DISSENTING OPINION OF JUDGE VERESHCHETIN

Principal points of the dissent (para. 1).

I. Subject-matter of the main dispute between the Parties (paras. 2-9):

Spain's position on the subject-matter of the dispute (paras. 2, 5) — Canada's position on this issue (paras. 3, 6) — Article 40, paragraph 1, of the Statute as the point of departure for the Court's finding (para. 4) — Canada's contention that every dispute before the Court must necessarily consist of an "indivisible" whole embracing the facts and rules of law (para. 6) — European Community's attitude (para. 7) — Absence of well-founded reasons for narrowing the subject-matter of the dispute presented by the Applicant (para. 8).

II. Effects of the Canadian reservation on the Court's jurisdiction in this case (paras. 10-24):

Principle of the consent of the Parties is circumscribed (para. 10) — Court's duties as "an organ and guardian of international law" (para. 11) — "The Court cannot base itself on a purely grammatical interpretation of the text" (para. 12) — Construction in the light of international law (para. 13) — Definition of the concept "conservation and management measures" in recent multilateral agreements — Eminent relevance of these agreements (paras. 14-15) — Sine qua non *element of the above definition (paras. 16-18) — "Due regard" to the declarant's intention (para. 19) — Court should seek to interpret the reservation as consistent with international law (paras. 20-21) — Declarant"s intention — Parliamentary debates (paras. 19, 21-22) — Implications of the Canadian reservation for the jurisdiction of the Court cannot be conclusively established at this stage (paras. 23-24).*

1. I regret that I find myself obliged to dissent from the Judgment of the Court in the present case. I cannot concur with the arguments and findings relating to two principal points:

(1) the subject-matter of the dispute, and
(2) the effects of the Canadian reservation on the Court's jurisdiction in this case. Accordingly, I propose to deal with each of these issues in turn.

I. The Subject-Matter of the Main Dispute between the Parties

2. Spain has steadfastly reiterated throughout both the written and oral pleadings that the core, the subject-matter, of the dispute between the two States is the existence or non-existence of a title under international law to act on the high seas against ships flying the flag of a foreign State, and more concretely, against ships flying the Spanish flag. (See,

inter alia, Memorial of Spain, Chap. II, Sec. IX, para. 22; Chap. IV, Sec. II, paras. 173-176; CR 98/9, pp. 18-19, 31, 42 *et seq.*; Final Submissions of Spain). Equally, it has insisted that "Spain's Application is not concerned with fishing on the high seas, nor with the management and conservation of biological resources within the NAFO zone" (CR 98/9, p. 53, para. 39 *[translation by the Registry]*).

Spain has explained what it means by the term "title". In so doing it has relied on the jurisprudence of the Court in the *Burkina Faso/Republic of Mali* case, where the Court held that this concept may "comprehend both any evidence which may establish the existence of a right, and the actual source of that right" (*Frontier Dispute, I.C.J. Reports 1986,* p. 564, para. 18). The Agent of Spain, while not denying that in the course of the proceedings Spain sometimes used the word "title" in a different sense, concluded his presentation of the issue by the following statement:

> "When we contend that Canada has no international legal title to take action on the high seas against ships flying the Spanish flag, we are using the concept of title accepted by the Court: in other words, Canada's lack of entitlement to engage in such actions." (CR 98/9, p. 16 *[translation by the Registry].*)

Thus, Spain has emphasized over and over again that it had submitted to the Court a dispute relating not to measures for the management and conservation of fish stocks (which dispute had been dealt with elsewhere), but relating generally to Canada's lack of title under international law to take actions on the high seas against ships flying the Spanish flag, as it did in March 1995.

3. Contrary to this position, Canada has contended that the dispute does not go beyond the conservation and management measures taken by Canada and that, even if it does, the general issue of the entitlement to take actions on the high seas against ships flying the Spanish flag remains related to the above measures and their enforcement, and therefore cannot be treated by the Court separately from the factual framework covered by the Canadian reservation.

