INTERNATIONAL COURT OF JUSTICE

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Whaling in the Antarctic (Australia v. Japan)

The Court authorizes New Zealand to intervene in the proceedings

THE HAGUE, 13 February 2013. In an Order of 6 February 2013, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, authorized New Zealand to intervene in the case concerning Whaling in the Antarctic (Australia v. Japan).

In that Order the Court,

(1) decides, unanimously, that the Declaration of Intervention filed by New Zealand, pursuant to Article 63, paragraph 2, of the Statute, is admissible;

(2) fixes, unanimously, 4 April 2013 as the time-limit for the filing by New Zealand of the written observations referred to in Article 86, paragraph 1, of the Rules of Court;

(3) authorizes, unanimously, the filing by Australia and Japan of written observations on these written observations of New Zealand and fixes 31 May 2013 as the time-limit for such filing.

The subsequent procedure was reserved for further decision.

Object of the intervention

In its Order, the Court recalls that, on 20 November 2012, the Government of New Zealand, referring to Article 63, paragraph 2, of the Statute of the Court, filed in the Registry of the Court a Declaration of Intervention in the case concerning Whaling in the Antarctic (Australia v. Japan).

New Zealand's intervention relates to the points of interpretation which are in issue in the proceedings, in particular with respect to paragraph 1 of Article VIII of the International Convention for the Regulation of Whaling (hereinafter the "Convention"). It is recalled that the construction of this Convention is at the heart of the case between Australia and Japan. Article VIII, paragraph 1, of the Convention provides, inter alia, that "any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat

whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit" (a summary of the statement of the construction which New Zealand gives to that Article appears in paragraph 14 of the Court's Order).

Reasoning of the Court

In its reasoning, the Court first states that intervention based on Article 63 of the Statute is an incidental proceeding that constitutes the exercise of a right. The Court then explains that the fact that intervention under Article 63 of the Statute is of right is not sufficient for the submission of a "declaration" to that end to confer ipso facto on the declarant State the status of intervener, and that such right to intervene exists only when the declaration concerned falls within the provisions of Article 63. The Court notes that it must therefore ensure that such is the case before accepting a declaration of intervention as admissible. It adds that it also has to verify that the conditions set forth in Article 82 of the Rules of Court are met.

The Court observes that, while Japan does not object, in its written observations, to the admissibility of New Zealand's Declaration of Intervention, it draws the Court's attention to "certain serious anomalies that would arise from the admission of New Zealand as an intervenor" (a summary of the argument of the Japanese Government on this point can be found in paragraph 17 of the Court's Order). Japan stresses in particular the need to ensure the equality of the Parties before the Court, expressing its concern that Australia and New Zealand could "avoid some of the safeguards" of procedural equality provided for by the Statute and the Rules of Court. It cites, inter alia, Article 31, paragraph 5, of the Statute and Article 36, paragraph 1, of the Rules of Court, which exclude the possibility of appointing a judge ad hoc when two or more parties are in the same interest and there is a Member of the Court of the nationality of any one of those parties. It is recalled that the Court includes on the Bench a judge of New Zealand nationality, and that Australia has chosen a judge ad hoc to sit in the case.

The Court observes that the concerns expressed by Japan relate to certain procedural issues regarding the equality of the Parties to the dispute, rather than to the conditions for admissibility of the Declaration of Intervention, as set out in Article 63 of the Statute and Article 82 of the Rules of Court. It recalls that intervention under Article 63 of the Statute is limited to submitting observations on the construction of the convention in question and does not allow the intervener, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court. It therefore considers that such an intervention cannot affect the equality of the parties to the dispute.

Having noted that New Zealand has met the requirements set out in Article 82 of the Rules of Court, that its Declaration of Intervention falls within the provisions of Article 63 of the Statute and, moreover, that the Parties raised no objection to the admissibility of the Declaration, the Court concludes that New Zealand's Declaration of Intervention is admissible.

