Declaration of Judge Vukas

1. As stated in the above Order, I voted in favour of all the subparagraphs of its operative part contained in paragraph 52. Without any further explanation this would mean that I fully share the position of the Tribunal concerning the structure, the contents and the scope of the entire operative part. This not being so, I attach this declaration to the Order; its purpose is to explain my vote on subparagraphs 2 and 3 of paragraph 52.

2. I voted in favour of subparagraph 2, as I do share the opinion concerning the importance of achieving at this stage of the relations between the parties, and at the beginning of the procedure of the Tribunal on the merits of the case, the main goal set in this operative provision: abstention of the parties from any action which might aggravate or extend the dispute. An arrangement to be applied between the parties pending the final decision of the Tribunal could be a useful additional step in the same direction.

3. In my opinion, the duty to abstain from any action "taken by their respective authorities or vessels flying their flag which might aggravate or extend the dispute submitted to the Tribunal" had to be prescribed by the Tribunal as a provisional measure. However, in the course of the deliberations it was decided that the only provisional measure prescribed by the Tribunal would be the one formulated in subparagraph 1, and that the contents of subparagraph 2 would be drafted and adopted in the form of a recommendation. The reasons why I disagree as to formulating subparagraph 2 as a recommendation are the following:

Firstly, taking into account the nature of the case, the restraint of the parties in respect of actions which might aggravate or extend the dispute is of utmost importance. The tragic events which occurred on 28 October 1997 and afterwards resulted in human suffering and material loss. Therefore, the Tribunal should have used the most effective measures in order to convince the parties to abstain from any similar or other action which might aggravate or extend the dispute pending the final decision of the Tribunal. Under the applicable rules, such means are "prescribed provisional measures".

Secondly, another reason against the "recommendation" form of subparagraph 2 is based on the applicable rules on provisional measures prescribed by the Tribunal. And there is no doubt that this Order is made by the Tribunal on the Request submitted by Saint Vincent and the Grenadines only for the prescription of provisional measures. Under all the rules on provisional measures in the United Nations Convention on the Law of the Sea (article 290), the Statute of the International Tribunal for the Law of the Sea (article 25) and the Rules of the Tribunal (articles 89-95), the Tribunal is not entitled to take any other decision, make any suggestion or recommendation, express any wish, etc.; its only task and competence is to "prescribe provisional measures" which it considers appropriate under the circumstances of the dispute.

4. Parties to the dispute have to comply with the prescribed measures; the compliance with such measures is their legal obligation and they bear international responsibility for not complying with the prescribed provisional measures. Parties to a dispute have to inform the Tribunal as soon as possible as to their compliance with the prescribed provisional measures (article 95 of the Rules).

On the other hand, the legal nature of the measures recommended in subparagraph 2, nowhere mentioned in the applicable rules, remains unclear. As the Tribunal did not want to

qualify them as "provisional measures", it is questionable whether it at all considered them as "appropriate under the circumstances to preserve the respective rights of the parties to the dispute ... pending the final decision" (article 290, paragraph 1, of the Law of the Sea Convention). The reason for including such measures without characterising them as provisional measures remains obscure.

5. In subparagraph 3, the Tribunal decides that the parties have to submit reports, but it does not specify whether this obligation concerns only subparagraph 1 or also subparagraph 2. This vagueness does not come as a surprise, because the Tribunal is aware of the fact that it is entitled to request reports only in respect of the compliance with provisional measures (subparagraph 1), and that there is no rule which would oblige the parties to report on the compliance with recommendations (subparagraph 2). Taking this into account, it is not correct that the Tribunal invokes article 95, paragraph 1, of its Rules, as this provision deals only with reports on the compliance with provisional measures.

Notwithstanding this vagueness and incorrectness of subparagraph 3, I voted in favour because of its implied element which requires reporting concerning the provisional measures (subparagraph 1). Namely, I consider reporting an indispensable component for the efficiency of prescribed provisional measures.

(*Signed*) Budislav Vukas