INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
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CASE CONCERNING THE LAND, ISLAND AND MARITIME FRONTIER DISPUTE

(EL SALVADOR/HONDURAS)

APPLICATION BY NICARAGUA FOR PERMISSION TO INTERVENE

JUDGMENT OF 13 SEPTEMBER 1990

1990

COUR INTERNATIONALE DE JUSTICE

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(EL SALVADOR/HONDURAS)

REQUÊTE DU NICARAGUA À FIN D'INTERVENTION

ARRÊT DU 13 SEPTEMBRE 1990

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CASE CONCERNING THE LAND, ISLAND AND MARITIME FRONTIER DISPUTE

(EL SALVADOR/HONDURAS)

APPLICATION BY NICARAGUA FOR PERMISSION TO INTERVENE

Intervention under Article 62 of the Statute.

Article 81 of the Rules of Court — Timeliness of the Application for permission to intervene — Application filed at advanced stage of the proceedings containing request for changing composition of Chamber or its mandate — Whether definition of dispute by prior negotiation on subject of intervention is necessary.

Significance for the present Application of decision in case concerning Monetary Gold Removed from Rome in 1943.

Interest of a legal nature which may be affected by the decision in the case — Limits on scope of permitted intervention — Burden of proof on State seeking to intervene.

Interest asserted by Nicaragua — Whether Nicaraguan interest of a legal nature may be affected by decision on claim by one Party that there exists in Gulf of Fonseca "condominium" of riparian States and claim by other Party that there exists "community of interests" between those States — Whether sufficient demonstration of affected interest of a legal nature of Nicaragua in delimitation of maritime spaces within the Gulf — Whether interest in general legal rules and principles sufficient — Whether sufficient demonstration of affected interest of a legal nature of Nicaragua in question of entitlement of Parties outside Gulf to territorial sea, continental shelf or exclusive economic zone, and possible decision on delimitation.

Object of intervention — Object of informing the Court of nature of legal rights of Nicaragua which may be in issue — Object of protecting legal rights by all legal

means available — No request by State seeking to intervene for judicial pronouncement on its own claims.

Whether a valid link of jurisdiction between State seeking to intervene and the parties is a requirement for intervention — Relationship between intervention and the principle of consensual jurisdiction — Permission to intervene does not of itself make the permitted State a party to the case.

Procedural rights of State permitted to intervene.

JUDGMENT

Present: *Judge* SETTE-CAMARA, President of the Chamber; *Judges* ODA, Sir Robert JENNINGS; *Judges* ad hoc VALTICOS, TORRES BERNÁRDEZ; *Registrar* VALENCIA-OSPINA.

In the case concerning the land, island and maritime frontier dispute,

between

the Republic of El Salvador,

represented by

Dr. Alfredo Martínez Moreno,

as Agent and Counsel,

H.E. Mr. Roberto Arturo Castrillo Hidalgo, Ambassador to the Netherlands,

as Co-Agent,

and

H.E. Dr. José Manuel Pacas Castro, Minister for Foreign Relations,

assisted by

Mr. Keith Highet, Adjunct Professor of International Law at the Fletcher School of Law and Diplomacy and Member of the Bars of New York and the District of Columbia,

Mr. Elihu Lauterpacht, C.B.E., Q.C., Director of the Research Centre for International Law, University of Cambridge, Fellow of Trinity College, Cambridge,

Mr. Prosper Weil, Professor Emeritus at Université de droit, d'économie et de sciences sociales de Paris,

as Counsel and Advocates,

and

Mr. Anthony J. Oakley,
Lic. Celina Quinteros,
Lic. Ana Elizabeth Villalta Vizcara,

as Counsellors,

and

the Republic of Honduras,

represented by

H.E. Dr. Ramón Valladares Soto, Ambassador to the Netherlands,

as Agent,

assisted by

Mr. Derek W. Bowett, C.B.E., Q.C., Ll.D., F.B.A., Whewell Professor of International Law, University of Cambridge,

as Counsel and Advocate,

and

Mr. Arias de Saavedra y Muguelar, Minister, Embassy of Honduras at The Hague,

Mrs. Salomé Castellanos, Minister Counsellor, Embassy of Honduras at The Hague,

as Advisers,

Upon the Application for permission to intervene submitted by the Republic of Nicaragua,

represented by

H.E. Mr. Carlos Argüello Gómez, Ambassador,

as Agent and Counsel,

assisted by

Mr. Ian Brownlie, Q.C., F.B.A, Chichele Professor of Public International Law, University of Oxford; Fellow of All Souls College, Oxford,

Mr. Antonio Remiro Brotons, Professor of Public International Law, Universidad Autónoma de Madrid,

as Counsel and Advocates,

THE CHAMBER OF THE INTERNATIONAL COURT OF JUSTICE formed to deal with the above-mentioned case,

composed as above,

after deliberation,

delivers the following Judgment:

1. By a joint notification dated 11 December 1986, filed in the Registry of the Court the same day, the Ministers for Foreign Affairs of the Republic of Honduras and the Republic of El Salvador transmitted to the Registrar a certified copy of a Special Agreement in the Spanish language entitled *"COMPROMISO ENTRE HONDURAS Y EL SALVADOR PARA SOMETER A LA DECISION DE LA CORTE INTERNACIONAL DE JUSTICIA LA CONTROVERSIA FRONTERIZA TERRESTRE, INSULAR Y MARITIMA EXISTENTE ENTRE LOS DOS ESTADOS, SUSCRITO EN LA CIUDAD DE ESQUIPULAS, REPUBLICA DE GUATEMALA, EL DIA 24 DE MAYO DE 1986"*, and entering into force on 1 October 1986.

2. The Parties have not up to the present supplied the Court with an agreed translation of the Special Agreement into one of the official languages of the Court, and neither Party has submitted a translation of its own.

