CHAPTER 6

The Relevance of Compromissory Clauses in Environmental Law Treaties
Separate Opinion in the case of *Whaling in the Antarctic* (Australia *versus* Japan, New Zealand’s Declaration of Intervention, Order of 06.02.2013)

I Introduction

1. I have concurred with my vote to the adoption today, 06 February 2013, by the International Court of Justice (ICJ), of the present Order, whereby it declared admissible New Zealand’s Declaration of Intervention under Article 63(2) of the Statute, in the present case concerning *Whaling in the Antarctic*, opposing Australia to Japan. The present decision just taken by the ICJ today (06.02.2013), added to the decision it took one and a half years ago (Order of 04.07.2011), granting permission to Greece’s intervention (under Article 62 of the Statute) in the case concerning the *Jurisdictional Immunities of the State* (Germany *versus* Italy), constitute two positive steps taken by the Court for the development of the institute of intervention in international legal procedure.

2. Intervention under Article 63 and under Article 62 of the Statute rest on two quite distinct grounds, disclosing various interrelated aspects which have not been sufficiently or satisfactorily studied to date. Given the importance that I ascribe to the matters dealt with by the Court in the present Order, and those underlying it, in the case concerning *Whaling in the Antarctic*, I feel obliged to leave on the records the foundations of my personal position on the matter, in all its aspects. I feel even more compelled to do so as, although I have reached the same conclusion as the Court and have voted in favour of the adoption of the present Order, I have done so on the basis of a reasoning which is distinct from that of the Court.

3. In the present Separate Opinion, I shall, accordingly, at first, review all the documents conforming the dossier of the present case, relating to the proceedings before the Court concerning intervention, namely: a) New Zealand’s Declaration of Intervention (under Article 63); b) Written Observations of Australia and Japan on New Zealand’s Declaration of Intervention; c) Comments of New Zealand on Japan’s Written Observations. I shall then turn to the examination of points of international legal theory which I deem of particular relevance for the consideration of the subject-matter at issue, namely: a) the position beyond State consent; b) discretionary intervention (Article 62 of the Court’s Statute) and intervention as of right (Article 63 of the