In its Order, the Court lastly observes that the question of the participation in the case of the judge ad hoc chosen by Australia was referred to by the Respondent in the context of the latter's discussion of the equality of the Parties before the Court. The Court considers that it must make clear that, since the intervention of New Zealand does not confer upon it the status of party to the proceedings, Australia and New Zealand cannot be regarded as being "parties in the same interest" within the meaning of Article 31, paragraph 5, of the Statute, and that, consequently, the presence on the Bench of a judge of the nationality of the intervening State has no effect on the right of the judge ad hoc chosen by the Applicant to sit in the case pursuant to Article 31, paragraph 2, of the Statute.

Composition of the Court

The Court was composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Gaja, Sebutinde, Bhandari; Judge ad hoc Charlesworth; Registrar Couvreur.

Judge Owada appended a declaration to the Order of the Court; Judge Cançado Trindade appended a separate opinion to the Order of the Court; Judge Gaja appended a declaration to the Order of the Court. Summaries of those declarations and that opinion are reproduced below, as an annex to this press release.

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The Order will shortly be available on the Court's website (www.icj-cij.org) in the folder of the case in question, under the heading "Contentious Cases". It is recalled, however, that no further information can be provided about the positions of Australia and Japan as expressed in their written pleadings, because at this stage of the proceedings the written pleadings of the two Parties are not in the public domain and remain confidential.

The full texts of the Statute and the Rules of Court can be found online, under the heading "Basic Documents".

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial

system), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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Declaration of Judge Owada

In his declaration, Judge Owada states that when considering the admissibility of a request for intervention, whether it is filed pursuant to Article 62 or Article 63 of the Statute of the Court, the Court, should it find it necessary under the particular circumstances of the case, is in a position to examine and determine proprio motu whether such intervention would be in keeping with the principles of ensuring the fair administration of justice, including, inter alia, the equality of the Parties in the proceedings before the Court. Judge Owada submits that the Court's authority to examine these matters is inherent in the judicial function of the Court as a court of justice.

Judge Owada notes that the Court has exercised this inherent power with respect to a State's request to intervene pursuant to Article 62 of the Statute, though the concrete context was quite different. In the Continental Shelf (Libyan Arab Jamahiriya/Malta) case, the Court denied Italy's application for permission to intervene despite the possibility that Italy might have had "an interest of a legal nature which may be affected by the decision in the case" within the meaning of Article 62 of the Statute. Judge Owada points out that, in that case, the Court held that the procedure of intervention cannot constitute an exception to the fundamental principles underlying the Court's jurisdiction, including the principle of equality of States. According to Judge Owada, the Court's Judgment in Libya/Malta demonstrates that the Court has the power to deny a request for intervention when such a request would impinge on fundamental legal principles, including the principle of equality of States, even if the State requesting intervention may have fulfilled the express conditions for intervention set forth in the relevant articles of the Statute.

In Judge Owada's view, the language used in paragraph 18 of the Order is an oversimplified and overly categorical approach to the issue of intervention. Judge Owada states that the reasoning of the Order is based on a highly questionable proposition, as a general statement of the law, that simply because the scope of intervention under Article 63 is "limited to submitting observations on the construction of the convention in question" it therefore follows that such intervention "cannot affect the equality of the parties to the dispute". This, in Judge Owada's view, is a non sequitur.

Judge Owada adds that the Order does not sufficiently examine, in the concrete context of the situation of this case, the serious issues raised by Japan regarding the intervention by New Zealand. Judge Owada notes that, although Japan does not raise a formal objection to the intervention, it seems evident that it is deeply concerned that New Zealand's intervention could have consequences that would affect the equality of the Parties to the dispute and thus the fair administration of justice.

Judge Owada further writes that it is regrettable that a State Party to a case before the Court and a State seeking to intervene in that case pursuant to Article 63 of the Statute should engage in what could be perceived as active collaboration in litigation strategy to use the Court's Statute and the Rules of Court for the purpose of promoting their common interest, as is candidly admitted in their Joint Media Release of 15 December 2010.

Judge Owada states that he has voted in favour of the Order, as he believes that Japan has not substantiated, sufficiently to the satisfaction of the Court, its claim that the admission of New Zealand as a third-party intervenor under Article 63 could create a situation in which the principle of the fair administration of justice, including the equality of the Parties, would most likely be compromised. He wishes, however, to place on record his serious reservation about the formalistic approach in which the Court has handled this issue without giving sufficient reflection on an important aspect of the principle of equality of the Parties, which forms an essential cornerstone of the fair administration of justice.