3. The Spanish text of the Special Agreement reads as follows:

"COMPROMISO ENTRE HONDURAS Y EL SALVADOR PARA SOMETER A LA DECISION DE LA CORTE INTERNACIONAL DE JUSTICIA LA CONTROVERSIA FRONTERIZA TERRESTRE, INSULAR Y MARITIMA EXISTENTE ENTRE LOS DOS ESTADOS, SUSCRITO EN LA CIUDAD DE ESQUIPULAS, REPUBLICA DE GUATEMALA, EL DIA 24 DE MAYO DE 1986

El Gobierno de la República de Honduras y el Gobierno de la República de El Salvador,

Considerando *que el 30 de octubre de 1980, en la ciudad de Lima, Perú, suscribieron el Tratado General de Paz, por medio del cual,* inter alia, *delimitaron la frontera terrestre de ambas Repúblicas en aquellas secciones en donde no existía controversia;*

Considerando *que dentro del plazo previsto en los artículos 19 y 31 del Tratado General de Paz, de 30 de octubre de 1980, no se llegó a un arreglo directo sobre las diferencias de límites existentes con respecto a las demás zonas terrestres en controversia, y en lo relativo a la situación jurídica insular y de los espacios marítimos;*

Han designado *como sus respectivos Plenipotenciarios, Honduras al Señor Ministro de Relaciones Exteriores, Abogado Carlos López Contreras, y El Salvador al Señor Ministro de Relaciones Exteriores, Licenciado Rodolfo Antonio Castillo Claramount, quienes, una vez encontrados en buena y debida forma sus Plenos Poderes;*

CONVIENEN EN LO SIGUIENTE:

Artículo 1°

Constitución de una Sala

1. En aplicación del Artículo 34 del Tratado General de Paz suscrito el 30 de octubre de 1980, las Partes someten las cuestiones mencionadas en el Artículo Segundo del presente Compromiso a una Sala de la Corte Internacional de Justicia, compuesta por tres miembros, con la anuencia de las Partes, las cuales la expresarán en forma conjunta al Presidente de la Corte, siendo esta conformidad esencial para la integración de la Sala, que se constituirá de acuerdo a los Procedimientos establecidos en el Estatuto de la Corte y en el presente Compromiso.

2. Adicionalmente, integrarán la Sala dos jueces ad-hoc *especialmente nombrados uno por El Salvador y otro por Honduras; los que podrán tener la nacionalidad de las Partes.*

Artículo 2°

Objeto del litigio

Las Partes solicitan a la Sala:

1. Que delimite la línea fronteriza en las zonas o secciones no descritas en el Artículo 16 del Tratado General de Paz, de 30 de octubre de 1980.

2. Que determine la situación jurídica insular y de los espacios marítimos.

Artículo 3°

Procedimiento

1. Las Partes solicitan a la Sala autorizar que el procedimiento escrito consista en:

a) *una Memoria presentada por cada una de las Partes, a más tardar diez meses después de la notificación de este Compromiso a la Secretaría de la Corte Internacional de Justicia;*
b) *una Contramemoria presentada por cada una de las Partes, a más tardar diez meses después de la fecha en que se haya recibido la copia certificada de la Memoria de la otra Parte;*
c) *una réplica presentada por cada una de las Partes, a más tardar diez meses después de la fecha en que se haya recibido la copia certificada de la Contramemoria de la otra Parte;*
d) *la Corte podrá autorizar, o prescribir la presentación de una Dúplica, si las Partes están de acuerdo a este respecto o si la Corte decide de oficio o a solicitud de una de las Partes si esta pieza de procedimiento es necesaria.*

2. Las piezas antes mencionadas del procedimiento escrito y sus anexos presentadas al Secretario, no serán trasmitidas a la otra Parte, en tanto el Secretario no haya recibido la pieza de procedimiento correspondiente a dicha parte.

3. El procedimiento oral, la notificación del nombramiento de los respectivos agentes de las Partes y cualesquiera otras cuestiones procesales, se ajustarán a lo dispuesto en el Estatuto y el Reglamento de la Corte.

Artículo 4º
Idiomas

El caso se ventilará en los idiomas inglés y francés, indistintamente.

Artículo 5º
Derecho aplicable

Dentro del marco del apartado primero del Artículo 38 del Estatuto de la Corte Internacional de Justicia, la Sala, al dictar su fallo, tendrá en cuenta las normas de derecho internacional aplicables entre las Partes, incluyendo, en lo pertinente, las disposiciones consignadas en el Tratado general de Paz.

Artículo 6º
Ejecución de la Sentencia

1. Las Partes ejecutarán la sentencia de la Sala en un todo y con entera buena fe. A este fin, la Comisión Especial de Demarcación que establecieron mediante el Convenio de 11 de febrero de 1986, iniciará la demarcación de la línea fronteriza fijada por la sentencia, a más tardar tres meses después de la fecha de la misma y continuará diligentemente sus actuaciones hasta concluirla.

2. Para tal efecto, se aplicarán las reglas establecidas sobre la materia, en el mencionado Convenio de creación de la Comisión Especial de Demarcación.

Artículo 7º
Entrada en vigor y Registro

1. El presente Compromiso entrará en vigor el 1º de octubre de 1986, una vez que se haya cumplido con los procedimientos constitucionales de cada Parte.

2. Será registrado en la Secretaría General de las Naciones Unidas de conformidad con el Artículo 102 de la Carta de la Naciones Unidas, conjuntamente o por cualquiera de las Partes. Al mismo tiempo se hará del conocimiento de la Organización de los Estados Americanos.

Artículo 8º
Notificación

1. En aplicación del Artículo 40 del Estatuto de la Corte Internacional de Justicia, el presente Compromiso será notificado al Secretario de la misma por nota conjunta de las Partes. Esta notificación se efectuará antes del 31 de diciembre de 1986.

2. Si esa notificación no se efectúa de conformidad con el párrafo precedente, el presente Compromiso podrá ser notificado al Secretario de la Corte por cualquiera de las Partes dentro del plazo de un mes siguiente a la fecha prevista en el párrafo anterior."

4. The Special Agreement was, as indicated in its title, signed in the City of Esquipulas, Republic of Guatemala, on 24 May 1986; its preamble refers to the conclusion on 30 October 1980, in Lima, Peru, of a General Peace Treaty between the two States, whereby, *inter alia*, they delimited certain sections of their common land frontier; and the Special Agreement records that no direct settlement had been achieved in respect of the remaining land areas, or as regards "the legal situation of the islands and maritime spaces".

5. Pursuant to Article 40, paragraph 3, of the Statute of the Court and Article 42 of the Rules of Court, copies of the joint notification and Special Agreement were transmitted by the Registrar to the Secretary-General of the United Nations, the Members of the United Nations and other States entitled to appear before the Court.

6. The Parties were duly consulted, on 17 February 1987, as to the composition of the chamber of the Court contemplated by the Special Agreement, in accordance with Article 26, paragraph 2, of the Statute and Article 17, paragraph 2, of the Rules of Court.

7. The Parties in the course of such consultation confirmed what was said in the Special Agreement, that as regards the number of judges to constitute such chamber, they approved, pursuant to Article 26 of the Statute, that number being fixed at three judges with the addition of two judges *ad hoc* chosen by the Parties pursuant to Article 31, paragraph 3, of the Statute.

8. In March 1987 the Court was notified of the choice by El Salvador of Mr. Nicolas Valticos to sit as judge *ad hoc* in the chamber; in April 1987, the Court was notified of the choice by Honduras of Mr. Michel Virally to sit as judge *ad hoc* in the chamber.

