

SEPARATE OPINION OF JUDGE ODA

1. For purely procedural reasons, I did not support the request of El Salvador for an oral hearing relating to its Declaration of Intervention at this present stage. I wish in this opinion to clarify those reasons and to express my unease at what I believe to have been unfortunate aspects of the procedure followed by the Court in this case.

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2. El Salvador's Declaration of Intervention dated 15 August 1984, which appeared mainly directed to the merits of the case, was vague and did not appear to satisfy the requirements of Article 82, paragraph 2 (b) and (c), of the Rules of Court for an intervention at the present stage. On the same date, the Court asked the Parties for their written observations on El Salvador's Declaration, and Nicaragua and the United States responded on 10 and 14 September respectively. El Salvador's Declaration was later supplemented by its communications of 10 and 17 September, which could be said to meet the terms of Article 82 of the Rules. Since El Salvador's requests should have been considered as a whole, I regret that the Court did not attempt to ascertain the views of Nicaragua and the United States on these two subsequent communications from El Salvador. There seems to me to have been no reason why the Court should not, *ex proprio motu*, have ensured that it was in possession of the views of Nicaragua and the United States on these important additions to El Salvador's Declaration and, in particular, on the admissibility of El Salvador's intervention at this jurisdictional stage.

3. Article 84, paragraph 2, of the Rules of Court states :

“If . . . an objection is filed to an application for permission to intervene, or to the admissibility of a declaration of intervention, the Court shall hear the State seeking to intervene and the parties before deciding.”

If the observations by Nicaragua dated 10 September had been interpreted, as I believe they should, as objecting to El Salvador's intervention at this stage, Article 84, paragraph 2, would have clearly applied. Yet, as I understand it, the majority of the Court did not take that view ; otherwise the Court would have been obliged to hear the views of El Salvador and of the Parties. I voted against a hearing only because the Court was of the view that Nicaragua had not objected.

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4. It was also regrettable that the date of Monday 8 October had already been fixed for the commencement of the oral hearings between Nicaragua and the United States, and that a communiqué was issued on 27 September to that effect, even before the Court met to deal with El Salvador's Declaration on Thursday 4 October. Thus the impression could have been gained that the Court already took it for granted that the oral hearing of El Salvador's Application would not be necessary and that its Declaration would be found inadmissible. In fact, El Salvador's request for an oral hearing at the jurisdictional stage was denied and the question of the admissibility of El Salvador's intervention at the present stage was dealt with on 4 October, after only one day's deliberations.

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5. Had El Salvador's initial Declaration been properly formulated, had Nicaragua's observations been properly interpreted, and had the procedures of the Court been properly pursued, El Salvador's Declaration might well have been the first case of intervention under Article 63 of the Statute to be considered by the Court at a jurisdictional phase of a case.

(Signed) Shigeru ODA.