



MISION DE HONDURAS  
ANTE LA CORTE INTERNACIONAL DE JUSTICIA  
LA HAYA

The Hague, 15 January 1990

Sir,

I have the honour to refer to your letter dated 14 December 1989, requesting the views of my Government on the preliminary question of whether the request by Nicaragua to intervene in the present case between Honduras and El Salvador falls within the competence of the Chamber already constituted for that case or the full Court.

It is clear that jurisdiction in this case arises from the Special Agreement of 24 May 1986, and Article 2 of that Agreement is a request to the Chamber of the Court. The full Court has no jurisdiction over the case between Honduras and El Salvador, and equally could have no jurisdiction over Nicaragua on the one hand and either Honduras or El Salvador on the other in this case. Under the Court's Statute the powers of the full Court in relation to a case submitted to a Chamber are confined to matters affecting the composition of the Chamber, such as establishing the original membership of the Chamber, deciding on replacements, deciding on a member's request to be excused, and agreeing to the nomination of ad hoc Judges.

A request to intervene raises a totally different issue, it is a "procedural" matter under Chapter III of the Statute, and is described as an "incidental" proceeding under Section D of the Rules. Such an incidental procedural matter can only be decided by the body which has jurisdiction over the case as such. This would be true of all incidental proceedings, including an application for interim measures of protection. For the correct principle is believed to be that any Court or Tribunal, with competence over the merits of a case, must (within the limits of its Statute) be free to decide upon the procedures appropriate to the case, and such decision has to be taken in the light of the actual issues of substance raised in the case, not as an abstract matter. Thus, as a matter of both principle and practice, such incidental procedural matters cannot be divorced from the merits and treated by a body with no jurisdiction over the merits. This seems self-evident in a request for intervention where, as in this case, the requesting State has to prove that it has an interest of a legal nature which may be affected by the decision on the



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merits (Article 62 of the Statute). Whether such a legal interest exists can only be determined in the light of an understanding of the merits of the case. Yet that understanding is properly confined to the Chamber in this case, since the Chamber alone has jurisdiction over the merits. The same would be true of an application for an order of interim measures: a Court without competence over the merits could scarcely judge the factors relevant to such an application, such as the probability of jurisdiction being affirmed and the risk of irreparable harm to the interests of the applicant State.

The fact that Article 84 of the Rules states that "the Court" shall decide on applications to intervene is by no means decisive, for Article 90 makes clear that, for all the provisions in Parts I to III of the Rules, a reference to the Court shall mean a reference to a Chamber for the purposes of a proceeding before a Chamber.

Accordingly, I have to conclude, on behalf on my Government, that Nicaragua's application to intervene must be heard by the Chamber and not by the full Court.

Please accept, Sir, the assurance of my highest consideration.

Carlos Roberto Reina  
Agent

Mr. Eduardo Valencia-Ospina  
Registrar of the International  
Court of Justice  
The Hague