9. By an Order of 8 May 1987 the Court decided to accede to the request of the Parties to form a special chamber to deal with the case, and declared that at an election held on 4 May 1987 Judges Oda, Sette-Camara and Sir Robert Jennings had been elected to form, with the judges *ad hoc* referred to above, a chamber to deal with the case, and declared further such a chamber to have been duly constituted, with the following composition: Judges Oda, Sette-Camara and Sir Robert Jennings and Judges *ad hoc* Valticos and Virally. On 29 May 1987 the Chamber elected Judge Sette-Camara as its President, pursuant to Article 18, paragraph 2, of the Rules of Court.

10. Judge *ad hoc* Virally died on 27 January 1989, and by a letter dated 8 February 1989 the Agent of Honduras informed the Court that his Government had chosen Mr. Santiago Torres Bernárdez to sit as judge *ad hoc* in his place. By an Order dated 13 December 1989 the Court declared the composition of the Chamber formed to deal with the case to be as follows: Judge Sette-Camara,

President of the Chamber; Judges Oda and Sir Robert Jennings; Judges *ad hoc* Valticos and Torres Bernárdez.

11. By Article 3, paragraph 1, of the Special Agreeement the Parties requested that the written proceedings should consist of a Memorial, a Counter-Memorial and a Reply to be filed by each of the Parties within time-limits there stated, and the Special Agreement further provided that the Court might authorize or direct the filing of Rejoinders. By an Order dated 27 May 1987, the Court fixed the time-limit for the Memorials, and by an Order dated 29 May 1987 the Chamber authorized the filing of Counter-Memorials and Replies pursuant to Article 92, paragraph 2, of the Rules of Court, and fixed time-limits therefor.

12. The Memorials were duly filed within the time-limit of 1 June 1988 fixed therefor. The time-limits for the remaining pleadings were, at the request of the Parties, extended by Orders made by the President of the Chamber on 12 January 1989 and 13 December 1989. The Counter-Memorials and the Replies were duly filed within the extended time-limits thus fixed, namely 10 February 1989 and 12 January 1990 respectively. The Special Agreement, however, included a provision for a possible further exchange of pleadings, so that even when the Replies of the Parties had been filed, the date of the closure of the written proceedings, within the meaning of Article 81, paragraph 1, of the Rules of Court, would remain still to be finally determined.

13. Pursuant to Article 53, paragraph 1, of the Rules of Court, requests by the Governments of Nicaragua and Colombia for the pleadings and annexed documents to be made available to them were granted, in the case of Nicaragua on 15 June 1988, and in the case of Colombia on 27 January 1989, and in each case after the views of the Parties had been ascertained.

14. On 17 November 1989 the Republic of Nicaragua filed in the Registry of the Court an Application for permission to intervene in the case, which Application was stated to be made by virtue of Article 36, paragraph 1, and Article 62 of the Statute of the Court. In that Application, the Government of Nicaragua contended that its request for permission to intervene, "not only because it is an incidental proceeding but also for . . . reasons of elemental equity (that of consent and that of the equality of States)", was "a matter exclusively within the procedural mandate of the full Court".

15. By an Order dated 28 February 1990, the Court, after considering the written observations of the Parties on the question thus raised, whether the Application for permission to intervene was to be decided upon by the full Court or by the Chamber, and the observations of Nicaragua in response to those observations, stated that

> "the question whether an application for permission to intervene in a case under Article 62 of the Statute should be granted requires a judicial decision whether the State seeking to intervene 'has an interest of a legal nature which may be affected by the decision' in the case, and can therefore only be determined by the body which will be called upon to give the decision on the merits of the case";

and found that it was for the Chamber formed to deal with the present case to decide whether the Application by Nicaragua for permission to intervene under Article 62 of the Statute should be granted.

16. Pursuant to Article 83, paragraph 1, of the Rules of Court, the two Parties were on 5 March 1990 invited to furnish their written observations on the Appli-

cation for permission to intervene filed by Nicaragua on 17 November 1989. Both Parties submitted such observations within the time-limit fixed by the President of the Chamber. Honduras stated that it would see no objection to Nicaragua being permitted to intervene for the sole purpose of presenting its views on the legal status of the waters within the Gulf of Fonseca; El Salvador requested the Chamber to deny the permission sought by Nicaragua.

17. Since objection had thus been made to the Application for permission to intervene, public sittings were held, pursuant to Article 84, paragraph 2, of the Rules of Court, in order to hear the State seeking to intervene and the Parties, on 5, 6, 7 and 8 June 1990. In the course of those sittings the Chamber was addressed by:

For Nicaragua: H.E. Mr. Carlos Argüello Gómez,
Mr. Ian Brownlie,
Mr. Antonio Remiro Brotons.

For El Salvador: H.E. Dr. Alfredo Martínez Moreno,
Mr. Prosper Weil,
Mr. Elihu Lauterpacht,
Mr. Keith Highet.

For Honduras: H.E. Dr. Ramón Valladares Soto,
Mr. Derek W. Bowett.

*

18. In its Application for permission to intervene, Nicaragua stated by way of conclusion that it

> "respectfully requests the Court to recognize the validity of Nicaragua's claim to intervene in the proceedings between the Republic of El Salvador and the Republic of Honduras" (para. 20).

At the outset of the oral proceedings it was stated that

> "Nicaragua maintains, before this Chamber of the Court, its Application for permission to intervene but modified in the sense that the requests made in Sections 23 and 24 of its original Application of 17 November 1989 are not being submitted for decision by this Chamber."

(The requests referred to are set out in paragraph 41 below.)

19. On behalf of El Salvador, the following submission was presented during the oral proceedings:

> "That the Application of the Republic of Nicaragua to intervene in the case in process between El Salvador and Honduras be rejected."

20. On behalf of Honduras, the following submission as to the Application for permission to intervene was presented during the oral proceedings:

> "First, Honduras would see no objection to Nicaragua being permitted to intervene in the existing case for the sole purpose of expressing its views on the legal status of the waters within the Gulf. Nicaragua has, under Article 62, no right to intervene, and the Court in granting its permission, may limit that permission to the extent necessary to safeguard the legal interests of the requesting State. Indeed, it can be argued that the Court is bound to impose such limits on its permission."

21. During the oral proceedings, both Parties also made clear their continued opposition to the requests contained in paragraphs 23 and 24 of the Nicaraguan Application (set out in paragraph 41 below).

