statute, Art. 36, para. 2) — The optional declarations, a distinct and autonomous title of jurisdiction — The persistence of a dispute between the Parties over the validity of the 1928 Treaty between Colombia and Nicaragua — Afforded two titles of jurisdiction, the Court opts for that presenting less difficulty.

With regard to the first objection to the jurisdiction of the Court raised by the Republic of Colombia on the basis of Articles VI and XXXI of the Pact of Bogotá, I am unable to subscribe to the first decision in the operative part of the Judgment whereby the Court upholds that objection in so far as it concerns sovereignty over the islands of San Andrés, Providencia and Santa Catalina (operative clause, paragraph (1) *(a)*).

Furthermore, I cannot accept the way in which the Court has dealt with the second preliminary objection raised by Colombia, on the basis of the Parties' declarations recognizing the compulsory jurisdiction of the Court (Statute, Art. 36, para. 2). By upholding this objection, the Court has once again denied its jurisdiction over the three islands.

In this opinion, I shall address these two aspects in turn, explaining the reasons which prevented me from subscribing, in those respects, to the operative part of the Court's Judgment and the reasoning therein.

1. In my view, the Court could not uphold the objection to its jurisdiction raised by Colombia regarding sovereignty over the islands of San Andrés, Providencia and Santa Catalina, inasmuch as this objection does not possess, in the circumstances of the present case, an exclusively preliminary character within the meaning of Article 79, paragraph 9, of the Rules of Court. In fact it concerns, as we shall see, "both preliminary aspects and other aspects relating to the merits" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 31, para. 41).

It should be recalled that Article XXXI of the Pact of Bogotá, which attributes jurisdiction to the Court, adopted word for word Article 36, paragraph 2, of the Statute, with a restrictive clause being added in Article VI whereby:

"The aforesaid procedures, furthermore, may not be applied to

> matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty."

Article XXXIV then draws the following conclusion from Article VI: "If the Court, for the reasons set forth in Articles V, VI and VII of this Treaty, declares itself to be without jurisdiction to hear the controversy, such controversy shall be declared ended."

The Court rightly considered that, while it was for it to rule on its own jurisdiction by examining whether the 1928 Treaty and the 1930 Protocol had settled the dispute brought before it, it was not, however, up to it under the Statute to declare the dispute ended (Judgment, para. 59).

In the jurisdictional phase, it is therefore for the Court, on the basis of the Pact of Bogotá, to examine whether the 1928 Treaty and the 1930 Protocol settled the dispute, in full or in part, in order to assess subsequently its jurisdiction to deal with the issue.

The restriction on the Court's jurisdiction established by Article VI of the Pact of Bogotá concerns matters "governed by agreements or treaties in force", namely all those which bind the Parties in so far as the latter have complied with the formal requirements for their entry into force, which was the case when the 1930 Protocol was adopted; the consent thus given must still have been extant in 1948, when the Pact of Bogotá was signed.

It is true that Article VI does not stipulate that such treaties must be valid, but the condition is implied; it assumes that the expression of consent was not affected, originally or subsequently, by one of the defects established by the law of treaties which entail the absolute or relative nullity, according to the circumstances, of the legal instrument concerned.

It is regrettable that the Court did not make the essential distinction between the entry into force of a treaty and its validity, and maintained throughout its reasoning a certain ambiguity in its use of these notions, which nonetheless correspond to distinct legal concepts (Judgment, paras. 73-81).

Nicaragua, in its Memorial of 28 April 2003, disputed the validity of the 1928 Treaty, regarding it as null and void inasmuch as the country was under military occupation by the United States of America at the time when it was concluded, and deprived of its capacity freely to express its consent to be bound by international treaties (Memorial of Nicaragua, Vol. I, p. 116, part B).

Nicaragua expressly referred to Article 52 of the Vienna Convention on the Law of Treaties of 23 May 1969, which is said to reflect a customary rule that is as such binding on the Parties (*ibid.*, para. 2.123).

