

SEPARATE OPINION OF JUDGE NAGENDRA SINGH

A tribunal has normally always to respect the principle of judicial propriety that an applicant before it has to be heard before its request is rejected, unless of course the request is *prima facie* absurd or totally inadmissible, which does not appear to be so in this case. Being a firm believer in the salutary principle of giving a hearing to an applicant who has particularly asked for it, I have strongly felt the need to explain the circumstances which have led me to vote in this case.

It has been explained in paragraph 2 of the Court's Order that El Salvador's Declaration *in effect* appears directed to the merits of the case — an observation with which I do agree and which has also weighed with the Court. I feel, therefore, that if a hearing were ever to be granted to El Salvador at the present first phase there would inevitably be arguments presented touching the merits, which aspect belongs to the second phase of the case after the Court's jurisdiction to deal with the dispute has been established. If, therefore, El Salvador's request for a hearing had been granted at this stage, it would have amounted to two hearings on merits, which could not be acceptable to any tribunal because of the confusion it would cause all round. In fact this would be both undesirable and untenable. In view of the aforesaid difficulty, I have found reason to support the decision of the Court not to have a hearing at this stage, but to keep alive the right of El Salvador to make a Declaration at the next phase of the case when merits are dealt with *vide* paragraph 3 of the Court's Order which does take note of the intention of the applicant. Furthermore, the decision *not* to have a hearing at this stage was emphasized by the fact that the Court had come to the conclusion on the basis of near unanimity (14 v. 1) that El Salvador's Declaration was inadmissible. The decision of inadmissibility of El Salvador's Declaration taken by the Court before it had heard the applicant intervener rendered the need for a hearing a mere formality despite the principle that "justice has also to be shown to be done". The Court's decision therefore directed towards placing things in the order and sequence in which they rightly belong is a helpful one, particularly as it does not totally reject the applicant's request but agrees to consider it at the proper and appropriate time. In the circumstances it would appear that the ends of justice would be adequately met by the Court's Order which could not be interpreted to give a raw deal, as it were, to El Salvador, the applicant before it. The aforesaid reasoning weighed with me to the extent that I voted with the Court's majority verdict.

(Signed) NAGENDRA SINGH.
