

which the Order is based: because Fiji, which is not a party to the 1928 Act and to the optional clause system, has failed to invoke in its application any title of jurisdiction in relation to France.

In my view, in order to be entitled to intervene under Article 62 of the Statute for the purpose of asserting a right as against the respondent a State must be in a position in which it could itself bring the respondent before the Court.

When Article 62 of the Statute was drafted, its authors were proceeding on the assumption that the intervening State would have its own title of jurisdiction in relation to the respondent, since the draft Statute then provided for general compulsory jurisdiction. When that system was replaced by the optional clause, Article 62 remained untouched, but it must be interpreted and applied as still subject to that condition. Otherwise, unreasonable consequences would result, in conflict with basic principles such as those of the equality of parties before the Court and the strict reciprocity of rights and obligations among the States which accept its jurisdiction. A State which cannot be brought before the Court as a respondent by another State can neither become an applicant vis-à-vis that State nor an intervener against that same State, entitled to make independent submissions in support of an interest of its own. In my view the provision in Article 69, paragraph 2, of the Rules of Court requiring "a statement of law and of fact justifying intervention" must in circumstances like those in the present case be interpreted as including the requirement of establishing an independent jurisdictional link between intervener and respondent.

Judge *ad hoc* Sir Garfield BARWICK makes the following declaration:

I have voted in favour of the Order made in respect of the Application by Fiji to intervene in these proceedings not because of the Order made by the Court in the cases *Australia v. France* and *New Zealand v. France* but solely for the reasons expressed by Judge Jiménez de Aréchaga and Judge Onyeama in their declarations concerning the Fiji Order, with which I entirely agree.

(Initialled) M.L.

(Initialled) S.A.