* *

22. Nicaragua's request to be permitted to intervene is in respect of the proceedings instituted by the notification of the Special Agreement concluded on 24 May 1986 between El Salvador and Honduras. Article 2 of the Special Agreement, which defines the subject of the dispute, reads, in the original Spanish text, as follows:

> *"Las Partes solicitan a la Sala:*
>
> *1. Que delimite la línea fronteriza en las zonas o secciones no descritas en el Artículo 16 del Tratado General de Paz, de 30 de octubre de 1980.*
>
> *2. Que determine la situación jurídica insular y de los espacios marítimos."*

As noted above (paragraph 2), the Parties have not so far supplied the Chamber with an agreed translation of the Special Agreement into English or French, notwithstanding the fact that the Special Agreement itself provides (Art. 4) for the proceedings to be conducted in English or French. For the purposes of the present Judgment, however, the Chamber considers that it can make use of the following translation of Article 2, prepared by the Registry of the Court:

> "The Parties request the Chamber:
>
> 1. To delimit the frontier line in the areas or sections not described in Article 16 of the General Peace Treaty of 30 October 1980.
>
> 2. To determine the legal situation of the islands and maritime spaces."

23. The dispute between El Salvador and Honduras which is the subject of the Special Agreement concerns several distinct though in some respects interrelated matters. The Chamber is asked first to delimit the land frontier line between the two States in the areas or sections not described in Article 16 of the General Peace Treaty concluded by them on 30 October 1980; Nicaragua is not seeking to intervene in this aspect of the proceedings (paragraph 40 below). The Chamber is also to "determine the legal situation of the islands", and that of the "maritime spaces". The geographical context of the island and maritime aspects of the dispute, and the nature and extent of that dispute as appears from the Parties' claims before the Chamber, is as follows.

24. The Gulf of Fonseca lies on the Pacific coast of Central America, opening to the ocean in a generally south-westerly direction. The north-west coast of the Gulf is the land territory of El Salvador, and the south-east coast that of Nicaragua; the land territory of Honduras lies between

the two, with a substantial coast on the inner part of the Gulf. The entry to the Gulf, between Punta Amapala in El Salvador to the north-west, and Punta Cosigüina in Nicaragua to the south-east, is some 19 nautical miles wide. The penetration of the Gulf from a line drawn between these points varies between 30 and 32 nautical miles. Within the Gulf of Fonseca, there is a considerable number of islands and islets.

25. El Salvador recognizes the sovereignty of Honduras over Zacate Grande, the largest island of the Gulf, which is linked by a road to the Honduran mainland, and asks the Chamber to find that

> "El Salvador has and had sovereignty over all the islands in the Gulf of Fonseca, with the exception of the Island of Zacate Grande which can be considered as forming part of the coast of Honduras".

Honduras for its part invites the Chamber to find that the islands of Meanguera and Meanguerita are the only islands in dispute between the Parties, so that the Chamber is not, according to Honduras, called upon to determine sovereignty over any of the other islands, and to declare the sovereignty of Honduras over Meanguera and Meanguerita. Although the Farallones are not mentioned in their submissions, the Chamber understands from the pleadings of the Parties and from their oral arguments in the course of the present incidental proceedings that those islands, which lie on Nicaragua's side of the Gulf, are excluded from the claims of the Parties. Neither Party has laid claim to the Farallones, and counsel for Nicaragua has stated before the Chamber, without contradiction by either of the Parties, that Nicaragua's sovereignty over the Farallones has been expressly recognized by the Parties. For the purposes of the present Application for permission to intervene, there appears to be no need to determine at this stage the extent of the Chamber's jurisdiction in respect of the islands of the Gulf; both Parties are agreed that the Chamber should determine sovereignty over Meanguera and Meanguerita, and — with the exception of the Farallones — these are the islands which lie closest to the coast of Nicaragua.

26. The detailed history of the dispute is not here to the purpose, but two events concerning the maritime areas must be mentioned. First, the waters within the Gulf of Fonseca between Honduras and Nicaragua were to an important extent delimited in 1900 by a Mixed Commission established pursuant to a Treaty concluded between the two States on 7 October 1894. The published records of the delimitation established by the Mixed Commission describe that delimitation line as follows:

> *"Desde el punto conocido con el nombre de Amatillo, en la parte inferior del río Negro, la línea limítrofe es una recta trazada en dirección al volcán de Cosigüina, con rumbo astronómico Sur, ochenta y seis grados, treinta minutos Oeste (S. 86° 30′ O.), y distancia aproximada de treinta y siete kilómetros (37 Kms) hasta el punto medio de la bahía de Fonseca,*

equidistante de las costas de una y otra República, por este lado; y de este punto, sigue la división de las aguas de la bahía por una línea, también equidistante de las mencionadas costas, hasta llegar al centro de la distancia que hay entre la parte septentrional de la Punta de Cosigüina y la meridional de la isla de El Tigre." ("Límites definitivos entre Honduras y Nicaragua", Honduran Ministry of Foreign Affairs, 1938, p. 24.)

[Translation]

"From the point known as Amatillo, in the lower reaches of the River Negro, the delimitation is a straight line drawn in the direction of the volcano of Cosigüina, astronomic bearing south, 86 degrees, 30 minutes west (S. 86° 30′ W.), for a distance of approximately thirty-seven kilometres (37 km) to the central point of the Bay of Fonseca, equidistant from the coasts of the two Republics, on this side; and from that point it follows the division of the waters of the bay by a line, also equidistant from the said coasts, to arrive at the centre of the distance between the northern part of Punta de Cosigüina and the southern part of the island of El Tigre."

There was some controversy between Honduras and Nicaragua at the hearings as to the position of the seaward terminus of this delimitation line, but it appears that for both States the line does not extend so far as to meet a closing line between Punta Amapala and Punta Cosigüina.

27. The second event to be mentioned is the following. In 1916 El Salvador brought proceedings against Nicaragua in the Central American Court of Justice, claiming *inter alia* that the Bryan-Chamorro Treaty concluded by Nicaragua with the United States of America, for the construction of a naval base, "ignored and violated the rights of co-ownership possessed by El Salvador in the Gulf of Fonseca". According to the Judgement in the case, El Salvador's contention was:

"Que por el hecho de haber pertenecido esas aguas, por largos años, a una sola entidad política, cual era el dominio Español en Centro-América y después a la República Federal Centroamericana, resulta una verdad concluyente que, disuelta la Federación sin haberse efectuado delimitación entre los tres Estados ribereños relativa a su soberanía en las aguas del Golfo, han continuado esos tres Estados con un dominio común en ellas." (Corte de Justicia Centroamericana, *Sentencia*, 9 de marzo de 1917, p. 8.)

In an English translation published in 1917 by the Legation of El Salvador in Washington, and printed in the 1917 volume of the *American Journal of International Law:*

"That because, for a long period of years, those waters belonged to a single political entity, to wit, the Spanish Colonial Government in Central America, and, later, to the Federal Republic of the Center of

America, the fact conclusively results that, on the dissolution of the federation without having effected a delimitation among the three riparian States of their sovereignty therein, the ownership of those waters continued in common in those three States." (*AJIL*, 1917, p. 677.)