4. The point of departure for the Court's resolution of this dispute within the dispute should be Article 40, paragraph 1, of the Statute, which provides that it is for the applicant State to indicate the subject of the dispute. Hence, while it is true that "[t]he Court's jurisprudence shows that the Court will not confine itself to the formulation by the Applicant when determining the subject of the dispute" (para. 30 of the Judgment), it must be equally true that, in characterizing the main dispute between the Parties, the Court cannot without well-founded reasons redefine the subject of the dispute in disregard of the terms of the Application and of other submissions by the Applicant. Yet this appears to be what the Court has done in its Judgment (see para. 35 of the Judgment).

5. The Application refers to the dispute between the Parties as one "going beyond the framework of fishing, seriously affecting the

very integrity of the *mare liberum* of the high seas and the freedoms thereof . . .". It also refers to "a very serious infringement of the sovereign rights of Spain, a disquieting precedent of recourse to force in inter-State relations . . ." (Application of Spain, p. 11). More specifically, it states:

> "The question is not the conservation and management of fishery resources, but rather the entitlement to exercise a jurisdiction over areas of the high seas and the opposability of such measures to Spain." (*Ibid.*, p. 13.)

The use of the word "title" in the Application is not without ambiguity. It refers not only to the existence or non-existence of the right under international law, but also to the Canadian legislation, which, in the Applicant's view, is distinct from conservation and management measures proper. However, both in the Application and in the final submissions the Court is primarily asked to adjudicate on the question whether or not Canada has an international legal title to exercise jurisdiction over, and use force against, ships flying the Spanish flag on the high seas. Other claims by Spain are functions of this central claim, but not vice versa.

6. The contention of Canada that:

> "[i]t is impossible to isolate a dispute relating to matters of general international law, and more particularly State jurisdiction, from a dispute relating to measures for the conservation and management of the living resources of the sea" (CR 98/12, p. 57 *[translation by the Registry]*)

cannot be sustained on several accounts.

First, to maintain that every dispute before the Court must consist of an "indivisible", "indissociable" whole, always and necessarily embracing both facts and rules of law, would not accord with the Statute of the Court and its jurisprudence. Under Article 36, paragraph 2 *(b)*, of the Statute, the Court has jurisdiction in all legal disputes concerning "any question of international law". Legal disputes concerning "the existence of any fact which, if established, would constitute a breach of international obligation", are categorized on a par with disputes concerning "any question of international law". Nothing in the Statute prevents the Court from entertaining a "purely" legal dispute relating to a question of international law. In the *North Sea Continental Shelf* cases, in accordance with the Special Agreements, the Court stopped short at declaring applicable principles and rules of international law (*I.C.J. Reports 1969*, pp. 54-55).

Secondly, were the Court to understand the above contention by Canada as a general proposition that the Court cannot entertain in isola-

tion a dispute relating to the interpretation of principles and rules of international law merely because the same principles and rules may govern another dispute, or another aspect of the dispute which is, allegedly, exempted from the jurisdiction of the Court, then this contention would again go contrary to the *North Sea* cases' jurisprudence as well as to the Court's dictum in the case concerning *United States Diplomatic and Consular Staff in Tehran:*

> "no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects . . ." (*I.C.J. Reports 1980*, p. 19, para. 36).

The Court also remarked in its Judgment in the same case that:

> "if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes" (*ibid.*, p. 20, para. 37).

Thirdly, a dispute before the Court may have several subjects, or several distinct aspects of the same subject. Thus in the *Right of Passage over the Indian Territory* case the Court noted that "the dispute submitted to the Court ha[d] a *threefold subject*" including *"the disputed existence of a right . . ."* (*I.C.J. Reports 1960,* pp. 33-34, emphasis added). In a concrete case, the Court may find that it has jurisdiction with regard to one subject, or to a specific aspect of that subject, and has no jurisdiction with regard to others.

7. In the case under consideration, due regard should also be given to the fact that the European Community and its member States would appear to have agreed that there was a dispute between Spain and Canada distinct from, and co-existent with, that between the Community and Canada concerning fisheries in the NAFO Regulatory Area.

