INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

AEGEAN SEA CONTINENTAL SHELF CASE

(GREECE *v.* TURKEY)

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU PLATEAU CONTINENTAL DE LA MER ÉGÉE

(GRÈCE c. TURQUIE)

ORAL ARGUMENTS ON THE REQUEST FOR THE INDICATION OF INTERIM MEASURES OF PROTECTION

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague,
from 25 to 27 August and on 11 September 1976,
President Jiménez de Aréchaga presiding

PLAIDOIRIES RELATIVES À LA DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

PROCÈS-VERBAUX DES AUDIENCES PUBLIQUES

tenues au palais de la Paix, La Haye,
du 25 au 27 août et le 11 septembre 1976,
sous la présidence de M. Jiménez de Aréchaga, Président

FIRST PUBLIC SITTING (25 VIII 76, 10 a.m.)

Present : President JIMÉNEZ DE ARÉCHAGA ; *Vice-President* NAGENDRA SINGH ; *Judges* FORSTER, GROS, LACHS, DILLARD, MOROZOV, SIR HUMPHREY WALDOCK, RUDA, MOSLER, ELIAS, TARAZI ; *Judge* ad hoc STASSINOPOULOS ; *Registrar* AQUARONE.

Also present :

For the Government of Greece :

H.E. Mr. Nicolas Karandreas, Ambassador of Greece, *as Agent* ;

Mr. Constantine Eustathiades, Professor of Public International Law in the University of Athens, Head of the Legal Department of the Ministry of Foreign Affairs, *as Agent, Advocate and Counsel* ;

Professor D. P. O'Connell, Member of the English, Australian and New Zealand Bars, Chichele Professor of International Law in the University of Oxford,

Mr. Roger Pinto, Professor in the University of Paris,

Mr. Georges Vedel, Professor in the University of Paris,

Mr. Prosper Weil, Professor in the University of Paris,

Mr. Richard Baxter, Professor at Harvard University, Member of the Bar of the Commonwealth of Massachusetts,

Mr. Dimitrios Evrigenis, Professor in the University of Salonica, Member of the Chamber of Deputies,

Mr. Elias Krispis, Professor in the University of Athens,

Mr. Constantine Economides, Special Legal Adviser to the Ministry of Foreign Affairs,

Mr. Emmanuel Roucounas, Professor in the University of Athens, *as Counsel* ;

Vice-Admiral (retd.) Patrocles Conialis, Hellenic Navy,

Mr. Christos Macheritsas, Special Adviser to the Legal Department of the Ministry of Foreign Affairs,

Mr. J. O. Small, Geophysicist, *as Expert Advisers*.

OPENING OF THE ORAL PROCEEDINGS

The PRESIDENT : The Court meets today to consider the request for the indication of interim measures of protection, under Article 41 of the Statute of the Court and Article 66 of the Rules of Court, filed by the Government of Greece on 10 August 1976 in the case concerning the *Aegean Sea Continental Shelf* brought by Greece against Turkey.

The Application (see pp. 3-60, *supra*) instituting proceedings in this case, which invokes Article 17 of the General Act for the Pacific Settlement of International Disputes of 1928, read together with Articles 36, paragraph 1, and 37 of the Statute of the Court, and a joint communiqué issued at Brussels on 31 May 1975, was filed in the Registry on 10 August 1976. I shall ask the Registrar to read from the Application the statement of what the Greek Government seeks from the Court.

The REGISTRAR : In its Application, the Government of Greece requests the Court to adjudge and declare the following :

"(i) that the Greek Islands referred to in the Application, as part of the territory of Greece, are entitled to the portion of the continental shelf which appertains to them according to the applicable principles and rules of international law ;

(ii) what is the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to Greece and Turkey in the Aegean Sea in accordance with the principles and rules of international law which the Court shall determine to be applicable to the delimitation of the continental shelf in the aforesaid areas of the Aegean Sea ;

(iii) that Greece is entitled to exercise over its continental shelf sovereign and exclusive rights for the purpose of researching and exploring it and exploiting its natural resources ;

(iv) that Turkey is not entitled to undertake any activities on the Greek continental shelf, whether by exploration, exploitation, research or otherwise, without the consent of Greece ;

(v) that the activities of Turkey described in [the Application] constitute infringements of the sovereign and exclusive rights of Greece to explore and exploit its continental shelf or to authorize scientific research respecting the continental shelf ;

(vi) that Turkey shall not continue any further activities as described above in subparagraph (iv) within the areas of the continental shelf which the Court shall adjudge appertain to Greece."

The PRESIDENT : On 10 August 1976, the same day as that on which the Application was filed, Greece filed a request (see pp. 63-66, *supra*) under Article 41 of the Statute and Article 66 of the Rules of Court for the indication of interim measures of protection. I shall ask the Registrar to read from that request the statement of the measures which the Government of Greece asks the Court to indicate.

The REGISTRAR :

"Greece . . . requests the Court to direct that the Governments of both Greece and Turkey shall :

(1) unless with the consent of each other and pending the final judgment of the Court in this case, refrain from all exploration activity or any scientific research, with respect to the continental shelf areas within which Turkey has granted such licences or permits or adjacent to the Islands, or otherwise in dispute in the present case ;
(2) refrain from taking further military measures or actions which may endanger their peaceful relations."

The PRESIDENT : Copies of the Application and the request for interim measures of protection were, on 10 August 1976 (see p. 571, *infra*), handed by the Registrar of the Court to the Ambassador of Turkey to the Netherlands, the channel of communication which had been nominated by the Government of Turkey for communications addressed to that Government by the Court under the Statute and Rules.

The Court is bound, on receipt of a request for interim measures of protection, to proceed in accordance with its Statute and Rules to consider as a matter of urgency whether measures should be indicated, and for that purpose to give the parties an opportunity of presenting their observations on the subject. Accordingly, the Parties were informed orally on 18 August and in writing on 19 August (see p. 574, *infra*) that, pursuant to Article 66, paragraph 8, of the Rules of Court, the Court would hold public hearings, opening on 25 August at 10 a.m., to afford the Parties the opportunity of presenting their observations on the Greek request for the indication of interim measures of protection.

The Court in the present case includes upon the Bench no judge of the nationality of the Parties. On this basis, the Government of Greece notified the Court on 14 August 1976 (see p. 573, *infra*) that it considered that it possessed and intended to exercise the right to choose a judge *ad hoc* under Article 31 of the Statute, and that person chosen was His Excellency Mr. Michel Stassinopoulos, ex-President of the Hellenic Republic, ex-President of the Council of State. No similar notification of the exercise of the right to choose a judge *ad hoc* has been received from Turkey. Within the time-limit fixed under Article 3 of the Rules of Court for the views of the Turkish Government on the appointment by Greece of a judge *ad hoc* to be submitted to the Court, no objection to this appointment was received from the Turkish Government.

I shall therefore call upon Mr. Stassinopoulos to make the solemn declaration required by Article 20 of the Statute of the Court.

M. STASSINOPOULOS : Je déclare solennellement que j'exercerai tous mes devoirs et attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.

The PRESIDENT : I place on record the declaration made by Mr. Stassinopoulos and declare him duly installed as judge *ad hoc* in the present case.

Judges Ignacio-Pinto and de Castro are unable to be present today. Judge Ignacio-Pinto is convalescing after a serious illness and is not yet permitted by his medical advisers to take part in the work of the Court ; Judge de Castro is also ill, and it is unlikely that he will be able to participate in the present proceedings.

When the Court convened to consider the procedure to be followed in the present case, Judge Oda informed me by letter that he considered that, subject to the decision of the Court, he ought not to take part in the decision of this case. I therefore consulted the Court, which decided that Judge Oda's view

was entirely proper. Accordingly, Judge Oda will not take part in the decision of the present case.

I note the presence in Court of the Agent and counsel of Greece and declare the oral proceedings open on the request of Greece for the indication of interim measures of protection.

DÉCLARATION DE M. KARANDREAS

AGENT DU GOUVERNEMENT GREC

M. KARANDREAS : Monsieur le Président, Messieurs les membres de la Cour, je voudrais d'abord dire combien je suis honoré d'avoir le privilège de paraître devant la Cour internationale de Justice pour présenter l'affaire du *Plateau continental de la mer Egée*. C'est un grand honneur pour la délégation hellénique et pour moi-même.

Le Gouvernement hellénique apprécie hautement le rôle de la Cour internationale de Justice comme organe judiciaire principal des Nations Unies, la plus haute instance judiciaire internationale, une instance qui a toujours fait preuve d'indépendance et d'impartialité en tant qu'organe le plus compétent à résoudre les différends juridiques entre les Etats.

C'est vraiment regrettable que la Cour internationale de Justice ne soit pas saisie plus fréquemment de différends juridiques internationaux en vue de les régler pacifiquement.

La politique constante de la Grèce a toujours été de recourir aux moyens de règlements pacifiques tels qu'ils sont aujourd'hui prévus par la Charte des Nations Unies.

C'est pour cela que la Grèce a proposé à la Turquie que les divergences au sujet de la délimitation du plateau continental de la mer Egée soient soumises à la Cour internationale de Justice.

La question de la délimitation du plateau continental de la mer Egée est une question purement juridique qui, à ce titre, relève entièrement de votre juridiction.

En effet, le droit international contient des règles concernant le plateau continental, coutumières et conventionnelles, dont votre Cour a déjà eu l'occasion, pour certaines d'entre elles, de préciser la portée.

Bien que le Gouvernement turc ait accepté la proposition du Gouvernement hellénique tendant à saisir conjointement la Cour internationale de Justice du différend sur la délimitation du plateau continental de la mer Egée, le Gouvernement turc, par ses atermoiements au cours des négociations prolongées, a fait obstacle à cette procédure.

Le 6 août 1976, un navire de recherche turc a commencé à se livrer à des activités d'exploration sismique dans des secteurs du plateau continental de la mer Egée relevant de la Grèce. Malgré les protestations, les démarches et réclamations politiques, les explorations sismiques dans des secteurs du plateau continental de la mer Egée relevant de certaines îles grecques continuent.

Jusqu'à maintenant la Grèce a évité, en ce qui concerne ses relations avec la Turquie, toute provocation et a gardé une attitude modérée et pacifique en respectant les lois internationales. La Grèce, fidèle à la Charte des Nations Unies, souhaitant et espérant la solution pacifique du problème, soumet à la Cour internationale de Justice une requête introduisant une instance au nom de la Grèce contre la Turquie en l'affaire de la délimitation du plateau continental de la mer Egée, ainsi qu'une demande tendant à ce que la Cour internationale de Justice énonce ou indique à titre provisoire des mesures conservatoires pour protéger les droits de la Grèce en attendant l'arrêt définitif ou l'issue de l'instance.

Monsieur le Président de la Cour, j'ai eu l'honneur de communiquer à la Cour internationale de Justice la liste des agents, des avocats-conseils et des conseillers-experts qui représenteront mon gouvernement en l'affaire du *Plateau continental de la mer Egée*.

Je vous prie, Monsieur le Président, de bien vouloir donner maintenant la parole à M. le professeur Eustathiades qui fera une brève présentation de l'affaire ; ensuite je vous prie, Monsieur le Président, de donner la parole à M. le professeur O'Connell et ensuite à M. le professeur Pinto, qui vont développer les chefs de la demande hellénique.

PLAIDOIRIE DE M. EUSTATHIADES

CONSEIL DU GOUVERNEMENT GREC

M. EUSTATHIADES : Monsieur le Président, Messieurs les membres de la Cour, c'est un grand honneur pour moi de présenter brièvement la demande soumise par la Grèce devant la plus haute juridiction internationale.

Le Gouvernement hellénique a introduit devant la Cour à la date du 10 août 1976 une requête relative au plateau continental des îles de la mer Egée. Cette requête, soumise conformément à l'article 36, paragraphe 1, et à l'article 37 du Statut de la Cour, est fondée sur la compétence attribuée à la Cour en vertu de l'article 17 de l'Acte général de Genève pour le règlement pacifique des différends de 1928 ; elle est de plus fondée sur le communiqué conjoint des premiers ministres de la Grèce et de la Turquie signé à Bruxelles le 31 mai 1975, attribuant également à la Cour cette compétence.

La demande, à la même date, en indication de mesures conservatoires, afin que soient protégés entre autres les droits souverains exclusifs de la Grèce aux fins de la recherche, de l'exploration et de l'exploitation du plateau continental de la Grèce et adjacent aux îles grecques de l'Egée, fut présentée par mon pays dans des circonstances qui, loin de s'être entre-temps améliorées, risquent de devenir encore plus graves.

Le Gouvernement hellénique, convaincu qu'il contribue au règlement pacifique de la situation dans cette région névralgique, a fait appel à la fonction judiciaire pacificatrice de la Cour, fonction qui est exercée par un jugement et, dans des cas d'urgence, par l'indication de mesures conservatoires.

L'exercice en la présente affaire du pouvoir que la Cour possède d'indiquer des mesures conservatoires pourra être de nature à contribuer, en même temps que la préservation des droits des parties en vue de l'examen du fond de l'affaire, au maintien de relations pacifiques entre pays voisins.

Ce pouvoir spécifique de la Cour, sans être complètement indépendant de sa compétence de connaître de l'affaire quant au fond, présente néanmoins plusieurs traits caractéristiques qui lui confèrent un caractère propre.

De par sa nature même, l'exercice de ce pouvoir, je dirais par définition du concept des mesures conservatoires, ne préjuge pas la décision finale de la Cour quant à sa compétence et quant au fond de l'affaire.

D'autre part, pour l'indication de mesures conservatoires, il suffit que l'incompétence quant au fond ne soit pas manifeste.

Cette condition, comme il vous sera démontré tout à l'heure, est certainement remplie en la présente affaire.

Dans ces limites, il appartient à la Cour d'apprécier librement les circonstances qui exigeraient que des mesures conservatoires soient indiquées. L'étendue de cette liberté d'appréciation est illustrée par le fait qu'en attendant que la Cour se réunisse et se prononce à leur sujet « le Président prend, s'il y a lieu, les mesures qui lui paraissent nécessaires afin de permettre à la Cour de statuer utilement » (art. 66, par. 3, du Règlement de la Cour).

Cela souligne en même temps le fait que l'urgence des mesures conservatoires à prendre constitue un élément particulièrement important pour l'exercice du pouvoir de la Cour d'indiquer de telles mesures. De plus le Statut et le Règlement confèrent à la Cour le pouvoir d'indiquer même d'office

des mesures conservatoires. C'est encore l'urgence qui est retenue ici comme facteur déterminant l'exercice du pouvoir de la Cour d'ordonner des mesures conservatoires.

Tous ces traits caractéristiques, qui se dégagent de la jurisprudence de votre Cour et qui témoignent de sa liberté d'appréciation, se rattachent à la nature même et au but des mesures conservatoires. En effet, on sait que pour parer aux lenteurs de la procédure judiciaire, qu'elle soit internationale ou interne, et pour faire face à des cas d'urgence, ce sont les mesures conservatoires qui feront le pont, en permettant d'éviter des inconvénients qui existeraient sans elles et qui empêcheraient que le tribunal puisse statuer utilement et que les droits des parties que l'arrêt pourrait reconnaître puissent être préservés.

L'urgence à préserver les droits apparaît notamment lorsque le dommage sera irréparable et il en sera ainsi lorsque, entre autres, il n'est pas susceptible d'être réparé « moyennant le versement d'une simple indemnité ou par une autre prestation matérielle ».

Dans le cas présent, en plus d'autres dommages de cette nature, quel dommage serait-il plus irréparable que celui résultant de l'atteinte à des droits souverains ? Or c'est justement à des droits souverains de la Grèce qu'a été et continue à être porté atteinte par les activités de la Turquie.

Il s'agit d'activités qui, de l'aveu du Gouvernement turc, sont des activités de recherche et d'exploration et qui, de l'aveu de ce même gouvernement, ont pour but de contester les droits souverains qui appartiennent à la Grèce.

Ne s'agit-il pas en plus d'une action répétée visant aussi à la modification du droit existant ?

A part l'urgence dictée par le besoin d'empêcher qu'un dommage irréparable soit causé à l'une des parties, il y a aussi urgence lorsqu'on peut raisonnablement songer à l'aggravation et à l'extension du différend soumis à la Cour. Lors du différend anglo-iranien, aussi bien le Président de la Cour dans son message au Gouvernement de l'Iran que la Cour elle-même dans son ordonnance ont fait pour les parties un devoir d'empêcher « tout acte, de quelque nature qu'il soit, qui pourrait aggraver ou étendre le différend soumis à la Cour » et on sait que ce précédent n'est pas le seul.

Dans la présente affaire, la sortie du navire turc *Sismik I* marque l'échelonnement d'une série d'actes bien préparés et planifiés de la part de la Turquie consistant notamment à l'octroi de permis d'exploration de pétrole, à la contestation réitérée des droits souverains de la Grèce sur son plateau continental des îles d'Egée, à la proclamation du déplacement profond des limites occidentales de l'espace aérien contrôlé par la Turquie coïncidant en général avec les limites des régions du plateau continental de la Grèce pour lesquelles elle a illicitement octroyé des permis d'exploration.

Ainsi, l'aggravation ou l'extension du différend en la présente affaire, loin de relever du domaine des suppositions, constitue un danger réel au milieu d'un climat de relations très tendues et de dispositions militaires de part et d'autre.

En effet, face aux activités du navire de recherche turc et en présence du fait aggravant que ce dernier fut escorté par des unités de guerre aériennes et navales, la moindre des choses que la Grèce aurait pu faire était la surveillance des agissements du navire turc. D'autre part, face aux déclarations successives turques qu'il y aurait une réaction armée immédiate au cas où la Grèce ferait usage de son droit de police sur son plateau continental de la mer Egée et face à la mobilisation des forces armées turques, la Grèce n'avait d'autre choix que de prendre, elle aussi, des mesures militaires appropriées.

Dans ces conditions, si la fermeté et le sang-froid du Gouvernement

hellénique jusqu'à présent a empêché l'empirement de la situation, il n'est point exclu que même des controverses ou malentendus surviennent, avec des conséquences imprévisibles pour la paix dans cette région. Mais même sans cela, le cas présent est bien caractéristique d'un différend dont le maintien en état d'effervescence peut aggraver ou étendre les conséquences et compromettre la mission de la Cour de juger utilement.

En terminant, qu'il me soit permis d'attirer l'attention sur le fait que la Cour a cru nécessaire d'indiquer des mesures conservatoires dans des affaires où le danger d'aggravation du différend était moins évident et dont l'objet était peut-être la préservation de droits moins importants que les droits souverains exclusifs d'un Etat.

Monsieur le Président, Messieurs les membres de la Cour, en rappelant quelques données de la jurisprudence de votre juridiction suprême, j'ai simplement voulu montrer comment fut formée la conviction du Gouvernement hellénique que, bien que cette Cour ait de larges pouvoirs d'appréciation en matière de mesures conservatoires, la présente affaire entre dans le cadre de votre juridiction même en application de critères restrictifs.

Les insignes de ce palais de la Paix sont *Justitia et Pace*. Rendre justice est l'apanage de cette Cour. Elle aura la satisfaction de servir en même temps de façon plus directe la paix.

ARGUMENT OF PROFESSOR O'CONNELL

COUNSEL FOR THE GOVERNMENT OF GREECE

Professor O'CONNELL : Mr. President and Members of the Court. On opening the address to the Court on the grounds for the request for interim measures made on behalf of the Government of Greece, I should like to express my respects to the Court and indicate the sense of honour which I experience in appearing before it again. I begin by indicating what are the areas of the Aegean under dispute.

If Members of the Court will be good enough to look at the map which has been submitted in addition to the Application (Annex I, see p. 13, *supra*) they will see in general the areas in dispute. Members of the Court will find, I believe, photocopies of these maps in their dossier, and I would seek their indulgence to consult these. I say they will see in general the areas which are in dispute because the map indicates the areas where the Turkish Government has granted permits, and part of these permits cover what Greece claims to be her continental shelf.

Now with the indulgence of the Court I would seek the assistance of Admiral Conialis who will help me to turn over the maps to which I shall refer.

The Application seeks a decision on the merits concerning whether the Greek islands which are mentioned in paragraph 29 of the Application have appurtenant continental shelf areas or not. If Members of the Court would again be good enough to consult the map they will see the location of these islands and Admiral Conialis will point them out.

Beginning from north to south, they are Samothrace, Limnos, Aghios Eustratios, Lesbos, Chios, Psara, Antipsara, Samos, Ikaria, Patmos, Leros, Kalimnos, Kos, Nisiros, Tilos, Simi, Chalki, Rhodes and Karpathos, with their attendant small islands and islets.

The territorial sea between Greece and Turkey has been delimited by Article 5 of the Treaty of 4 January 1932. This treaty was made between Italy and Turkey and covered the Dodecanese group. It was, of course, succeeded to by Greece when she took the cession of the islands in 1947. Members of the Court may notice that there is a slight discrepancy in places between the indication of the extent of the Turkish territorial sea in the Dodecanese area and the line on the map which indicates the line of delimitation. That discrepancy arises from the fact that the Turkish territorial sea limit is six miles whereas the Treaty of 1932 provided for all rocks and islets on either side of that line to fall respectively to Turkey and Italy.

Members of the Court will see the Turkish territorial sea indicated on the map in red and the Greek territorial sea indicated on the map in blue. There is no territorial sea boundary agreement between Greece and Turkey other than in the Dodecanese area which I have referred to. Greece in 1936 declared a six-mile territorial sea and a translation of that law has been deposited with the Court (Greek *Official Gazette*, Vol. No. 450, 13 October 1936). The same limit was prescribed in Article 139 of a Greek decree of 3 October 1973, a translation of which has also been deposited with the Court. Greece has not adopted a straight baseline system. There is no Greek legislation on the

continental shelf other than Law No. 169 of 1969 which provides for licensing.