Nicaragua appeared in the proceedings and resisted the claim, contending *(inter alia)*

> *"que las antiguas provincias españolas de Nicaragua, Honduras y El Salvador, por su adyacencia, son dueñas del Golfo, en el sentido de que a cada una corresponde una parte de él; pero no en el sentido de que por eso exista entre las referidas Repúblicas, una comunidad en la acepción jurídica de la palabra. Hay indemarcación de fronteras, lo cual es distinto de dominio común"* (CJC, *Sentencia*, p. 20),

i.e., that

> "the ancient Spanish provinces of Nicaragua, Honduras and El Salvador, by reason of the fact that they are adjacent, are owners of the Gulf in the sense that to each belongs a part thereof, but not in the sense that, thereby, a community in the legal acceptation of the word exists among those republics. Demarcation of frontiers therein is lacking; but this . . . does not result in common ownership." (*AJIL*, 1917, p. 688.)

28. The Decision of the Central American Court of Justice dated 9 March 1917 was divided into three parts. In the first part, the voting of the judges was recorded on a number of specific questions arising in the case, and this part records the unanimous view of the judges that the international status of the Gulf of Fonseca was that it was "an historic bay possessed of the characteristics of a closed sea" (*AJIL*, 1917, p. 693). The second part is an "Examination of facts and law", and the third part the formal decision, adopted by four votes to one. In the second part, the Court found:

> *"CONSIDERANDO: que reconocida por este Tribunal la condición jurídica del Golfo de Fonseca como Bahía histórica, con caracteres de mar cerrado, se ha reconocido, en consecuencia, como condueños de sus aguas a los tres países ribereños, El Salvador, Honduras y Nicaragua, excepto en la respectiva legua marina del litoral, que es del exclusivo dominio de cada uno de ellos; y que en orden al condominio existente entre los Estados en litigio . . . se tomó en cuenta que en las aguas no litorales del Golfo existe una porción de ellas en donde se empalman o confunden las jurisdicciones de inspección para objetos de policía, de seguridad y fines fiscales; y otra en donde es posible que no suceda lo mismo. Por lo tanto, el Tribunal ha decidido que entre El Salvador y Nicaragua existe el condominio en ambas porciones, puesto que están dentro del Golfo; pero con la salvedad expresa de los derechos que*

corresponden a Honduras como copartícipe en esas mismas porciones." (CJC, *Sentencia*, pp. 55-56.)

"WHEREAS: The legal status of the Gulf of Fonseca having been recognized by this Court to be that of a historic bay possessed of the characteristics of a closed sea, the three riparian States of El Salvador, Honduras and Nicaragua are, therefore, recognized as coöwners of its waters, except as to the littoral marine league which is the exclusive property of each, and with regard to the coöwnership existing between the States here litigant, the Court . . . took into account the fact that as to a portion of the non-littoral waters of the Gulf there was an overlapping or confusion of jurisdiction in matters pertaining to inspection for police and fiscal purposes and purposes of national security, and that, as to another portion thereof, it is possible that no such overlapping and confusion takes place. The Court, therefore, has decided that as between El Salvador and Nicaragua coöwnership exists with respect to both portions, since they are both within the Gulf; with the express proviso, however, that the rights pertaining to Honduras as coparcener in those portions are not affected by that decision." (*AJIL*, 1917, p. 716.)

It is a matter of public record that on 24 November 1917 Nicaragua addressed to the States of Central America a lengthy Note

"for the purpose of explaining and justifying the attitude that was forced upon [the Nicaraguan] Government of ignoring and rejecting the two Judgements rendered against it by the Central American Court of Justice",

i.e., the 1917 Judgement and an earlier Judgement in a case brought by Costa Rica against Nicaragua.

29. The Central American Court of Justice had been informed of the existence of the delimitation of part of the waters of the Gulf effected by Honduras and Nicaragua, and referred to above. In its Judgement that Court noted that

"la línea trazada . . . sólo llegó hasta un punto medio entre la isla del Tigre y Punta de Cosigüina, dejando sin dividir . . . una considerable porción de aguas comprendida entre la línea trazada desde Punta Amapala a Punta Cosigüina y el punto terminal de la división entre Honduras y Nicaragua" (CJC, *Sentencia*, p. 50).

"the line drawn . . . only extends as far as a point midway between Tigre Island and Cosigüina Point, thus leaving undivided . . . a considerable portion of the waters embraced between the line drawn from Amapala Point to Cosigüina Point and the terminal point of the division between Honduras and Nicaragua" (*AJIL*, 1917, p. 711).

Referring also to an overlap or intersection, at the entrance to the Gulf, of "the two lines (distant twelve miles from the coast) that mark the respective limits of the zone of maritime inspection" (*AJIL*, 1917, p. 702) of El Salvador and Nicaragua, the Central American Court of Justice stated that

> *"Por consiguiente, hay que concluir en que, exceptuando esa parte, el resto de las aguas del Golfo ha quedado* pro-indiviso, *en estado de comunidad entre El Salvador y Nicaragua, y en que por la particular configuración del mismo, esas aguas quedan frente a frente, confundiéndose por un empalme . . ."* (CJC, *Sentencia*, p. 50.)

> "Consequently, it must be concluded that, with the exception of that part [sc., the area delimited between Honduras and Nicaragua], the rest of the waters of the Gulf have remained undivided and in a state of community between El Salvador and Nicaragua, and that, by reason of the particular configuration of the Gulf, those waters, though remaining face to face, were . . . confounded by overlapping." (*AJIL*, 1917, p. 711.)

30. It is claimed by El Salvador in its Memorial in the present case that

> "On the basis of the 1917 judgement an objective legal régime has been established in the Gulf. Even if initially the judgement was binding only in respect of the direct parties to the litigation, Nicaragua and El Salvador, the legal status recognized therein has been consolidated in the course of time; its effects extend to third States, and in particular, they extend to Honduras"

and further that the juridical situation of the Gulf "does not permit the dividing up of the waters held in condominium", with the exception of "a territorial sea within the Gulf", recognized by the Central American Court of Justice. It therefore asks the Chamber to adjudge and declare that

> "The juridical position of the maritime spaces within the Gulf of Fonseca corresponds to the juridical position established by the Judgement of the Central American Court of Justice rendered March 9th 1917, as accepted and applied there after."

It also contends in its Counter-Memorial that

> "So far as the maritime spaces are concerned, the Parties have not asked the Chamber either to trace a line of delimitation or to define the Rules and Principles of Public International Law applicable to a delimitation of maritime spaces, either inside or outside the Gulf of Fonseca."

