

JOINT DECLARATION BY JUDGES CAMINOS, YANKOV, AKL, ANDERSON, VUKAS, TREVES AND EIRIKSSON ON THE QUESTION OF COSTS

We were unable to support the decision in this case on the question of costs for two reasons.

First, the two States parties to the dispute requested the Tribunal to award costs to the successful party. They included their joint request in their Agreement of February 1998. They repeated it individually at the time of making their respective final submissions, in which each party sought recovery of its costs against the other. The parties are in agreement that the successful party should be awarded its costs and, at the request of the Tribunal, each has submitted invoices and accounts which have been duly examined.

In this connection, we recall that, from the outset of the work of the Permanent Court of International Justice, it was understood that the terms of Article 64 of its Statute (comparable to article 34 of the Tribunal's Statute) did not exclude the possibility that a division of the costs between the parties could be ordered pursuant to an agreement between them. The Sub-Committee of the Third Committee of the Assembly of the League of Nations, in reporting on its work in preparation for the adoption by the Assembly of the Statute of the Permanent Court, stated: "The Sub-Committee unanimously recognises that the terms of [Article 64] do not prevent division of the costs between the Parties in accordance with an agreement between them." (*League of Nations, Records of the First Assembly, Meetings of the Committees, I*, p. 537, Geneva, 1920).

In the present case, there is clearly agreement between the parties to the effect that the party found by the Tribunal to have been the "successful party" should receive its costs.

Secondly, this case has resulted in the award of compensation. The Tribunal has determined certain precise amounts of compensation, as well as interest, with the stated aim of wiping out the consequences of acts found to have been contrary to the Convention (paragraph 170 of the Judgment). In our opinion, it would have been consistent with the full achievement of that aim to have departed from the general rule and to have awarded costs to Saint Vincent and the Grenadines, as the generally successful party.

We recognize that, as regards the general question of the award of costs, the Tribunal has not yet elaborated specific rules or procedures, such as have been adopted by other international courts and tribunals. Nonetheless, on the basis of certain general principles and the information provided by each party, we would have awarded, in the circumstances of this case, reasonable costs in respect of the following: professional fees, travel and subsistence of agents, counsel and advocates; travel and subsistence of witnesses; production of evidence; and other expenses necessarily incurred for the purposes of this phase of the proceedings. Such an award, by responding affirmatively to the repeated requests of both parties, would have done no more than meet their legitimate expectations.

Finally, we support the decision of the majority that the general rule on costs is applicable to the phase of the proceedings concerning provisional measures, in the absence in our opinion of a successful party in that phase.

(Signed)

Hugo Caminos

(Signed)

Alexander Yankov

(Signed)

Joseph Akl

(Signed)

David H. Anderson

(Signed)

Budislav Vukas

(Signed)

Tullio Treves

(Signed)

Gudmundur Eiriksson