SEPARATE OPINION OF JUDGE LACHS

I write this separate opinion, firstly, because I am unable to agree with the Court's treatment of the issue of jurisdiction (para. 44). Not only was the Court's jurisdiction contested by Turkey but the Court was in my view under an obligation to consider the issue *proprio motu* and make clear its provisional views thereon, notwithstanding the negative answer it felt bound to give the request for interim measures.

Secondly, and this is for me a subject of serious preoccupation, I have some doubts with regard to the manner in which the Court has disposed of that request. Greece applied simultaneously to the Court and the Security Council, thus seeking both legal and political relief. The Court is called upon to pronounce after a period of negotiations. The Order it has made appears after a resolution in which the Security Council has urged Greece and Turkey to "do everything in their power to reduce the present tensions in the area, so that the negotiating process may be facilitated", and called upon the two States "to resume direct negotiations over their differences". Thus further negotiations may now ensue. This is the general background against which the Court has to consider the request, and which lends the case a specific and most unusual character. The time of seisin of the Court is never of its own choice, but lies in the hands of applicants. It sometimes falls in a twilight zone as regards the situations either of fact or of law.

Emphasis has been placed by the Court on the strict interpretation of the wording of the Greek request. But this, to my mind, should have been viewed as just one among several possible responses to the provisions of Article 66, paragraph 1, of the Rules of Court, according to which "the request shall specify . . . the rights to be protected, and the interim measures of which the indication is proposed". In fact, the same Article of the Rules reveals how it is the *situation concerning the dispute as a whole* with which the Court is expected to concern itself.

In general, it is true, the Court must take a restrictive view of its powers in dealing with a request for interim measures. Such proceedings may not be the best framework for the enunciation by the Court of such judicial opinions as it has been ready to articulate in many a final decision. Yet even if the Court had to reach the present negative decision, I feel that a positive contribution to the solution of the dispute in question was still a possibility.

This brings me to a wider issue. The Court does not, to my way of thinking, arrogate any powers excluded by its Statute when, otherwise than by adjudication, it assists, facilitates or contributes to the peaceful settlement of disputes between States, if offered the occasion at any stage of the proceedings.

On one occasion the Permanent Court observed:

> "... the judicial settlement of international disputes, with a view to which the Court has been established, is simply an alternative to the direct and friendly settlement of such dispute between the Parties; ... consequently it is for the Court to facilitate, so far as is compatible with its Statute, such direct and friendly settlement" (*P.C.I.J., Series A, No. 22*, p. 13).

On another occasion, while unable to find on a submission said to lie outside the scope of the proceedings, the Court found it possible to stress at the end of its reasoning the great desirability of a negotiated settlement (*P.C.I.J., Series A/B, No. 78*, p. 178). *A fortiori* the present Court, whose Statute is much more intimately bound up with the United Nations Charter than that of its predecessor with the Covenant of the League, should the more readily seize the opportunity of reminding the member States concerned in a dispute referred to it of certain obligations deriving from general international law or flowing from the Charter. In the present instance some of these obligations have been mirrored in the Security Council's resolution of 25 August 1976.

The Court has given due prominence to this resolution in the reasoning of the Order.

There was in my view no statutory bar to its spelling out the legal consequences of the Security Council's resolution and the official statements of the representatives of the two States. The pronouncements of the Council did not dispense the Court, an independent judicial organ, from expressing its own view on the serious situation in the disputed area.

While it would not be proper specifically to advise Greece and Turkey "as to the various courses" they should follow (*I.C.J. Reports 1951*, p. 83), the Court, acting *proprio motu*, should, even while not indicating interim measures, have laid greater stress on, in particular, the need for restraint on the part of both States and the possible consequences of any deterioration or extension of the conflict. In going further than it has, the Court, with all the weight of its judicial office, could have made its own constructive, albeit indirect, contribution, helping to pave the way to the friendly resolution of a dangerous dispute. This would have been consonant with a basic role of the Court within the international community.

(Signed) Manfred LACHS.