According to that provision: "A treaty is void if its conclusion has

been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."

It has been established that this cause of invalidity, vitiating the consent given under coercion through the threat or use of force, is an absolute one, in the sense that it cannot be mitigated in any way, for example by the subsequent conduct of the Party concerned. In its commentary, the International Law Commission justified this as follows:

> "The effects and the implications of coercion in international relations are of such gravity that the Commission felt that a consent so obtained must be treated as absolutely void in order to ensure that the victim of the coercion should afterwards be in a position freely to determine its future relations with the State which coerced it." (*Yearbook of the International Law Commission*, 1966, Vol. II, p. 239.)

Yet the Court, with scant regard for the characteristics of the kind of invalidity invoked by Nicaragua, has merely observed that "for more than 50 years, Nicaragua has treated the 1928 Treaty as valid and never contended that it was not bound by the Treaty" in order to infer that "the 1928 Treaty was valid and in force on the date of the conclusion of the Pact of Bogotá in 1948" (Judgment, paras. 79 and 81). It is true that it was only on 4 February 1980, with the publication of the "White Paper" addressing the issue of San Andrés and Providencia (Memorial of Nicaragua, Vol. II, Ann. 73), that Nicaragua invoked for the first time the *ab initio* invalidity of the Bárcenas-Esguerra Treaty and explained its position in that document, maintaining that it was only after 19 July 1979, when the Sandinista movement came to power, that it could act freely once again. (After the withdrawal of the last United States troops in 1933, the "Somoza" régime is said to have lacked room for manoeuvre at the international level.)

It is surprising that the Court should have despatched in this way Nicaragua's arguments regarding the invalidity of the 1928 Treaty, without examining a series of questions which clearly have a bearing on the merits of the case, such as the relevance of the rule prohibiting the threat or use of force in 1928, a date concomitant with the adoption of the Pact of Paris or Kellogg-Briand Pact, or indeed the legal and factual context in which the Treaty was concluded (see *ibid.*, Vol. I, pp. 129-132, paras. 2.151-2.156).

Nicaragua did not merely invoke the occupation of the country by "more than 5,000 United States marines . . . at the time the Treaty was concluded" (*ibid.*, p. 121, para. 2.132), which would only have been a general reference to coercion; it went further and expressly referred to the 1928 Treaty, which it regards as having been "negotiated between Colombia and the United States and imposed on Nicaragua" (*ibid.*, p. 123, para. 2.136).

The Court obviously could not undertake, in the jurisdictional phase, an investigation into whether or not coercion was exerted on the State,

without entering into the merits of the dispute. Such an investigation involves not only analysing the legal situation at the time concerning the prohibition of the threat or use of force, but also examining the circumstances obtaining when the Treaty was concluded and the respective claims of the Parties immediately before its signature. All of these are questions which would oblige the Court to settle certain aspects of the dispute on the merits.

In any event, the Court was not equipped to debate the matter and was unable to do so seriously and in depth, as the Parties did not carry through to completion their legal arguments on the issue; at the hearings, Nicaragua expressly reserved the right to return to the subject in the merits phase:

> "These questions will be developed more extensively when the merits of this case are under consideration.
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> . . . . . .
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> The question that will be before the Court during the merits phase is whether a treaty brought about by means contrary to the Treaty of Paris of 1928 — and all the other similar instruments of international law adopted since then — is to be considered valid." (CR 2007/19, pp. 11-12, paras. 15 and 17 (Arguëllo).)

This can only signify that the Applicant put forward an argument on the merits in its Memorial, and informed the Court, when it encountered an objection to the Court's jurisdiction from the other Party, that it reserved the right to develop and address that argument more thoroughly, once it knew the outcome of the decision on jurisdiction.

In the *Ambatielos* case, the Court held that "[t]he point raised here has not yet been fully argued by the Parties, and cannot, therefore, be decided at this stage" (*Ambatielos (Greece* v. *United Kingdom), Preliminary Objection, Judgment, I.C.J. Reports 1952*, p. 45). In such an event, the Parties are free to return to the argument in question in the subsequent merits phase.