Turkey adopted a six-mile territorial sea in 1914 by Act of the Sublime Porte for all Ottoman waters (J. No. 5417/99). This was affirmed for the Aegean in 1964 by Law No. 476 and that law also adopted a system of straight baselines on the Anatolian coast. These baselines are also shown on the map. When this system of straight baselines was adopted Greece questioned its validity. However, for the purposes of the present hearing this issue can be put on one side because the infringement of Greek rights which is the occasion of the hearing has occurred in areas which Greece claims are hers however the territorial sea is measured. The difference is indicated in green between the limits which, according to the Greek view, Turkey is entitled to claim, as territorial sea drawn from the low-water mark and drawn from the straight baselines system. It will be noted that the discrepancy indicated in green is not great but it obviously affects the question of the delimitation of the continental shelf.

From the Exchanges of Notes and the records of the bilateral negotiations which are contained in the Application, it appears that Turkey denies that the islands which I have mentioned are entitled to continental shelf rights. She appears to say that the boundary in the continental shelf should be drawn half-way across the Aegean Sea, whereas Greece says that it should be drawn between the islands and the Turkish coast or Turkish islands. We ask the Court to resolve that question.

The Application then asks the Court to decide what is the course of the boundary between Greece and Turkey in the seabed. At this stage of the case it is unnecessary to say more about this. We are required only to show that prima facie Greece has rights which are threatened. The actual location of the boundary is a matter of detail to be gone into after the question has been decided whether the islands generate continental shelf rights or not.

The Application then asks the Court to declare that Greece is entitled to exercise over its continental shelf sovereign rights and exclusive rights for the purpose of exploring it and exploiting its natural resources. The word "exclusive" is emphasized because Turkey appears to say that seismic testing is not an infringement of sovereign rights anyway, whereas we say that Greece is exclusively entitled to authorize seismic testing. So the Application goes on to ask the Court to declare that Turkey is not entitled to undertake any activities on the Greek continental shelf, whether by way of exploration, exploitation, research or otherwise, without the consent of Greece.

This reference to exclusivity in the matter of research is made because Turkey appears to be saying that seismic activity is scientific research and does not require Greece's consent. It is unclear what is the legal basis of this apparent contention, whether it is because scientific research is said to be a freedom of the high seas which has been restricted only by Article 5 (8) of the Geneva Convention on the Continental Shelf, to which Turkey is not a party, or because Turkey says that she is free to act however she pleases because the area is disputed. Either way we oppose this contention, and ask the Court now to indicate interim measures restraining all activity in respect of the continental shelf pending a definitive order that Turkey shall not continue further exploration activities within the areas of the continental shelf which the Court shall adjudge appertain to Greece.

Before I proceed further I should like to remove from our minds one notion which the Government of Turkey has been propagating and which may have had the effect, whatever be the intention, of suggesting that Greece has been

claiming that the Aegean is a Greek sea. Greece has done no such thing. In all of the diplomatic exchanges which have occurred Greece has scrupulously maintained the basic legal distinction between the high seas and the continental shelf. Greece concedes all of the rights to which Turkey or any other country is entitled in the high seas. She does not deny their freedom under international law as it exists today to conduct oceanographical research, to fish or to navigate. What she does contest is Turkey's liberty to conduct seismic activity in relation to the continental shelf which Greece claims.

Mr. President, my learned friend, Mr. Pinto, will address the Court in detail on the facts relating to the dispute. Let me, therefore, very briefly advert to the main events.

On 1 November 1973 the Government of Turkey granted exploration licences in the Aegean following the discovery of oil by Greece off the island of Patmos, which Members of the Court will see lies off the coast of northern Greece.

Greece reserved her rights with respect to the areas in question and began a dialogue. The areas in question will be indicated on the attachment to the map and will also be indicated in a subsequent map on a larger scale in a moment [1]. Turkey however on 18 July 1974 granted other exploration licences west of the Greek islands. Again Greece reserved her rights and continued the dialogue and the second set of exploration licence areas are also indicated on the map. In February 1975 both parties had reached the position where they had stated that the question between them should be settled peacefully. By this time there were in fact two questions. The first was that relating to the continental shelf and the second was a question relating to air space where a boundary line drawn by Turkey was remarkably coincidental with the limits of the seabed claimed by Turkey. That line is shown in red on the map down the middle of the Aegean and east of that line Turkey claimed exclusive rights of notification for air navigation purposes. That is not an element of dispute in the case but it did suggest from the apparent coincidence between a claim to exclusive control of the airspace and a claim to be able to grant exploration permits in the seabed that it was not Greece that was extending the issue in the dispute from the seabed into superjacent jurisdictional areas but rather it was Turkey that gave the appearance of doing so.

The undertaking between the parties with respect to peaceful settlement was amplified in February 1975 by acceptance of the principle that the continental shelf question should be submitted to this Court. That principle was affirmed by the Greek and Turkish Prime Ministers when, on 31 May 1975, they agreed to submit the matter to the Court. That was the proper and sensible thing to do but thereafter Turkey steadfastly declined to take any steps whatever to implement that agreement. Since May 1975 experts from the two countries have met three times. At these meetings Greece has sought to have a compromis drawn up. At all of them the Turkish delegation said "No, let us talk". They have sought to make out an argument that international law requires that seabed disputes be settled by negotiations and not by other means, but, whereas Greece has frankly stated her legal case she remains uninformed as to what principles of law Turkey would anticipate would be applied in the negotiations. This is so, despite the fact that Turkey in her Note of 27 February 1974, which is in Annex II, No. 2, to the Application (see p. 23, *supra*), referred to the Geneva Convention.

[1] Not reproduced.

All this has been very unsatisfactory, but Greece has persisted in trying to seek a peaceful solution. At the last meeting that took place between the two delegations of the two Governments, Greece made it plain that she would continue talking provided that Turkey took no action in the disputed areas. Greece would take no action either.

That meeting was hardly over when the Turkish Government made preparations, accompanied by much excitation of public feeling on both sides, to send out a seismic exploration vessel, the *Sismik I*. An earlier incident of this kind had occurred in 1974. The political temperature mounted as these preparations continued and became the subject of continuous comment.

Eventually in late July, *Sismik I* sailed. The Turkish Government declined to say where or when it would conduct its activities, and its intentions became known only because Notices to Mariners were issued which indicated where seabed explosions could be expected in the next few days.

The track plan of *Sismik I* is shown on another map which is deposited with the Court [1]. I shall refer in more detail to that in a moment. Greece has made it known several times to Turkey, and quite formally, where Greece considers the limit of its continental shelf to be according to international law, namely the median line between the islands and the Turkish mainland. She has requested Turkey to abstain from infringement of that limit for the purpose of exploration and research, but nonetheless *Sismik I* has repeatedly crossed that line. The Turkish Government does not contest the fact that the limit has been crossed by *Sismik I* but it maintains that, because there has been no delimitation, *Sismik I* has the right to do so. It is in this context that a conflict has arisen which Greece asks the Court to settle in law. Meanwhile it is of the utmost importance that this conflict be not exacerbated by one or other party and that is precisely the object sought by the request for interim measures.

The track plan indicates that *Sismik I* has moved from the Turkish territorial sea into the area above the continental shelf claimed by Greece and has made a series of parallel or zig-zag movements conducting seismic activity in connection with the areas of the continental shelf of Greece, and this has been done in such a way as to provoke a grave political crisis between the two countries, accompanied by deployments of armed forces and a high level of public emotion.

According to the Notices to Mariners (see pp. 187, 578, *infra*) which the Turkish Navy has issued, *Sismik I* towed a 3,800-metre-long streamer from 20 metres below the surface and air-gun explosions would be made from the vessel at short intervals and continuously. The track plan indicates the points at which the explosions were detected by Greek recording devices. The purpose of explosions of this type is to send waves through the seabed so as to reveal the geophysical structure beneath it. Announcements indicate that the intention is to continue that activity both inside and outside the area which is in dispute. Inside that area seismic testing was conducted between 6 and 14 August in the area between Limnos and Lesvos and between 20 and 22 August in the area between Chios and Ikaria.

The sailing of *Sismik I* cannot be seen as an isolated scientific expedition. It is the climax of a set of acts : the grant of exploration permits for seabed areas largely overlapping the Greek continental shelf ; the systematic official contestation of the continental shelf of the Greek Islands ; and the unilateral

[1] Not reproduced.

definition by Turkey of an air zone in the Aegean largely coinciding with the exploration areas.

In the sober atmosphere of the Court it may indeed seem surprising that a threat of war could arise out of the seismic activities of a single vessel. But the Court will not be unaware of the background to the whole affair. During the Cyprus crisis the Turkish air force made a strike upon a destroyer which was believed to be Greek and which was in the area of Cyprus. There was no state of war between Greece and Turkey to warrant this. The destroyer was sunk with heavy loss of life. The fact that it happened to be Turkish, tragic for the Turkish families affected by this mistake, has done nothing to allay Greek disquiet at the implications of Turkish intentions.

The disquiet is only increased by the fact that Turkey at that time used legal arguments to support her actions in respect to Cyprus. Turkey invoked the Treaty of Guarantee of 1960. This, of course, guaranteed the existence of an independent Cyprus and its Constitution. It permitted unilateral action only to re-establish the basic features of the State in the event of these being upset. Two years later Turkey occupies 40 per cent. of the island. The Cyprus crisis has given new consistency to latent apprehensions with regard to the true intentions of the Turkish Government.

In the Note of Turkey of 15 March 1976, which is in Annex V (see p. 44, *supra*), there is a statement about the dispute concerning the continental shelf upsetting the delicate balance of the Treaty of Lausanne. This is a totally misleading statement. The Treaty of Lausanne confirmed the cession to Greece of the islands, other than the Dodecanese of course. The Turkish reference to the Treaty of Lausanne seems to have certain implications for the broadening of the dispute.

The Treaty of Lausanne, like the Treaty of Paris of 1947, may, however, have some bearing on Greece's title to the continental shelf. This is because the fundamental doctrine of the continental shelf – that it is *ipso facto* and *ab initio* attributed to the adjacent coastal State – yields the conclusion for the law of State succession that continental shelf rights were transferred to Italy by Turkey and then from Italy to Greece, along with territorial sea rights, in the respective treaties. The elaboration of this matter is, of course, one for the merits.

At this stage I merely draw attention to the fact that in Article 12 of the Treaty of Lausanne Turkey renounced "à tous droits et titres, de quelque nature que ce soit" in respect of the ceded territories.

The case which we now present concerns the areas of continental shelf in the Aegean Sea which belong respectively to Greece and Turkey. I stress at the outset that it concerns areas. If I used the expression "boundary" or "delimitation" I would distract attention from what is the central principle at issue, namely the allocation of the seabed. Delimitation is a subordinate question, dependent upon the ascertainment that there are two areas to be divided or to have a boundary between them. To speak of delimitation alone would be to confuse the major and minor questions.

What Turkey seems to be saying is that in the eastern half of the Aegean Sea Greece has no "area of" continental shelf whatever. That is a proposition at once so extreme and politically insensitive so as to invite immediate dissent, yet that, simply put, appears to be it. So the question is not, in Turkish eyes, one of delimitation at all, but one of outright denial of any entitlement. The delimitation that Turkey would seem to envisage would be one which would occur only after Greece conceded that the only area of continental shelf appertaining to Greece is that in the western half of the Aegean Sea. The

Turkish delegation has put it cryptically, almost epigrammatically, in their negotiations with Greece. They have said that the Greek islands are mere "protuberances" of the Turkish continental shelf.

The problem arises because the Aegean Sea is studded with islands. They are continuous stepping stones. The War of Independence of Greece resulted in the creation of the modern Greek State, which at that time included the islands in the western half of the Aegean Sea, such as the Cyclades. The islands in the eastern half, as well as Crete, remained Turkish.

The Dodecanese Islands were occupied by Italy in 1912 during the Turkish-Italian War, and they were ceded to Italy in the Treaty of Lausanne. They remained Italian until ceded by Italy to Greece in the Peace Treaty of 1947.

The Treaty of Lausanne confirmed also the cession of the other Greek islands to Greece which had been effected at the end of the Balkan Wars of 1913. If Members of the Court would again be good enough to look at the map, they will see that the islands which became Greek at that time are those in the eastern half of the Aegean from Patmos northwards. Two islands were left in Turkish hands, Imbros and Tenedos. Apart from these, all land formations west of the Anatolian mainland were, by 1947, under Greek sovereignty, which was recognized and guaranteed by treaties to which the Powers are also parties.

If one sails between these islands, or stands upon them to regard the others, one is struck by their proximity. Khios as seen from Lesbos looms large and close, and to this extent a wrong impression is apt to be created by large scale maps. This proximity has, for the island Greeks, an obvious psychological significance. But here we are not dealing with impressions but with law. I mention the matter because the Turkish Government has in the negotiations been impressionistic, at times at the expense of logic.

To say that these islands are mere protuberances of the Turkish continental shelf is a tendentious statement. It embodies a conclusion under the guise of a fact. When we consider what is a continental shelf in the physical sense we are concerned with a mere fact, which is verifiable as a result of investigation. But when we consider what is a continental shelf in terms of the exercise of political authority we are in a realm of legal speculation. The attempt which has been made by Turkey to run the two enquiries together and make them into the same thing is erroneous and inadmissible.

I hope to be able to maintain clearly in the Court's mind this basic distinction between physical fact and legal extrapolation. Let me begin by outlining what we say about the physical facts. We say that there is a continuous continental shelf in the sense of a continuous geophysical structure between the Greek peninsula and the mainland of Asia Minor. That continuity is not affected by the fact that the bathymetry would indicate more than a shelving in the ordinary sense. The seabed is, indeed, broken by what, for want of a better description I shall call crevasses, but there is no natural break in the geophysical structure which could be regarded as creating two continental margins, one of Europe and one of Asia Minor. Even if there were, we would say that this made no difference. What we do say about the facts is that the Aegean is a depressed saucer, the mountain tops of which are the islands.

Of course, in that sense, the islands are protuberances of the seabed. But that is not what Turkey says : Turkey says they are protuberances of her legal area, which is manifestly to beg the question which we have not even begun to embark upon when we say that as a matter of fact the islands are elevations of a continuous submerged land mass.

At the merits stage of the case we shall call eminent expert evidence to elaborate more technically upon these geological facts, so I shall, with the Court's indulgence, leave it there and go on with the question of law which arises from an association of two facts of quite different order, one fact being the location of the islands on this submerged land mass, the other being the fact of the political character of the islands as part of Greece.

When the Turkish Government says that the islands are protuberances of the Turkish continental shelf, they cannot possibly mean that they are this merely because they emerge from the seabed and not vice versa. If they did mean this, and merely this, they would be denying that an island which is not also a continent, such as Australia or Madagascar, could ever have a continental shelf. The Caribbean islands could not ; Mauritius could not ; Fiji could not. That would be a manifest absurdity which I am confident the Court would not for a moment countenance. Clearly then Turkey means something else and, under the pretence of revealing mere geophysical facts, Turkey is introducing political factors as qualifications and then trying to make these the intrinsic link between the geophysics and the law. To be fair to the Turkish Government, it has not specified the political factors, so we can only speculate as to what they might be. What, then, could they be ?

Well, one factor which would distinguish the Aegean islands from, say, Trinidad and Tobago, which are geographical analogies which cannot escape one's attention, would be the political fact that Trinidad and Tobago constitute a State in themselves. On that basis alone, then, Turkey might admit what seems to be obvious to all the world, that Trinidad and Tobago have a legal continental shelf, although these islands could be described as mere protuberances of the South American continental margin which they undoubtedly are, unlike for example, the Windward Islands. But that conclusion that Trinidad and Tobago had a continental shelf in the legal sense, would obviously involve a departure from the simple equation of law and geophysics which it purports to be.

On the same basis, presumably the United Kingdom and Ireland, which are mere protuberances of the continent of Western Europe, are entitled to seabed rights. Is it a question of scale or of political identity that would yield that conclusion ?

But what is the case when the islands are separated both geophysically and as political dependencies from the metropolis, and are protuberances of the continental shelf of another continent, such as St. Pierre and Miquelon ? Well, we do not have to enter into that distinction because ours is a case where we say the islands are both upon a seabed that is geophysically continuous with the land mass and are part of the metropolitan territory politically. If they are not to have seabed areas attributed to them in these circumstances, which islands would have ? Could the islands of Denmark, which are part of the metropolitan territory which includes a part of continental Europe ? Ah, it might be said, but the capital of Denmark is on an island. Well, what if the capital of Greece happened to be Mytilene, would that make all that much legal difference ? And what of the Aaland Islands ? They are protuberances of the seabed between Sweden and Finland, although, bathymetrically, perhaps, less obviously linked with Sweden. Do they have no seabed entitlement ?

What of the Shetland and Orkney Islands, or the Faroes ? Are they not mere protuberances ? Are they not island parts of a metropolis ? They are closer to other national than to foreign territory which certainly distinguishes them from the Greek islands, but is that the distinguishing factor ?

I mention these cases, not because I expect the Court to consider them, but

only to demonstrate the implausibility of the proposition that islands do not have adjacent seabed areas unless it can be said in a geological sense – as it can be said of Australia – that the seabed is the natural prolongation of the land mass and not vice versa.

In their negotiations with the Greek Government, the Turkish Government has sought to draw inferences from what this Court said in the *North Sea Continental Shelf* case about "natural prolongation" and these inferences we submit are erroneous. "Natural prolongation" played an important role in the Court's Judgment in that case, and is unquestionably a valid concept. But it was used in the case in a very restricted context, namely to indicate the general scope and direction of the area of the seabed to which a concave coastline was entitled in relation to the situation of adjacent States. And, as the Court pointed out in paragraph 44, even then the concept of "natural prolongation" was interpreted by the parties in the case in quite different ways.

Subsequent speculation about the implications of the Court's Judgment have, however, carried the notion of natural prolongation beyond what was in issue in the *North Sea Continental Shelf* case.

One important and central implication which has been drawn, and which, we submit, correctly so, relates to the distance over which the sovereign rights of coastal States might extend. In the case of a continent which fronts upon an ocean, "natural prolongation" would have the conceptual effect of indicating, as the terminus of coastal State rights, the full extent of the continental margin. To this extent, "natural prolongation" resolves the ambiguity in what is called the "exploitability criterion" in Article 1 of the Geneva Convention, and it has virtually eliminated the bathymetric device for determining the extent of the continental shelf, which was the 200-metre isobath.

Natural prolongation has also played a role in the determination of the respective areas of the seabed to be attributed to opposite States, as well as to adjacent States, namely the point where the respective natural prolongations meet and overlap.

But to say that "natural prolongation" can be used to deny that the sovereign of land areas has any entitlement whatever to the areas of the seabed, merely because the land areas rise from the seabed rather than the seabed extending from them, is obviously a complete misinterpretation of the Court's doctrine which can only be productive of mischievous consequences. And this is so even when the island areas in question arise from the seabed which, in a geological sense, is the extension of a continent under another political sovereignty.

We in fact do not concede that this is the case in the Aegean, that this is a case of islands arising from the seabed of a continent which is under another sovereign. It is just as misleading to say that the seabed of the Aegean is the natural prolongation of Anatolia as to say it is the natural prolongation of Greece. It is the natural prolongation, if one wants to put it that way, of them both, because there is a geophysically continuous structure linking the land masses. The problem is one of determining the areas to which Greece and Turkey are respectively entitled, whereas Turkey appears to be saying that there is no problem at all because Greece has no areas to which it is entitled in the eastern Aegean.

The truth about the matter geologically, of course, is that it is a misnomer to speak of the seabed of the Aegean as continental shelf at all, just as it is a misnomer to speak of the Baltic or the Persian Gulf as continental shelves. Members of the Court will recall that this problem of nomenclature was

almost the first to bother the International Law Commission in 1950. If legal rights were to be limited to seabeds which were continental shelves in the strictly geographical sense, then only those countries which fronted upon the oceans could have seabed entitlements. That would have been an absurd conclusion, because in fact oil was being abstracted from submerged areas that were not within the continental margin at all, such as the Persian Gulf. So the concept of the continental shelf was deliberately broadened in order to encompass places which the geographers would not have described as continental shelves.

It is for this reason that the concept of "natural prolongation", so valid and useful in some contexts, may have no relevance to the particular question in this case, because we are not dealing here with the margin of a continent at all but with a submerged basin like the Adriatic or the Black Sea. If Members of the Court care to consult their maps they will see that the declivity which could be said to be the terminus of Europe is south of Crete and natural prolongation really has relevance to that feature but that is not the matter in issue.

The Court adjourned from 11.15 to 11.40 a.m.

I have begun by dissecting, in a preliminary way, the false projection of the concept of "natural prolongation" which the Turkish Government has relied upon in its negotiations with Greece, and I submit that I have shown that it is, to put it at the least, questionable. This being so, it is, I submit, clear that there is a dispute between Greece and Turkey on the most basic question of all, namely, whether Greek territory has any seabed entitlement whatsoever. At the stage of preliminary measures it is not necessary for me to nail once and for all the fallacy in the Turkish misuse of the concept of "natural prolongation".

So I now turn to the positive element in our case. Article 1 of the Geneva Convention on the Continental Shelf states that the term is used to refer to the seabed and subsoil of submarine areas adjacent to the coast but outside the area of the territorial sea and "to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands". There is, of course, no definition of "islands" in the Convention but we say that there is an implied reference to the definition of "island" in the Convention on the Territorial Sea and Contiguous Zone, which is a naturally formed area of land, dry at all tides. We say, too, that this is a definition in customary law so that we do not have to rely upon the contention that Article 1 is expressive of customary law. But we still say that it is expressive of it.

In the *North Sea Continental Shelf* case (*I.C.J. Reports 1969*, p. 1), the Court referred three times to the customary law character of the basic concepts of the continental shelf as they are enshrined in the first three articles of the Convention. In paragraph 22 it referred to the most fundamental rule of all, the rule of law relating to the continental shelf, namely, natural prolongation, as "enshrined in Article 2 ; though quite independent of it". Both Greece and Turkey agree with that, although we say that Turkey is seeking to turn the inference inside out when it comes to islands. Then in paragraph 63, the Court said of the first three articles that these were the ones "which, it is clear, were then regarded as reflecting, or as crystallizing, received or at least emergent rules of customary international law relative to the continental shelf". And in paragraph 100 it said that the régime of the continental shelf "furnishes an

example of a legal theory derived from a particular source that has secured a general following".

