

SEPARATE OPINION OF JUDGES RUDA, MOSLER, AGO,  
SIR ROBERT JENNINGS AND DE LACHARRIÈRE

1. Article 63 of the Statute of the Court provides for a right of intervention in proceedings before it, "Whenever the construction of a convention to which States other than those concerned in the case are parties is in question". Where those conditions are fulfilled, a State wishing to intervene has a right to do so, and it is not for the Court to grant or withhold permission. Nevertheless, it is for the Court to decide in each case whether or not the conditions for such intervention, laid down in Article 63, are fulfilled.

2. Accordingly, Article 82 of the Court's Rules provides that a State desiring to avail itself of the right of intervention conferred upon it by Article 63 shall file a declaration ; which declaration shall contain *inter alia* :

- “(b) identification of the particular provisions of the convention the construction of which it considers to be in question ;
- (c) a statement of the construction of those provisions for which it contends”.

3. We have voted with the majority of the Court in deciding that El Salvador's declaration of intervention is inadmissible in the present phase of the proceedings, because we have not been able to find, in El Salvador's written communications to the Court, the necessary identification of such particular provision or provisions which it considers to be in question in the jurisdictional phase of the case between Nicaragua and the United States ; nor of the construction of such provision or provisions for which it contends. Furthermore, the brief references made in this regard have not convinced us that El Salvador's request is in accordance with what is contemplated by Article 63 of the Court's Statute.

4. We differ, however, from the Court on the question whether or not El Salvador should have been granted an oral hearing. In our opinion, it would have been more in accordance with judicial propriety if the Court had granted a hearing to the State seeking to intervene, and had not decided only on the basis of the written communications.

(Signed) J. M. RUDA.

(Signed) Hermann MOSLER.

(Signed) Roberto AGO.

(Signed) R. Y. JENNINGS.

(Signed) Guy DE LACHARRIÈRE.