The Court was even more specific in the *Barcelona Traction* case:

> "[T]he Court may find that the objection is so related to the merits, or to questions of fact or law touching the merits, that it cannot be considered separately without going into the merits (which the Court cannot do while proceedings on the merits stand suspended under Article 62), *or without prejudging the merits before these have been fully argued*." (*Barcelona Traction, Light and Power Company Limited (Belgium* v. *Spain), Preliminary Objections, Judgment, I.C.J. Reports 1964*, p. 43; emphasis added).

In any event, we are dealing here with exactly the kind of situation for which Article 79, paragraph 2, of the Rules of Court provides, that of an objection which does not possess an exclusively preliminary character.

Indeed, the objection raised by Colombia is not merely "touching upon" the merits, as the Permanent Court of International Justice put it in the case concerning *Certain German Interests in Polish Upper Silesia* (*Jurisdiction, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6*, p. 15), thereby enabling itself to settle the issue *in limine litis*, inasmuch as it concerned the merits in an incidental and very secondary way.

In the present case, the Court, in ruling on the objection at this stage, both settles part of the dispute and disposes of the principal argument put forward by the Applicant therein. As the Court pointed out in the case concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom)*: "The objection raised by the United Kingdom on that point has the character of a defence on the merits. In the view of the Court, this objection does much more than 'touch[ing] upon subjects belonging to the merits of the case'." (*Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 29, para. 50.)

By referring in this way to the above-mentioned Judgment of the PCIJ in the *Certain German Interests in Polish Upper Silesia* case, the Court shows that this is a test which it should apply to any objection in order to rule on its exclusively preliminary character or otherwise. For if any party could nip in the bud an argument on the merits at a point when the other party had not had the opportunity to discuss it fully, as is its right, the question would arise as to whether international justice had been prevented from performing its principal task, which is to settle a dispute once the States have exhausted all their arguments on the subject. It is the very credibility of the International Court of Justice as the principal judicial organ of the United Nations which is at stake here.

Certainly, international justice should not be impeded by frivolous arguments of a delaying kind, where these are obviously devoid of relevance. When this is so, the Court should draw attention to the fact and not take them into account:

> "There can be little doubt, as is implied in the Charter of the United Nations and recognized in Article 52 of the Vienna Convention on the Law of Treaties, that under contemporary international law an agreement concluded under the threat or use of force is void. It is equally clear that a court cannot consider an accusation of this serious nature on the basis of a vague general charge unfortified by evidence in its support." (*Fisheries Jurisdiction (United Kingdom* v. *Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, p. 14, para. 24.)

But that is not the situation in the case between Nicaragua and Colombia, since the reality of the military occupation of Nicaragua, at the time when the territorial treaty was concluded, has not been disputed, and because it happens that the rule prohibiting the use of force was devel-

oping at just the same time. That may be seen as a presumption in favour of the non-futility of the arguments challenging the treaty, without prejudging any decision on its validity, once the debate on the merits has been completed.

Ultimately, the test of the "not exclusively preliminary character" of an objection has as much to do with the nature as with the scope of those aspects of the merits of the case which it concerns, especially the question of whether, by ruling in the preliminary phase, the Court will thus dispose entirely of certain rights claimed by the Applicant. As the Court emphasized in the *Lockerbie* case:

> "That objection relates to many aspects of the dispute. By maintaining that Security Council resolutions 748 (1992) and 883 (1993) have rendered the Libyan claims without object, the United Kingdom seeks to obtain from the Court a decision not to proceed to judgment on the merits, which would immediately terminate the proceedings. However, by requesting such a decision, the United Kingdom is requesting, in reality, at least two others which the decision not to proceed to judgment on the merits would necessarily postulate: on the one hand a decision establishing that the rights claimed by Libya under the Montreal Convention are incompatible with its obligations under the Security Council resolutions; and, on the other, a decision that those obligations prevail over those rights by virtue of Articles 25 and 103 of the Charter.
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> The Court therefore has no doubt that Libya's rights on the merits would not only be affected by a decision, at this stage of proceedings, not to proceed to judgment on the merits, but would constitute, in many respects, the very subject-matter of that decision." (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 28-29, para. 50.)