Of course it is easy to point out that these three passages have not necessarily endorsed all aspects of the first three articles as customary law, including the matter of islands, or to quibble over the expression "at least emergent rules of customary international law". But prima facie these statements of the Court, I submit, cover the Greek contention that islands do have continental shelves, and that nothing has been shown which could make an exception of the Greek islands to this general rule. Judge Padilla Nervo had no doubt about it. On page 96 he said that "The first three articles of the Convention were intended to be broadly declaratory of existing customary international law . . .". Judge Tanaka on page 173 described the Convention "as a kind of law-making treaty" and added at page 179 that Articles 1 to 3, "constitute the fundamental concept of the continental shelf".

If our contention is correct that every island has its entitlement to a portion of the seabed, then there is a clear presumption that the islands of the Aegean benefit from this rule. This being so, the question left would be the subordinate one of delimitation or boundary fixing. That should be the issue in this case. It is not, because Turkey denies the major premise altogether, and makes a dispute out of the fundamental question whether islands have seabed areas appertaining to them.

Had Turkey in her negotiations with Greece been less ambitious in her legal propositions we might have had something more concrete to dispute about. But Turkey has not said that the existence of the islands is a special circumstance as envisaged in Article 6 of the Convention. She has probably avoided that contention because Article 6, consistently with the doctrine in the *North Sea Continental Shelf* case, would not apply as such ; and because "special circumstances" in that Article is clearly a legislative interpolation without support in customary law. So we say that even if Turkey did attempt to make a case based upon special circumstances, this would not be a case of special circumstances.

But the dispute is not about such details. There is no argument about special circumstances. The case is about the broadest of all possible propositions – have the islands seabed entitlements beyond the territorial sea or not ? The Turkish Government says that they have not because they emerge from the seabed and not vice versa. We say the opposite because, even though they may emerge from the seabed, the legal criterion is the exercise of political authority over the land to which the seabed is adjacent.

That is what the dispute is about. It could not be a more simple issue to state, although it may not be so simple to resolve. Once that fundamental issue is decided in favour of the islands having an entitlement to areas of seabed, then will arise the subordinate question of delimitation. We do not know what the Turkish attitude will be to that subordinate question because they have steadfastly resisted being persuaded from their one and only contention that the islands are to be altogether discounted for seabed purposes.

At this stage we are obliged only to make out a prima facie case, and I submit that I have done so with respect to the main issue in dispute. Indeed, I would only need, I submit, to adduce Article 1 of the Geneva Convention and indicate the islands to which we say that applies to have made out such a case. If Turkey did not object to that proposition, it would be a case valid and accepted by all the world. Turkey does take issue with it, but that is not to displace what is prima facie authentic about our case. So I propose to leave that aspect until the hearing on the merits.

But before I depart from it altogether, I feel that I should emphasize what is central to the legal conception as distinct from the geophysical conception of the continental shelf, and that is the exercise of political authority. This Court, in the *North Sea Continental Shelf* case, made the point in several passages, and thereby gave the notion of "natural prolongation" a specifically legal as distinct from a geophysical character. It said that the coastal State exercises sovereign rights over the seabed by virtue of two things, which it called twin factors. One of these was the natural prolongation but the other was "sovereignty over the land". The continental shelf is "a prolongation or continuation of the land territory or domain, or land sovereignty of the coastal State". Here territory and political authority march hand in hand, the one an aspect of the other. You cannot have one without the other. The basic idea, the Court said, is of something already possessed. And possession, of course, is a political not a geophysical notion.

So it is the fact that sovereignty is exercised upon the dry land to which the seabed is adjacent that is the critical factor. The sovereignty of Greece pervades the islands. The seabed in dispute is geophysically linked with them and nearer to them than it is to the areas of land which are under Turkish sovereignty. Surely that is the central criterion. But the Court's understanding of the matter is further evidenced, I submit, by what it said about the territorial sea. It referred to the attribution of the seabed to the land mass by virtue of the outflow of sovereignty from the land into the territorial sea. The quality of the coastal State's rights may differ when this emanation of political authority goes beyond the limits of the territorial sea into the seabed, so as to become "sovereign rights" rather than sovereignty, but that is a matter of degree rather than of intrinsic entitlement. If the coastal State is entitled to territorial waters it is entitled, upon the same principles, to continental shelf, where a continental shelf exists.

That, apparently, is what Turkey aims to deny. Why does not Turkey deny that Greece is entitled to territorial sea rights because the islands are protuberances of Turkish soil ? No, international law attributed the territorial sea to them and Turkey admits this in agreeing upon a common territorial sea frontier around the Dodecanese. Why then should not international law authorize the further emanation of political power that reposes in the continental shelf doctrine ? We are not told. We have never been told. But it does not matter for immediate purposes of this case because I submit that we have made out a prima facie case.

At issue in this case is the basic question whether the doctrine of natural prolongation achieves an exact equation between legal and geological premises or not. I have given reasons why we say this cannot be so for all purposes and for all aspects, among them the fact that the legal régime applies in areas which are not continental margins in the geophysical sense. I now conclude the point by drawing attention to what the Court said in the *North Sea Continental Shelf* case at paragraph 94. It said :

> "In balancing the factors in question it would appear that various aspects must be taken into account. Some are related to the geological, others to the geographical aspect of the situation, others again to the idea of the unity of any deposits."

That, I submit, indicates a certain flexibility in the articulation of the link between law and geophysics. But then the Court goes on to emphasize the basic reasons why one must start with the notion of political authority over

the land in order to reach out for political authority over the seabed. It is said at paragraph 96 :

> "The doctrine of the continental shelf is . . . encroachment on maritime expanses . . . the principle is applied that the land dominates the sea . . . the land is the legal source of the power which a State may exercise over territorial extensions to seaward . . ."

When Turkey tries to distinguish between the territorial sea and the continental shelf – conceding the former but not the latter to the Greek islands – she drives a wedge into what in the Court's view is an integrated expanse of political authority. The Court said in paragraph 96 that "the contiguous zone and the continental shelf are in this respect concepts of the same kind". Does Turkey deny Greece a contiguous zone as well ? But how could Turkey do this when at paragraph 43 the Court said, as part of its statement of the fundamental principles, that the continental shelf is a prolongation "via the bed of its territorial sea" ? If the territorial sea is validly claimed, so must the contiguous zone be. But if this is the case, why not the continental shelf too ?

There remains one more point about the issues in dispute. The Greek case is that this is a matter of opposite States. To that extent it is different from the *North Sea Continental Shelf* case which was a matter of adjacent States. In the case of opposite States the areas of apportionment to which each are entitled is indicated by the respective areas of natural prolongation. The subsidiary process of delimitation follows upon the determination of the portions to be delimited, and is a matter then of details. Turkey, by denying that there is anything to apportion at all, seeks to alter the whole question – making delimitation relate to the median line between mainland Greece and Anatolia. If, as we contend, that is fallacious, then the respective opposite coasts are those of the Greek islands and Anatolia.

In the *North Sea Continental Shelf* case the Court said at paragraph 57 :

> "The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line ; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved."

The distinction between the cases of opposite and adjacent States is then pursued in the following paragraph.

I shall now make submissions as to the legal requirements for the ordering of interim measures by the Court, leaving further consideration of the substance of the dispute to the stage of the merits.

With respect to interim measures there is a general position in international law and a special position under Article 41 of the Court's Statute and Article 33 of the General Act. I begin with the general position because the Court will no doubt have this in mind when it interprets the specific powers under these two Articles. The importance of this general position is that, if the existence in customary international law of an inherent power in international tribunals to indicate interim measures were overlooked, and the purpose for which such an inherent power exists were neglected, there might be established more stringent limitations as to the occasions and circumstances wherein such measures could be ordered than international law warrants. This is the

thought behind the statement of Judge Hudson in his work *International Tribunals Past and Future* in 1944. He said :

> "While a proceeding is pending before an international tribunal, good faith would seem to require that neither of the parties should attempt to alter the situation existing in such a way as to add to the difficulties of the tribunal." (P. 96).

In support of this statement he quoted from a passage of the Judgment of the Permanent Court in the *Electricity Company of Sofia and Bulgaria* case :

> "The parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute". (*P.C.I.J., Series A/B, No. 79*, p. 199.)

Mr. President, I pause here to emphasize this statement of the Court in the *Electricity Company of Sofia and Bulgaria* case because it is the decision upon which we take our stand. When it is analysed it yields the following propositions : Firstly, there is a *general* consideration underlying the right to order interim measures, namely, not allow any step to be taken which might aggravate or extend the dispute. Secondly, such step is a step "of any kind". In other words, all actions of the parties which might aggravate or extend the dispute fall under the jurisdiction of the Court. Thirdly, this general power to order interim measures to avoid aggravation or extension of the dispute is separable from and not merely another way of phrasing the idea that interim measures are intended to avoid prejudice in regard to the execution of the decision later to be given.

My submission is that there are here two broad and separate grounds for the Court's authority to order interim measures. One ground is that actions should not be taken which would prejudice the execution of the decision, and the other ground is that actions should not be taken which might aggravate or extend the dispute. These are clearly independent grounds for the Court's intervention, but they are also, of course, linked inasmuch as aggravation or extension of the dispute may of itself make it more difficult for various reasons to carry a decision of the Court into effect. So in a sense the word "prejudice" covers both of these independent grounds and is not used in the very technical sense of it being impossible to execute the judgment because, for example, the product which is the subject of the dispute may have been consumed in the meanwhile or, as in the *Nuclear Tests* cases, harm may have been caused to people and territory in the meanwhile.

This is clearly what Judge Hudson had in mind when he referred to the provisions empowering tribunals to take interim measures for the protection of the parties as reinforcing this principle. The principle itself has been enunciated by the Third Chamber of the Arbitral Commission on Property Rights and Interests in Germany. It said : "We have no doubt of our inherent power to issue such orders as may be necessary to conserve the respective rights of the parties." (*ILR*, 1958-I, Vol. 25, at p. 523.)

Now in the present case we contend that there are two separate and independent grounds for an award of interim measures, although they are obviously linked by the embracing notion of prejudice inasmuch as the whole process of judicial settlement in the case is likely to be undermined if the political situation should gravely deteriorate. These two grounds are :

(a) First, the specific ground is that Greece's rights would be prejudiced if the Turkish Government were free, pending the Court's judgment, to continue with its seismic activities, the subject-matter of our complaint. Supposing that the Court upholds Greece's contention that she has exclusive rights over the seabed which is in dispute, then her exclusivity is prejudiced by Turkey's acquisition of knowledge about the geophysics of the area. I shall elaborate upon this a little later ; I mention it here in broad terms.

(b) The second is the general ground and this is that continued seismic activity on Turkey's part in the disputed area threatens international peace and security. In that sense there would be aggravation or extension of the dispute. The gravity of this should not be underestimated. My learned friend Professor Pinto will address the Court on the facts relating to this situation. I shall confine myself to pointing out the link between the Court's doctrine in the *Electricity Company of Sofia and Bulgaria* case and the Court's role within the United Nations system respecting peaceful settlement. If there is an independent source of the Court's competence to order interim measures in order to prevent aggravation or extension of a dispute, there is also a specific source for it in the tenor, purposes and principles of the United Nations Charter, which can be used to amplify the sparse wording of Article 41 of the Court's Statute.

So I now turn to Article 41 specifically. First, it should be noted that that is the same as Article 41 of the Statute of the Permanent Court. Therefore the statement of the Court in the *Electricity Company of Sofia and Bulgaria* case is not a peculiarity of the doctrine of the old Court.

Secondly, Article 41, while it speaks in terms of a power conferred upon the Court, must clearly be construed in the light of the inherency of the authority to order interim measures, as a power coupled with a duty, that is a duty to exercise a judicial discretion to prevent either of the two types of injury or deterioration to which I have referred. It is not in any sense an uncontrolled discretion. Where the circumstances exist which warrant interim measures, I submit that the Court has a duty to indicate those provisional measures which the Court thinks are appropriate to preserve the rights of a party likely to be prejudiced. That is the significance which, I submit, is attachable to the word "may" in Article 41.

I now turn to Article 33 of the General Act for the Pacific Settlement of International Disputes. This is remarkable inasmuch as it uses the expression "aggravate or extend the dispute". The Article is divided into three paragraphs. The second deals with proceedings of conciliation and is irrelevant. The first reads as follows :

> "1. In all cases where a dispute forms the object of arbitration or judicial proceedings, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. The parties to the dispute shall be bound to accept such measures."

The third paragraph reads :

> "The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or

upon the arrangements proposed by the Conciliation Commission and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute."

The Court will be instantly struck by the fact that the language used in the *Electricity Company of Sofia and Bulgaria* case is identical with that which is used in Article 33. This is not surprising, of course, because the General Act was the keystone of the system of peaceful settlement and the judges were conscious of it. But the fact that the Court absorbed into its own jurisdiction the concept as well as the actual wording is indicative of some fundamental things.

First, it is indicative of the fact that Article 41 rests upon a broad customary law base and is not a mere legislative text to be narrowly construed. It absorbs the generalities which other treaties within the system of peaceful settlement express.

Secondly, it is indicative of the Court's recognition that its function is primarily to conserve that system of peaceful settlement.

Thirdly, it is indicative of the distinction between two things : prejudice as to the execution of the decision, and aggravation and extension of the dispute. There can be no doubt that the intention behind Article 33 was to require the parties to abstain from any sort of action whatsoever which might aggravate or extend the dispute, whether that action would prejudice, in a narrow technical sense, the execution of the decision or not. That must be so because the General Act is concerned with peaceful settlement and aims at preventing the deterioration politically of a situation.

But that being so, it is clear that the Court's borrowing of this text is indicative of the Court's intention to cover that type of situation also in the exercise of its powers under Article 41.

As to the differences between Article 41 and Article 33, they are :

Article 33 deals expressly with a situation where the question on which the parties differ arises out of acts already committed or on the point of being committed, whereas Article 41 is more general and describes a power to indicate provisional measures to preserve the respective rights of either party if it considers the circumstances so require. In the present case there is no particular significance in this difference, since the question does arise out of acts done and to be done as well as the general circumstances.

But Article 33 is particularly significant in that it uses mandatory language rather than the discretionary language in Article 41 – "shall", not "may".

Finally, Article 33 contains an obligation upon the parties to abstain from the action mentioned therein, whereas Article 41 is a matter of the Court's own power.

Now you, Mr. President and Members of the Court, will remember that in the *Nuclear Tests* cases both Article 33 and Article 41 figured in the request addressed to the Court, and in the addresses of counsel, and it will be recalled that Judge Sir Humphrey Waldock asked if the Applicants formulated their requests on alternative bases, that is, either on Article 33 or on Article 41, or on those two Articles in combination. He also asked if the Applicants contended that the Court was competent to indicate interim measures of protection on the basis of Article 33 of the General Act without having first decided whether or not the General Act is still in force.

To that question the Government of Australia replied that it based its request for interim measures first and foremost on Article 41 because this was the instrument the force and effect of which was not in doubt. Subsidiarily,

and only if the Court should find that the General Act was still in force, did Australia also rest its request for provisional measures on Article 33. Also, that the Court would be entitled to indicate interim measures of protection on the basis of Article 33 if the Court were satisfied that it was not manifestly without jurisdiction under that Act. But, in view of the dire urgency of the matter, it was wished that there would be no delay in granting interim measures by reason of the fact that the Court might find it necessary to go beyond what was needed to justify the indications of interim measures under Article 41.

The Court, in its Order of 22 June 1973, adverted to this reply, and then went on in paragraph 19 of page 103 to say :

> "Whereas the Court is not in a position to reach a final conclusion on this point [that is Article 33] at the present stage of the proceedings, and will therefore examine the request for the indication of interim measures only in the context of Article 41 of the Statute."

The question now arises of the submission that Greece makes with respect to Article 33. Because of the urgency of the case for interim measures, Greece cannot take any other position than to say that if the question of interim measures had to await a final decision on the General Act then Greece would not wish that delay to occur.

But Greece submits that the question of indicating interim measures under Article 33 needs to be reopened and, to that extent, Greece relies upon it.

The grounds for this are as follows : first, in the *Nuclear Tests* cases there was, at the stage of interim measures, a wider spectrum of doubt as to whether the General Act was in force than there could possibly be today. This is because the Court went on in the *Nuclear Tests* cases to a hearing on the jurisdiction. The result of that hearing will be recalled. The majority of the Court held that supervening events had terminated the dispute, and so it was unnecessary to give judgment. But the minority which dissented on that point did go ahead to write opinions on the question of jurisdiction, and so we have six judges holding the General Act to be in force in terms so definite and with arguments so plausible that the whole status of the General Act has been transformed since the first hearing in the *Nuclear Tests* cases. Whereas at that time the Court found that prima facie the General Act was in force, now we have a very strong judicial opinion that indeed it is in force, which, if not exactly a finding, must rank as the most cogent statement of judicial opinion short of an actual majority judgment in the Court's history. The status of the General Act, I submit, has been raised from the level of the prima facie to the level of the presumptive.

This being so, surely Greece is entitled to the benefit of Article 33, for if she is to be denied this, then she is to be denied the benefit of participation in a treaty which is presumptively in force, I submit, and which this Court, we submit, should hold to be in force.

Let me put it this way : suppose the Court were to say to us, you cannot rely on Article 33 to bind both parties until we have decided that the General Act is in force between you because that would be to apply the treaty when we may, theoretically, decide that it is not applicable. But this is an argument that can be turned the other way around. If Greece has rights under Article 33 and is not to benefit from them until the last doubt about the General Act is removed by a judgment, and that judgment, as seems likely, is that the treaty is in force, then Greece has been denied the benefits of these rights, perhaps to her great detriment.

Surely this avoidance of detriment is the very purpose of Article 33. Surely the general principles of law about presumptions must operate so as to avoid so unfortunate a consequence. I think that the point is unprecedented, so I must seek to reinforce it by oblique means.

On the specific subject of treaties, I submit that the notion of presumptive effect runs throughout the Vienna Convention on the Law of Treaties. Article 42, dealing with the impeachment of treaties, reflects it. The whole thrust of Part V is in favour of the applicability of treaties which were ostensibly in force. I draw attention specifically to Article 18. This says that a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty but the treaty is not yet binding upon it. Surely the converse must be *a fortiori*. There must be an obligation to refrain from acts which would defeat the object and purpose of a treaty when the treaty is ostensibly in force but is subject to a challenge. This converse of Article 18 is essentially what Article 33 aims at – namely, the prevention of acts which would defeat the object and purpose of the General Act.

This, so far, has been an argument that the Court should, because Article 33 is presumptively in force, utilize that Article. But if the Court is unprepared to accept the logic of this, there is another associated argument I would wish to make as to the relevance of Article 33.

This is that the Court's inherent power to indicate interim measures, which gives it an alternative source of power to Article 41, would seem to authorize the Court to make an order equivalent in context to an order under Article 33, even if that Article is not treated as the source of that power. Furthermore, if the source of the Court's power is an inherency derived from the general principles of law and customary international law, the Court, while relying upon Article 41, could pick up the content of an undertaking which is presumptively in force, namely Article 33, and enunciate its indication of provisional measures in those terms, because the presumptivity would be a product of the general principles of law.

I have dealt with the authentic sources of the Court's power with respect to interim measures in this case. I now turn to the conditions for the making of an order of interim measures. Of course, if Article 33 is to be applied, then the Court has no discretion about the matter once the conditions are fulfilled. If the Court decides to rely upon Article 41 only, then the conditions must be such as to require an exercise of judicial discretion in the indication of interim measures. The conditions are the same. The question is whether they must be more stringent in the case of Article 41 than in the case of Article 33.

It may be useful at the outset to review the cases in which requests for interim measures were accepted by the Court and its predecessor. There are 11 instances altogether. An order for interim measures was made in 5 of these cases and rejected in 6 of them. But it is significant that in each of the 6 there were special reasons for refusal which had no bearing upon the facts in the present case.

In the *Factory at Chorzów* case *(P.C.I.J., Series A, No. 12)*, Germany sought an interim payment and the Court said that this was tantamount to seeking an interim judgment : the question of damages was one for the merits. In the *Legal Status of the South-Eastern Territory of Greenland* case (*P.C.I.J., Series A/B, No. 48*, at p. 284), the Court said that the incidents complained of could not affect the existence or value of the sovereign rights claimed by Norway over the territory. In the *Prince von Pless Administration* case *(P.C.I.J., Series A/B, No. 54)*, interim measures were inappropriate because of undertakings which had been given. In the *Polish Agrarian Reform and German Minority*

case *(P.C.I.J., Series A/B, No. 58)*, it was said that interim measures would result in a general suspension of the programme of agrarian reform. That referred to future rather than past expropriations and hence went beyond the rights claimed and so did not fall under Article 41, and would not therefore be regarded as solely designed to protect the subject-matter of the dispute ; in the *Interhandel* case (*I.C.J. Reports 1957*, p. 105), interim measures were inappropriate because the United States said that it intended no action that would prejudice the situation ; and in the case concerning the *Trial of Pakistani Prisoners of War* (*I.C.J. Reports 1973*, p. 238), the element of urgency was removed because the Applicant had requested a postponement.

Of these cases, only the first two, the *Factory at Chorzów* case and the *Legal Status of the South-Eastern Territory of Greenland* case would seem to call for comment at all. In the first of them, the Court at page 284 expressly avoided deciding whether measures of protection would be granted for the "sole purpose of preventing regrettable events and unfortunate incidents". In the present case the prevention of regrettable events and unfortunate incidents is one aim we have in requesting interim measures, but it is not the sole one. But even if it were the sole one, the fact that the Court deliberately left the question open is indicative of the fact that Article 41 does not obviously preclude the making of an order in that situation.

