

DECLARATION OF JUDGE *AD HOC* GAJA

1. When rejecting Costa Rica's Application for permission to intervene as a non-party, the majority of the Court considered that the Judgment on the merits would at any event protect the Applicant's "interest of a legal nature" that might be affected. Protection would be "accorded to any third party, whether intervening or not" (para. 86). While the Court's intention to do this is clear, one cannot be certain that all the necessary information would be available for effectively protecting a third State's interest. Thus, a third State may wish to intervene in the proceedings in order to contribute to the determination of the nature and scope of its legal interest at stake.

2. The only mechanism offered for that purpose by the Statute and the Rules of Court to the third State is to request permission to intervene under Article 62 of the Statute. In its most recent decision concerning intervention in a case relating to maritime delimitation, the Court had unanimously granted Equatorial Guinea permission to intervene (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Application for Permission to Intervene, Order of 21 October 1999, I.C.J. Reports 1999 (II)*), pp. 1034-1035, paras. 13-16). The parties to that case had not objected to the request, but the Court, while noting this fact, did not rely on it as a justification for granting permission.

3. I fail to see how one could distinguish Equatorial Guinea's request in that case from Costa Rica's Application in the present case. Moreover, I cannot find compelling reasons for the Court to revert to its earlier and more restrictive jurisprudence on the admissibility of intervention in cases of maritime delimitation (*Continental Shelf (Libyan Arab Jamahiriya v. Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, pp. 18-27, paras. 28-43).

4. It is true that, when deciding the merits, the Court may take into account (para. 51) the information provided by a party that has unsuccessfully sought permission to intervene. However, it seems paradoxical that, in a case of maritime delimitation, the only way for a third State to submit information about its interest of a legal nature which may be affected by a decision of the Court would be to make an application that the Court considers inadmissible. This the more so given the cumbersome procedure provided by Article 84 of the Rules when an objection to an application for permission to intervene is filed.

5. If one accepts the approach taken by the majority of the Court in the present Judgment, it would seem that the Court should establish a

new procedural mechanism short of intervention that would allow third States to submit information which they consider useful in order to protect their interests of a legal nature.

*(Signed)* Giorgio GAJA.

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