8. In my view, the preceding analysis shows that legal entitlement ("the disputed existence of a right") may properly be the subject of a separate litigation before the Court. Spain, as an applicant State, was at liberty to bring before the Court and to single out a distinct aspect of the dispute between the Parties, which presented for it a special interest or had not been resolved by some other peaceful means.

The scope of the dispute between the Parties is much broader than the pursuit and arrest of the *Estai* and the consequences thereof. Quite apart from this proximate cause of the dispute, it would appear that what underlies it are different perceptions by the Parties of the rights and obligations which a coastal State may or may not have in a certain area of the high seas; or, more generally, different perceptions of the relationship

between the exigencies of the law of the sea, on the one hand, and environmental law on the other. The Court had no good reason for redefining and narrowing the subject-matter of the dispute presented by the Applicant, although, certainly, the Court could reasonably find that it had jurisdiction in respect of some aspects of the dispute and was without jurisdiction in respect of others.

* * *

9. Up to now we have not been concerned with the question whether the dispute between the parties, however defined by the Court, is covered or otherwise by the reservation attached by Canada to its declaration of acceptance of the compulsory jurisdiction of the Court. We propose now to turn to this crucial question.

It will be appropriate to recall at this juncture the text of Canada's reservation. Subparagraph *(d)* of paragraph 2 of the Canadian declaration of 1994 excludes from the jurisdiction of the Court:

> "disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures".

II. The Effects of the Canadian Reservation on the Court's Jurisdiction in This Case

10. A number of preliminary observations seem to be necessary. It is common knowledge that "jurisdiction of the Court is based on the consent of the parties". However, this precept does not reflect the whole truth. If jurisdiction must always be based on consent in the literal meaning of the word, then, as soon as that consent is withdrawn (at any given time) by the respondent State, the Court automatically ceases to have jurisdiction to deal with the case brought against that State. As is, however, also well known, the reality is different. There are a number of rules of international law which circumscribe the principle of consent. Once a State has given its consent to the jurisdiction of the Court, be that in the form of a special agreement *(compromis)*, a jurisdictional clause of a treaty, or in the form of a declaration of acceptance of the optional clause, its freedom in respect of the Court's jurisdiction ceases to be unlimited; still less, can it be absolute. As the case may be, it is constrained by general rules of international law *(pacta sunt servanda)*, specific rules of the treaty in question (the terms of the compromissory clause), the Statute and procedural rules of the Court. Having regard to these considerations, it is impossible to assert or to presume the absolute freedom

of a State at any given moment in respect of the jurisdiction of the Court, without due regard to the attendant circumstances.

One of the manifestations of the existing limitations on this freedom is the Court's *compétence de la compétence*. "Self-judging" by the State concerned is excluded. It is for the Court to establish the existence or otherwise of its jurisdiction in a concrete case. In doing so the Court is not guided by the present wish of the respondent State, but rather relies on the interpretation of the voluntary acts of the parties in the past, at the time when they accepted the jurisdiction of the Court, as well as on the existing rules of international law and its jurisprudence.

11. In case of the optional clause jurisdiction (or so-called compulsory jurisdiction), a State is absolutely free to join or not join the optional clause system and to limit or not limit its consent to the Court's jurisdiction by certain conditions and reservations. This does not mean, however, that the role of the Court in the assessment of a State's reservation/condition to its declaration of acceptance of the optional clause may be reduced solely to the establishment of the intention/will of the State concerned or, for that matter, that the above intention/will must always be conclusive for purposes of a decision on the Court's jurisdiction. The Court would be failing in its duties of an "organ and guardian" of international law should it accord to a document the legal effect sought by the State from which it emanates, without having regard to the compatibility of the said document with the basic requirements of international law.