The second of these cases, the *Legal Status of the South-Eastern Territory of Greenland* case, might at first glance appear to have affinities with the present case, since it was a territorial dispute and interim measures were sought – although, unlike this case, sought solely for the purpose of avoiding regrettable incidents. But a threat to the peace, as clearly exists in the present case, cannot be described in the banal terms of "regrettable incidents". The facts in the *Legal Status of the South-Eastern Territory of Greenland* case are totally different and really trivial. There were a few Norwegian hunters in the area, one of them invested with police powers, and there were a relatively large number of Danes. There was a vague apprehension that Norwegians and Danes might meet and provoke "regrettable incidents". This would have no bearing upon the rights of either Party with respect to the territory and that was not even pleaded. In any event, Denmark contended that Norway had not established that there was a real possibility of such incidents occurring. The Court at page 284 expressly avoided deciding whether Article 41 gave it power to indicate interim measures of protection for the sole purpose of preventing regrettable events and unfortunate incidents.

So, the cases in which interim measures were not indicated are all cases bearing little analogy to the present one. Hence we must concentrate on the five cases in which interim measures were ordered. These are the *Denunciation of the Treaty of 2 November 1865 between China and Belgium* case *(P.C.I.J., Series A, No. 8)*; the *Electricity Company of Sofia and Bulgaria* case *(P.C.I.J., Series A/B, No. 79)*; the *Anglo-Iranian Oil Co.* case (*I.C.J. Reports 1951*, p. 89); the *Fisheries Jurisdiction* case (*I.C.J. Reports 1972*, p. 12) and the *Nuclear Tests* cases (*I.C.J. Reports 1973*, pp. 99 and 135). The first two of these do not call for comment. In the remaining three the Court has developed a doctrine which calls for analysis.

In the *Anglo-Iranian Oil Co.* case the Court said :

> "Whereas the object of interim measures of protection provided for in the Statute is to preserve the respective rights of the Parties pending the decision of the Court, and whereas . . . it follows that the Court must be concerned to preserve by such measures the rights which may be

subsequently adjudged by the Court to belong either to the Applicant or to the Respondent." (*I.C.J. Reports 1951*, p. 93.)

In the *Fisheries Jurisdiction* case, the Court said :

"21. Whereas the right of the Court to indicate provisional measures as provided for in Article 41 of the Statute has as its object to preserve the respective rights of the Parties pending the decision of the Court, and presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute in judicial proceedings and that the Court's judgment should not be anticipated by reason of any initiative regarding the measures which are in issue ;

22. Whereas the immediate implementation by Iceland of its Regulations would, by anticipating the Court's judgment, prejudice the rights claimed by the United Kingdom and affect the possibility of their full restoration in the event of a judgment in its favour." (*I.C.J. Reports 1972*, p. 16.)

And in the *Nuclear Tests* cases the Court repeated the words it had used in the *Fisheries Jurisdiction* case (*I.C.J. Reports 1973*, p. 103, para. 20). Later in paragraph 24, the Court said that :

"Whereas by the terms of Article 41 of the Statute the Court may indicate interim measures of protection only when it considers that circumstances so require in order to preserve the rights of either party."

Lest there be any misinterpretation of this passage, may I point out that the adverb "only", "only when it considers", qualifies the verb "considers" in the temporal clause beginning "when", and does not relate to the phrase "in order to preserve the rights of either party". That is quite clear from the context. So the Court is not saying that it is restricted to cases where the rights of the parties, in the narrow technical sense of the subject-matter of the dispute, are in need of preservation, but the cases where the "circumstances so require".

In the operative part of the Order in the *Nuclear Tests* cases the Court adopted the language of the *Electricity Company of Sofia and Bulgaria* case – "aggravation or extension of the dispute" – as well as the formula "prejudice" to the rights of either Party. That these are alternative injunctions is clear from the word "or" before the word "prejudice". The Court said that the Parties :

"Should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court or prejudice the rights of the other Party in the carrying out of whatever decision the Court may render in the case."

So far as the first of these alternative injunctions is concerned – that of aggravation or extension of the dispute – my learned friend Professor Pinto will establish the grounds for interim measures. I shall confine myself to the second of them – prejudice to the rights of the parties.

Now the key expressions here are obviously "irreparable prejudice", "the Court's Judgment should not be anticipated by reason of any initiative regarding the measures which are at issue", "prejudice the rights claimed by the Applicant and affect the possibility of their full restoration". Those are the three expressions used. In all three cases to which I have referred the Court had before it an allegation that action or contemplated action on the part of the Respondent would make it difficult to give full effect to a judgment in

favour of the Applicant. In the *Anglo-Iranian Oil Co.* case, oil would have been extracted which could not have been replaced, and the plant perhaps affected ; in the *Fisheries Jurisdiction* case fishermen would have been denied a living ; and in the *Nuclear Tests* cases radioactive particles would have fallen on foreign territory and in the sea with possibly deleterious consequences. There was in all three cases a thread of similarity regarding the rights of the Parties in the subject-matter which constituted the "circumstances" required for interim measures.

The word "irreparable" does not, I submit, mean at first glance what it might be supposed to mean. In the *Anglo-Iranian Oil Co.* case the actions to be enjoined could not possibly have been "irreparable" in a literal sense, because they could have been compensated for in monetary terms. In the *Fisheries Jurisdiction* case they could not possibly have been "irreparable" in a literal sense because all that would have been lost would be the fish that were not caught, and the economic consequences of that were remediable in monetary as well as other terms. In the *Nuclear Tests* cases "irreparable" may have been an appropriate expression, but then the facts were extraordinary.

What the Court's doctrine on prejudice comes down to is that the Court will order interim measures when the parties' rights might not be restored in full measure in the event of a judgment if that judgment is anticipated. The Court's objective is to maintain the status quo until the case ends.

In the present case, I have indicated, there are two distinguishable matters in respect of which Greece's rights could be prejudiced. The first is the prejudice to Greece's exclusive rights respecting the continental shelf, and the second is the prejudice to Greece's security and her treaty rights, including Article 33 of the General Act with its undertaking to abstain from all action and Article 33 of the United Nations Charter which requires the settlement of dispute by peaceful means. This prejudice could occur by reason of the potential aggravation and extension of the dispute. I shall deal with these elements then in order.

The first matter is the effect of continued seismic testing on the rights of Greece in the matter of the continental shelf. I shall not, as a mere layman in this matter, address the Court on the technological features of seismic activity. In the Memorial we shall go into the facts concerning seismic testing and the uses to which seismic testing are put. This will show how Greece is in fact prejudiced by this sort of activity.

It might be thought that seismic testing of itself cannot detract from the rights of the coastal State. After all, the minerals are still there, whereas in the *Anglo-Iranian Oil Co.* case a small part of them might have been extracted. All that has happened is the collection of information. But that is precisely the point. What is taken away from Greece is the exclusivity of knowledge about the continental shelf, and that is an irreparable loss.

The doctrine of the continental shelf is not merely one about the exercise, as Article 2 of the Geneva Convention has it, of sovereign rights for the purpose of exploring it and exploiting its natural resources. These rights are said to be exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no-one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State. That, of course, does not say anything about the acquisition and retention of knowledge about the seabed and subsoil, but that is implicit in it.

In the Memorial, we shall show what significance is attachable to exploration activity, but I shall highlight one aspect of it : a nation's sover-

eignty includes the total discretion to formulate a national energy policy. Such a policy can only be formulated on the basis of knowledge as to the availability of resources, extent and location of reserves, the likely economics of extraction, etc. The existence or otherwise of known geological factors is an essential element in this national process.

We all know that oil companies are highly secretive and jealous as to the knowledge they acquire of the fields which they are exploiting, and they have good reason for cherishing their knowledge. These include the suppression of competition and the diversification of programmes. Governments have the same motives as those whom they license to exploit. Their total discretion is impaired if someone else has access to the knowledge without their consent. If a foreign country has that knowledge, whether or not the claimant to the continental shelf has it in fact or not, it is shared knowledge available for economic and political exploitation.

Once the genie of knowledge is out of the oil lamp it cannot be put back.

Let me point to one practical consequence of this : if the Government of Turkey acquires knowledge of the geology of an area which the Court subsequently holds to belong to Greece, and suppose that this knowledge were to be indicative of the unlikelihood of oil being present there, and suppose Turkey published that information or otherwise conveyed it, the bargaining power of the Government of Greece when negotiating with foreign exploration companies to explore the area would obviously be adversely affected. It might have no applicants at all for its licences, whereas otherwise it might have had a queue of them ; or it might be unable to extract high fees, whereas otherwise there might have been so many applicants that Greece might have auctioned the rights.

This is one obvious way in which rights expressed in Article 2 of the Continental Shelf Convention involve exclusivity and why breach of these rights is irreparable prejudice, and does anticipate the Court's judgment, and does make restoration of the full rights impossible. In other words, the conditions for exercise of the Court's powers under Article 41 are fully met by the fact of seismic activity occurring.

At this point I shall deal with the possible argument that there has been no breach of Greece's rights at all, because the activity of the ship *Sismik I* would not be classified as exploration, which is a matter of the sovereign rights of the coastal State, but scientific research, which it might be said was not so. Well, at the outset I repudiate the distinction's relevance for the very reasons I have given, namely the exclusivity of knowledge. It does not matter how one characterizes seismic activity, as exploration or research, the result is the same and that is what counts. Indeed, the distinction is only a play upon words. The coastal State still has exclusivity with respect to knowledge of the geophysics of the area of sovereign rights.

The distinction between exploration and scientific research is very difficult if not impossible to maintain in practice when seismic activity takes place. If I am not mixing my metaphors when discussing the search for oil, the proof of the pudding is only in the eating. Only after investigation has been made and the results have been published is it possible to say whether the action is exploration or scientific research. The distinction between the two only arises because Article 2 of the Geneva Convention refers to exploration and Article 5 says in paragraph 1 that exploration of the continental shelf and exploitation of its resources must not result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication ; and adds in paragraph 8 that the consent of the coastal

State shall be obtained in respect of any research concerning the continental shelf and undertaken there.

Nevertheless the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State should have the right, if it so desires, to participate in or to be represented in the research, and that in any event the results shall be published.

We say that under customary international law full rights are reserved to the coastal State to prohibit any probing into its continental shelf, whether the intention behind that probing is exploration for natural resources or scientific research. This is the position as between Greece and Turkey because Turkey is not a party to the Continental Shelf Convention. Only if Turkey were a party to the Convention could it avail itself of Article 5, but then the conditions prescribed by that Article have not been complied with. Turkey has not sought Greece's consent nor undertaken to publish the results of the investigation. Article 5 is a provision whereby, in a situation clearly covered by all the manifold rights and reciprocal obligations of the treaty, arrangements are arrived at for consent to scientific research. The article presupposes the rights of the coastal State when it thus lays down the conditions for the grant or permission. It presupposes that the researching institution will submit a programme for the scrutiny of the coastal State. If the latter thinks that this amounts to exploration, it clearly has the right to refuse permission. The question would then be whether the permission had been unreasonably withheld and that is the question to be resolved within the framework of the whole treaty relationship. Clearly, the presupposition of the Article – which I remind the Court is concerned with the liberties of other States after the reservation of the rights of coastal States – is that the coastal State has exclusivity with respect to knowledge of the continental shelf, but, when appropriate steps are taken, will allow purely scientific research to proceed under agreed conditions.

Now this faculty of appraisal as to what is going to happen has been taken right out of Greece's hands by the Government of Turkey. Even if Article 5 were expressive of customary law, we would say that Greece's rights have been breached and are in need of restoration. But because the Convention does not bind the parties we reassert the primordial right of the coastal State not only to decide what constitutes exploration or not, but also to conserve its exclusive right to knowledge of the geophysics of the area. It is our contention that the Government of Turkey has no liberty in this matter.

Of course, the Government of Turkey attempts to sidestep this argument by saying that because the question is in dispute whether the area is or is not part of the continental shelf of Greece, Greece has no rights and Turkey has complete liberty. Why, in that case, Turkey bothers to make the distinction between exploration and scientific research is difficult to understand, because the Turkish argument, if valid, would be as relevant to Greece's claimed exclusivity with respect to exploration as to her claimed exclusivity with respect to scientific research.

But the Turkish contention concedes the very point of my submission. It is that there is a dispute as to the area. If either side were to research or explore the area, that would prejudice the outcome of the case for the reasons I have adumbrated. The only logical course is to put the whole matter on ice until the dispute is judicially settled. That means ordering *both* parties to refrain from

any seismic or other relevant activity, whether it is called exploration or scientific research.

The Turkish foreign minister has made it explicitly clear that the purpose of *Sismik I* is to explore and locate resources within and under areas of the Greek continental shelf. Thus, in his statement of 24 July 1976, which will be found in Annex VIII, No. 2, in the Application, he says :

> "According to Mr. Ecevit, the most important thing is to determine the resources of the sea in the areas of the Aegean claimed by Turkey. *Sismik I* will carry out precisely this important mission. It will even be able to carry out its mission not only in the areas of the Aegean where rights are claimed as Mr. Ecevit says, but also in all the areas of the Aegean outside the territorial water of Greece. Seismic research has no other goal and purpose than to determine resources below the sea. And this is what will be done."

In this context, it becomes almost farcical to debate about "scientific research". The foreign minister's statement manifests a clear intention to violate Greek rights and to create by *fait accompli*, Turkish rights in the Greek continental shelf.

What the drafting history of Articles 2 and 5 of the Geneva Convention clearly confirms is the intrinsic exclusivity of the coastal State with respect to this appraisal of activities of a seismic nature. The starting point is the rights of the coastal State as against other States, and not vice versa. This general background understanding is now represented in a consensus at the Third Law of the Sea Conference. The provisions of Article 5 have been dropped in the Revised Single Negotiating Text and draft Article 73 says forthrightly : "The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there." Customary law, I submit, clearly indicates the rights of Greece to object to seismic activity. These rights need protection while the dispute is subject to judicial settlement. Surely it is inadmissible of Turkey to say that there are no rights because there is a dispute. That would make nonsense of Article 41, of Article 33 of the General Act, and of every canon of relevant law.

I would like to add a few words on the technical aspects of seismic exploration. As I understand it, the length of the cable towed behind the ship is indicative of the degree of penetration of the sound waves into the earth's crust. My information is that a cable of the length of 3,800 metres, such as the length of the cable streamed by *Sismik I* according to the Notice of Mariners (see pp. 187, 578, *infra*), is indicative of an intention to send sound waves deeply into the crust of the earth. I am also informed that the question of the depth of penetration is in ratio with the intention to seek the existence of natural resources or merely for scientific research. The deeper the penetration, the more likely it is that the objective is to explore for oil. Explosions are set off which cause echoes to rebound from the various geological interfaces below the surface of the seabed. There is therefore no question but that the activities of *Sismik I* involve a probing into the area which is claimed as the Greek continental shelf.

I now turn to the question of the jurisdiction of the Court. In a request for provisional measures the Court, as is stated in paragraph 13 of the *Nuclear Tests* Order of 22 July 1973 (*I.C.J. Reports 1973*, p. 101) :

> ". . . need not, before indicating them, finally satisfy itself that it has jurisdiction on the merits of the case, and yet ought not to indicate such

measures unless the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded".

Judge Gros in his dissenting opinion adopted a more rigorous test. In due course I shall compare the present case with the two standards laid down, that of the Court and that of Judge Gros.

The procedure prescribed in the Rules of Court does not contemplate an extended argument on the question of jurisdiction in order to satisfy this requirement of a prima facie case. There is nothing in Article 66, paragraph 1, which requires this of the requesting party. Furthermore, since paragraph 2 speaks of "a matter of urgency" it would be inappropriate to delay the Court further than is necessary. I shall, then, avoid trying the Court's patience with arguments more complex than seem to be required at this stage.

In this case we rely upon two independent grounds of jurisdiction. The first in order of statement in the Application, though not necessarily in the order of logical priority, is Article 17 of the General Act for the Pacific Settlement of International Disputes, 1928, read together with Articles 36 (1) and 37 of the Statute of the Court. The second is the joint communiqué of the Greek and Turkish Prime Ministers of 31 May 1975, which we submit is a joint and several acceptance of the Court's jurisdiction as required by Article 36 (1) of the Court's Statute.

My learned friend Professor Pinto will address the Court on the second of these two grounds of jurisdiction, namely the joint communiqué. I shall, then, merely preface what he will have to say by pointing out the significance of the expression "joint and several" as used in the Application. The consensus results from the coincidence of the undertakings of Greece and Turkey. In the *Nuclear Tests* cases (*I.C.J. Reports 1974*, p. 251) the Court considered the legal effect of unilateral statements of policy made by the President of France and Ministers of France. These were made at a press conference, on French television, and in an address to the United Nations General Assembly. In these statements it was said that the current round of atmospheric testing would be the last, and that it was possible to continue testing underground. The Court drew the following conclusions from these statements: ". . . the Court finds that France made public its intention to cease the conduct of atmospheric nuclear tests . . ." (*I.C.J. Reports 1974*, p. 267, para. 41).

> "It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding." (*Ibid.*, para. 43.)

> "One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of

an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected." (*Ibid.*, p. 268, para. 46.)

"The validity of these statements and their legal consequences must be considered within the general framework of the security of international intercourse, and the confidence and trust which are so essential in the relations among States." (*Ibid.*, p. 269, para. 51.)

This is the intellectual framework within which the joint communiqué is to be evaluated. It would be strange indeed if the Court were to find that a solemn statement made by two Prime Ministers in the course of negotiations between them was not a legal commitment when a statement of the French President made in a press conference was. However, my learned friend, Professor Pinto, will, as I say, deal with this, so I shall proceed to the first of the two stated grounds of jurisdiction, the General Act.

I find myself in the unusual situation of probably being the first counsel to appear before this Court who has had to repeat an argument in two cases. In the *Nuclear Tests* cases I addressed the Court on a question of its jurisdiction under the General Act. I appear before the Court today with the duty of assisting it on precisely the same question. To those Members of the Court who may have heard my address in the *Nuclear Tests* cases my reappearance on the stage so soon in the same role may appear to be a case of *déjà vu*. But to the new Members of the Court, who may be unfamiliar with the point, I must address at least sufficient remarks to convince them that there is a prima facie case for jurisdiction under the General Act.

The question arises because Article 53 of the Court's Statute requires it to satisfy itself that the Court has jurisdiction whenever a party does not appear before it, which is the case today. In both the *Fisheries Jurisdiction* case and the *Nuclear Tests* cases the Court was confronted with the situation where the respondent failed to appear, but where a question was raised as to the Court's jurisdiction. In both of those cases the Court proceeded to indicate interim measures pending a hearing on the question of jurisdiction.

In the *Nuclear Tests* cases the jurisdiction of the Court was in question because of two main considerations. One of these was that France had amended its acceptance of the optional clause, and that gave rise to a question whether thereby the Court's jurisdiction under Article 17 of the General Act had been lost. That is a question which does not arise in this case, so that leaves us with only one of the two major issues that arose in the *Nuclear Tests* cases, namely, whether the General Act is still in force. France, in a letter to the Registrar, it will be recalled, asserted that the General Act had ceased to have legal effect because it had lapsed through desuetude or, being closely linked with the League of Nations, had expired with that Organization.

The Court as a whole did not give judgment on the question whether the General Act is in force or not. In a technical sense therefore that question is still open. But in a practical sense the whole issue has been transformed both by the minority judgment of the Court and by the actions of governments and the Secretary-General of the United Nations respecting the General Act.

The minority of this Court – which, be it recalled, was in fact the majority among those Members who reached a finding on the issues – was that "the demise of the League of Nations could not possibly constitute 'a cause of extinction' of the General Act by reason of the references to the League Secretariat in those Articles" (*I.C.J. Reports 1974*, p. 333, para. 44).

> "Nor could their disappearance [of organs of the League mentioned in the General Act] be considered such a fundamental change of circumstances as might afford a ground for terminating or withdrawing from the [General Act] . . ." (*Ibid.*, p. 334, para. 45.)

Nor did the revision of the General Act in 1949 have the effect of causing "Article 17 [to lose its] . . . efficacy as between those of its parties who were parties to the Statute of this Court" (*ibid.*, p. 337, para. 52). Nor was it possible to infer from the conduct of the parties that they had intended to abandon the General Act (p. 338). The minority held that the General Act was a treaty in force (para. 69). They expressly rejected each and every one of the points made by France against the General Act being in force and they concluded that "Article 17 . . . provides in itself a valid and sufficient basis for the Applicant to establish the jurisdiction of the Court . . ." (p. 358, para. 94).

That, I submit would be sufficient to establish that prima facie the General Act is in force, which is all that at this stage we need to do, although I have argued that the powerful Judgment I have just referred to accords the General Act a presumptive status greater than that of prima facie. However, to reinforce by reference to State practice what the minority judgment found, I shall mention that the Secretary-General of the United Nations has continued to exercise depositary functions in relation to the General Act and after having dropped the General Act for a number of years reinstated it and has registered the denunciations to it of the United Kingdom and the declarations of four other countries. I refer the Court to *Multilateral Treaties in Respect of which the Secretary-General Performs Depositary Functions*, 1975, page 563. It is also interesting to note that a Turkish guide to treaties published in Ankara in 1966 includes the General Act – I refer to A. Gunduz Okoun, *A Guide to Turkish Treaties* at page 222.

In these circumstances I think that the Court will be glad to hear that I do not propose to elaborate further on the question of whether the General Act is still in force. It is inconceivable that the Court, having found the General Act to be prima facie in force at the interim measures stage in the *Nuclear Tests* cases should now find it otherwise, when the doubts raised then about its being in force have been so drastically diminished.

This being so, I have merely to mention that Greece and Turkey are parties to the General Act. The dates of their respective accessions are set forth in the Application at paragraph 32. The General Act is terminable on notice at five-year intervals. It has not been denounced by either party.

I submit that the test of the Court in the *Nuclear Tests* cases for the grant of interim measures has been met, and in passing I draw the Court's attention to an article by Mendelson, on "The Jurisdiction of the Court to Indicate Interim Measures in Cases of Contested Jurisdiction", *British Year Book of International Law*, Volume 46, page 259. That is the last issue.

