## DECLARATION BY JUDGE WARIOBA

I have voted against the operative paragraphs 1(c) and (f) not because I disagree with the substance but because I believe they are issues which belong properly to the merits.

Australia, Japan and New Zealand agreed on a total allowable catch (TAC) of 11,750 tonnes in 1989 and subsequently decided each year to maintain the same, up to 1997. The disagreement arose because Japan wanted the TAC to be increased while Australia and New Zealand held a contrary view. The respective positions were based on the appreciation of scientific evidence. Since the Tribunal has admitted in paragraph 80 that it cannot conclusively assess the scientific evidence presented by the parties, it has no basis of prescribing an order that sets a TAC. That issue should be left to the arbitral tribunal to determine.

Australia, Japan and New Zealand should of course continue negotiations with other fishing States and entities with a view to ensuring the conservation and promoting the objective of optimum utilisation. I am sure they will continue to do so in addition to continuing cooperation in matters on which they do not have a dispute. The Order of the Tribunal should be confined to issues that are the subject matter of dispute placed before it. The relationship of the parties to this dispute does not include non-parties to the 1993 Agreement.

I further disagree with references to the protection of the marine environment in paragraphs 67 and 68 of the Order. What is stated in those paragraphs is true but has no relevance here. Every activity in the oceans will of necessity affect the environment. It is not necessary for the Tribunal to include consideration of marine environment in every case. The Tribunal can do so only when it has been requested by a party or parties or when it considers it absolutely necessary and urgent. It was not so in this case.

(*Signed*) Joseph Sinde Warioba