31. Honduras in its Reply rejects the view that the 1917 Judgement produced or reflected an objective legal régime, contending that in the case of

> "a judgment or arbitral award laying down a delimitation as between the parties to a dispute, the solution therein adopted can only be opposed to the parties. As for other States, which are alien to the case, a decision which affects their rights cannot be opposed to them. This is indeed the case for Honduras with respect to the 1917 Judgement of the Central American Court, which was the outcome of proceedings in which it did not participate."

It also observes that

> "it is not the 1917 Judgement which confers sovereignty upon the riparian States over the waters of the Bay of Fonseca. That sovereignty antecedes considerably that judgment between two riparian States, since it dates back to the creation of the three States concerned."

Honduras's contention as to the legal situation of the maritime spaces, to be examined further below, involves their delimitation between the Parties. It considers that the Chamber has jurisdiction under the Special Agreement to effect such delimitation, and has indicated what, in the view of Honduras, should be the course of the delimitation line.

32. As regards maritime spaces situated outside the closing line of the Gulf, Honduras asks the Chamber to find that the "community of interests" between El Salvador and Honduras as coastal States of the Gulf implies that they each have an equal right to exercise jurisdiction over such spaces. On this basis, it asks the Chamber to determine a line of delimitation extending 200 miles seaward, to delimit the territorial sea, the exclusive economic zone and the continental shelf of the two Parties. El Salvador however contends that the Chamber does not, under the Special Agreement, have jurisdiction to delimit maritime areas outside the closing line of the Gulf. El Salvador denies that Honduras has any legitimate claim to any part of the continental shelf or exclusive economic zone in the Pacific, outside the Gulf; it is however prepared to accept that this question be decided by the Chamber.

33. A feature of the present case is that on none of the three aspects of the dispute referred to in Article 2, paragraph 2, of the Special Agreement, to which the Application for permission to intervene relates, — the islands, the waters of the Gulf, and the waters outside the Gulf — are the Parties in agreement as to the issues to be decided by the Chamber under the Special Agreement. In considering whether Nicaragua has a legal interest which may be affected by the decision in the case, so as to justify

its intervention, the Chamber has accordingly to bear in mind that a number of issues may or may not fall to be determined by it under each head.

* *

34. By a letter dated 20 April 1988, the Ambassador of Nicaragua to the Netherlands requested that the pleadings be made available to Nicaragua under Article 53, paragraph 1, of the Rules of Court, a request granted (above, paragraph 13) on 15 June 1988 after ascertainment of the views of the Parties. That letter referred to the Order of the Court of 8 May 1987 constituting the Chamber in this case, and stated:

> "Whilst Nicaragua does not at this stage intend to avail itself of the provisions of Article 62 of the Statute of the Court, the purpose of the present communication is to inform the Court that the possibility offered by Article 62 is under active consideration. In this context I am instructed to convey the view of my Government that Nicaragua has an interest of a legal nature which may be affected by a decision of the Chamber constituted for the purpose of deciding the *Case concerning the Land, Island and Maritime Frontier Dispute* between El Salvador and Honduras. Moreover, in the light of the principle of consent as invoked by the Court in the *Monetary Gold* case, *I.C.J. Reports 1954*, p. 19, at p. 32, my Government considers it necessary to reserve its position generally in relation to the Court's Order of 8 May 1987."

Copies of this letter were transmitted to the two Parties by the Registrar of the Court.

35. In its Application for permission to intervene, filed on 17 November 1989, Nicaragua stated that the Application was made by virtue of Article 36, paragraph 1, and Article 62 of the Statute. An application under Article 62 is required by Article 81, paragraph 1, of the Rules of Court to be filed "as soon as possible, and not later than the closure of the written proceedings". The Application of Nicaragua was filed in the Registry of the Court two months before the time-limit fixed for the filing of the Parties' Replies.

36. By Article 81, paragraph 2, of the Rules of Court a State seeking to intervene is required to specify the case to which it relates and to set out:

> "*(a)* the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;
> *(b)* the precise object of the intervention;
> *(c)* any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case".

Nicaragua's contentions on each of those requirements are as follows.

37. As to the interest of a legal nature (Article 81, paragraph 2 *(a)*, of the Rules of Court), Nicaragua states as follows in its Application: "As can be appreciated in Article 2 of the Special Agreement . . ., the Government of Nicaragua has an interest of a legal nature which must inevitably be affected by a decision of the Chamber." (Para. 2.) It then proceeds to enumerate the "particular considerations supporting this opinion" as including the following:

"*(a)* The phrasing of paragraph 2 of Article 2 of the Special Agreement, which refers comprehensively to *'la situación jurídica insular y de los espacios marítimos'*.

(b) The title of the Special Agreement which refers to *'la controversia fronteriza terrestre, insular y marítima existente entre los dos Estados'*.

(c) The geographical situation in the Gulf of Fonseca and the adjacent maritime areas.

(d) The essential character of the legal principles, including relevant equitable principles, which would be relevant to the determination of the questions placed on the agenda by the Special Agreement.

(e) The general recognition by authoritative legal opinion that the issues relating to the Gulf of Fonseca involve a trilateral controversy.

(f) The leading role of coasts and coastal relationships in the legal régime of maritime delimitation and the consequence in the case of the Gulf of Fonseca that it would be impossible to carry out a delimitation which took into account only the coasts in the Gulf of two of the three riparian States.

(g) The fact that a possible element in the regulation of the legal situation of maritime spaces, especially in a case like that of the Gulf of Fonseca, would be the designation of one or more zones of joint exploration and exploitation: see the Report of the Conciliation Commission in the *Jan Mayen Continental Shelf* case, *International Law Reports* (ed. E. Lauterpacht), Vol. 62, p. 108." (Application, para. 2.)

38. Article 81, paragraph 2 *(b)*, of the Rules of Court requires a statement of "the precise object of the intervention". In Nicaragua's Application, it is stated that

"The intervention for which permission is requested has the following objects:

First, generally to protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available.

Secondly, to intervene in the proceedings in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute. This form of intervention would have the conservative

> purpose of seeking to ensure that the determination of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua . . ." (Application, paras. 4-6.)

Nicaragua goes on to state that it "intends to subject itself to the binding effect of the decision to be given" (Application, para. 6). The Chamber takes note of that statement.

39. The further requirement of Article 81, paragraph 2 *(c)*, of the Rules of Court, that an application for permission to intervene set out "any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case", is dealt with in the Application as follows. Nicaragua contends that, for reasons which are there briefly stated, "In the opinion of the Government of Nicaragua Article 62 of the Statute, which is the governing instrument, does not require a separate title of jurisdiction . . ." (Application, para. 7.) Nicaragua does not assert the existence of any basis of jurisdiction other than the Statute itself; it adds that

> "Moreover, Article 36, paragraph 1, of the Statute states that the jurisdiction of the Court 'comprises . . . all matters specially provided for . . . in treaties and conventions in force'; and the Statute is itself a 'treaty in force'." (Application, para. 7.)