But I submit, too, that the more rigorous test of Judge Gros has also been met.

At page 122 of his opinion in the *Nuclear Tests* cases Judge Gros said that each case must be examined according to its merits, and, as Article 41 says, according to "the circumstances". He then went on to distinguish the circumstances in the *Fisheries Jurisdiction* cases, wherein he had voted for interim measures, from the *Nuclear Tests* cases wherein he voted against them. He said :

> "The Court had developed an awareness of the existence of its own jurisdiction, the urgency was admitted, the reality and the precise

> definition of the dispute were not contested ; finally, the right of the Applicant States which was protected by the Orders was recognized as being a right currently exercised, whereas the claim of Iceland constituted a modification of existing law." (*I.C.J. Reports 1973*, p. 122.)

The situation in the *Nuclear Tests* cases, he said, was the reverse,

> ". . . since the Applicants stand upon a claim to the modification of existing positive law when they ask the Court to recognize the existence of a rule forbidding the overstepping of a threshold of atomic pollution" *(ibid).*

In other words, Judge Gros's test linked jurisdiction, as a "circumstance", with the merits of the dispute as a "circumstance" under Article 41, and his restrictive test is that interim measures should be refused when this aggregation of circumstances induces a certain degree of doubt.

Now we do not have to take our stand upon the *Nuclear Tests* cases merely because it was then that the Court held that the General Act prima facie conferred jurisdiction. All we rely upon from that case is that, despite the doubts as to the admissibility of the claim, the Court did order interim measures on the basis of prima facie jurisdiction. The present case is very much stronger, and akin to the *Fisheries Jurisdiction* case. We submit that it satisfies even Judge Gros's test : there must be an awareness of jurisdiction because of the standing of the General Act in the eyes of so many Members of the Court ; there is urgency ; there is no contest as to the reality and the precise definition of the dispute ; and the merits relate not to a claim to a modification of existing positive law but to a clear question of the scope of what is unquestionably existing positive law.

So, taking the most restricted position possible, which is much more restrictive than the majority doctrine of the Court, we submit that the conditions for interim measures are met.

One of the factors in the Court's consideration of when interim measures ought to be granted is the inconvenience to the parties which such an order might occasion. If one balances the equities in this case, one sees that continued seismic activity would be harmful in the ways I have suggested, whereas if that activity were to be discontinued, and *Sismik I* diverted elsewhere or laid up for a time, the inconvenience to Turkey would be accounted trivial. The preponderance of legal benefit is clearly in favour of the indication of interim measures than otherwise.

There remains only one further point to complete the prima facie case concerning jurisdiction, and this is the transfer of jurisdiction, if I may so put it, from the Permanent Court to this Court. It will be recalled that Article 17 of the General Act confers jurisdiction upon the Permanent Court. The present Court acquires that jurisdiction by virtue of Article 37 of the Court's Statute as it was construed in the *Barcelona Traction, Light and Power Company, Limited* case. This point was not in issue in the *Nuclear Tests* cases, apparently because it was beyond controversy, but it was dealt with by the minority judges in paragraphs 40 and following of their opinion, and that is sufficient to constitute a prima facie case, so I leave it at that.

The Court rose at 1 p.m.

SECOND PUBLIC SITTING (26 VIII 76, 10 a.m.)

Present : [See sitting of 25 VIII 76.]

Professor O'CONNELL : Mr. President and Members of the Court, before I sum up I believe it might be appreciated if I alluded to several implications of the present case going beyond the strict issue of the delimitation of the continental shelf in the Aegean Sea.

The case reaches the Court at a fortuitous moment, for there are many lessons to be drawn from the fact that it reaches the Court at all. The moment is opportune because the principles of boundary-making in the sea, which prescind from the Judgment of the Court in the *North Sea Continental Shelf* cases should be elaborated by the tribunal which is central to the whole mechanism and system of international law, and not done piecemeal in other places.

But the fact that the case reaches the Court at all is indicative of a point that is all too often overlooked, particularly at international conferences which propose methods of settlement of disputes other than through this Court. The point is that the very viability of international law depends in the last resort upon the unique role that this Court was intended to play under the United Nations Charter in the maintenance of international peace and security. No other tribunal is linked with the machinery of the United Nations as is this Court. Article 33 of the Charter, to which the Court draws attention very rightly in the *North Sea Continental Shelf* cases, and about which I shall have to say more in my submissions in a moment, particularly envisages resort to the Court within the system of peaceful settlement of disputes.

This is not a case concerned only with a technical question, as perhaps the *North Sea Continental Shelf* cases were. It is rather a case wherein the technical question submitted to the Court has already generated a great deal of political tension and a great excitation of public feeling and alarm. These circumstances have an important bearing upon the need for interim measures.

Mr. President and Members of the Court, let me now sum up. At this stage of the case we must establish the following things :

First that the Court prima facie has jurisdiction. I submit that I have done so with respect to the General Act, and Professor Pinto in a few minutes will make his submissions on the alternative ground. I would only add this comment on the question of jurisdiction. When the General Act was invoked in the *Nuclear Tests* cases it was perhaps pardonable to suppose that people were taken by surprise. The General Act suddenly came alive, very much alive, became the subject of a great deal of diplomatic scrutiny and activity. It was open for denunciation very recently. Turkey has taken no action with respect to it. Turkey cannot be said to have been taken by surprise. As this Court reminded us in the Anglo-Norwegian *Fisheries* case, if a government fails to react to legal action the consequences of its omission are its responsibility.

Secondly, we must establish that prima facie Greece has rights which appear to fall within the purview of the Court's jurisdiction. I submit that I have done this by demonstrating that international law considers that

continental shelves appertain to islands, and that this is a case where it is claimed that islands have continental shelves appurtenant to them.

Thirdly, that there is a dispute as to the parties' legal rights which warrants the exercise of the Court's jurisdiction under Article 17 of the General Act. I submit that I have done this by reciting the Greek claim and the Turkish controversion of that claim.

Fourthly, that the circumstances arise when the Court should indicate interim measures. I submit that I have done this when I showed how Greece's exclusivity in the seabed is affected by Turkish activity, and I draw attention to the arguments that will be shortly addressed by Professor Pinto directed to showing the nature of the aggravation and extension of the dispute brought about by these activities.

I have already had occasion to allude to the bearing of Article 33 of the United Nations Charter on the present case. That Article does not say that judicial settlement has to be waived in favour of negotiations. There is no logical or temporal relationship between negotiations and judicial settlement in that Article. Judicial settlement and negotiations are alternatives and do not mutually exclude each other. Judge Ammoun elaborated on this point in his opinion in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, pp. 146-147); and in the *Nöttebohm* case the Court said that:

> "It would constitute an obstacle to the opening of negotiations for the purpose of reaching a settlement of an international dispute or of concluding a special agreement for arbitration and would hamper the use of the means of settlement recommended by Article 33 of the Charter of the United Nations, to interpret an offer to have recourse to such negotiations or such means, consent to participate in them or actual participation, as implying the abandonment of any defence which a party may consider it is entitled to raise . . ." (*I.C.J. Reports 1955*, pp. 19-20.)

In short, an agreement to negotiate does not imply the abandonment of any legal right of a party.

In its correspondence with Greece the Turkish Government, after failing to honour the legal commitment to submit the dispute to the Court, has reiterated that the dispute must be settled by negotiations. But when the parties are as far removed from each other in their respective legal positions as Greece and Turkey are revealed to be in their last exchanges of correspondence and protest, what could negotiations be expected to yield ?

In the *North Sea Continental Shelf* case the Court had something to say about the obligation to negotiate. In fact it had two things to say. One is that there is an obligation to negotiate with a view to settlement of a dispute, but obviously the Court did not mean thereby the exclusion of its own role when negotiations are profitless. Secondly, it said something about negotiations to share a boundary in the continental shelf. It said this because the Special Agreement in that case provided that the Court should denote what principles and rules of international law are applicable to the delimitation of the continental shelf, and then provided for the parties do delimit it by agreement in pursuance of the Court's decision. Naturally negotiations had to be undertaken to reach the agreement which the parties had agreed to reach. But first of all the principles and rules of international law had to be established. That is what we are seeking in this case.

In this case there is no room for further negotiation on these general principles because it is the very principles and rules of international law that

are in dispute, and because Turkey is resisting, not delimitation, which is what negotiation should be about, but even the existence of Greek continental shelf rights. What Turkey wants is for Greece to negotiate away rights which she claims to be hers – compromise, not solution – surrender, not consensus. That is why the matter is before the Court today, the only proper forum for it.

QUESTION BY JUDGE RUDA

The PRESIDENT : I will call upon Judge Ruda, who wishes to put a question to counsel. Of course the Agent and counsel are not expected to answer that question immediately, but perhaps we can have an answer in a hearing tomorrow (see p. 139, *infra*).

Judge RUDA : I would ask the assistance of the Greek delegation on the following point :

The Greek Government has submitted to the Court, as Annex IX to the Application instituting proceedings (see p. 59, *supra*), the instrument of accession of Greece, subject to some reservations, to the General Act of 1928. Paragraph *(b)* of this instrument includes the phrase : "and in particular disputes relating to the territorial status of Greece". I would like to ask the Greek delegation : what is the effect, if any, of this reservation in relation to the present case ?

PLAIDOIRIE DE M. PINTO

CONSEIL DU GOUVERNEMENT GREC

M. PINTO : Monsieur le Président, Messieurs les juges de la Cour internationale de Justice, j'ai l'honneur de présenter ces observations, en qualité de conseil du Gouvernement grec, demandeur en indication de mesures conservatoires.

La Grèce a une longue tradition de confiance en la juridiction internationale. Elle a apporté au règlement arbitral et judiciaire entre Etats une contribution que l'on peut qualifier d'exemplaire. Il était donc naturel que le Gouvernement grec propose au Gouvernement turc de soumettre leur différend, en ce qui concerne les problèmes du plateau continental en mer Egée, à la décision de votre Cour ; et que, cet accord obtenu, après avoir épuisé toutes les possibilités de règlement diplomatique au moins jusqu'à ce jour, la Grèce saisisse la Cour comme elle l'a fait.

Oserai-je dire, me projetant en un unique instant sur le devant de la scène, que je ressens un honneur tout particulier de plaider devant la Cour. Comme de nombreux juristes de ma génération, marqué par le maître ouvrage de Nicolas Politis, j'ai placé dans la justice internationale un espoir que les vicissitudes des relations internationales, au cours du dernier demi-siècle, n'ont jamais aboli.

Aussi la délégation grecque et celui qui vous parle personnellement regrettent sincèrement l'absence, officielle au moins, de la Turquie, son défaut devant la Cour. Et nous la regrettons d'autant plus que la représentation de la Turquie n'aurait préjugé en rien des exceptions d'incompétence ou d'irrecevabilité que l'Etat défendeur peut faire valoir au cours de la procédure principale. Nous la regrettons d'autant plus que, comme vous l'avez entendu, Messieurs de la Cour, les mesures provisoires qui sont sollicitées par le Gouvernement grec sont destinées à protéger non seulement les droits de la Grèce mais aussi les droits de la Turquie, c'est-à-dire les droits de chacun.

La Cour me permettra sans doute de rappeler solennellement en cette audience publique qu'elle est un organe principal de l'Organisation des Nations Unies, au même titre que l'Assemblée générale et que le Conseil de sécurité. Dans le cadre de ses fonctions et de ses responsabilités particulières, la Cour a le devoir, comme les autres organes principaux des Nations Unies et tous les autres, de réaliser les buts et les principes de l'Organisation. Et sans doute les textes que je vais me permettre de vous citer sont dans toutes les mémoires, mais ne convient-il pas de les rappeler à tout moment ?

« Nous, peuples des Nations Unies, ...

Article premier

Les buts des Nations Unies sont les suivants :

1. Maintenir la paix et la sécurité internationales ... réaliser, par des moyens pacifiques, conformément aux principes de la justice et du droit international, l'ajustement ou le règlement de différends ou de situations, de caractère international susceptibles de mener à une rupture de la paix ;

[Et l'article 2, paragraphe 4, porte :]

4. Les Membres de l'Oganisation s'abstiennent, dans leurs relations internationales, de recourir à la menace ou à l'emploi de la force, soit contre l'intégrité territoriale ou l'indépendance politique de tout Etat, soit de toute autre manière incompatible avec les buts des Nations Unies. »

Maintien de la paix, interdiction du recours à la force armée dans les relations internationales : sous cet aspect j'oserai dire que la demande en indication de mesures conservatoires présentée par le Gouvernement grec prend une dimension dramatique.

Il s'agit en effet, et le spectacle du monde nous le montre assez, de paix ou de guerre. Mais les bruits du monde ne s'arrêtent pas aux portes de la Cour. La Cour est trop avertie de la situation dans cette région particulière où se situe le différend pour qu'il soit besoin de lui rappeler les dangers qui, sans qu'on les veuille ni les accepte, peuvent surgir d'un incident ou d'un simple accident.

En dressant devant elle le tableau réaliste de ces risques, certes je ne serai pas infidèle à la vérité. Mais je voudrais que la brièveté de nos propos à ce sujet soit le témoignage du caractère sérieux et grave de la situation.

Comment cependant ne pas évoquer le risque trop réel d'un rapprochement, d'une fusion de ces foyers si proches, et au-delà de ces conflits armés localisés déjà incontrôlables, d'un embrasement général ? L'urgence est donc extrême !

La Grèce et la Turquie sont Membres des Nations Unies. Elles sont parties à ce titre au Statut de la Cour, élément intégrant de la Charte. L'objet du différend qui les oppose est clairement reconnu et défini par les deux Etats, dans les notes diplomatiques échangées et dans les communiqués unilatéraux, communs ou conjoints, qui ont été publiés.

Mais au-delà de ce différend sur la délimitation du plateau continental en mer Egée se profile la menace apportée au maintien du *statu quo* dans cette région. Cette menace a été évoquée par le ministre des affaires étrangères de Grèce devant le Conseil de sécurité et je crois savoir que la Cour est en possession des documents du Conseil de sécurité, et en particulier de celui que je vais citer, le procès-verbal de la réunion du 13 août 1976 (S/PV.1950, p. 27-28).

Au cours de cette séance, le ministre des affaires étrangères de Grèce a cité des sources gouvernementales turques très élevées – je reprends ses propres paroles – et je cite les propos qu'il a rapportés comme venant de ces hautes autorités de Turquie. De M. Gunes, ministre des affaires étrangères : « Le plateau continental de la mer Egée constitue [le prolongement] la continuation de l'Asie mineure ainsi que les îles en question. » De M. Demirel, premier ministre, le 8 juin 1974 :

« Le désaccord s'est manifesté en raison du fait que les îles qui se situent tout près de la Turquie appartiennent à la Grèce et pas à la Turquie. Ces îles, à la fin de la deuxième guerre mondiale, n'appartenaient pas à la Grèce. Les îles forment une partie de l'Asie mineure et depuis des siècles elles appartenaient à l'Etat qui dominait l'Asie mineure. »

De M. Irmac, premier ministre, le 18 janvier 1975 : « La Turquie ne fait aucune concession en mer Egée. La moitié nous appartient. »

De M. Sencar, ministre de la défense, le 20 janvier 1975 :

« En mer Egée, l'équilibre penche clairement vers la Turquie, ceci à un tel point que les regards et les pensées des Turcs, anciens habitants

des îles, restent fixés sur les terres situées à quelques milles des côtes turques dans l'espoir de pouvoir s'y réétablir un jour. »

M. Demirel, dans une interview à un périodique parisien du 5 juillet 1975, déclare :

« Regardez la carte. Est-ce que la mer Egée a l'air d'un lac grec ? D'ailleurs, l'enseignement de l'histoire renforce celui de la géographie. Jusqu'à ces derniers temps, les îles de la mer Egée ont toujours appartenu à celui qui possédait l'Anatolie. »

Enfin, et c'est la dernière citation que M. le ministre des affaires étrangères de Grèce présentait au Conseil de sécurité, M. Turkes, vice-président du Gouvernement turc, a dit le 30 mars 1976 :

« Le groupe d'îles situées près des côtes turques, y compris le Dodécanèse, doit appartenir à la Turquie. Parmi ces îles, citons Samothrace, Lemnos, Chio, Samos, Cos, Rhodes et toutes autres petites et grandes îles situées à une distance de 50 kilomètres. »

J'ai terminé la citation de l'exposé du ministre des affaires étrangères de Grèce et j'en conclus, sur le plan qui est le mien, que le règlement établi par les conventions internationales, qui ont été rappelées par mon confrère et ami le professeur O'Connell, conventions internationales solennellement garanties par les Puissances, risquent d'être mises en cause par rupture imminente des procédures pacifiques requises et par le jeu de la force pure.

Messieurs de la Cour, il vous a été exposé – et je ne reviendrai pas sur ces points, d'autant plus que vous les connaissez mieux que nous – que le Statut confère à la Cour compétence à l'effet d'indiquer des mesures conservatoires. Il lui attribue même le pouvoir exceptionnel de prendre spontanément, d'office, de telles mesures. L'examen des mesures conservatoires a la priorité sur toutes autres affaires. Aucune exception préliminaire de compétence ou de recevabilité ne peut suspendre la procédure sur les mesures conservatoires. Ces exceptions n'ont donc en aucun cas le caractère de ce que les juristes français appellent des questions préalables autorisant un sursis à statuer. D'ailleurs il est prévu que la Cour doit statuer d'urgence et elle nous en fournit encore un exemple par l'audience qu'elle nous a accordée si rapidement.

Ni le Statut ni le Règlement de la Cour ne prévoient ainsi un examen préalable de la compétence. La jurisprudence de la Cour a justement déterminé les conditions de recevabilité d'une demande en indication de mesures conservatoires et je me réfère tout naturellement à cet égard aux observations qui ont été présentées par le professeur O'Connell.

Je rappelle simplement que selon la jurisprudence constante de la Cour l'indication de mesures conservatoires ne préjuge en rien la décision que la Cour pourrait être amenée à prendre sur une exception à sa compétence si une telle exception était présentée par l'Etat défendeur.

Parmi les dispositions qui ont été indiquées à titre à la fois alternatif et cumulatif – comme l'a rappelé le professeur O'Connell –, parmi ces dispositions qui ont été invoquées par le Gouvernement grec pour justifier la compétence de la Cour, se trouve l'accord intervenu entre les premiers ministres de Grèce et de Turquie le 31 mai 1975.

La Cour doit être assurée, suivant les formules mêmes de ses arrêts, que cet accord constitue *prima facie* une base sur laquelle sa compétence pourrait être fondée et il m'appartient, comme son auxiliaire temporaire, de tenter de lui donner cette assurance.

Mes observations concernent donc en premier lieu la portée de cet accord intervenu le 31 mai 1975 entre les deux premiers ministres. Les termes de cet engagement, énoncé dans un communiqué conjoint, commun, sont les suivants – il est publié dans les documents soumis à la Cour, mais je le lis à partir du communiqué qui a été remis à la presse par la direction générale de l'information du ministère des affaires étrangères de Turquie le 31 mai 1975, à la date même où ce communiqué a été présenté par les deux premiers ministres à la presse grecque, turque et mondiale. Ce document d'ailleurs pourrait être authentifié si la Cour estime qu'elle n'est pas en possession d'un document suffisamment authentique :

> « Au cours de leur rencontre [indique ce communiqué de la direction générale de l'information du ministère des affaires étrangères de Turquie sous le titre « Communiqué conjoint turco-grec »] les deux premiers ministres ont eu l'occasion de procéder à l'examen des problèmes qui conduisirent à la situation actuelle les relations de leurs pays.
>
> Ils ont décidé que ces problèmes doivent être résolus pacifiquement par la voie des négociations et concernant le plateau continental de la mer Egée par la Cour internationale de La Haye. Ils ont défini les lignes générales sur la base desquelles auront lieu les rencontres prochaines des représentants des deux gouvernements.
>
> A cet égard ils ont décidé d'accélérer la rencontre d'experts concernant la question du plateau continental de la mer Egée, ainsi que celle des experts sur la question de l'espace aérien. »

(Le reste du communiqué est, si vous le voulez, une sorte d'appel à des relations amicales entre les deux Etats et n'a pas la même pertinence que les passages que je viens de vous lire.)

L'existence de ce communiqué n'est pas et ne pourrait être contestée. Il a été présenté par les deux premiers ministres au cours d'une conférence de presse. Il a été publié, comme je viens de le dire, par les soins du ministère des affaires étrangères de Turquie. Il a été publié également dans les journaux de Turquie – j'en ai deux sous les yeux –, dans les organes de la presse internationale – j'ai sous les yeux *Le Monde* du 3 juin 1975 – et par conséquent il me semble que son existence ne saurait être mise en doute.

Ce communiqué commun est dépourvu d'ambiguïté. Il constate une obligation internationale non équivoque. Il s'agit, Messieurs de la Cour, selon ses propres termes, d'une décision prise par les deux premiers ministres qui sont en même temps des chefs de gouvernement.

Les premiers ministres décident de saisir la Cour du différend qui oppose leurs deux Etats. A la lecture de ce texte, les termes employés marquent clairement qu'il ne s'agit pas d'une simple obligation de négocier, de mener de bonne foi des négociations en vue d'accepter la juridiction de la Cour, ce que la doctrine appelle – vous le savez Messieurs de la Cour – des pactes *de contrahendo* ou *de negociando*.

A cet égard je me permets de placer sous les yeux de la Cour une sentence arbitrale dans une affaire déjà ancienne qui opposait le Chili et le Pérou, l'affaire de *Tacna-Arica*, sentence arbitrale du 4 mars 1925 ; je me permets de placer cette sentence sous les yeux de la Cour parce que l'on y trouve une bonne définition, me semble-t-il, de ce genre d'accord, de ce genre de pacte, qui nous permettra de constater la différence avec l'accord qui est intervenu le 31 mai 1975. Cette sentence arbitrale du 4 mars 1925 est signée par le président des Etats-Unis, arbitre chef d'Etat, mais elle est contresignée par son

secrétaire d'Etat, Charles Evans Hughes, un éminent juriste qui devait devenir président de la Cour suprême des Etats-Unis.