Separate opinion of Judge Cançado Trindade

1. In his Separate Opinion, composed of 10 parts, Judge Cançado Trindade begins by explaining that, although he has concurred with his vote to the adoption of the present Order in the case concerning Whaling in the Antarctic (Australia versus Japan), which declared admissible the Declaration of Intervention of New Zealand, — yet he feels bound, and cares, to leave on the records the foundations of his own personal position on the matter dealt with, in all its interrelated aspects. His reflections, developed in the present Separate Opinion, pertain — as he indicates in part I — to considerations at factual, conceptual and epistemological levels, on distinct points in relation to which he does not find the reasoning of the Court entirely sufficient or satisfactory.

2. He wished greater attention were devoted to these considerations, and finds that a proper understanding of intervention in legal proceedings under Article 63 of the Statute of the Court can contribute to further development of international legal procedure in our days. Even more so, — he adds, — if one bears in mind that intervention under Article 63 and under Article 62 of the Court's Statute "rest on two quite distinct grounds, disclosing various interrelated aspects which have not been sufficiently or satisfactorily studied to date" (para. 2).

3. He begins his analysis by reviewing in detail all the documents conforming the dossier of the present case, relating to the proceedings before the Court concerning intervention, namely, the Declaration of Intervention of New Zealand (part II), the Written Observations of Australia and Japan on New Zealand's Declaration of Intervention (part III), and the Comments of New Zealand on Japan's Written Observations (part IV). Recalling that, in the present case, there has been no formal objection to New Zealand's Application for permission to intervene, he then makes the point that State consent does not play a role in the proceedings conducive to the Court's decision whether or not to grant intervention. This is so, — he adds, — in respect of interventions under Article 62 as well as Article 63 of the Court's Statute (part V).

4. He further recalls that, likewise, there was no formal objection to Greece's recent Application for permission to intervene in the case concerning the Jurisdictional Immunities of the State (Germany versus Italy), wherein the ICJ granted Greece permission to intervene as a non-party in the case (Order of 04.07.2011). He had already made this point in his Separate Opinion appended to that previous Court's Order, as well as in his earlier Dissenting Opinion in the case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia versus Russian Federation, Judgment of 01.04.2011). Even if there were any such objection, it would, in his view, have been immaterial for the purpose of the Court's assessment of the request or declaration of intervention; the ICJ is not always restrained by State consent, nor is it an arbitral tribunal (para. 23).

5. Judge Cançado Trindade proceeds by turning attention to the typology of interventions under the ICJ Statute (part VI): he addresses the conceptual distinction between discretionary intervention (under Article 62) and intervention as of right (under Article 63). Although in its origins the historical antecedents of the institute of intervention in legal proceedings can be found in the old practice of international arbitrations, such antecedents show that arbitral practice pursued its essentially bilateralized outlook, and maintained its focus on the consent of the contending parties; it was thus necessary, — he adds, — to wait for "the systematization of the whole chapter of peaceful settlement of international disputes, encompassing the judicial solution as well (as distinguished from the arbitral solution), for the express provision on intervention to come to the fore and to see the light of the day" (para 25).

6. That systematization took place in the course of the two Hague Peace Conferences, in 1899 and 1907, respectively. The institute of intervention was in fact provided for by the 1899 Convention for the Pacific Settlement of International Disputes (Article 56) and the 1907 Convention for the Pacific Settlement of International Disputes (Article 84). What the draftsmen of this provision had in mind was intervention as of right, of the kind of the one which,

some years later, found its place in Article 63 of the Statute of the Permanent Court of International Justice (PCIJ), and subsequently of the International Court of Justice (ICJ).

7. By the end of the two Hague Peace Conferences, - Judge Cançado Trindade ponders, —

> "the universal juridical conscience seemed to have captured the idea that international law had to conform a true international system (...). After all, State voluntarism remained an obstacle to respect for international law and an undue limitation of the rule of law in international litigation. [There were] fears that, in the absence of international justice, States would keep on doing whatever they wished, and the increase in armaments (naval and military) would keep on going on. There was a premonitory reaction, on the part of the lucid jurists of those threatening times, against that state of affairs, and against State voluntarism" (paras. 28-29).