40. In its Application Nicaragua further states that its request to intervene is "limited to that part of the object of the Special Agreement contained in paragraph 2 of Article 2", i.e., the request that the Chamber "determine the legal situation of the islands and maritime spaces" and that it "wishes to make very clear that it has no intention of intervening in those aspects of the procedure relating to the land boundary which is in dispute between El Salvador and Honduras" (Application, "Preliminary Statements").

41. In its Application to the Court for permission to intervene dated 17 November 1989 Nicaragua also stated that

> "The practical consequence of a favourable response to the present request will be the reformation of the Chamber as presently constituted and the re-ordering of the written proceedings as arranged by the Order of 27 May 1987. Whilst my Government is bound to take all available steps in order to protect its legal interests, it is concerned to proceed in a spirit of goodwill and co-operation in face of a procedure which has already been initiated. Consequently, it is the intention of my Government to propose not a reformation of the Chamber and its jurisdictional basis *tout court* but only the making of those changes strictly necessary in order to maintain the minimum standards of efficacy and procedural fairness" (para. 23 of that Application),

and that

> "Nicaragua in the alternative would request that, for those reasons of elemental fairness explained above . . ., the Court should, in any case, exclude from the mandate of the Chamber any powers of determination of the juridical situation of maritime areas both within the Gulf of Fonseca and also in the Pacific Ocean and, in effect, limit the Chamber's mandate to those aspects of the land boundary which are in dispute between El Salvador and Honduras." (Para. 24 of that Application.)

In its Order of 28 February 1990, the Court observed on the first of these contentions that

> "while Nicaragua has thus referred to certain questions concerning the composition of the Chamber, it has done so only in contemplation of a favourable response being given to its request for intervention";

and on the second, that "while Nicaragua contemplates a limitation of the mandate of the Chamber, its request to that effect is put forward only 'in the alternative'"; and the Court concluded that it "is thus not called upon to pronounce on any of these questions", which it referred to as "contingent on the decision whether the application for permission to intervene is to be granted", that decision being an "anterior question".

42. At the hearings, the Agent of Nicaragua, in his first statement to the Chamber, referred to the Court's Order and stated that

> "now that Nicaragua is before the Chamber reiterating its petition to intervene, it does so without submitting to the Chamber on this opportunity the two questions that the full Court stated could only be resolved after the decision on the Application for permission to intervene was made by the Chamber . . . Nicaragua maintains, before this Chamber of the Court, its Application for permission to intervene but modified in the sense that the requests made in Sections 23 and 24 of its original Application of 17 November 1989 are not being submitted for decision by this Chamber".

In reply to a question by the Chamber, the Agent made it clear that Nicaragua accepted that the decision on intervention is entirely for the Chamber, which has full authority to decide on it and stated further:

> "The Chamber is correct in understanding that Nicaragua accepts that it is the Chamber which is properly seised of an application by Nicaragua for permission to intervene before it in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*; and that Nicaragua recognizes that the eventual decision of the Chamber granting or refusing permission to intervene will be binding and final . . .
>
> The only limitation we have made to our original application to the

full Court was that we are not putting at this moment before the Chamber any request that it reconstitute itself or that it exclude from its own competence *ratione materiae* those aspects of the case that Nicaragua had requested that the full Court exclude from the mandate of this Chamber . . .

. . . what we are putting before the Chamber is the simple and unconditional request to be allowed permission to intervene in the present case based on Article 62 of the Statute . . ."

* *

43. Some of the arguments of El Salvador have been put forward as grounds for the Chamber to reject the Application of Nicaragua *in limine*, without there being any need for further examination of its compliance with Article 62 of the Statute of the Court. These will therefore be examined first.

44. First, El Salvador claims that the Application fails to fulfil the requirement in Article 81, paragraph 2 *(c)*, of the Rules of Court that a State seeking to intervene is to set out in its application "any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case". Nicaragua does not set out any such basis in its Application but argues that Article 62 of the Statute "does not require a separate title of jurisdiction" (para. 7). The Chamber does not see here any formal defect, justifying dismissal of the Application *in limine*, since the Rule only requires statement of "any basis of jurisdiction which is claimed to exist". El Salvador also advances the view that a "jurisdictional link" between the State seeking to intervene and the parties is a necessary condition for intervention. The Court, however, has observed in an earlier case that

> "although this question is one of the Court's jurisdiction, it has no priority of the kind which attaches to a jurisdictional objection *stricto sensu*, and need not be examined in advance of the other contentions put forward by the Parties either as objections to the admissibility of the Application, or as grounds for refusing it" (*I.C.J. Reports 1984*, p. 8, para. 11).

El Salvador's contentions on the question of the jurisdictional link will therefore be examined later (paragraphs 93-101).

45. Second, El Salvador contends that Nicaragua's Application is defective because it does not comply with the requirement of Article 81, paragraph 2 *(b)*, of the Rules of Court that a State applying to intervene indicate in its Application "the precise object of the intervention". Nicaragua's Application has two paragraphs (quoted in paragraph 38 above) stating the object of the intervention. El Salvador nonetheless contends *(inter alia)* that Nicaragua has not complied with the requirement to indicate "the *precise* object": it does not "indicate its position with respect to the fundamental issue in the case, which is to define the object of the litiga-

tion and consequently the scope of the powers of the Chamber", and "these omissions make the Application defective". In the Chamber's view, however, Nicaragua has given an indication of an object which could certainly be defined in a more precise way but is not so evidently lacking in precision as to justify the Chamber in rejecting the Application *in limine* for non-compliance with Article 81 of the Rules of Court. Whether, as El Salvador also claims, Nicaragua's object in intervening is not a proper one is a separate matter to be considered below (paragraphs 85-92).

46. Thirdly, El Salvador contends further that "Nicaragua is time-barred or estopped from seeking changes in the procedural aspects of the principal proceedings". El Salvador refers to the provision of Article 81, paragraph 1, of the Rules of Court whereby an application for permission to intervene is to be filed "as soon as possible, and not later than the closure of the written proceedings". In its written observations on the Application, El Salvador emphasized the words "as soon as possible", and contended that, in view of Nicaragua's requests in paragraphs 23 and 24 of the Application, for the reformation of the Chamber and the re-ordering of the written proceedings (paragraph 41 above), it should not have postponed its Application for nearly three years after being notified of the proceedings; and that the Application for permission to intervene should be declined because Nicaragua is "out of time". At the hearings the Agent of El Salvador, continuing to urge that the Application was "untimely", stated that El Salvador was fully aware that the relevant time-limits "have in the technical sense been complied with by Nicaragua", and explained that it was requesting the Chamber to reject the Nicaraguan Application, "not because it fails to meet a technical requirement of the Rules but because it fails to meet the substantive requirements of the Statute". The contention appears to be that Nicaragua's Application is untimely, not only in itself but because of the late raising of the matters in paragraphs 23 and 24 thereof, which would be disruptive at the present advanced stage of the proceedings; and that the Chamber has and should exercise a discretion to reject the Application *in limine* on this ground.

