SEPARATE OPINION OF VICE-PRESIDENT NAGENDRA SINGH

While endorsing the majority decision and voting, therefore, for the Judgment in this case, I hold that there are certain aspects which need to be emphasized in the overall interests of administering justice, particularly in the context of settlement of inter-State disputes in respect of which the Court has a distinct role to play in the service of the international community. These aspects which weigh with me to the extent that they need to be specially brought out are briefly stated below:

I

The Court has undoubtedly chosen the right path in the adjudication of the jurisdictional issues arising out of the case when it has given over-riding priority to the examination of the Greek reservation as duly invoked by Turkey excluding disputes pertaining to "territorial status" from the jurisdiction of the Court. It is the effectiveness or otherwise of this reservation which becomes the key pivotal issue in the search for the Court's jurisdiction because if the General Act of 1928 was ever to be considered as at all valid, then the Greek reservation would be decisive in its application to either open or bar access to the Court. On the other hand, if the Act itself was invalid, it could not obviously provide the necessary basis for the Court's jurisdiction. The Court therefore rightly undertook the examination of the Greek reservation "at once", i.e., before anything else, and found that it did effectively bar access to the Court and thus rendered unnecessary its decision on the General Act as a treaty in force. In the circumstances, the Court has rightly refrained from pronouncing on the validity of the General Act of 1928 in this case. In so doing, the Court has also given no less than two valid reasons for the adoption of the aforesaid course in paragraph 40 of the Judgment.

While endorsing this approach of the Court in its Judgment, I wish to add a third reason in its favour. This additional reason is to the effect that in accordance with the principle of judicial propriety, a court of law is required to pronounce upon those issues alone which are so directly involved in the decision-making process as to require detailed scrutiny followed by a regular judgment from the Court. In short, in the proper discharge of its judicial function, a court is not required to pronounce on those aspects of the case which do not call for a decision in the task of accomplishing the adjudication of the dispute. No tribunal could ever undertake an exercise in futility. This particular principle of judicial

propriety needs to be emphasized as it should find a rightful place in the Court's jurisprudence since a tribunal indulging in unnecessary pronouncements, by making them when not legally required to do so, could easily undermine its judicial character. This would particularly apply in the context of administering inter-State law wherein the Court's observations, despite Article 59 of the Statute, could easily create implications in the relations between States including even those not before the Court. A tribunal has to be ever mindful of that aspect.

II

While the Court has come to the valid finding that the Brussels Communiqué of 31 May 1975 could not actually operate to constitute by itself a binding agreement creating forthwith an immediate access to the Court, there can be no doubt that the parties had taken recourse to the said Communiqué with the definite intention of ultimately taking the dispute to the Court for a judicial settlement. If the Brussels Communiqué symbolized that intention and clear will of the parties, then it would appear that the Court would not be transgressing its judicial limits if it were to point to, though not decree, the obligations which flow from the Communiqué, namely to move further in the direction of negotiations. A tribunal could not ever advise parties as to the exercise of a choice "amongst the various courses" or options available to them as was pointed out in the *Haya de la Torre* case (*I.C.J. Reports 1951,* pp. 78-79). However, the Court could deal with the relationship of the Communiqué vis-à-vis the parties and their respective duties to resolve the dispute by peaceful means in accordance with Article 33 of the United Nations Charter, which obligation remains unimpaired. If the Court could not, on its own, go so far as to conclude that the Brussels Communiqué constitutes a legal obligation on both States to proceed to complete the agreement on the modalities necessary for the submission of the case to the Court, it could, nevertheless, consistent with its judicial character, point to the need for further negotiations to be undertaken by both sides in good faith and in the interests of peaceful resolution of the dispute. To proceed to pronounce thus far would be consistent with the basic role of the Court in the international community. Again, it would be neither inconsistent with its judicial function, nor in derogation of its judicial character. In this connection, it would be pertinent to cite the observations of the Court in the *Fisheries Jurisdiction* case (*I.C.J. Reports 1974,* p. 32, para. 74) where the Court said:

> "The obligation to negotiate thus flows from the very nature of the respective rights of the Parties; to direct them to negotiate is therefore a proper exercise of the judicial function in this case. This also corresponds to the Principles and provisions of the Charter of the United Nations concerning peaceful settlement of disputes. As the Court stated in the *North Sea Continental Shelf* cases:

> '... this obligation merely constitutes a special application of a principle which underlies all international relations, and which is moreover recognized in Article 33 of the Charter of the United Nations as one of the methods for the peaceful settlement of international disputes' (*I.C.J. Reports 1969,* p. 47, para. 86)."

There can be no question, therefore, of the incompatibility of negotiations with judicial settlement at any stage in the course of the dispute. The Court, having gone thus far in its Judgment, could have taken the next step forward by pronouncing on the need of further meaningful negotiations thereby not only emphasizing the due importance of this particular method in the peaceful settlement of disputes, but also indicating the path leading to completion of those necessary details which are still left incomplete in the Brussels Communiqué of 31 May 1975.

III

In the international field the paramountcy of the doctrine of consent lies at the root not only of the law as enacted, but also of the jurisdiction of the tribunal which administers that law. In the aforesaid context of sovereignty of States no international tribunal could afford to overlook today the fact that the Applicant seeks the protection of law and, refraining from taking recourse to other means, moves the Court for redress of its grievances and thus acts as a law-abiding member of the community. The Court has come to the correct conclusion following its decision in the *Norwegian Loans* case *(I.C.J. Reports 1957)* that, since the Greco-Turkish Treaty of Friendship, Neutrality, Conciliation and Arbitration of 30 October 1930 has not been invoked by the Applicant as a basis of the Court's jurisdiction, it does clearly dispense the Court from entering any further into the question posed by the existence of that Treaty. It would, however, appear to be still necessary to indicate that the door of the Court is in no way permanently closed to the Applicant as if leaving him without a judicial remedy forever. It is noteworthy that both Greece and Turkey have accepted the aforesaid Treaty of 1930 as a treaty in force which still binds the parties today. If in future, therefore, the parties were to agree to comply with the prescribed treaty requirements relating to conciliation, they could find means of achieving an amicable settlement to the present dispute.

(Signed) NAGENDRA SINGH.