8. In fact, — he proceeds, — the discussions, throughout the work of the two Hague Peace Conferences (of 1899 and 1907), on the future creation of international courts, contained, already at that time, references to: a) the juridical conscience of peoples; b) the need of obligatory arbitration; c) the needed establishment or constitution of permanent tribunals; d) the determination of fundamental rules of procedure; e) the access of individuals to international justice; f) the development of an international jurisprudence; and g) the progressive development of international law. This, — in his perception, — showed "the awareness, of the importance of such issues, already present in the minds of jurists of that time" (such as, e.g., T.M.C. Asser, Ruy Barbosa, L. Bourgeois, J.H. Choate, F. de Martens, C.E. Descamps, F. Hagerup, F.W. Holls, among others — para. 30).

9. The following historical moment to address was that of the drafting, in mid-1920, by the Advisory Committee of Jurists (appointed by the League of Nations), of the Statute of the old PCIJ, followed, years later (in 1945), by the Statute of the ICJ. By then, with the advent of the judicial settlement of disputes at world level, the concept of intervention fully bloomed. Two kinds of intervention were envisaged, and enshrined into Articles 62 and 63, respectively, of the Statute of the Hague Court (PCIJ and ICJ). As Judge Cançado Trindade observes, "[i]ntervention, under the two provisions, was to seek to overcome the bilateralization of the controversy at stake, thus widening dispute-settlement, when it could be of direct interest or concern to other States" (para. 34).

10. Although the use of intervention (as a non-party), under Article 63(2) of the Statute, — of the kind sought by New Zealand in the cas d'espèce, — has been rather infrequent, this does not mean, — he adds, — that it would or should remain so, as all States Parties to multilateral treaties are committed to contribute to their proper interpretation. If such interventions increased, uncertainties could diminish, "as the ICJ could have more occasions to clarify the application and scope of Article 63" (para 40). There is here a case for a "teleological interpretation" of certain multilateral treaties, so as to enable the Parties to defend the rights that such treaties purport to protect. In any case, — Judge Cançado Trindade adds, — Article 63 widens the Court's jurisdiction, in contemplating intervention as of right in certain circumstances (cf. infra).

11. As to discretionary intervention, set out in Article 62 of the Statute, it has had distinct antecedents and meanings, as the State seeking to intervene ought to disclose "an interest of a legal nature which may be affected by the decision in the case", and the Court has the discretion to decide upon this request. The scope of Article 62 is thus stricter than that of Article 63, in that the permission for intervention will depend on the exercise by the Court of its discretion, its decision being taken in the light of the particular circumstances of each case. This kind of discretionary intervention, — he proceeds, — "is drawn from that provided for in the domestic legal system of several States, i.e., in comparative domestic law" (para. 37).

12. After clarifying this conceptual distinction, Judge Cançado Trindade reviews the precedents on intervention in the case-law developed along the history of the Hague Court (PCIJ and ICJ — paras. 41-52), and singles out the significance of the upholding of intervention in legal proceedings in the Order of the Court in the present case of Whaling in the Antarctic, as well as in the Court's Order of 04.07.2011, in the case concerning the Jurisdictional Immunities of the State, on the basis of Article 63 and 62, respectively. He then moves on to the following line of his considerations, pertaining to the nature of the multilateral treaties at issue (part VII).

13. In drawing attention to the fact that certain multilateral treaties embody matters of a general or "collective interest" and are endowed with mechanisms of "collective guarantee", Judge Cançado Trindade sustains that intervention in legal proceedings in respect of such treaties is even more compelling, for the sake of the due observance of, or compliance with, the obligations contracted by the States Parties (para. 53). This is — he adds — in accordance with the general rule of interpretation of treaties, set forth in Article 31 of the two Vienna Conventions on the Law of Treaties (of 1969 and 1986), underlying which is the principle ut res magis valeat quam pereat, widely supported in case-law, and which corresponds to the so-called effet utile (principle of effectiveness), whereby one is to secure to the conventional provisions their proper effects (para. 54).

