

DECLARATION OF JUDGE HERCZEGH

[Translation]

Article 59 of the Statute — Unjustified criticism in paragraph 238 of the Judgment — Protection afforded to third States dependent on Court's interpretation and application.

I voted for all points of the operative paragraph of the Judgment, with which I am in complete agreement. They express the same conclusions that I had reached after examining the case.

I cannot however subscribe to the proposition set out in paragraph 238 of the reasoning, which states *inter alia*:

“The Court considers that, in particular in the case of maritime delimitations where the maritime areas of several States are involved, the protection afforded by Article 59 of the Statute may not always be sufficient. In the present case, Article 59 may not sufficiently protect Equatorial Guinea or Sao Tome and Principe from the effects — even if only indirect — of a judgment affecting their legal rights.”

I see in this passage a scarcely veiled criticism, which I cannot share, of the Court's Statute, which is an integral part of the United Nations Charter. Article 59 of the Statute provides as follows: “The decision of the Court has no binding force except between the parties and in respect of that particular case.” That is a necessary, indeed inevitable, consequence of the fact that the Court's jurisdiction is founded on the consent of the parties. The Court must ensure that it takes no decision which oversteps the limits laid down by Article 59 and which would in consequence be without binding force and remain a dead letter. This is not only a principle of the sound administration of justice, but also an obligation incumbent upon the Court deriving from its function as laid down by its Statute, namely, in particular, to decide in accordance with international law such disputes as are submitted to it.

In certain circumstances, satisfying the obligation not to affect the rights of third States may pose problems for the Court, which explains and justifies the inclusion in its Statute of a provision concerning the intervention of a State which considers that it has an interest in a dispute of a legal nature which may be affected by the decision in the case (Art. 62). The Judgment of 14 April 1981 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Application for Permission to Intervene*, and the separate opinions of Judges Morozov, Oda and Schwebel appended to that Judgment, and then the Judgment of 21 March 1984 in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, *Application for Permission to Intervene*, and the dis-

senting opinions of Judges Sette-Camara, Oda, Schwebel and Jennings clearly demonstrate the complexity of the problem and the Court's efforts to give a consistent interpretation of the relevant provisions of the Statute and to apply them in accordance with their letter and their spirit. The last word has yet to be said in this debate. However, as Judge Schwebel so aptly put it: "Article 59 cannot, by any canon of interpretation, be read so as to read Article 62 out of the Statute" (*I.C.J. Reports 1984*, p. 134, para. 9). Moreover, at least in my opinion, it cannot be said that the protection afforded to the rights of third parties by Article 59 of the Statute might be insufficient. The criticism of this Article strikes me as misplaced.

This is not a rule of law which, in itself, might be said sufficiently to protect or not to protect a legal interest of a particular country. It is, rather, a provision which it is for the Court to interpret and apply in such a way that such protection is made as effective as possible. Hence, whether that protection proves to be sufficient or not depends on the Court. In the present case the Court carefully considered the legal interests of Equatorial Guinea and Sao Tome and Principe and it was in that sense and in that spirit that it rendered its Judgment concerning the determination of the maritime boundary between Cameroon and Nigeria. In order to do so it had no need whatever to make a critical remark in regard to an Article of the Statute.

(Signed) Géza HERCZEGH.