La sentence note que l'accord entre le Chili et le Pérou, le traité d'Ancon de 1883, prévoyait dans son article 3 « qu'un accord spécial qui sera considéré comme partie intégrante du présent traité déterminera la manière dont le plébiscite sera réalisé ». Et en effet, l'accord, le traité d'Ancon plaçait la région contestée de Tacna-Arica sous l'administration chilienne pendant une période de dix années au terme de laquelle la population devait être consultée par plébiscite pour savoir si elle entendait être maintenue sous la souveraineté péruvienne ou au contraire se maintenir dans la dépendance chilienne. Cette sentence est rapportée au volume II du *Recueil des sentences arbitrales de l'Organisation des Nations Unies*, page 921.

A la page 929, la sentence définit ainsi la portée de l'accord :

> « Comme les parties se sont mises d'accord pour se lier par un protocole spécial, mais n'en ont pas fixé les termes, leur obligation était, en substance, de négocier de bonne foi à cette fin. »

Mais la lecture que je me suis permis de faire une nouvelle fois du communiqué conjoint du 31 mai 1975, qui a exprimé l'accord entre les deux premiers ministres turc et grec révèle que, dans ce cas particulier, dans cet accord intervenu, aucun accord spécial, aucun protocole spécial, n'a été prévu et n'était nécessaire pour la mise en œuvre de la décision selon laquelle les problèmes concernant le plateau continental de la mer Egée doivent être résolus par la Cour.

Donc il y a une différence fondamentale entre un accord de ce type, véritable pacte *de contrahendo*, et l'accord dont vous êtes saisis et que nous vous demandons de consacrer, Messieurs de la Cour. C'est qu'en réalité chaque accord de ce genre doit être examiné dans son texte pour que sa portée puisse être appréciée et déterminée.

Et je me permettrai alors de citer une autre sentence arbitrale rendue dans l'affaire du *Lac Lanoux* entre la France et l'Espagne le 16 novembre 1957 et qui est rapportée au *Recueil des sentences arbitrales de l'Organisation des Nations Unies*, page 281.

Dans ses considérations d'ordre général sur ce type d'accord, la sentence dans l'affaire du *Lac Lanoux* s'exprime ainsi :

> « On a ainsi parlé, quoique souvent d'une manière impropre, de « l'obligation de négocier un accord ». En réalité les engagements ainsi pris par les Etats prennent des formes très diverses et ont une portée qui varie selon la manière dont ils sont définis et selon les procédures destinées à leur mise en œuvre ; mais la réalité des obligations ainsi souscrites ne saurait être contestée et peut être sanctionnée. »

Et la sentence indique les modalités d'une sanction internationale possible juridiquement, sanction juridique dans le cas d'un pacte *de contrahendo*.

Ainsi, même un accord en vue de négocier peut être sanctionné aux termes de cette jurisprudence arbitrale que j'ai rappelée et implique des obligations internationales dont la réalité ne peut être contestée. A plus forte raison, Monsieur le Président, Messieurs de la Cour, lorsque l'obligation même est précisée par l'accord en cause, comme je crois pouvoir le constater, l'accord conclu entre les deux premiers ministres, chefs de gouvernement, se suffit à lui-même.

Bien entendu, l'existence de l'accord du 31 mai 1975 n'excluait nullement qu'avant de saisir la Cour les deux Etats s'efforcent de tenter par voie de

négociation d'une part de résoudre leur différend sur les problèmes du plateau continental de la mer Egée et d'autre part de rédiger s'ils le pouvaient un compromis spécial pour porter l'ensemble du différend devant la Cour. Mais cette poursuite des négociations ne modifiait pas le consentement donné à la juridiction de la Cour et ne modifiait pas non plus l'obligation internationale assumée en conséquence et constatée par ce communiqué conjoint du 31 mai 1975.

Je voudrais citer un document qui est annexé à la requête du Gouvernement grec. C'est une note verbale du 2 octobre 1975 qui se trouve imprimée ci-dessus à la page 38 de cette requête et dans laquelle le 2 octobre 1975 le Gouvernement grec commente ainsi la portée de l'accord du 31 mai de cette même année :

> « Lorsque les premiers ministres des deux pays se sont rencontrés à Bruxelles le 31 mai 1975, il a été convenu que la question serait tout d'abord officiellement soumise à la Cour internationale et qu'il n'était pas exclu que des conversations aient lieu en vue de parvenir à un accord sur une solution. Que les deux premiers ministres aient été d'accord pour saisir la Cour internationale afin de régler le problème de la délimitation du plateau continental ressort sans aucune équivoque du communiqué conjoint qu'ils ont publié... »

et suit le texte du communiqué conjoint.

Vous trouverez également, Messieurs de la Cour, aux pages 41 à 42 ci-dessus, la note turque en réponse à cette note grecque du 2 octobre 1975. La note verbale turque porte la date du 18 novembre 1975. Elle ne conteste pas l'interprétation donnée par le Gouvernement grec dans la note dont j'ai donné lecture à l'obligation assumée. La note verbale turque, à la page 41 ci-dessus, soutient que des négociations diplomatiques préalables pour le règlement du litige au fond doivent avoir lieu avant que la Cour ne soit saisie et je me permettrai de donner lecture de la traduction des deuxième et troisième alinéas de la page 41 ci-dessus :

> « Etant donné ce qui précède, le Gouvernement turc ne partage pas l'interprétation grecque suivant laquelle les parties sont déjà convenues de soumettre le différend à la Cour internationale de Justice, sans négociations préalables. Pour cette raison même, les nombreuses citations partielles de communications turques antérieures figurant dans la note grecque du 2 octobre 1975, n° F.6243.15/190/AS 3780, ne donnent pas une idée complète de leur contexte ainsi que de celui de la déclaration faite par l'ancien premier ministre de Turquie et de ce dont les deux pays sont convenus aux réunions de Rome et de Bruxelles.
>
> Le Gouvernement turc croit indispensable de rappeler une fois de plus qu'à son avis les questions qui se posent entre la Turquie et la Grèce au sujet du plateau continental de la mer Egée doivent être résolues par des négociations bilatérales... »

Et ces négociations bilatérales, comme je le disais tout à l'heure, n'excluent nullement l'obligation assumée d'aller devant la Cour. Nous sommes donc en présence, et telle est la thèse du Gouvernement grec, dans ce communiqué conjoint du 31 mai 1975 d'un acte juridique international : le communiqué conjoint, le communiqué commun – acte juridique international créateur d'obligations juridiques internationales. Ces communiqués communs ont déjà leurs titres d'ancienneté. Mais leur fréquence est un phénomène récent. Leur

théorie juridique authentique, si elle a été préparée par la jurisprudence de la Cour, reste à faire. Ce sera également là l'œuvre de votre haute juridiction.

Si j'osais, je dirais à la Cour que le communiqué conjoint analysé juridiquement apparaît comme la juxtaposition dans un même instrument de deux déclarations unilatérales immédiatement acceptées de part et d'autre.

Comme l'a d'ailleurs indiqué récemment la Cour en examinant des déclarations revêtant la forme pure d'actes unilatéraux dans l'arrêt déjà cité par mon confrère, le professeur O'Connell, mais je crois qu'il n'est pas inutile de citer à nouveau, en français :

> « Quand l'Etat auteur de la déclaration entend être lié conformément à ses termes, cette intention confère à sa prise de position le caractère d'un engagement juridique, l'Etat intéressé étant désormais tenu en droit de suivre une ligne de conduite conforme à sa déclaration. Un engagement de cette nature, exprimé publiquement et dans l'intention de se lier, même hors du cadre de négociations internationales, a un effet obligatoire. » (*C.I.J. Recueil 1974*, p. 267, par. 43.)

L'arrêt souligne que la forme n'est pas décisive : « Qu'une déclaration soit verbale ou écrite, cela n'entraîne aucune différence essentielle. » (*Ibid.*, par. 45.) C'est une citation de votre arrêt.

La Cour cite également, en les approuvant, les motifs qu'elle a donnés dans son arrêt de 1961, dans l'affaire du *Temple de Préah Vihéar*. La citation de cette affaire est ainsi donnée :

> « c'est généralement le cas en droit international qui insiste particulièrement sur les intentions des parties, lorsque la loi ne prescrit pas de forme particulière, les parties sont libres de choisir celle qui leur plaît, pourvu que leur intention en ressorte clairement » (*C.I.J. Recueil 1961*, p. 31).

Et la Cour, en 1974, cite également le passage suivant de l'arrêt rendu dans l'affaire du *Temple de Préah Vihéar* : « la seule question pertinente est de savoir si la rédaction employée dans une déclaration donnée révèle clairement l'intention... » (*C.I.J. Recueil 1961*, p. 32). En même temps, dans cet arrêt sur les *Essais nucléaires* de 1974, la Cour rappelle, comme elle l'a rappelé tant de fois et comme je suppose les Cours internationales à venir le rappelleront souvent, ce ne sera jamais inutile, le principe fondamental qui régit les relations internationales – le principe de la bonne foi :

> « L'un des principes de base qui président à la création et à l'exécution d'obligations juridiques, quelle qu'en soit la source, est celui de la bonne foi.
>
> La confiance réciproque est une condition inhérente de la coopération internationale, surtout à une époque où, dans bien des domaines, cette coopération est de plus en plus indispensable. Tout comme la règle du droit des traités *pacta sunt servanda* elle-même, le caractère obligatoire d'un engagement international assumé par déclaration unilatérale repose sur la bonne foi.
>
> Les Etats intéressés peuvent donc tenir compte des déclarations unilatérales et tabler sur elles ; ils sont fondés à exiger que l'obligation ainsi créée soit respectée. » (*C.I.J. Recueil 1974*, p. 268, par. 46.)

A plus forte raison, dirai-je, le principe de bonne foi exige que soit respectée l'obligation juridique créée par une déclaration conjointe, par une déclaration commune à deux Etats.

Les règles du droit international et la jurisprudence de la Cour que je viens

de rappeler nous enseignent que le consentement ainsi donné n'exige aucune forme particulière. Dans le cas du communiqué conjoint des deux premiers ministres le consentement à la juridiction de la Cour est donné par décision expresse. Mais ce consentement aurait pu être tacite. La jurisprudence particulière concernant l'acceptation de la juridiction de la Cour confirme et conforte ces règles générales.

Que la Cour m'autorise à citer un certain nombre des motifs qu'elle a donnés dans ses arrêts, à cet égard. Dans son arrêt dans l'affaire des *Droits de minorités en Haute-Silésie*, la Cour a dit pour droit :

> « L'acceptation par un Etat de la juridiction de la Cour dans un cas particulier [et nous sommes bien dans un cas particulier] n'est pas, selon le Statut, soumise à certains termes, comme par exemple l'établissement d'un compromis formel préalable. » (*Arrêt n° 12, 1928, série A n° 15*, p. 93.)

La Cour actuelle, dans son arrêt du 25 mars 1948, dans l'affaire du *Détroit de Corfou*, a cité cette jurisprudence de l'arrêt sur les *Droits de minorités en Haute-Silésie* pour l'approuver et ainsi la consolider dans les termes suivants :

> « Alors que le consentement des parties confère juridiction à la Cour, ni le Statut ni le Règlement n'exigent que ce consentement s'exprime dans une forme déterminée... » (*C.I.J. Recueil 1947-1948*, p. 27-28.)

Comme l'a dit la Cour permanente de Justice internationale, dans son arrêt n° 12 (et ici encore la Cour dans son arrêt de 1948 reprend la formule des trente années qui avaient précédé, oui des trente années qui avaient précédé) :

> « L'acceptation, par un Etat, de la juridiction de la Cour dans un cas particulier, n'est pas, selon le Statut soumise à certaines formes, comme, par exemple, l'établissement d'un compromis formel préalable. » (*Arrêt n° 12*, du 26 avril 1928, p. 23.)

De même, dans l'affaire de l'*Or monétaire pris à Rome en 1943*, arrêt du 15 juin 1954, la Cour a dit ceci :

> « La Cour ne peut trancher ce différend sans le consentement de l'Albanie [c'est le principe]. Mais il n'a été soutenu par aucune des Parties que l'Albanie ait donné son consentement en l'espèce, ni expressément, ni implicitement. » (*C.I.J. Recueil 1954*, p. 32.)

Dans l'affaire qui vous est maintenant soumise, la Turquie a explicitement et formellement donné ce consentement. Ce consentement est irrévocable.

Certes, les deux Etats ont continué leurs négociations bilatérales pour tenter d'aboutir à un règlement transactionnel et parallèlement pour préparer un compromis mais ces négociations n'avaient ni pour but ni pour effet de modifier, d'oblitérer, de faire disparaître l'obligation librement consentie par les deux premiers ministres de faire trancher les problèmes concernant le plateau continental en mer Egée par la Cour.

Il est constant que, au moment où la Grèce saisit la Cour, ces négociations ont abouti à une impasse. Cet échec, à ce moment-là, est manifeste et à cet égard les résultats de la dernière conférence d'experts tenue à Berne les 19 et 20 juin 1976 ne permettaient le moindre doute (ci-après p. 159-166). Tant sur les principes juridiques applicables à la délimitation du plateau continental que sur les limites du plateau continental de chaque Etat en mer Egée, les Etats étaient à l'époque en désaccord complet.

En même temps, le Gouvernement turc s'est systématiquement refusé à rédiger en commun un compromis spécial.

Les échanges de notes, les entretiens diplomatiques et les conférences d'experts montrent qu'au moment où la Grèce saisit la Cour le Gouvernement turc se dérobe à toute négociation significative et a pour objectif de temporiser.

Dans ces conditions, le Gouvernement grec était en droit de faire jouer l'obligation principale assumée par les deux Etats et de porter, comme il l'a fait, le différend devant la Cour.

Le 31 mai 1975 en effet les deux gouvernements ont retenu, pour résoudre pacifiquement le différend sur le plateau continental en mer Egée, un mode de règlement déterminé, parmi tous les modes de règlement disponibles ; ce règlement déterminé c'est le règlement judiciaire par la Cour internationale de Justice. Ils auraient pu en choisir un autre mais c'est sur celui-là que leurs volontés concordantes se sont rencontrées. Ce choix, très précis et très conscient, prend tout son relief si on le compare aux modalités choisies pour résoudre les autres problèmes, dans le même communiqué, qui séparent les deux pays et qui ne comportent pas la saisine de la Cour.

Il est décidé, je le rappelle, énonce le communiqué conjoint, que les problèmes doivent être résolus pacifiquement par la voie des négociations et concernant le plateau continental de la mer Egée par la Cour internationale de Justice. On ne saurait être plus clair.

Il s'agit là, comme je l'ai dit à la Cour, d'un accord de fond qui engage définitivement et irrévocablement les deux gouvernements, à moins naturellement d'un accord nouveau en faveur d'un autre mode de solution. Mais c'est par la voie du règlement judiciaire que le différend sur le plateau continental de la mer Egée doit être finalement tranché. La rédaction spéciale d'un compromis « au cours de réunions d'experts » ne constitue pas une des conditions énoncées par le communiqué conjoint. Son accomplissement ou son non-accomplissement ne peut réagir sur la décision de fond prise par les deux gouvernements.

Les obstacles mis par l'une des parties – en l'occurrence la Turquie – soit au règlement de fond du différend soit à la rédaction d'un compromis spécial ne sauraient porter atteinte au caractère définitif de la décision prise par les deux gouvernements le 31 mai 1975. La Turquie n'est pas en droit, sous peine de violer ses engagements et de méconnaître le principe de bonne foi, de remettre en cause unilatéralement, fût-ce de manière indirecte, l'accord du 31 mai 1975.

Pacta sunt servanda, certes, celui du 31 mai 1975 comme tous les autes.

Il apparaît donc – et mes observations complètent ainsi celles du professeur O'Connell –, que le Gouvernement grec est recevable *prima facie* à demander à la Cour d'indiquer des mesures conservatoires.

En ce qui concerne ces mesures conservatoires, mon collègue le professeur O'Connell a présenté le premier volet de la requête grecque. Il m'appartient, en second volet, d'exposer à la Cour les droits dont la conservation serait à assurer et les mesures conservatoires dont l'indication est proposée.

La Grèce prie en effet la Cour de prescrire aux Gouvernements turc et grec :

> « 2) [ce sont les conclusions de la requête] de s'abstenir de prendre de nouvelles mesures militaires ou de se livrer à des actions qui pourraient mettre en danger leurs relations pacifiques ».

Il s'agit là, dans cette demande en indication de mesures conservatoires, et la Cour le sait mieux que moi, d'une mesure conservatoire classique, dont sa jurisprudence fournit des exemples constants. Elle tend à obtenir des parties à

un différend qu'elles s'abstiennent de tout ce qui risquerait de l'aggraver ou de l'étendre.

Suivant la formule souvent citée de la Cour permanente de Justice internationale dans l'affaire de la *Compagnie d'électricité de Sofia et de Bulgarie* (*1939, C.P.J.I. série A/B n° 79*, p. 199) qui a d'ailleurs été déjà rappelée par le professeur O'Connell :

> « les parties en cause doivent..., en général, ne laisser procéder à aucun acte, de quelque nature qu'il soit, susceptible d'aggraver ou d'étendre le différend ».

Dans ses ordonnances du 17 août 1972 (affaires de la *Compétence en matière de pêcheries (Royaume-Uni c. Islande) (République fédérale d'Allemagne c. Islande)*), la Cour reprend très exactement la formule de 1939 : « éviter tout acte qui risquerait d'aggraver ou d'étendre le différend dont la Cour est saisie » (*C.I.J. Recueil 1972*, p. 17 et 35).

Ainsi en priant la Cour d'inviter les deux gouvernements à s'abstenir de toutes mesures militaires ou actions qui risqueraient de mettre en danger leurs relations pacifiques, la Grèce suit un chemin déjà tracé depuis longtemps.

La mesure conservatoire sollicitée tend à assurer la conservation dans les zones en cause, d'une part, du droit de la Grèce à l'exercice paisible de ses compétences territoriales exclusives et, d'autre part, du droit de la Grèce au maintien de la paix et de la sécurité dans ces mêmes zones.

Mais ces mesures sont destinées à protéger également les droits de la Turquie. Ces mesures sont destinées aux deux gouvernements et sont donc protectrices aussi bien des droits de la Turquie que de ceux de la Grèce.

Toutefois, avant de présenter mes observations sur ces deux aspects des droits à protéger, l'exercice paisible des compétences territoriales exclusives, le droit au maintien de la paix et de la sécurité dans la zone en cause, je demande à la Cour la permission d'exposer brièvement l'origine et la portée des droits de souveraineté exercés par la Grèce sur le plateau continental en mer Egée.

L'audience, suspendue à 11 h 10, est reprise à 11 h 35

Le professeur O'Connell a évoqué les traités qui ont transféré à la Grèce la souveraineté sur les îles. Je voudrais souligner que les droits inhérents à la souveraineté et qui ont été ainsi transférés par les traités n'ont pas en quelque sorte été figés, cristallisés, gelés dans leur contenu et leur portée, à l'époque du transfert de souveraineté.

La Grèce, en se substituant notamment à la souveraineté ottomane sur les îles, en a reçu la plénitude avec toutes ses virtualités. Ainsi, en ce qui concerne le contenu économique de la souveraineté, la souveraineté transférée doit permettre à l'Etat grec de mettre en œuvre, s'il le souhaite, dans la partie insulaire de son territoire, les principes du nouvel ordre économique.

On ne pourrait pas soutenir que la Turquie, Etat successeur de l'Empire ottoman serait recevable à prétendre que la souveraineté sur les îles n'a été transférée que dans les limites du concept juridique qu'elle recouvrait à l'époque du transfert et qu'en conséquence, sous cet aspect économique, la nationalisation d'entreprises devrait être soumise aux règles du droit international public en vigueur à la fin du XIX^{e} siècle et au début du XX^{e}.

La souveraineté a été transférée par la Turquie dans tous ses éléments actuels et virtuels. Les droits souverains exclusifs ultérieurement reconnus sur le plateau continental s'incorporent naturellement et de plein droit à la souveraineté exercée par la Grèce sur les îles.

Le différend sur la délimitation n'ouvre pas à la Turquie le droit d'exercer sur l'ensemble de la zone grecque du plateau continental de la mer Egée les compétences exclusives reconnues par le droit international aux Etats sur leur plateau continental – sous prétexte qu'aucune délimitation n'a eu lieu.

Telle est cependant la doctrine du Gouvernement turc, exposée notamment dans sa note diplomatique du 10 août 1976, qui a été mise en œuvre, et qui doit l'être encore, par la campagne du *Sismik I*.

La note du ministère des affaires étrangères de Turquie du 10 août 1976, publiée parmi les documents du Conseil de sécurité S/12172 à la date du 11 août 1976, porte qu'il convient d'avoir présent à l'esprit le fait que le plateau continental de la mer Egée n'a pas encore été délimité et poursuit :

> « On doit dès lors considérer que la position grecque est fondée sur de simples allégations. Il convient de rappeler que des déclarations ou des allégations unilatérales ne sauraient constituer un fondement juridique pour ce qui est de l'établissement de droits souverains sur le plateau continental. »

Devant le Conseil de sécurité, le 13 août 1976, le ministre des affaires étrangères de Turquie a déclaré : « Jusqu'à ce que soit délimité le plateau continental, les revendications respectives de la Turquie et de la Grèce ont une validité égale. » (S/PV.1950, p. 6.)

Or, le fondement juridique premier de la Grèce sur le plateau continental est distinct du titre conféré par le droit international public relatif à ce plateau continental, tel qu'il s'est établi aujourd'hui.

Ce fondement juridique premier résulte, comme je l'ai rappelé tout à l'heure, du transfert de souveraineté par conventions internationales sur les îles, avec tous les droits inhérents à cette souveraineté, actuels mais aussi virtuels.