To paraphrase that Judgment, it could be said that by requesting a decision not to proceed to judgment on the merits, which would terminate the proceedings as far as the three islands in question are concerned, Colombia is requesting, in reality, at least two others which the decision not to proceed to judgment on the merits would necessarily postulate: on the one hand, that the rule establishing the absolute invalidity of a treaty concluded under coercion through the threat or use of force was not applicable at the time when the 1928 Bárcenas-Esguerra Treaty was concluded; and, on the other, that the subsequent conduct of Nicaragua between 1928 and 1979 (when the Sandinista Government came to power) now prevents it from challenging any defect of consent by which that Treaty might have been affected.

It is clear that the Court has not applied in this case the test which has emerged from its jurisprudence, in that it has not assessed either the relevance of the arguments invoked by Nicaragua or the impact on the mer-

its of the case of its own decision at this stage of the proceedings. The Court has taken a shortcut by emphasizing the implicit acquiescence of Nicaragua to the Treaty, which supposedly prevents it from subsequently challenging that instrument, knowing full well that if its absolute invalidity could be demonstrated on the merits, such a path would only lead, at that stage, to a dead end.

I am consequently of the opinion that the Court's decision is, on the one hand, premature, as there was no urgency to act in this way and, on the other, unwise, since it deals in a cavalier fashion with the issue of States' capacity to enter into commitments, which lies at the heart of contemporary international law and its universal nature. Beyond the dispute between Nicaragua and Colombia, such a decision to rule on the validity of a treaty in the jurisdictional phase, and as a result to settle the issue of sovereignty over the three islands in question, constitutes an unfortunate precedent, because it prejudices the outside world's perception of the role and function of the Court. Those who thought they were banishing in this way any doubts over territorial treaties, which might have a destabilizing effect, did not consider for a moment what would be the scope of the damage caused to the Court by a hasty decision in this jurisdictional phase.

For my part, I remain convinced that it was possible to safeguard the stability of territorial treaties while protecting the credibility of the Court. It would have been sufficient to analyse the Treaty itself, according to its ordinary meaning, where it deals with the issue of Colombia's sovereignty over the three islands, while reserving a final decision for the merits phase, once the questions of fact and law regarding the validity of the 1928 Treaty had been assessed.

How would that have changed the position of Colombia, which in any case has a presence in the San Andrés archipelago? In reality, not at all. On the other hand, by postponing its decision, the Court would have ensured that it was fully in accordance with international law and given it the seal of legitimacy, by reference to the whole historical background of the case.

2. When it turns to consideration of the second preliminary objection which Colombia raised, regarding its jurisdiction on the basis of the declarations made by the Parties under Article 36, paragraph 2, of the Statute, as invoked by Nicaragua, the Court notes that there are here "two distinct bases of the Court's jurisdiction which are not mutually exclusive" (Judgment, para. 136) and even that "the scope of its jurisdiction could be wider under the optional clause than under the Pact of Bogotá" (Judgment, para. 137).

It might thus have been expected that the Court would examine the declarations themselves, including any reservations they contain, quite separately from the conclusions that it reached in its analysis of the Pact of Bogotá.

But that was not the case. It is, to say the least, surprising to see the Court, on the contrary, rely on the conclusions that it drew from the Pact

of Bogotá in order to uphold the objection raised by Colombia to the optional declarations:

> "Given the Court's finding that there is no extant legal dispute between the Parties on the question of sovereignty over the islands of San Andrés, Providencia and Santa Catalina, the Court cannot have jurisdiction over this question either under the Pact of Bogotá or on the basis of the optional clause declarations." (Judgment, para. 138.)