Certainly, a State making a reservation sometimes does so because it "lack[s] confidence as to the compatibility of certain of its actions with international law" (para. 54 of the Judgment) and for that reason wishes to evade the scrutiny of its conduct by the Court. However, it is one thing when the legality of certain actions may be seen as doubtful, and quite a different thing when the actions whose examination by the Court a State seeks to avoid, by making a reservation, are clearly contrary to the Charter of the United Nations, the Statute of the Court or to *erga omnes* obligations under international law. Being confronted with such a dilemma, it is for the Court to draw a distinction between these two different legal situations, which may lead to different conclusions as to the validity or admissibility of the reservation in question.

A State is not absolutely free to make any reservation or condition it pleases to its optional declaration deposited under Article 36, paragraph 2, of the Statute. For example, it is uncontested that the Court cannot give effect to a condition imposing certain terms on the Court's procedure which run counter to its Statute or Rules. As Judge Armand-Ugon rightly argued in the *Interhandel* case, "[t]he rules of substance and procedure fixed by the Statute must be regarded as immutable: neither

the Court nor the parties can break them" (*Interhandel, Preliminary Objections, Judgment, I.C.J. Reports 1959,* p. 93, dissenting opinion of Judge Armand-Ugon). Equally, in my view, the Court cannot give effect to a reservation which expressly exempts from its jurisdiction the examination of conduct manifestly inconsistent with the basics of international law. An objection to the Court's jurisdiction based on a reservation tainted with such a defect must be rejected by the Court as inadmissible. Recognition by the Court of the operation of a reservation of this kind might be viewed as tantamount to legal endorsement of what in fact should be considered as an abuse of the right of a State not to be sued without its consent before an international tribunal. Generally, reservations and conditions must not undermine the very raison d'être of the optional clause system.

12. In our case the legal situation is different. The Canadian reservation admits of more than one interpretation. It is not the reservation itself, but rather its current interpretation by Canada that is challenged by Spain. Nor has the Court any reason to find that the content of the Canadian reservation makes it *ab initio* manifestly inconsistent with the basic principles of international law and therefore inapplicable. The task of the Court in the present case is to find which of the possible interpretations of the reservation is correct and, depending on this finding, to resolve the dispute over its jurisdiction in the case.

According to the well-established rules for the interpretation of declarations and reservations thereto, the Court must read them as a whole and accord the natural and ordinary meaning to the words used in the text. At the same time, the Court has specifically emphasized in the past that:

> "the Court 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 declarant State] at the time when it accepted the compulsory jurisdiction of the Court." (*Anglo-Iranian Oil Co., Preliminary Objection, I.C.J. Reports 1952,* p. 104.)

13. For the Court, the question of legality cannot be totally irrelevant to "a natural and reasonable way of reading the text". Since the function of the Court is to decide disputes in accordance with international law (Article 38, paragraph 1, of the Statute), every international document must be construed by the Court in the light of international law. The language of the Court is the language of international law. A term of a declaration or of a reservation may have a wider or narrower meaning in common parlance or in some other discipline, but for the Court "the natural and ordinary" meaning of the term is that attributed to it in inter-

national law. For natural scientists, for the fisheries industry, conservation and management of fisheries resources remain conservation and management irrespective of the location and legality of this activity. This does not mean, however, that from the position of international law we can characterize as conservation and management, for example, measures for the protection of straddling fish stocks taken by one State in the territorial waters of a neighbouring State without the consent of the latter. International law recognizes the importance and encourages the development of transborder co-operation for the protection of natural resources, including straddling fish stocks, but it does not admit the possibility of providing this protection by way of violation of fundamental principles of international law. The terms of the art for the Court are the terms used in the context of international law, even though they may have a somewhat different meaning in other disciplines.

14. It follows that the expression "conservation and management measures", as used in the Canadian reservation, must be read by the Court as referring only to measures accepted within the system of modern international law. A natural source in which to seek definitions of terms and concepts used in the context of the new international law of the sea is the relevant multilateral agreements, particularly those drawn up recently. The meaning of the concept "conservation and management measures" in the international law of the sea is defined in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (hereinafter referred to as the "United Nations Agreement on Straddling Stocks of 1995")[1].