14. Judge Cançado Trindade then ponders that

> "(...) When it comes to protection (of the human person, of the environment, or of matters of general interest), the principle of effet utile assumes particular importance in the determination of the (enlarged) scope of the conventional obligations of protection.
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> The corresponding obligations of the States Parties assume an essentially objective character: they are implemented collectively, singling out the predominance of considerations of general interest (or even ordre public), transcending the individual interests of States Parties. The nature of treaties addressing matters of general or common interest and counting on collective guarantee (by States Parties) for their implementation has an incidence on their process of interpretation. And it could not be otherwise.
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> There is no space, under treaties of the kind, for unilateral State action, or even for bilateral reciprocal concessions: States Parties to such treaties are bound by the contracted obligations to seek jointly the realization or fulfilment of the object and purpose of the treaties at issue. State Parties are bound by positive obligations enshrined therein" (paras. 55-57).

15. He then recalls that the 1946 International Convention for the Regulation of Whaling (ICRW), provides for the proper conservation of the whale stocks and the orderly development of the whaling industry; it is, in his view, clear that the former stands higher, as without the proper conservation of whale stocks there can be no orderly development of the whaling industry. The basic foundation of the ICRW is thus the conservation of all whale species at issue. The principle of effet utile points in this direction, discarding the mere profitability of the whaling industry (para. 58).

16. There is here a concern for orderly development in the ICRW, which uses the expression "common interest" (fourth preambular paragraph), and, moreover, identifies its beneficiaries, in expressly recognizing, in its first preambular paragraph,

> "the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks".

The general policy objectives under the ICRW thus remain the protection of all whale species from overfishing, to the benefit of future generations in all nations (as stated in its preamble), and the orderly development of whaling industry, abiding by that. The objectives of the ICRW disclose the nature of the treaty, to be implemented well beyond the scope of bilateral relations between States Parties. The nature of the ICRW is, in his understanding, to be kept in mind, in the present decision of the Court concerning intervention for the purposes of interpretation of Article VIII of the Convention (paras. 59-60).

17. Judge Cançado Trindade next draws attention to the ICRW's preventive dimension, calling upon States Parties to act with due care, so as to avoid a harm which may project itself in time. The long-term temporal dimension and the notion of inter-generational equity are present herein, a point to which he devoted his reflections in his Separate Opinion (paras. 114-131) in the case concerning Pulp Mills on the River Uruguay (Argentina versus Uruguay, Judgment of 20.04.2010). The uncertainties still surrounding the institute of intervention in legal proceedings are, in his view, proper to the persisting and new challenges faced by international justice in our times, in the enlargement of its scope both ratione materiae and ratione personae. In any case, "international tribunals are to face such uncertainties, approaching the institute of intervention with due attention to the contemporary evolution of international legal procedure at conceptual level, and to the nature of the multilateral treaties at stake" (para. 62).

18. His following line of thinking in the present Separate Opinion concerns the resurrectio of intervention in contemporary judicial proceedings before the ICJ (part IX). This is a point which he had already made in his Separate Opinion in the Court's previous Order of 04.07.2011 permitting Greece's intervention in the case concerning the Jurisdictional Immunities of the State (Germany versus Italy), and which he reiterates herein. In a rather short lapse of time, the Court has thus taken its position on granting intervention, on the basis of both Article 62 (in 2011) and Article 63 (the present Order) of its Statute. He recalls that, twice before, in two cases concerning land and maritime boundaries in the nineties (case concerning the Land, Island and Maritime Frontier Dispute between El Salvador and Honduras, Nicaragua's intervention, Judgment of 13.09.1990; and case concerning the Land and Maritime Boundary between Cameroon and Nigeria, Equatorial Guinea's intervention, Order of 21.10.1999), the ICJ had also authorized two other applications to intervene.