Yet, if the two bases of jurisdiction are distinct and not mutually exclusive, it is difficult to see how the Court can apply its conclusion regarding the absence of a dispute, as drawn from the Pact of Bogotá, to the optional declarations based on Article 36, paragraph 2, of the Statute. In the first case, the Pact of Bogotá excludes matters "already governed by agreements or treaties in force on the date of the conclusion of the present Treaty", whereas in the second case, the optional declarations apply to "legal disputes concerning . . . any question of international law". And it is incontrovertible that the dispute between the Parties over the validity of the 1928 Treaty relates to a "question of international law". It is even less possible in this instance to settle the issue of the validity of the Treaty in the jurisdictional phase, as the Court did when considering the first preliminary objection.

The optional declarations, as a distinct and autonomous title of jurisdiction, must be considered in themselves in order to establish if they still bind the Parties and if they contain any reservations which affect their scope. The Court felt free to dispense with the exercise (Judgment, para. 139) of assessing the withdrawal by Colombia of its declaration *in extremis* (just before Nicaragua's Application was filed) and the reservation *ratione temporis* included in Colombia's declaration of 30 October 1937, limiting its scope to "disputes arising out of facts subsequent to 6 January 1932". Instead of following this line of enquiry, which would probably have led it to base its jurisdiction on the declarations, the Court has opted to brush them aside by applying to them the restriction contained in Article VI of the Pact of Bogotá, which manifestly had neither that object nor that end in view.

This ultimately makes one wonder if the Court is not indirectly concurring with Colombia's argument that jurisdiction by virtue of the Pact of Bogotá is exclusive of all other bases of jurisdiction and, in this case, of that based on the optional declarations. And indeed, these are deemed irrelevant by reference to the absence of a dispute on the basis of Article VI of the Pact of Bogotá. Yet that argument was expressly dismissed by the Court, relying on its jurisprudence (Judgment, paras. 135 and 136), according to which:

> "the multiplicity of agreements concluded accepting the compulsory jurisdiction is evidence that the contracting Parties intended to open new ways of access to the Court rather than to close old ways or to

> allow them to cancel each other out with the ultimate result that no jurisdiction would remain" (*Electricity Company of Sofia and Bulgaria (Belgium* v. *Bulgaria), Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 76).

It is curious to note that, after this reference to its predecessor, the Court manages to come to the very conclusion that it was supposed to avoid, with the two titles relied on for its compulsory jurisdiction cancelling each other out, leaving it with no jurisdiction to rule on the three islands in question.

The Court was certainly concerned not to contradict itself in the same Judgment when dealing with the two objections to its jurisdiction in turn, but the jurisprudence in fact provides a means to avoid this contradiction, by opting for the legal title which clearly confers jurisdiction and not addressing the one which could give rise to difficulties — as is the case with the Pact of Bogotá, which refers to an agreement whose validity is in dispute. Thus as was emphasized by Shabtai Rosenne:

> "Where more than one title of jurisdiction is invoked in the instrument instituting the proceedings, and any one of them is sufficient to found the jurisdiction of the Court in the case, the Court will, if necessary, choose the one which is more convenient, and ignore the one which may give rise to difficulty." (*The Law and the Practice of the International Court: 1920-2005*, Vol. II, Jurisdiction, 4th edition (2006), p. 926.)

The Permanent Court of International Justice provided a definition of a legal dispute which has often been used in the jurisprudence of the present Court: "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (*Mavrommatis Palestine Concessions, 1924, Judgment No. 2, P.C.I.J., Series A, No. 2*, p. 11).

It is therefore a difference between the subjective interpretations of the States concerned. True, the Court has held that "[w]hether there exists an international dispute is a matter for objective determination", explaining that what it meant by this was that "[t]he mere denial of the existence of a dispute does not prove its non-existence" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). It is for the Court to ascertain "objectively" whether the dispute in question falls within the categories established by the title of jurisdiction that is relied upon.

There can be no question, as the Court suggests in the case before us, of acting as a substitute for the States in the "determination" of the dispute, since that is said to be "an integral part of the Court's judicial function" (Judgment, para. 138). It is, however, for the Court to take note of the differences in the legal arguments presented and to consider if these

correspond to one of the categories of dispute for which it has jurisdiction.

