DECLARATION OF JUDGE TARASSOV

I voted for the present Judgment bearing in mind that its sole purpose is to solve the dispute between the Republic of Guinea-Bissau and the Republic of Senegal, relating to the validity or nullity of the Award rendered on 31 July 1989 by the Arbitration Tribunal for the determination of the maritime boundary established on the basis of the Arbitration Agreement between the Parties on 12 March 1985. The Court did not examine — and was not asked by the Parties to examine — any of the circumstances and evidence relating to that same determination, including the delimitation line established in the Franco-Portuguese Exchange of Letters of 26 April 1960 and applicability of this document to the territorial dispute between two States. As was stated in the Judgment "both Parties recognize that no aspect of the substantive delimitation dispute is involved". Consequently, I consider the present Judgment to be for the most part of a procedural rather than a material character. From this point of view, I agree with the analysis and conclusions of the Court, which has found that the submissions and arguments of Guinea-Bissau against the existence or validity of the Award are not convincing.

As I express this agreement, I nonetheless feel obligated to declare that, in my opinion, the Award contains some serious deficiencies. Those deficiencies, while not providing a formal basis for a finding that it is null and void, call for some strong criticism which is partially reflected in the present Judgment.

In the Award, the Arbitration Tribunal did not accomplish the main task entrusted to it by the Parties, as it did not definitively settle the dispute about the delimitation of all adjacent maritime territories off the coasts of Senegal and Guinea-Bissau. The Arbitration Agreement leaves one in no doubt that neither Party regarded their different attitudes towards the 1960 Franco-Portuguese Agreement as constituting the main subject of their dispute. They recognized and defined their inability "to settle by means of diplomatic negotiation the dispute relating to the determination of their maritime boundary" and decided to resort to arbitration "to reach a settlement of that dispute as soon as possible" (Annex to the Application of Guinea-Bissau, Award, para. 1). The quintessence of the dispute was directly reflected in the very title of the Tribunal, i.e., "Arbitration Tribunal for the Determination of the Maritime Boundary: Guinea-Bissau/ Senegal" (*ibid.*, p. 1).

The Tribunal itself recognized and specified in its Award that:

> "The sole object of the dispute submitted by the Parties to the Tribunal accordingly relates to the determination of the maritime boundary between the Republic of Senegal and the Republic of Guinea-Bissau, a question which they have not been able to settle by means of negotiation. *The case is one of a delimitation between adjacent maritime territories . . . off the coasts of Senegal and Guinea-Bissau.*" (Para. 27; emphasis added.)

Moreover, Article 9 of the Arbitration Agreement expressly requested the Tribunal, upon completion of the proceedings, to "inform the two Governments of its decision regarding *the questions* set forth in Article 2 of the present Agreement" (Annex to the Application of Guinea-Bissau, Award, para. 1; emphasis added). The wording of this part enables one to consider that the Tribunal had to inform the Parties of its decision regarding *both questions* put in Article 2 and that, in any event, that decision — whatever it might be — had to "include the drawing of the boundary line on a map" with the assistance of technical experts. It is important that the form of words employed in Article 9 is neither logically nor grammatically connected with the character — positive or negative — of the reply to the first question of Article 2 of the Arbitration Agreement.

I admit that the wording of the second question of Article 2 was such as to permit the Tribunal to decline to answer it, in the event of a positive answer to the first question — albeit on the basis of a purely *formal*, grammatical interpretation of that Article. The Tribunal pursued that course. However, in accordance with the jurisprudence of this Court, the judicial body

> "cannot base itself on a purely grammatical interpretation of the text. It must seek the interpretation which is in harmony with a natural and reasonable way of reading the text, having due regard to the intention [of the Parties]" (*I.C.J. Reports 1952*, p. 104).

And of course, the real intention of the Parties in the present case was to settle their dispute on the delimitation of *all* maritime territories, including the economic zone. The contention of the Tribunal in paragraph 87 of the Award that it is not called upon to reply to the second question because of "the actual wording of Article 2 of the Arbitration Agreement" does not, in my opinion, suffice to substantiate the decision on such an important issue.

As the Court said in the cases concerning *South West Africa* (Preliminary Objections):

> "This contention is claimed to be based upon the natural and ordinary meaning of the words employed in the provision. But this rule of interpretation is not an absolute one. Where such a method of interpretation results in a meaning incompatible with the spirit, purpose and context of the clause or instrument in which the words are contained, no reliance can be validly placed on it." (*I.C.J. Reports 1962*, p. 336.)

I think that there is a serious foundation for the view expressed by the President of the Tribunal, Mr. J. Barberis, in the declaration attached to the Award, in which he stated his conviction that the Tribunal had the opportunity and competence to give a "partially affirmative and partially negative reply" to the first question put in Article 2 and, on that basis, to settle the whole of the dispute.

When it stated in the Award

> "that the 1960 Agreement does not delimit those maritime spaces which did not exist at that date, whether they be termed exclusive economic zone, fishery zone or whatever" (Annex to the Application of Guinea-Bissau, Award, para. 85),

the Tribunal did nothing for the delimitation of "those maritime spaces". When it decided that the "straight line drawn at 240° mentioned by the 1960 Agreement is a loxodromic line", the Tribunal did not state whether that line might or might not be used for the delimitation of the economic zone. Such an omission, together with the Tribunal's refusal to append a map (in contradiction with Article 9 of the Arbitration Agreement) did not, in my opinion, help to solve the whole dispute between the Parties and has merely paved the way to the new Application by Guinea-Bissau to the Court.

(Signed) Nikolai K. TARASSOV.