

## DISSENTING OPINION OF JUDGE EL-KHANI

*[Translation]*

On 20 January 1982 the Court adopted an Order setting up, for the first time, a Chamber in accordance with Article 26, paragraph 2, of the Statute. This Chamber will be dealing with a particular case concerning the course of the single maritime boundary in the Gulf of Maine between the areas of continental shelf and fishing zones appertaining to Canada and the United States of America.

On 25 November 1981 the two Parties' diplomatic representatives at The Hague presented to the Registrar of the Court a document containing a Special Agreement signed at Ottawa on 29 March 1979 between the Government of Canada and the Government of the United States, a Treaty concluded between the two countries on the same date and a Special Agreement, in the same terms as the first, to submit the same question to a court of arbitration in the event that the International Court of Justice did not accede to the request to form the Chamber in question within the specified time and in the desired manner. This document also comprised the instruments of ratification of the Treaty and of the Special Agreements. An accompanying letter, signed by the Ambassadors of the two countries, emphasized that this Chamber had to be formed before the new members of the Court elected in the triennial election entered upon their terms of office, that is to say, before 6 February 1982.

The representatives of the Parties, after having fixed the number of members of the Chamber as five following talks with the President of the Court, further insisted upon the Chamber having a particular composition and on the identity of any replacements elected in case of vacancy being subject to their approval, failing which they would withdraw the case and discontinue the proceedings before the Court, sending the case to arbitration instead.

I find that the imposition of an unduly close time-limit for the Chamber's formation and of a particular composition renders the Court no longer master of its own acts, deprives it of its freedom of choice and is an obstacle to the proper administration of justice. Furthermore it diminishes the prestige of the Court and is harmful to its dignity as the principal judicial organ of the United Nations. It results in its regionalization by depriving it of its basic and essential characteristic of universality and produces the indirect result of there being more than one judge of the same nationality acting in the name of the Court, one in the Chamber and the other in the Court, which does not correspond to the Statute. On these grounds I find that this ought not to constitute a precedent, as it would be a dangerous course to follow in the future.

Having voted in favour of the Chamber being constituted, I would have preferred the composition of this Chamber to have been referred to the Court in the new composition it will have two weeks from now. That would have enabled us to avoid the disadvantages I have mentioned above.

For these reasons I have voted against this Order.

*(Signed)* Abdallah EL-KHANI.

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