15. This Agreement and the terms used therein are eminently relevant for the issue under consideration. Indeed, the Agreement is contemporaneous with the emergence of the dispute. Its objective ("to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks" — Article 2) coincides with the proclaimed objective of the Canadian measures. Both the measures under the Agreement and the Canadian measures are designed for application beyond areas under national jurisdiction. The Agreement was drawn up "for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982", that is, it is intimately linked

[1] Adopted without a vote on 4 August 1995 at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. One hundred and thirty-eight States and many international organizations participated in the Conference. As of now, the Agreement has been signed by more than 60 States, but has not yet come into force.

to the *"Magna Carta"* of the modern law of the sea[2]. Moreover, both Canada and Spain have signed (but not yet ratified) this Agreement.

Article 1, paragraph 1 *(b)*, of the Agreement provides that:

> "'Conservation and management measures' means measures to conserve and manage one or more species of living marine resources *that are adopted and applied consistent with the relevant rules of international law* as reflected in the Convention and this Agreement." (Emphasis added.)

Even more specific in this regard is another recent international legal instrument directly related to the problems of conservation and management on the high seas, namely: the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. This so-called "Compliance Agreement" was adopted in 1993 by the Twenty-seventh Session of the FAO Conference and forms an integral part of the Code of Conduct for Responsible Fisheries[3]. Article I of this Agreement, entitled "definitions", contains a definition of "international conservation and management measures" which, among other elements — identical to those in the above-cited definition — also includes the element of legality, which is formulated in the following way: "[measures] that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea".

16. It follows from the texts just cited that, contrary to what is said in the Judgment, in international law, in order for a measure to be characterized as a "conservation and management measure" or an "international conservation and management measure", *it is not sufficient* that "its purpose is to conserve and manage living resources and that, to this end, it satisfies various technical requirements" (paragraph 70 of the Judgment). Another essential requirement — indeed a *sine qua non* — is that the adoption and application of such a measure be "consistent" or "in accordance" with the relevant rules of

[2] According to the mandate of the Conference which adopted the agreement, "[t]he work and results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas". See Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Vol. I: Resolutions adopted by the Conference, Res. I, Ann. II, para. 17.40.

[3] FAO Fisheries Department. Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. Twenty-five acceptances are required for the Agreement to come into force. As of now, ten acceptances have been received, including that of Canada. Significantly, Canada accepted the Agreement on 20 May 1994, that is, only 10 days after the filing of its declaration of acceptance of the compulsory jurisdiction of the Court, which declaration contained the reservation discussed.

international law and, more specifically and primarily, with the Law of the Sea Convention.

Moreover, as the legislative history of the United Nations Agreement on Straddling Stocks of 1995 shows, Canada was among the States which formally proposed to include in Article 1 of the Agreement the definition of "international conservation and management measures", which definition embraced the requirement of the adoption and application of such measures "in accordance with the principles of international law as reflected in the United Nations Convention on the Law of the Sea . . ."[4].

17. The argument in the Judgment that "the practice of States" supports the view that the exigencies of international law are irrelevant for the definition of the concept "conservation and management measures" does not accord with a number of facts. None of the instruments of national legislation and regulations, cited in the Judgment as evidence of "typical" practice of States (para. 70), contain any definition whatsoever of "conservation and management measures", but all of them do contain special clauses providing for the application of those laws and regulations in the waters under national jurisdiction (that is, in harmony with international law). Some of these instruments specifically stipulate that their interpretation and application must be in a manner consistent with international obligations (see, for example, New Zealand Fisheries Act 1996, Art. 5).

18. I agree with the statement in the Judgment that:

> "[r]eading the words of the reservation [of Canada] in a 'natural and reasonable' manner, there is nothing which permits the Court to conclude that Canada intended to use the expression 'conservation and management measures' in a sense different from that generally accepted in international law" (para. 71).

But I fundamentally disagree that the meaning given by the Judgment to the concept of "conservation and management measure" accords with the meaning of this concept accepted in modern international law, as evidenced by the two above-cited recent multilateral agreements and their legislative history.

