

## DECLARATION OF JUDGE ODA

1. I should like to add a few lines of explanation in regard to my vote in favour of the Court's Order constituting the Chamber to deal with El Salvador's Application for revision.

2. Article 100, paragraph 1, of the Rules of Court provides as follows:

“If the judgment to be revised or to be interpreted was given by the Court, the request for its revision or interpretation shall be dealt with by the Court. If the judgment was given by a Chamber, the request for its revision or interpretation shall be dealt with by that Chamber.”

The meaning of the expression “that Chamber” is not entirely clear. It certainly cannot mean that the Chamber charged with dealing with a request for the revision of a judgment should have precisely the same composition as that which rendered the judgment. Under the terms of Article 61, paragraph 5, of the Statute, a request for revision may be made up to ten years from the date of the judgment concerned. Clearly, in many cases it will be materially impossible to reconstitute a Chamber in its original composition after so great a lapse of time. To require that the Chamber to be formed to deal with a request for revision should have the same composition as the original Chamber might thus in practice render an application for revision before a Chamber impossible. That cannot have been the Court's intention in adopting paragraph 1 of Article 100 of the Rules.

The fact remains, however, that it is in general the judges having rendered a judgment who are naturally in the best position to deal with a request for the revision of that judgment. It follows that the composition of a Chamber charged with dealing with a request for revision should be as similar as the circumstances permit to that of the Chamber which rendered the judgment in question. This in my view is one way in which the term “that Chamber” in Article 100 might reasonably be interpreted.

3. In the present case, El Salvador recognizes in paragraph 167 of its Application that it is for the Court to constitute the Chamber charged with hearing it, in accordance with Article 26, paragraph 2, of the Statute, and Articles 17 and 18 of the Rules of Court. However, in paragraph 166 of the Application, El Salvador also quotes Article 100 of the Rules of Court, adding: “This application falls within that category, since the Judgment of 11 September 1992 was given by a Chamber.” El Salvador requests the Court “[t]o proceed to form the Chamber that will hear the application for revision of the Judgment” and expressly asks it

to “[bear] in mind the terms that El Salvador and Honduras agreed upon in the Special Agreement of 24 May 1986” (Application for Revision of the Judgment of 11 September 1992, para. 170 (*a*)). These terms read as follows:

“In application of Article 34 of the General Treaty of Peace, signed on 30 October 1980, the Parties submit the issues mentioned in Article 2 of the present Special Agreement to a chamber of the International Court of Justice, composed of three members, with the *consent of the Parties*, who will express this in a *joint form* to the President of the Court, this agreement being *essential for the formation of the chamber*, which will be constituted in accordance with the procedures established in the Statute of the Court and in the present Special Agreement.” (Special Agreement of 24 May 1986, Art. 1, para. 1; emphasis added.)

Since I am the only Member of the Court still sitting to have been a member of the Chamber which rendered the Judgment of 11 September 1992 in the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* case, I ought in principle, in view of all of the foregoing, to be a member of the Chamber that the Court has just constituted to rule on the request for revision of that Judgment submitted by El Salvador.

4. I note that, under the terms of Article 17, paragraph 4, of the Rules of Court:

“Members of a Chamber formed under this Article who have been replaced, in accordance with Article 13 of the Statute following the expiration of their terms of office, shall continue to sit in all phases of the case, whatever the stage it has then reached.”

Examination of El Salvador’s request for revision could potentially continue over a relatively lengthy period, extending well beyond the end of my third full term at the Court.

While I deeply appreciate the continuing confidence shown in me both by El Salvador (in its Application for revision) and by Honduras, it would be neither reasonable nor advisable in view of my health for me to remain in office for an indefinite period after 5 February 2003, the date on which my current term is due to expire. The time will have come after 27 full years in office at the Court for me honourably to take my leave at that date.

5. Finally, I would like to repeat a comment I have often made in the past, including most recently in my declaration appended to the Order by the Court in the case concerning the *Frontier Dispute (Benin/Niger)* made on the same day as the present Order. An *ad hoc* Chamber formed under Article 26 of the Statute is essentially an arbitral tribunal. In order for such a Chamber to be constituted, there must be an agreement by the parties, before the Court decides on the constitution, not only as to the

number of judges forming the Chamber but also as to their names. Furthermore, the parties must jointly express that agreement when the President, acting pursuant to Article 17 of the Rules of Court, ascertains their views regarding the composition of the Chamber.

*(Signed)* Shigeru ODA.

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