Dans la mesure donc où, en dehors du différend relatif à la délimitation proprement dite, la Turquie revendiquerait, en tout ou partie, des zones du plateau continental relevant de la souveraineté sur les îles, cette revendication constituerait un différend distinct. Mais, dans ce cas, il s'agit non pas d'un simple différend de délimitation mais d'un différend portant sur l'exercice de droits souverains en matière de plateau continental sur un ensemble de zones du plateau continental de la mer Egée. Tant que cette revendication sur le plateau continental en mer Egée n'a pas été consacrée en droit et par justice la Turquie a l'obligation de s'abstenir de tout exercice unilatéral de compétence dans les zones du plateau continental revendiquées.

En d'autres termes, il me semble qu'il faut bien distinguer la revendication des zones du plateau continental où s'exerceront des droits souverains d'une part et d'autre part la délimitation d'un plateau continental dont il est reconnu qu'il doit être réparti entre les deux Etats.

Il s'agit là – cette obligation d'abstention, lorsqu'on revendique un ensemble de droits souverains sur des zones du plateau continental, à la différence d'un simple litige sur la délimitation – il s'agit là du respect que l'Etat en cause doit marquer à l'égard de l'Etat vis-à-vis duquel il exprime cette revendication. Ce respect est fondé sur un principe fondamental du droit international contemporain : ce principe bien établi selon lequel provision est due au titre, cette obligation de respecter le *statu quo* a été tout récemment réaffirmée par la conférence sur la sécurité et la coopération en Europe.

L'acte final signé le 1er août 1975 par les représentants de la Grèce comme de la Turquie et par trente-deux autres Etats, dont la Suisse, la Suède, les

Etats-Unis, le Canada, les Etats membres de la Communauté européenne, la Yousgoslavie, l'Union soviétique, sans compter une haute autorité morale, le Saint-Siège, l'acte final de la conférence d'Helsinki porte que les Etats participants rappellent et énoncent des principes conformes à la Charte des Nations Unies. En effet, les articles préliminaires de la Charte que j'ai évoqués au début de mes observations le montrent bien : il s'agit d'un rappel, d'un énoncé d'une précision. Les Etats participants à la conférence d'Helsinki déclarent qu'ils sont résolus à respecter et à mettre en pratique ces principes conformes à la Charte des Nations Unies.

Or, parmi ces principes pertinents pour l'indication des mesures conservatoires qui sont sollicitées, la Cour me permettra de relever les principes suivants. Ils sont inscrits dans la partie de l'acte final intitulée « Questions relatives à la sécurité en Europe ».

Le chapitre premier de cette partie contient sous la lettre *a)* une déclaration sur les principes régissant les relations mutuelles des Etats participants – et je rappelle que la Turquie et la Grèce sont des Etats participants – et sous la lettre *b)* les questions concernant la mise en pratique de certains des principes énoncés ci-dessus.

Parmi les principes énoncés sous la lettre *a)* de l'article I, le paragraphe 2 vise le non-recours à la menace ou à l'emploi de la force. Et je citerai notamment le paragraphe suivant :

> « les Etats participants s'abstiennent de tout acte constituant une menace d'emploi de la force ou un recours direct ou indirect à la force contre un autre Etat participant. De même ils s'abstiennent de toute manifestation de force visant à faire renoncer un autre Etat participant au plein exercice de ses droits souverains.
>
> Aucune menace ou aucun emploi de la force de ce genre ne sera utilisé comme moyen de résoudre les différends... »

Et sous la lettre *b)* – questions concernant la mise en pratique de certains des principes énoncés ci-dessus –, au paragraphe *i)*, parmi donc les déclarations relatives à la mise en pratique de ce principe d'Helsinki, la Cour me permettra de souligner que les Etats participants se déclarent résolus « à s'abstenir de toute manifestation de force visant à faire renoncer un Etat participant au plein exercice de ses droits souverains ».

Voilà donc à la fois dans les principes et leur mise en œuvre la réaffirmation qu'un Etat participant doit s'abstenir de toute manifestation de force visant à faire renoncer un Etat participant au plein exercice de ses droits souverains.

Je crois pouvoir dire que l'appel aux principes du droit international public général, la réaffirmation de ces principes par l'acte final de la conférence d'Helsinki suffisent à fonder le droit de la Grèce à la protection provisoire qu'elle sollicite.

Mais le titre grec résultant du transfert de souveraineté sur les îles est au surplus conforté par la jurisprudence de la Cour dans l'affaire du *Plateau continental de la mer du Nord* et ceci ayant été développé par le professeur O'Connell je me permettrai de ne pas y revenir. Il en résulte en tout cas que les zones du plateau continental de la mer Egée se trouvant à l'ouest des îles grecques ou entre ces îles relèvent en dehors de toute délimitation des droits souverains et exclusifs de la Grèce. Toute mesure, et à plus forte raison action, ou opération de recherche, d'exploration, d'exploitation entreprise par la Turquie dans ces zones du plateau continental qui relèvent inconstestablement des droits souverains de la Grèce, constitue une violation de plein droit des droits de souveraineté exclusifs de la Grèce dans ces zones.

De son côté, la Grèce est fondée à exercer paisiblement dans ces zones du plateau continental, outre les compétences rappelées par le professeur O'Connell, les compétences de police que lui reconnaît le droit international public. En particulier, elle est en droit d'exiger que des navires étrangers se livrant sans autorisation à des recherches ou explorations dans ces zones du plateau continental qu'ils répondent aux injonctions des autorités navales grecques de surveillance, cessent leurs activités ou se retirent et, en cas de refus, les autorités grecques de surveillance ont le pouvoir de diriger le navire en état d'infraction vers un port grec.

Or précisément l'exercice paisible de ces compétences de police sur le plateau continental est menacé par les déclarations et les actions turques.

Je me réfère ici, sans qu'il m'apparaisse nécessaire de les relire, aux données de fait que la requête du Gouvernement grec expose à la Cour, en particulier aux pages 7, 8 et 9 ci-dessus. Il s'agit des communiqués publiés au lendemain des réunions du conseil national de sécurité de Turquie, le 13 juillet 1976, et qui indiquent bien que la Turquie entend faire obstacle à l'exercice paisible de ces droits de police. Il s'agit également de déclarations qui ont été publiées dans la presse turque par le ministre de l'énergie qui, à une question relative à une réaction de la Turquie en cas d'intervention auprès du navire *Sismik I*, répondait : « En pareil cas, l'Etat turc donnera la réponse qui s'impose ; d'ailleurs la région dans laquelle auront lieu des recherches est en sécurité. » J'ajouterai simplement ici, pour compléter cette démonstration qui tend à faire apparaître que le Gouvernement turc s'oppose à ce que la Grèce exerce ses droits de police sur le plateau continental, que dans sa note diplomatique du 8 août 1976 qui apparaît parmi les documents du Conseil de sécurité et publiée dans ces documents le Gouvernement turc met en garde la Grèce contre tout acte de provocation susceptible de gêner les activités de recherche du *Sismik I* dans la mer Egée.

Alors, Messieurs, quelle est la signification de ces avertissements, de ces mises en garde ? En d'autres termes, le Gouvernement turc entend interdire à la Grèce d'exercer ses compétences de police sur le plateau continental de la mer Egée dans des zones du plateau continental qui, en dehors même de toute délimitation, relèvent incontestablement des droits souverains et exclusifs de la Grèce.

Dans sa note du 10 août 1976, publiée également comme document du Conseil de sécurité S/12172 (édition française : p. 4), le Gouvernement turc a précisé sa pensée :

> « Le Gouvernement turc souhaiterait appeler l'attention du Gouvernement grec sur le fait que, depuis le 6 août 1976, le navire de recherche turc *MTA-Sismik I* est soumis au harcèlement de navires et d'aéronefs appartenant à la flotte et à l'aviation grecques. Le Gouvernement turc élève une protestation vigoureuse contre ces actes illégaux et demande au Gouvernement grec de mettre fin à ces activités. »

J'ai demandé au commandement des forces armées grecques de faire un inventaire des mesures militaires prises tant par la Turquie que par la Grèce depuis le 16 juillet 1976. Cet inventaire a probablement été fait avec une certaine discrétion, compte tenu du secret militaire, le secret de la défense nationale.

Voici ce que rapporte, suivant ces observations, le commandement des forces armées grecques.

Depuis cette période et du côté turc, trois divisions d'infanterie se sont déployées le long du fleuve Evros, en Thrace orientale. Les quartiers généraux

du quatrième et du cinquième corps d'armée de Thrace orientale ont progressé vers l'ouest et l'ensemble de ses unités se trouve en état d'alerte. Les permissions du personnel de la première armée sont annulées. Sur le littoral ouest, les unités de la quatrième armée sont mises en état de vigilance. La flotte de débarquement d'Yzmir est renforcée par des unités de débarquement et de combat. A l'embouchure des Dardanelles, on constate un rassemblement de navires de guerre.

Du côté grec, les indications fournies par le commandement des forces armées grecques lui-même au cours de cette même période indiquent que des mesures de protection parallèles ont été prises. En Thrace occidentale, les unités d'infanterie s'avancent sur des lignes de champs de déploiement près des camps militaires. Des unités de réserve sont mises en état d'alerte préventif.

Ainsi, les deux armées se font face dans cette région.

En mer Egée, en ce qui concerne la Grèce, la surveillance de l'espace maritime est assuré par un ensemble renforcé de navires de guerre. La moitié de la force de combat navale de la Grèce effectue au cours de cette période des exercices en mer Myrtéenne et en mer de Crète.

Le Gouvernement turc lui aussi a fait état par ailleurs de quinze incidents qui se sont produits entre le 29 juillet et le 11 août 1976, incidents à caractère militaire qu'il décrit comme constituant des actions de harassement et d'intimidation. Ces quinze incidents ont été rapportés dans un document dont la Cour a connaissance. Il s'agit du document S/12175 du 13 août 1976. C'est une lettre du représentant permanent de la Turquie auprès des Nations Unies adressée au Secrétaire général des Nations Unies et qui donne la liste de ces incidents.

Cette escalade des mesures militaires prises de part et d'autre a créé incontestablement une menace, une situation dangereuse pour la paix. Et, puis-je dire, à la menace dirigée contre le droit de la Grèce d'exercer paisiblement, sur son plateau continental en mer Egée, les compétences qui lui sont reconnues par le droit international, s'ajoute une menace contre le droit de la Grèce au maintien dans la région de la paix et de la sécurité, droit garanti par la Charte des Nations Unies et rappelé dans les termes que j'évoquais par l'acte final de la conférence d'Helsinki.

Sans pour autant être d'accord sur les causes de cette escalade des mesures militaires, les ministres des affaires étrangères de Grèce et de Turquie ont l'un et l'autre constaté l'existence de ce grave état de tension en mer Egée.

Evoquant, devant le Conseil de sécurité, le 12 août 1976, cette tension, le ministre des affaires étrangères de Grèce déclarait :

> « il est facile d'imaginer combien la tension va s'accroître dans les jours et les semaines qui viennent. La présence dans la région de forces navales et aériennes des deux pays ne devrait pas non plus être oubliée. Dans ces circonstances, un simple accident pourrait suffire pour que l'on perde tout contrôle de la situation. Je ne pense pas devoir insister là-dessus pour montrer à quel point la situation est vraiment dangereuse. » (S/PV.1949, p. 13.)

De son côté, le ministre des affaires étrangères de Turquie indiquait le 13 août 1976, au Conseil de sécurité :

> « S'il existe actuellement une tension dans la mer Egée, si une situation dangereuse a été créée dans la région, cela est dû au fait que la Grèce a eu recours, sans aucun droit légitime, à des harassements militaires à

l'encontre d'un navire civil turc qui est en train de conduire des recherches en dehors des eaux territoriales de la Grèce. Ces harcèlements ont pris la forme de vols d'avions à basse altitude au-dessus du navire, de tentatives en vue d'intimider ce navire avec des navires de guerre et en vue d'entraver ses mouvements. » (S/PV.1950, p. 6.)

« Si la paix est menacée dans la région, cela provient directement de l'action militaire entreprise par la Grèce à l'encontre d'un navire non armé dans une région où elle n'a aucun droit de souveraineté. » (*Ibid.*, p. 18-20.)

Répondant, ce même 13 août 1976, le ministre des affaires étrangères de Grèce déclarait au Conseil de sécurité :

« [Les] Turcs, [qui] ne voient pas d'objection pour eux-mêmes à concentrer des forces navales et aériennes sur la côte d'Anatolie, face aux îles grecques. Ces forces comprennent – et ce n'est certainement pas une coïncidence – un très grand nombre d'engins de débarquement ; je répète : des engins de débarquement. » (*Ibid.*, p. 27.)

Cette situation appelle incontestablement des mesures destinées à éviter que le pire ne se produise : la protection des droits que j'ai tenté de définir, Monsieur le Président, Messieurs de la Cour, à savoir le droit à l'exercice paisible des compétences reconnues par le droit international, le droit au maintien de la paix et de la sécurité contre toute atteinte par un autre Etat. Ces droits doivent être protégés par des mesures intérimaires.

Dans un espirt de bon voisinage, dans l'intérêt de la paix, la Grèce, sans préjudice de ses droits, accepte que les mesures indiquées par la Cour s'appliquent à elle, en même temps qu'à la Turquie et sous réserve de réciprocité.

Ainsi sont protégés, comme le prévoit l'article 41 du Statut de la Cour, les droits de chacun. Encore faut-il que la Cour estime, selon les termes de ce même article 41 du Statut, que les circonstances exigent des mesures conservatoires.

Dans ce domaine de l'exercice paisible, par chaque Etat, de ses compétences, dans ce domaine du maintien de la paix, toute menace n'est-elle pas en soi irrémédiable si on lui laisse produire ses effets.

Il ne s'agit pas simplement ici, comme l'écrivait le professeur Guggenheim, dans le recueil des cours de l'Académie (*RCADI*, 1932-II, p. 693), « de prévenir des occurrences regrettables et des événements fâcheux ».

Le risque que j'ai évoqué devant vous, Messieurs de la Cour, dès qu'il existe, le peser minutieusement serait trop dangereux. La prévention s'impose.

Puis-je évoquer ce qui se passe depuis plusieurs semaines en Guadeloupe. Le volcan de la Soufrière menace, comme lors du désastre de la montagne Pelée, en Martinique, au début de ce siècle, de faire explosion. Malgré l'incertitude des savants et l'apaisement soudain et irrégulier des grondements, des mesures préventives sont prises et maintenues.

Le maintien de relations internationales paisibles entre deux Etats – presque au bord de l'abîme – exigerait-il une moindre attention ?

Dans les *Essais nucléaires*, la Cour a indiqué des mesures conservatoires dans des circonstances où la santé et peut-être la vie de populations paraissaient menacées par des retombées radioactives sur le territoire de l'Australie. Or, le caractère infinitésimal de ce danger n'était pas contesté.

M. Guy de Lacharrière, directeur des affaires juridiques au ministère des affaires étrangères français, a pu écrire dans l'*Annuaire français de droit*

international de 1973, page 244 : « L'Australie ... ne nie pas ... que l'apport français dans l'irradiation artificielle totale, de toutes sources, à laquelle sont soumis les Australiens ne soit très faible. »

Il indiquait que l'Australie et la Nouvelle-Zélande subissaient une irradiation, d'origine naturelle et artificielle, de l'ordre de 130 à 150 millirems par an. Or, les expériences nucléaires françaises n'apportaient dans ce total qu'une irradiation de 0,2 millirem.

Dans ses ordonnances du 22 juin 1973, si j'ose les interpréter, mais la Cour les interprétera mieux que moi, j'ai l'impression que la Cour n'a entendu ni peser ni détailler la menace. Il lui a suffi que les renseignements qui lui ont été soumis, y compris les rapports du comité scientifique des Nations Unies pour l'étude des effets des rayonnements ionisants :

> « n'excluent pas qu'on puisse démontrer [la Cour n'a pas dit *démontrent* mais *n'excluent pas qu'on puisse démontrer*] que le dépôt en territoire australien de substances radioactives provenant de ces essais cause un préjudice irréparable à l'Australie » (*C.I.J. Recueil 1973*, p. 105).

Si un préjudice irréparable résultant de retombées radioactives n'était pas exclu dans l'affaire des *Essais nucléaires*, il semble évident, qu'à plus forte raison encore, un tel préjudice irréparable existe ici.

Le préjudice irréparable atteindrait aussi bien la Grèce que la Turquie, dans la vie de leurs populations de toutes générations, dans la destruction des forces économiques vives des deux nations.

Je voudrais évoquer en terminant l'opinion de l'un des membres de la Cour. Bien qu'exprimée dans un dissentiment, elle ne peut, me semble-t-il, que recueillir, dans son principe, l'assentiment de tous :

> « Le juge international a toujours – et le plus souvent seulement – un rôle préventif... Ceci soulève la question générale des rapports entre deux modes de règlement pacifique des différends internationaux – la négociation et le règlement judiciaire... il me suffira de dire que le juge ne devrait pas, selon moi, être trop influencé dans l'exercice de sa fonction par le déroulement de l'autre mode, la négociation. » (*Ibid.*, p. 308.)

Et la suite de cette opinion montre bien que la saisine de la Cour n'est pas incompatible avec la poursuite de négociations et que les parties peuvent venir à tout moment devant la Cour pour adapter la procédure à leurs négociations.

Si je reviens au plan des mesures conservatoires, je dirai en concluant que sans doute la saisine de la Cour, la saisine de votre juridiction suprême a suspendu dans l'instant et pour l'instant le risque de conflit armé. Mais ce répit pourrait être illusoire devant le refus de la Cour d'avertir solennellement les parties de leurs devoirs face à la communauté internationale tout entière, devant le refus de la Cour d'indiquer les mesures susceptibles de maintenir la trêve actuelle et de faire disparaître les menaces à la paix.

QUESTION BY THE COURT

The PRESIDENT : I have to put to the Greek delegation a question on behalf of the Court. Will the Agent of Greece please be good enough to inform the Court whether in the view of their Government the Security Council resolution adopted by consensus on 25 August 1976 (resolution 395 (1976)) concerning the present dispute is a circumstance to be taken into consideration by the Court for the purposes of the present proceedings. Of course it is not expected that this question is to be answered now. It could be answered in the hearings of tomorrow (see p. 137, *infra*).

DÉCLARATION DE M. KARANDREAS

AGENT DU GOUVERNEMENT GREC

M. KARANDREAS : Monsieur le Président, au nom de mon gouvernement j'ai l'honneur de porter à la connaissance de la Cour que la Grèce maintient les conclusions contenues dans sa requête du 10 août 1976 en indication de mesures conservatoires (ci-dessus p. 63-66), à savoir qu'elle prie la Cour de prescrire aux Gouvernements grec et turc :

(1) unless with the consent of each other and pending the final judgments of the Court in this case, refrain from all exploration activity or any scientific research, with respect to the continental shelf areas within which Turkey has granted such licences or permits or adjacent to the Islands, or otherwise in dispute in the present case ;
(2) refrain from taking further military measures or actions which may endanger their peaceful relations.

L'audience est levée à 12 h 20

TROISIÈME AUDIENCE PUBLIQUE (27 VIII 76, 15 h 30)

Présents : [Voir audience du 25 VIII 76.]

M. KARANDREAS : Monsieur le Président, Messieurs les membres de la Cour, en ce qui concerne la question posée par la Cour lors de l'audience du 26 août 1976 (ci-dessus p. 135), j'ai l'honneur de porter à votre connaissance que les agents de la Grèce ont l'honneur de vous faire savoir que, de l'avis de leur gouvernement, les deux procédures, au Conseil de sécurité et à la Cour internationale de Justice, sont distinctes l'une de l'autre.

La résolution du Conseil de sécurité, adoptée par consensus le 25 août 1976, n'empiète pas sur la mission de la Cour aux fins de la présente procédure.

En conséquence le Gouvernement grec maintient les conclusions présentées dans sa demande et réitérées lors de l'audience du 26 août 1976.

QUESTION BY JUDGE LACHS

The PRESIDENT : I will give the floor to Judge Lachs, who wishes to put an additional question in connection with the answer which has just been given to the question put by the Court. This question to be put by Judge Lachs personally may be answered at the end of the present hearings or, at the choice of the Greek delegation, it may be answered in writing.

Judge LACHS : My question refers directly to the reply the Agent of Greece was good enough to give to the Court a few minutes ago, and in this connection I wish to recall that in addressing the Security Council on 12 August (S/PV.1949, p. 6) His Excellency the Minister for Foreign Affairs of Greece, Mr. Bitsios, stated :

> ". . . the one thing I want to state at the very outset is that it is not my intention to ask the Security Council to take a decision on our legal dispute, for Greece has already seised the International Court of Justice in The Hague with this matter. My intention is to denounce the activities of Turkey which jeopardise peace and security in the eastern Mediterranean and to ask the Council to call upon Turkey to cease them."

This is from the verbatim record of the Security Council.

Now on 25 August the Security Council adopted by consensus a resolution which, as you know, contains four operative paragraphs (resolution 395 (1976)). The first two concern the very issue raised by the Foreign Minister of Greece. There are two additional paragraphs which are not contained in the statement of the Foreign Minister of Greece, and therefore I wish some possible clarification on the part of the Agent of Greece on this point. In particular that after the meeting of the Security Council the Minister for Foreign Affairs of Greece made a formal statement in which he said that he wished to thank the Council "for having adopted a resolution which" – and then he refers to other points – "will, I trust, clear away the obstacles to resumption of the dialogue". In view of these statements, the original request to the Security Council, the substance of its resolution and the latest statement of the Minister for Foreign Affairs of Greece, I would like to have some clarification from the representative of Greece.

M. KARANDREAS : Monsieur le Président, Messieurs les membres de la Cour, la délégation hellénique répondra par écrit.

The PRESIDENT : I understand that the answer will reach us before Monday.

