

## SEPARATE OPINION OF JUDGE ELIAS

I have voted, without enthusiasm, for subparagraphs (2) to (16) of the operative clause, but I consider that subparagraph (1) of the operative clause is out of place in the present Judgment. It is inappropriate because it is contradictory to the Judgment already given in 1984, which, from the standpoint of the Court, is difficult to attempt to amend now. It has no organic or even symbolic relation to the remaining operative subparagraphs. I hesitate to call it a mere concession to expediency, but find it linguistically colourless and procedurally out of place.

By the Court's Judgment of 26 November 1984 the question of the Vandenberg Reservation was definitely left in abeyance, pending any intervention by El Salvador, Honduras or Costa Rica in the current phase of the proceedings, on merits and reparation ; since none of the three countries has sought to intervene, the reservation is of no further relevance.

I cannot accept what appears to me to be the employment by the Court of Article 53 of the Statute to endow itself with the power to interpret and revise its own previous Judgment on jurisdiction and admissibility, by an extended interpretation of Articles 60 and 61 of the Statute. Such a power could not be exercised even if the non-appearing Respondent itself had requested it *at this stage*. It is thus even more remarkable that the Court should attempt to invoke such a power for the benefit of non-parties to the present case (like El Salvador, Honduras and Costa Rica).

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I do not intend to make general remarks either on the Judgment itself or on Judge Schwebel's dissenting opinion because I believe that the reader himself will read and judge. I would however like to say a few words on two attacks launched against me personally in two separate paragraphs, 109 and 115 of Judge Schwebel's dissenting opinion, together with their accompanying remarks.

As for the reference to the Press Release, I wish to say very briefly as follows :

By its Order of 4 October 1984 the Court after deliberation, decided not to hold a hearing on the Declaration of Intervention of El Salvador filed on 15 August 1984 and that the Declaration was inadmissible inasmuch as it

related to the then current phase of the proceedings. These decisions were taken after consideration by the Court of the Declaration of El Salvador and of the written observations thereon submitted by Nicaragua and the United States pursuant to Article 83 of the Rules of Court, the time-limit for which had been set at a date, 14 September 1984, prior to the opening of the oral proceedings on the questions of jurisdiction and admissibility. The opening of those oral proceedings having been fixed for the afternoon of 8 October 1984, this date was made public in advance, after consultations, in accordance with standard practice, by means of a press communiqué issued on 27 September 1984, which indicated also that the Court was seised of a Declaration of Intervention of El Salvador. There is nothing inherent in the Statute and Rules of Court that would have prevented the Court, had it so decided on 4 October 1984, from holding a hearing on the Declaration before or during the oral proceedings on the questions of jurisdiction and admissibility to open on 8 October 1984, or El Salvador from submitting during those proceedings its observations with respect to the subject-matter of the intervention pursuant to Article 86 of the Rules of Court. Under Article 82 of the Rules of Court, a State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file its declaration to that effect as soon as possible and "not later than the date fixed for the opening of the oral proceedings". It is thus evident that only after such a date is announced can other States know whether or not a declaration is filed within the time-limits prescribed by the Rules of Court. It is significant that Judge Oda, who is cited by Judge Schwebel, did vote with the majority of the Court to reject El Salvador's Declaration of Intervention.

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With regard to the interview referred to by Judge Schwebel, he should recall that it took place in the Court on 12 December 1984, after repeated requests by the Associated Press to the First Secretary in charge of information matters, to persuade me to grant an interview on the Judgment which we delivered on 26 November 1984, holding that the Court had jurisdiction to hear the case brought by Nicaragua. The First Secretary was present throughout the question and answer interview and demanded from the interviewer a promise that he would let us see the transcript from the tape recording which he had made before any publication. Judge Schwebel's account in his written dissenting opinion was the first that the First Secretary and I had ever seen of the account narrated in the opinion together with the comments of outsiders, who are not Members of the Court, also cited by Judge Schwebel. Apart from the slants given to my alleged remarks, I confirm that the gist of what I am supposed to have said is quite correct and I very much regret the use made of it in a Member of the

Court's dissenting opinion to a Judgment which still confirms that the United States of America was found wrong by the Court even under a new President, on all the essential points made by Nicaragua against it.

*(Signed)* T. O. ELIAS.

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