

DECLARATION OF JUDGE KEITH

1. I agree with the decision of the Court and in essence with the reasons it gives. My principal purpose in preparing this declaration is to emphasize an important aspect of the function of the Court in deciding in accordance with international law disputes submitted to it. The Court has the power and the responsibility, when it may properly do so, to decide at a preliminary stage of a case a matter in dispute between the Parties if deciding that matter will facilitate the resolution of the case. That power and responsibility arise from the principle of the good administration of justice, and are illustrated by the cases the Court cites in paragraph 49 of its Judgment; they are also reflected in the broad terms of the first sentence of paragraph 1 of Article 79 of the Rules of Court, regulating preliminary objections, as originally adopted in 1972. The power and responsibility may be used to safeguard the rights and interests of the Parties, particularly those which contend that a matter is no longer a live one. The Court should not leave unresolved for later and further argument a matter which in the particular circumstances of the case may be properly decided at that earlier stage.

2. The Parties disagree on the question whether the matter of sovereignty over the three named islands was settled by and in accordance with the terms of the 1928 Treaty. That question arises in respect of each of the two autonomous sources of jurisdiction invoked by Nicaragua.

3. I consider that the Court may properly decide, as it has and for the reasons it gives, that in terms of Article VI of the Pact of Bogotá that matter of sovereignty was settled in favour of Colombia as at 1948. There was no extant dispute. For essentially the same reasons, to turn to the second head of jurisdiction, there is now no dispute in respect of that matter, as required by Article 36, paragraph 2, of the Statute of the Court and the Parties' declarations made under it, as again the Court rules. It follows that the Court does not have jurisdiction in respect of that matter under either head of jurisdiction invoked by Nicaragua.

4. In the first and third paragraphs I have used the adverb "properly" to indicate a limit on the power and responsibility to decide. As the Court has often declared, it must as a judicial body and a court of justice remain faithful to the requirements of its judicial character (e.g. *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, Advisory Opinion, I.C.J. Reports 1956*, pp. 77, 84). In particular, it must have before it the material which it needs to decide the matter according to law, and it must accord to each Party equal rights to

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present its evidence and submissions on that matter and to rebut the material presented against it. I have no doubt that both requirements are satisfied in this case in respect of the matter relating to the three named islands on which the Court has ruled.

(Signed) Kenneth KEITH.