19. In the process of interpretation, following the jurisprudence of the Court, "due regard" should also be given to the intention of the State author of the declaration/reservation at the time when such declaration/reservation was made. "Due regard" does not mean that this factor should be controlling and definitive for the outcome of the interpretation by the Court, but it must certainly play an important role in ascertaining

[4] Draft Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on the High Seas (submitted by the delegations of Argentina, Canada, Chile, Iceland and New Zealand), doc. A/CONF.164/L.11 of 14 July 1993.

the purpose of the legal instrument. The purpose intended by the State author must be primarily sought in the wording of the document itself. In some cases, the Court has found "a decisive confirmation of the intention" of the declarant State in the text itself of the examined declaration/reservation. (See case concerning *Anglo-Iranian Oil Co., Preliminary Objection, Judgment, I.C.J. Reports 1952*, p. 107.)

20. As a general premise, the Court should proceed from the presumption that the intent was to remain within the orbit of international law. The purpose of the declaration/reservation must be presumed as legal. The Permanent Court of International Justice stressed that the Court cannot presume an abuse of rights (*Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7*, p. 30). The present Court in the *Right of Passage* case stated that:

> "It is a rule of interpretation that a text emanating from a Government must, in principle, be interpreted as producing and as intended to produce effects in accordance with existing law and not in violation of it." (*Right of Passage over Indian Territory, Preliminary Objections, Judgment, I.C.J. Reports 1957*, p. 142.)

The Court cannot impute to a State bad faith, an intent by way of a reservation to cover a violation of international law.

21. Basing itself on the presumed lawfulness of Canada's intent, the Court cannot read into the text of the reservation of Canada an intention to violate the fundamental principle of the freedom of the high seas and at the same time to avoid review of this conduct by the Court. Rather, it should seek to interpret the reservation as consistent with international law and, therefore, to construe the words "conservation and management measures" in the sense accepted in recent multilateral agreements (see *supra*, para. 16) or, at the very least in a sense having some justification in international law.

22. The purpose intended to be served by the declaration/reservation may also be sought by the Court in any available evidence pertaining to the adoption of the instrument. The evidence furnished by Canada to this effect is ambivalent. Parliamentary statements, made at the time when the declaration and the reservation thereto had just been deposited, would appear to limit the application of the envisaged measures to "pirate vessels" (which would be consistent with international law). Both the Minister for Foreign Affairs and the Minister for Fisheries and Oceans principally spoke of stateless or "pirate vessels" as the target of the proposed legislation (Bill C-29), whose "integrity" the reservation was intended to protect. In light of the link between that legislation and the reservation, the above statements could be viewed as the official interpretation of the reservation by Canada at the time of its deposit.

Only some one year later did Canada introduce the regulations by which Act C-29 was applied to Spanish and Portuguese vessels.

Arguably, those regulations are not relevant to the interpretation of the reservation at the time of its deposit. It follows that the parliamentary debate and other evidence submitted by Canada cannot be relied on in order to draw conclusions as to "*the evident* intention of the declarant" (paragraph 66 of the Judgment; emphasis added) at the time material for the interpretation of the reservation.

* * *

23. In view of the above considerations, the scope *(ratione materiae* and *ratione personae)* of the Canadian reservation, as well as its implications for the Court's jurisdiction in this case, appear much less clear than it may seem on the face of the matter. The clarification of these issues requires further analyses of facts and law and the conclusive establishment whether the measures taken by Canada, including their enforcement, fall within the terms of the reservation. This can be done only at the merits stage.

24. On the other hand, already at the present stage, it is amply clear that legal uncertainties surrounding the Canadian reservation make it impossible for the Court, relying on this reservation, to arrive with confidence at the conclusion that it has no jurisdiction to entertain the broad legal dispute over the title under international law for a coastal State to act on the high seas with the use of force against vessels of other States. In my view, the correct course of action for the Court would have been to find that in the circumstances of the case the objections of Canada did not have an exclusively preliminary character.

(Signed) Vladlen S. VERESHCHETIN.