The Court has always been flexible in interpreting the definition of a dispute, merely noting the existence of the States' opposing arguments on a point of law. It is difficult to see how, in considering the second jurisdictional title put forward by Nicaragua, it could conclude that no dispute exists because its previous "acknowledgment of the fact that sovereignty over the three islands was attributed to Colombia under the 1928 Treaty was made for the purposes of ascertaining whether or not the Court had jurisdiction over the matter under the Pact of Bogotá" (Judgment, para. 138), when its jurisdiction by virtue of the optional declarations is completely distinct, unaffected by the restriction contained in the Pact of Bogotá, and concerns a disagreement on a point of law, the Parties differing on the validity of the 1928 Treaty, which constitutes a "point of law" par excellence.

It is of little significance whether Nicaragua's arguments regarding the 1928 Treaty's lack of validity, or Colombia's dismissal of them, are well-founded. The legal dispute exists nonetheless. Thus as the Court noted in the case concerning *East Timor (Portugal* v. *Australia)*: "Portugal has, rightly or wrongly, formulated complaints of fact and law against Australia which the latter has denied. By virtue of this denial, there is a legal dispute." (*Judgment, I.C.J. Reports 1995*, p. 100, para. 22.)

In reality, the reasoning of the Court is based on the presupposition that it has decided on the attribution of sovereignty over the three islands, when it was only meant to pronounce on its own jurisdiction under the Pact of Bogotá. It was the Court's duty, if the optional declarations afforded it a clearer title of jurisdiction to examine the dispute over the three islands, to give priority to them and so avoid this unprecedented situation whereby its response in relation to the first title of jurisdiction (the Pact of Bogotá) doomed *ipso facto* the second title based on the optional declarations.

The Court has found that it lacks jurisdiction because there is no extant legal dispute, but the latter cannot simply be wiped out by a stroke of the pen, since the Parties differed and continue to differ as regards the validity of the 1928 Treaty. And yet, as Christian Tomuschat recalled in his commentary on Article 36 of the Statute: "As far as can be seen, no case has been rejected as not encapsulating a dispute." (*The Statute of the International Court of Justice: A Commentary*, ed. A. Zimmermann *et al.*, 2006, p. 597.)

I respectfully regard the precedent thus created as regrettable; indirectly, it tends to give substance to a questionable doctrine according to which there are inherent limitations to judicial settlement because of the political nature or implications of certain disputes. In his day, Hersch Lauterpacht explained this doctrine as follows:

> "The doctrine of the inherent limitations of the judicial process among States is, first and foremost, the work of international lawyers anxious to give legal expression to the State's claim to be independent of the law." (*The Function of Law in the International Community*, 1933, p. 6.)

Determined to maintain its credibility, the Court has, until now, shown firmness in this respect, asserting that it "h[ad] never shied away from a case brought before it merely because it had political implications or because it involved serious elements of the use of force" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 435, para. 96).

That same concern for credibility has always required the Court to settle the disputes brought before it by the parties and to answer the legal questions presented by the authorized agencies of the United Nations system. The Court could not even, according to Judge Higgins, shelter behind "the current state of international law" in order to refuse to give a ruling, as that would be nothing less than resorting to "the concept of *non liquet*" which "is no part of the Court's jurisprudence" (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, dissenting opinion of Judge Higgins, p. 591, para. 36).

In the case before us, the majority has sought to avoid a debate on the merits about the validity of a treaty allegedly concluded under coercion through the threat or use of force. By ruling at this stage on such a controversial issue, without possessing all the information on which to base its decision, the Court is exposing itself to criticism of the way in which it performs its judicial function.

The complexity of the problems raised in this case cannot conceal the questions that remain as regards the way in which the principal judicial organ of the United Nations has dealt with certain principles and methods of the judicial settlement of international disputes.

(*Signed*) Mohamed BENNOUNA.