DISSENTING OPINION OF JUDGE MOROZOV

In accordance with Article 26, paragraph 2, of the Statute, the Court may create a Chamber for consideration of a particular case, and there is no doubt that this is a discretionary right of the Court. In the course of discussion of the matter in the Court I supported the view that, taking the circumstances into account, it was reasonable that the whole matter be considered by the Court as newly composed in February 1982. I did not object to the positive decision of the Court in principle to establish the Chamber, subject to the reservation that the election of the members of the Chamber should be postponed until 6 February 1982. I maintain that reservation.

After rejection of my suggestion relating to the postponement of the election, I did not participate in that election. In the course of the general discussion I noted that, in substance, the Special Agreement between the United States of America and Canada clearly took as point of departure the erroneous presumption that, contrary to Article 26, paragraph 2, of the Statute, the Parties who present a request to create a Chamber for consideration of a particular case may not merely choose what should be the number of the members of the Chamber, but also formally decide and propose the names of the judges who should be elected by secret ballot, and even present these proposals to the Court in the form of some kind of "ultimatum". I was and remain unconvinced by the answers given to the Court by the Ambassadors of the United States of America and Canada in their letter to the Acting President of the Court of 6 January 1982, which moreover only repeats and confirms the above-mentioned incorrect presumption of the Parties that they may dictate to the Court who should be elected.

In this situation, the sovereign right of the Court to carry out the election independently of the wishes of the Parties, by secret ballot in accordance with the provisions of the Statute and Rules of Court, becomes in substance meaningless.

I have therefore voted against the Order as a whole. I continue to think that the matter could have been successfully settled by the Court in February 1982 in its new composition, which would not have been in contradiction with Article II of the Treaty of 29 March 1979 between the United States of America and Canada, since that Article provides that the Parties are ready to wait six full calendar months for settlement of the question (that is to say, until 19 May 1982).

(Signed) P. D. MOROZOV.