M. KARANDREAS : Oui, Monsieur le Président (voir ci-dessous p. 578-579).

ARGUMENT OF PROFESSOR O'CONNELL

COUNSEL FOR THE GOVERNMENT OF GREECE

Professor O'CONNELL : Mr. President and Members of the Court, I have the honour to reply to the question put by Judge Ruda (see p. 118, *supra*) on the subject of the Greek reservation to its accession to the General Act for the Pacific Settlement of International Disputes of 1928.

A reservation has effect only in relation to questions which it expressly and literally excludes. Nothing in the Greek reservations could bring the continental shelf within its terms. There are four reservations. The first concerns anterior disputes and is clearly inapplicable. The second concerns domestic jurisdiction. Clearly the matter of questions which international law leaves to the exclusive competence of States is not the matter here, so we can put that to one side. Turkey, along with most parties to the General Act, made a similar reservation.

The third concerns disputes relating to the territorial status of Greece. The expression "territorial status" has of course a precise meaning. It concerns the juridical régime of territory as that term is used in international law. But the continental shelf is not territory in that sense. It is an extra-territorial area within which the coastal State exercises sovereign rights for the purpose of exploration and exploitation of the natural resources. That is a purpose which is strictly and deliberately limited, and the drafting history of the expression "sovereign rights" reveals that the intention was to invest the continental shelf with a specific competence that did not amount to territorial sovereignty.

For example, the whole of the coastal State's criminal law does not apply to the continental shelf as it does to the national territory. Only law regulating activities relating to exploration and exploitation of natural resources can be validly made for the continental shelf. There is a decision of the French Conseil d'Etat holding that the continental shelf is not part of French territory, and I would cite to the Court the reports of that case in the *Journal du droit international (Clunet)* for 1972 at page 572.

Nothing that I have said is altered by the idea of natural prolongation because that envisages only contiguity of the continental shelf to territory, and cannot confer upon it the status of territory.

In short, the continental shelf is of its juridical nature extraterritorial as is the contiguous zone even in the case of the territorial sea which is invested with sovereignty as distinct from sovereign rights. There is a great and continuing controversy as to whether this is part of the national territory or is extraterritorial. I have conveniently summarized the debate and the Court's decisions in my article "The Juridical Nature of the Territorial Sea" in the *British Year Book of International Law*, Volume 46, page 303, and I take the liberty of mentioning this to the Court. But since I wrote that article important judicial decisions have been handed down in the highest courts of the United States and of Australia, holding that the territorial sea is extraterritorial. (*United States* v. *Maine et al.*, Supreme Court, No. 35, Orig. 1975 ; *New South Wales* v. *Commonwealth, Australian Law Journal*, Vol. 50, 1976, p. 218.) *A fortiori* the continental shelf is extraterritorial. As for the fourth reservation relating to ports and lines of communication – this again has no relevance, because it concerns circulation, normally on the surface, whereas the

continental shelf doctrine is concerned with the exploration and exploitation of economic resources in the subsoil.

As a matter of literal construction then the Greek reservation has no relevance to the present case. But that conclusion is also verifiable from the *travaux préparatoires* of the reservation, which reveal that in a strictly limited purpose, in a strictly limited and land-bound context. The question arose when Greece, in 1928, was considering making a declaration under the optional clause. Professor Politis, on 9 September 1928, addressed a letter (see pp. 186, 577, *infra*) to the Greek Foreign Minister in which he suggested that Greece should make certain reservations in acceding to Article 36 of the Statute of the Court in order to safeguard Greece "against an eventual application of Bulgaria" on matters related to Greece's territorial status, the access of Bulgaria to the Aegean and the protection of Bulgarian-speaking minorities in Greece.

It will be recalled that at that time there were frontier questions with Bulgaria, left over from the Balkan wars, including allegations of Bulgarian rights over Greek territory to Greek ports. Politis drafted three reservations to cover these three aspects in matters in issue with Bulgaria. It will be recalled that in the same year he was the draftsman of the General Act, and with the aim of safeguarding Greece in respect of these same matters he secured the incorporation in Article 39 of the General Act of a right of reservation respecting the same matters. Greece took advantage of this in her accession to the General Act to make the same reservations and for the same specific purpose as the reservation she made to her declaration to the optional clause.

The term "territorial status" has been employed in Article 39 of the General Act to cover special matters subject to reservation. The question of territorial status was familiar at the time in Memel, Saar and Danzig, etc. The fact that Greece has employed this term in a specific sense was shown by the explanation given in the same reservation as the régime of ports and communications.

So, the record discloses that Greece's intention in making the reservation was to provide for the possibility of avoiding the Court's compulsory jurisdiction in a strictly limited situation where territorial status referred to land territory and boundary rights and was not intended to cover any question of maritime jurisdiction. The exercise of sovereign rights over the continental shelf is a matter of jurisdiction, not of territory, and there is no question of a continental shelf being a matter of territorial status.

In short, one would not describe the dispute over the extent or delimitation of the territorial sea as a dispute over the territorial status of a country. That would be a misuse of language. The continental shelf, like the territorial sea, and the contiguous zone is a matter of appurtenant right, not of territorial status.

It would have been possible for Greece, acting under Article 40 of the General Act, to have abandoned all, or part of their reservations by simple declaration, that is, by a letter to the Secretary-General of the United Nations – who, it will be recalled, has suddenly become very active in exercising his depositary functions under this instrument – before the Application was made. Greece is so confident of the precise content and application of this reservation that no such action was decided upon.

*

Mr. President, while I have occasion to address the Court, it occurs to me that Members of the Court might be assisted if I stated quite sharply and

precisely what are the areas which Greece would seek to have covered by the Court's order respecting interim measures. As I have indicated, Greece claims as Greek continental shelf the seabed extending from the mainland of Greece to the median line between the islands which are mentioned in the Application and the Turkish coast of Anatolia and Turkish islands off the coast of Anatolia. The whole of this area is obviously not in dispute. Since Turkey has not specified what she considers to be the western limits of her continental shelf claims, Greece can assume that there is a dispute at present only in the areas wherein Turkey has, by taking action, indicated a general claim to the area. Turkey has taken two sorts of action in respect of the areas which Greece claims to be her continental shelf.

One is the grant of exploration permits and the other is seismic activity which has occurred outside of the areas covered by the exploration permits, namely the recent activity of *Sismik I* in the area between Chios and Samos.

In the request we have asked the Court to indicate interim measures with respect to the continental shelf areas within which Turkey has granted exploration permits, or the areas adjacent to the islands or otherwise in dispute in the present case. The reasons for this phrasing will be obvious from what I have said. The areas covered by exploration permits are definable areas in dispute. The other areas come into dispute when Turkey takes action therein and thereby indicates a general claim to the area. Between the date of the filing of the request and the date of the indication of interim measures seismic activity might have occurred in areas claimed by Greece but outside of the limits of the exploration permits. It did in fact occur when *Sismik I* engaged in seismic activity between 20 and 22 August 1976. It might occur again before the indication of interim measures in additional areas. So we propose that the overall areas to be covered by an order for interim measures should be defined as follows :

On the western side, the western co-ordinates of the exploration areas specified in the *Turkish Gazette* of 18 July 1974 and shown as a green line on the map [1], plus straight lines connecting the western co-ordinates of these areas. Now if the Court will allow me the indulgence, I shall read into the record the co-ordinates of this comprehensive western indication of the areas in dispute as follows :

Lat.	40	40′		N – Long.	25	56′		E
,,	40	43′		,, – ,,	25	52′	5″	,,
,,	40	34′	5″	,, – ,,	25	13′		,,
,,	40	11′		,, – ,,	24	46′		,,
,,	39	34′		,, – ,,	24	29′		,,
,,	38	48′		,, – ,,	24	54′		,,
,,	37	52′		,, – ,,	25	43′		,,
,,	37	8′		,, – ,,	26	24′		,,
,,	37	8′		,, – ,,	26	30′		,,
,,	37	4′	5″	,, – ,,	26	37′		,,
,,	36	57′		,, – ,,	26	38′	5″	,,
,,	36	46′		,, – ,,	26	33′	5″	,,
,,	36	10′		,, – ,,	27	7′	5″	,,
,,	35	34′		,, – ,,	28	14′		,,

These western limits may sound complicated but they are really quite simple. They are the existing lines on the map linked by straight lines.

[1] Not reproduced.

So far as the eastern limits of the areas in dispute are concerned, these depend upon the ascertainment of the median line which is someting that can only be done at the stage of boundary making. The matter is complicated by the difference between the limits of Turkish territorial sea as measured from the low-water mark and from straight base-lines. This inherent uncertainty concerning the eventual precise eastern limits of the Greek continental shelf does not affect the precision that can be given to the application of an Order for interim measures because we are asking the Court to make the Order applicable to both parties. It follows, that for the time being neither Turkey nor Greece would be free to engage in seismic activity in any part of the areas which are not presently and incontrovertibly subject to their respective national jurisdictions. This will mean that there will be no great exploration or research activity eastward of the line of the western limits indicated by the co-ordinates which I have read out, except in the Greek territorial sea appurtenant to the islands and there will be no Turkish exploration or research between that line of the western limits and the Turkish territorial sea as calculated from the low-water mark plus the continental shelf between the limits of the Turkish territorial sea as so calculated and the median line between the Greek islands and the Turkish coast or islands ; that line in either case being calculated by reference to the low-water mark.

Parts of the median line are indicated in the two charts [1] submitted to the Court showing the actual violations which occurred between 6 and 14 August and 20 and 22 August 1976 respectively.

There is presently no dispute respecting the lateral boundary in the continental shelf adjacent to the coast of Thrace, where Greece and Turkey share a land boundary so that no element of adjacent State situation enters into the matter. The phrasing of the request concerning areas adjacent to the islands covers the parts of the comprehensive area in dispute, as I have just outlined it, which lie outside of the Turkish permit areas. Really it is only island and not Greek mainland areas where the question arises. The phrasing in the request concerning areas otherwise in dispute was intended to cover two things. First, the areas represented by the difference between Turkish territorial sea drawn from the low-water mark or from straight base lines. And, secondly, the possibility that before the hearing Turkish activity might occur in some area or areas additional to the areas which I have described, for example, off the mainland coast of Greece, perhaps of Thrace. It is not capable of giving the Court the power to indicate interim measures against contingencies which may occur in the future in such additional areas. Should Turkey now engage in exploration or research activity in such additional areas, Greece would be free to seek further interim measures. But at the close of our case the geographical areas presently to be covered are now indicated with as much precision as is possible.

The Court adjourned from 4 to 4.40 p.m.

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[1] Not reproduced.

PLAIDOIRIE DE M. PINTO

CONSEIL DU GOUVERNEMENT GREC

The PRESIDENT : The Court understands that certain documents which were referred to by Professor O'Connell in his statement concerning in particular a letter from Mr. Politis, documents which have not been produced beforehand, will be furnished to the Court as soon as possible.

M. PINTO : Monsieur le Président, Messieurs les juges de la Cour.

Mes observations vont s'adresser au document que M. le Greffier de la Cour a bien voulu communiquer aux agents de la Grèce, c'est-à-dire une lettre du ministère des affaires étrangères de Turquie du 25 août 1976 accompagnant un document que cette lettre qualifie – et vous me pardonnerez d'indiquer cet intitulé dans sa langue originale, l'anglais : « Observations of the Turkish Government on the Request of the Government of Greece for provisional measures. » (Voir ci-dessus p. 69-76.)

Ainsi paraît se réaliser le vœu que j'avais exprimé personnellement au cours de mon intervention première de voir la Turquie se présenter devant la Cour.

Messieurs de la Cour, la question peut pourtant se poser de savoir quelle est la portée procédurale exacte des observations présentées par le Gouvernement turc.

La Turquie est-elle devenue partie à la procédure incidente ou ne l'est-elle pas ? Est-elle présente ou est-elle absente ? Nous ne pouvons nous défendre de l'impression que la Turquie cherche en vérité à être les deux à la fois.

Dans le sens de sa présence, on peut invoquer, d'une façon qui paraît très pertinente, la qualification que la Turquie a donnée elle-même au document qu'elle a adressé au Greffe de la Cour. Elle intitule en effet ce document, comme je l'ai rappelé, « Observations du Gouvernement turc sur la requête de la Grèce ».

Et par là même, le Gouvernement turc se place dans le cadre de l'article 61, paragraphe 8, du Règlement de la Cour, aux termes duquel :

> « La Cour n'indique des mesures conservatoires qu'après avoir donné aux parties la possibilité de faire entendre leurs observations à ce sujet. » (Règlement de la Cour, art. 61, par. 8.)

L'anglais dit « presenting » et le document dit en effet, dans son intitulé, « observations presented », si je ne me trompe pas.

Ainsi, non seulement la possibilité de présenter des observations a-t-elle été donnée à la Turquie, mais la Turquie vient précisément, dans la lettre qu'elle a adressée à la Cour et dans ce document, faire usage de cette possibilité de présenter des observations.

D'autre part, tout en demandant la radiation de l'affaire du rôle de la Cour, le document turc conclut en même temps au rejet de la demande grecque.

Et à l'appui de cette conclusion (que la demande grecque soit rejetée, « be dismissed »), nous constatons que le Gouvernement turc ne se borne pas à contester la compétence *prima facie* de la Cour, mais il présente une argumentation détaillée sur le bien-fondé des mesures conservatoires qui ont été demandées par la Grèce et même sur certains aspects touchant au fond du différend entre les deux Etats.

Enfin, et toujours dans ce sens, nous pouvons constater qu'à la différence de ce qui s'est produit dans des affaires récentes, la Turquie n'a, dans aucune partie de ses observations, fait connaître formellement son intention de rester en dehors de l'instance. Tout ce qu'elle a fait, c'est de réserver ses droits en ce qui concerne la compétence de la Cour :

> « . . . the presentation of the attached observations [c'est là, je m'excuse d'avoir cru trouver dans l'intitulé les termes mêmes du Règlement de la Cour, c'est dans cette citation, « the presentation of the attached observations », que l'on retrouve cette formule qui est inscrite dans le Règlement] do not imply any commitment by the Turkish Government as to the jurisdiction of the Court »,

ce qui d'ailleurs va de soi, conformément à la jurisprudence constante de la Cour que je m'étais permis de lui rappeler hier.

Ainsi il existe des raisons de penser, des raisons qui portent à penser, que la Turquie est présente dans cette phase de la procédure.

Il est vrai, Monsieur le Président, Messieurs de la Cour, qu'en sens inverse on n'est pas pleinement assuré que le Gouvernement turc ait mesuré la portée de la communication adressée à la Cour et ait tiré toutes les conséquences juridiques qui pouvaient résulter de sa démarche.

En effet, comme je l'ai indiqué tout à l'heure, parallèlement aux conclusions de rejet de la demande grecque, le Gouvernement de la Turquie n'hésite pas à conclure à la radiation de l'affaire du rôle de la Cour, ce qui évidemment est se placer en dehors de la procédure normale.

D'autre part, le Gouvernement turc n'a pas procédé à la nomination d'un agent et, de ce fait, il ne donne pas à la Cour la possibilité de poser à cet agent des questions à l'occasion des audiences qui se déroulent actuellement. Nous nous rendons bien compte qu'il est souvent nécessaire pour les membres de votre Cour de poser de telles questions. Il n'y a pas d'agent du Gouvernement turc pour y répondre.

Mais le Gouvernement grec ne croit pas utile de s'attarder davantage sur ce problème ainsi posé.

C'est que nous ne sommes pas sûrs que la question présente un intérêt pratique décisif. En effet, la jurisprudence de la Cour ne paraît pas, en matière de mesures conservatoires, attacher à l'absence ou à la présence de la partie défenderesse les conséquences procédurales que cette position particulière comporte, notamment et certainement, dans les instances contentieuses sur le fond.

Le fait que la Cour n'ait pas cru utile, au moins dans le passé, de se placer sur le terrain de l'article 53 de son Statut, alors même que le défendeur n'était pas présent à l'audience, ou même n'avait pas présenté ses observations sur une demande d'indication de mesures conservatoires, paraît tout à fait révélateur à cet égard.

Mais il existe peut-être une raison plus simple et plus déterminante encore pour que, à ce point des audiences qui nous sont accordées par la Cour, nous n'entrions pas dans un débat sur la qualification juridique et sur la nature procédurale du document turc.

C'est qu'en effet le contenu même de ce document n'est pas de nature à modifier la position grecque telle qu'elle a été exposée hier, avant-hier et encore aujourd'hui par mon confrère le professeur O'Connell, qu'il s'agisse du terrain de la compétence *prima facie* de la Cour en matière d'indication de mesures conservatoires ou qu'il s'agisse du bien-fondé de la demande grecque en indication de mesures conservatoires.

Que la Turquie soit présente à la procédure incidente dont vous êtes saisis ou qu'elle ne le soit pas, les pouvoirs de la Cour sont identiques en ce qui concerne sa compétence à ce stade de la procédure. Ce sera ma première observation.

Dans les deux cas – nous l'avons exposé –, présence ou absence, la Cour n'a pas à établir sa compétence par un arrêt préalable. Il lui suffit de constater que, *prima facie*, elle a compétence.

La jurisprudence de la Cour me paraît constante sur ce point. Elle l'a confirmée dans les deux arrêts récents qui ont été déjà cités : les affaires de la *Compétence en matière de pêcheries* (1972), les affaires des *Essais nucléaires* (1974).

Or sur ce premier point il nous semble avoir démontré à suffisance de droit que cette compétence *prima facie* existe bien. Et, au surplus, notre démonstration est confirmée en quelque sorte par les observations du Gouvernement turc. Ces observations ouvrent une discussion de droit, très fouillée qui fait bien apparaître que l'absence de juridiction n'est pas du tout évidente. Elles montrent par là même qu'au stade actuel de la procédure ou seule doit être démontrée une compétence apparente de votre juridiction, la Court est fondée à exercer son pouvoir d'indiquer des mesures conservatoires.

Et à cet égard – c'est le deuxième point de mes observations – la nécessité urgente des mesures conservatoires telles qu'elles sont sollicitées par la Grèce demeure.

Sans doute les observations du Gouvernement turc affirment que la Turquie s'abstient et s'abstiendra de toute menace contre la paix. Mais précisément cet objectif de paix serait renforcé par l'indication de mesures conservatoires tendant à en assurer la pleine réalisation.

Depuis le début du différend, la Grèce s'est spontanément abstenue – fût-ce de recherches scientifiques – dans la zone du plateau continental où a opéré et doit encore opérer le *Sismik I*. C'est qu'en effet il s'agit essentiellement d'une zone à délimiter et sur cette délimitation les deux Etats ne sont pas d'accord. Si la Grèce observe de son plein gré, d'ores et déjà, les mesures conservatoires dont elle sollicite l'indication dans le point 1 de sa requête, elle est fondée à s'adresser à la Cour pour lui demander d'indiquer que de telles mesures devront être prises aussi bien par la Grèce que par la partie adverse.

D'ailleurs, le *Nautilus* auquel les observations turques font allusion (ci-dessus p. 69-70, par. 8) est un navire océanographique et hydrographique ; il n'effectue aucune mission de recherche ou d'exploration sur le plateau continental.

Enfin, comme nous l'avons noté, les observations turques vont même au-delà de la procédure actuellement pendante devant votre juridiction. Les observations turques abordent en effet des questions qui sont étrangères à cette procédure incidente : compétence de la Cour pour statuer, en l'état, au fond, et même questions de fond. A cet égard, la Grèce répondra en son temps et au cours de la procédure qui doit se poursuivre devant la Cour, même si les parties – comme je l'avais déjà fait remarquer dans mon intervention précédente – recherchent en même temps un règlement négocié de leur différend.

Telles sont, Monsieur le Président, Messieurs de la Cour, les remarques portant sur les observations du Gouvernement de la Turquie que la délégation grecque souhaite soumettre à l'appréciation de la Cour.

CLOSING OF THE ORAL PROCEEDINGS

The PRESIDENT : I thank the Agents and counsel of Greece for the assistance they have given the Court. I now declare the hearings closed on the Greek request for the indication of interim measures of protection, subject to the usual reservation that the Agent of Greece is requested to remain at the disposal of the Court with a view to furnishing any further information it may require. The decision of the Court on the request for interim measures will be made known in due course in the form of an Order of the Court.

The Court rose at 5 p.m.

FOURTH PUBLIC SITTING (11 IX 76, 12 noon)

Present : [See sitting of 25 VIII 76, Judges Gros and Dillard absent.]

READING OF THE ORDER

The PRESIDENT : The Court meets today to announce its decision on the request for the indication of interim measures of protection submitted by Greece on 10 August 1976 (see pp. 61-66, *supra*) in the proceedings concerning the *Aegean Sea Continental Shelf* which Greece had instituted against Turkey by an application filed on the same date (see pp. 1-60, *supra*).

It will be recalled that certain Members of the Court, namely Judges Ignacio-Pinto, de Castro and Oda, have been unable to participate in the current proceedings, for reasons which I explained at the opening of the public hearings on 25 August. I should now also mention that Judges Gros and Dillard, who have participated fully in the proceedings and in the voting of the Order which I am about to read, are unable to be present at today's sitting.

I shall now read the Order of the Court of today's date, omitting as is customary the preliminary formal recitals.

[The President reads paragraphs 16 to 46 of the Order [1].]

I shall now call upon the Registrar to read the French text of the operative clause of the Order.

[The Registrar reads the operative clause in French [2].]

I myself append a separate opinion to the Order, as do Vice-President Nagendra Singh and Judges Lachs, Morozov, Ruda, Mosler, Elias and Tarazi. Judge *ad hoc* Stassinopoulos appends a dissenting opinion to the Order.

In view of the need for the Court to make known its decision on a request for interim measures of protection as speedily as possible, the Order is read today from a stencil-duplicated copy, and the usual translations of the separate and dissenting opinions, prepared by the Registry, are not appended to the text. The usual printed copies of the Order, including the translations of the opinions, will be available in approximately one week's time.

The sitting is closed.

(Signed) E. JIMÉNEZ DE ARÉCHAGA,
President.

(Signed) S. AQUARONE,
Registrar.

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[1] *I.C.J. Reports 1976*, pp. 7-13.
[2] *Ibid.*, p. 14.