

Judge PETRÉN and Judge ONYEAMA make the following Joint Declaration:

We agree with the operative provision and the reasoning of the Judgment subject to the following declaration:

With regard to the nationality of Barcelona Traction, the Judgment refers to the existence of opinions to the effect that the absence of a genuine connection between a company and the State claiming the right of diplomatic protection of the company might be set up against the exercise of such a right. In this context the Judgment also mentions the decision in the *Nottebohm* case to the effect that the absence of a genuine connecting link between a State and a natural person who has acquired its nationality may be set up against the exercise by that State of diplomatic protection of the person concerned. The present Judgment then concludes that given the legal and factual aspects of protection in the present case there can be no analogy with the issues raised or the decision given in the *Nottebohm* case.

Now in the present case the Spanish Government has asserted and the Belgian Government has not disputed that, Barcelona Traction having been incorporated under Canadian law and having its registered office in Toronto, it is of Canadian nationality and Canada is qualified to protect it.

Canada's right of protection being thus recognized by both Parties to the proceedings, the first question which the Court has to answer within the framework of the third preliminary objection is simply whether, alongside the right of protection pertaining to the national State of a company, another State may have a right of protection of the shareholders of the company who are its nationals. This being so, the Court has not in this case to consider the question whether the genuine connection principle is applicable to the diplomatic protection of juristic persons, and, still less, to speculate whether, if it is, valid objections could have been raised against the exercise by Canada of diplomatic protection of Barcelona Traction.

Judge LACHS makes the following Declaration:

I am in full agreement with the reasoning and conclusions of the Judgment, but would wish to add the following observation:

The Court has found, in the light of the relevant elements of law and of fact, that the Applicant, the Belgian Government, has no capacity in the present case. At the same time it has stated that the Canadian Government's right of protection in respect of the Barcelona Traction company has remained unaffected by the proceedings now closed.

I consider that the existence of this right is an essential premise of the Court's reasoning, and that its importance is emphasized by the seriousness of the claim and the particular nature of the unlawful acts with which it charges certain authorities of the respondent State.

President BUSTAMANTE Y RIVERO, Judges Sir Gerald FITZMAURICE, TANAKA, JESSUP, MORELLI, PADILLA NERVO, GROS and AMMOUN append Separate Opinions to the Judgment of the Court.

Judge *ad hoc* RIPHAGEN appends a Dissenting Opinion to the Judgment of the Court.

*(Initialled)* J. L. B.-R.

*(Initialled)* S. A.