

DECLARATION OF JUDGE SHAHABUDDEEN

The Order made by the Court today should help to maintain friendly relations between two fraternal and neighbouring States. I have voted for paragraphs 1, 2, 4 and 5 of the *dispositif*. If I thought that there was a sound juridical basis for paragraph 3 of the *dispositif*, I should have voted for this also. However, I do not think there is such a basis.

A provisional measure should be framed in self-executing terms, in the sense that it should contain all the legal elements required for its interpretation and application. In the case of a provisional measure limiting the movement of armed forces, an essential element is the prescription of a clear physical benchmark, in the nature of a stipulation of positions or lines in relation to which it could be easily determined whether the required limitation has been observed. For the reasons alluded to in paragraph 38 of the Court's Order, the evidence has not permitted the Court to identify such a benchmark. A related problem confronted the Chamber in the *Frontier Dispute* case, but there an alternative solution was available (*Provisional Measures, I.C.J. Reports 1986*, pp. 10-11, para. 27, and p. 12, para. 32 (1) (D)). No similar alternative solution is available here.

In the result, a provisional measure limiting the movement of armed forces will not serve the intended purpose of avoiding conflict in the area. On the contrary, it may provide a basis for a fresh dispute, in that, in the circumstances of this case, there could be argument between the Parties as to what position or positions each occupied prior to 3 February 1996.

In this situation, it seemed to me that the provisional measure prescribed in paragraph 2 of the *dispositif*, for which I voted, was as much as the Court could usefully indicate, that measure being directed to requiring both Parties to observe the agreement reached by their Ministers of Foreign Affairs on 17 February 1996 for the cessation of all hostilities in the Bakassi Peninsula. The observance of this requirement should yield much of the practical effect which would have been achieved by an adequately constructed provisional measure limiting the movement of the armed forces of the Parties.

(Signed) Mohamed SHAHABUDEEN.