19. In the two more recent aforementioned cases (concerning the Jurisdictional Immunities of the State, and Whaling in the Antarctic, supra), the Court has adopted two Orders granting the requested interventions "in two domains of great importance in and for the development of contemporary international law, namely, that of the tension between the right of access to justice and the invocation of State immunities, and that of marine life and resources and international protection of the environment" (para. 66). In granting intervention in the aforementioned last two cases, in such relevant contexts, the ICJ has so decided at the height of its responsibilities as the main judicial organ of the United Nations (Article 92 of the U.N. Charter). Judge Cançado Trindade adds that,

> "[u]nlike land and maritime delimitation cases, or other cases concerning predominantly bilateralized issues, these last two cases concern third States as well, other than the respective contending parties before the Court.
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> The subject-matters at issue in those two cases (supra) are, in my perception, closely and decisively related to the evolution of contemporary international law as a truly universal international law, being thus of relevance ultimately to all States. The resurgere of intervention is thus most welcome, propitiating the sound administration of justice (la bonne administration de la justice), attentive to the needs not only of all States concerned but of the international community as a whole, in the conceptual universe of the jus gentium of our times" (paras. 67-68).

20. The way is then paved for the presentation of Judge Cançado Trindade's concluding observations (part X). In his perception, in the present case a proper expression to the principle of the sound administration of justice (la bonne administration de la justice) can be found precisely in the declaration of admissibility by the ICJ of the Declaration of Intervention by New Zealand in the cas d'espèce**.** He had made precisely this point, one and a half years ago, in his Separate Opinion (para. 59) appended to the Court's Order of 04.07.2011, in the case concerning the Jurisdictional Immunities of the State (Germany versus Italy). This is a point which, in his view, should not pass unnoticed herein.

21. It so happens that, in the present Order, the Court considered the principle of the sound administration of justice (la bonne administration de la justice) in relation to other arguments put to it (paras. 17-19 of the Order), which he regards as "rather tangential" to the institute of intervention (under Article 63) itself, and without a direct bearing on its essence. A Declaration of Intervention falling within the provisions of Article 63 of the Statute and the requirements of Article 82 of the Rules of Court, cannot — does not — affect the procedural equality of the contending parties, and is thus admissible, irrespective of whether the contending parties object or not to it (para. 70). And Judge Cançado Trindade adds that:

> "In circumstances like those of the cas d'espèce, it is necessary to surmount the old bilateralist bias that permeates dispute-settlement under the procedure before this Court. It so happens that such bias has for a long time impregnated expert writing on the subject as well. It is about time to overcome such dogmatisms of the past, with their characteristic immobilization, remnant of the old arbitral practice. The present case concerning Whaling in the Antarctic, unlike land and maritime delimitation cases, or other cases concerning predominantly bilateralized issues, concerns third States as well, Parties to the 1946 Convention for the International Regulation of Whaling, other than the respective contending parties before the Court. The Convention concerns a matter of general or common interest, and is to be implemented collectively by States Parties, thus contributing to the public order of the oceans" (para. 71).

22. Judge Cançado Trindade notes that, in the present Order, the Court has limited itself to address the points raised by the three States concerned, "in the terms in which they were raised". The insufficient clarification provided so far has been attributed to the rather infrequent use of intervention as of right under Article 63. But even in the cases wherein intervention under Article 63 has been put to the Court, like the present one, "this latter has not provided sufficient or entirely satisfactory clarification, though it has fortunately reached the right decision in today's Order" (paras. 72-73), — as it also did one and a half years ago (Order of 04.07.2011), in granting permission for Greece's intervention, under Article 62 of its Statute, in the case concerning the Jurisdictional Immunities of the State.

23. The aforementioned last two grants of intervention by this Court, under Articles 62 and 63 of its Statute (Orders of 04.07.2011 and 06.02.2013, respectively), in his view contribute to the progressive development of international law and the realization of justice at international level, in so far as the subject-matter at stake is concerned. He concludes that the "gradual resurrectio of intervention" in contemporary judicial proceedings before the ICJ, can render "a valuable service towards a more cohesive international legal order in our days. After all, intervention in legal proceedings, by providing additional elements to the Court for its consideration and reasoning, can contribute to the progressive development of international law itself, especially when matters of collective or common interest and collective guarantee are at stake" (para. 76).

Declaration of Judge Gaja

The Court should have specifically considered, among the conditions for the admissibility of New Zealand's intervention under Article 63 of the Statute, the relevance of the suggested construction of the International Convention for the Regulation of Whaling to the decision of the case.

The Court states that the construction of the Convention will be binding on the intervening States. The Court should have added that, with regard to that construction, the Parties will also be bound towards New Zealand under paragraph 2 of Article 63.

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