47. In its observations on the Nicaraguan Application for permission to intervene, El Salvador in fact sets out a number of grounds of objection to the matters raised in paragraphs 23 and 24 of that Application. To give effect to Nicaragua's stated intention to seek a "reordering of the written proceedings" would, it is contended, "infringe the Rules of Court", "fail to recognize the acquired rights of the litigant Parties", and "create an unfair situation by placing Nicaragua in an advantageous position vis-à-vis the Parties, already committed as they are by the contents of their pleadings, to which Nicaragua has been given access". Nicaragua's intended request for the "reformation of the Chamber as presently constituted" is described by El Salvador as an "extravagant and unprecedented claim", to allow which would "violate essential legal principles". To modify the constitution of the Chamber without the consent of the Parties

"would infringe Article 26, paragraph 2, of the Statute". Nicaragua's proposal that the Court should "exclude from the mandate of the Chamber any powers of determination of the juridical situation of maritime areas . . . and, in effect, limit the Chamber's mandate" to the land boundary dispute is an "extraordinary request" which "can only be explained by the mistaken assumption that a Chamber is a body subordinated to the Court". All these matters are, in the view of El Salvador, "totally disruptive of the orderly unfolding of the judicial process". El Salvador concludes that

> "All these serious defects in the Nicaraguan Application, resulting from the extravagant requests it advances, lead to the necessary rejection by the Chamber of such a defective application. The Chamber is not confronted here with a serious request for what the Court has qualified as a 'genuine intervention' . . ."

At the hearings, El Salvador urged rejection of the Nicaraguan Application because acceptance of it "would wreak havoc on the Parties to this case and would create an unconscionable situation of interference, rather than one of orderly advancement of the proceedings".

48. The Chamber is here only concerned to consider whether the objections addressed by El Salvador to paragraphs 23 and 24 of that Application would justify its rejection *in limine.* This point has to be considered notwithstanding the fact that the Court has categorized the content of those paragraphs as contingent on the decision whether or not to grant permission to intervene, and Nicaragua has made it clear that it is not

> "putting at this moment before the Chamber any request that it reconstitute itself or that it exclude from its own competence *ratione materiae* those aspects of the case that Nicaragua had requested that the full Court exclude from the mandate of this Chamber" (paragraph 42 above).

49. A rejection of the Application on these grounds would only be appropriate if the Chamber were to conclude that the inclusion of the requests in paragraphs 23 and 24 of the original Application invalidated the entire Application. The Chamber does not however consider that this is the case.

50. Finally, El Salvador relies on the fact that there has been "no discussion whatsoever between Nicaragua and either of the original Parties regarding the position of the Gulf of Fonseca". Therefore, it is argued, it is premature to bring such issues before the Chamber, and counter to the established rule "that before proceedings are brought in the Court, there must be a defined dispute which . . . has matured through the process of negotiation between the parties".

51. The Chamber does not consider that there is any requirement for the definition of a dispute in prior negotiations before an application can be made for permission to intervene. The function of intervention is, as

indicated in the 1984 Judgment on the Application of Italy for permission to intervene in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, and as explained below, something wholly different from the determination of a further dispute between the State seeking to intervene and one or both of the parties. In that Judgment the Court found that that Application could not be granted because, *inter alia*, to give effect to it "the Court would be called upon . . . to determine a dispute, or some part of a dispute, between Italy and one or both of the principal Parties" (*I.C.J. Reports 1984*, p. 20, para. 31), without the consent of those parties. It would therefore be inappropriate to require, as a condition of intervention, the existence of such a dispute, defined by prior negotiations.

* *

52. As the Court has made clear in previous cases (*I.C.J. Reports 1981*, p. 19, para. 33; *I.C.J. Reports 1984*, p. 9, para. 13), in order to obtain permission to intervene under Article 62 of the Statute, a State has to show an interest of a legal nature which may be affected by the Court's decision in the case, or that *un intérêt d'ordre juridique est pour lui en cause* — the criterion stated in Article 62. In the present case, Nicaragua has gone further: citing the case concerning *Monetary Gold Removed from Rome in 1943* (*I.C.J. Reports 1954*, p. 19), it has argued that its interests are so much part of the subject-matter of the case that the Chamber could not properly exercise its jurisdiction without the participation of Nicaragua. It will be convenient to examine this contention first.

53. In the view of Nicaragua, the decision in the *Monetary Gold* case "emphasized the impropriety of exercising jurisdiction in face of a substantial interest of a third State in the very subject-matter of the decision" (Application, para. 12). During the oral proceedings the Agent of Nicaragua claimed, adapting to the present case the terms of the decision in the *Monetary Gold* case, that

> "where . . . the vital issue to be settled concerns the rights of Nicaragua in the Gulf of Fonseca and the waters outside it, the Court cannot, without the consent of that third State, give a decision on that issue binding upon any State . . .".

What is apparently being suggested is that in such circumstances the failure of a third State to intervene, or even refusal of a request for permission to intervene, may deprive the Court of the right with propriety to exercise a jurisdiction conferred upon it by a special agreement between two other States.

54. In the *Monetary Gold* decision, the Court was dealing with the following argument (as reported in the Court's Judgment) which had been addressed to it:

> "It has been suggested that Albania might have intervened. The provisions of Article 62 of the Statute give to a third State, which considers that it 'has an interest of a legal nature which may be affected by the decision in the case', the right to request permission to intervene. It has been contended that the inclusion of the provisions for intervention indicate that the Statute contemplates that proceedings may continue, notwithstanding that a third State may have an interest of a legal nature which might enable it to intervene. It is argued that the fact that a third State, in this case Albania, may not choose to intervene should not make it impossible for the Court to give judgment on rights as between the Parties." (*I.C.J. Reports 1954*, p. 32.)

The Court did not reject this contention; as was to be expressly stated in a later Judgment, a State which considers that its legal interest may be affected by a decision in a case has the choice, to intervene or not to intervene; and if it does not, proceedings may continue, and that State is protected by Article 59 of the Statute (*I.C.J. Reports 1984*, p. 26, para. 42). The Court's reply in the *Monetary Gold* case to the argument addressed to it was as follows:

> "Albania has not submitted a request to the Court to be permitted to intervene. In the present case, Albania's legal interests would not only be affected by a decision, but would form the very subject-matter of the decision. In such a case, the Statute cannot be regarded, by implication, as authorizing proceedings to be continued in the absence of Albania." (*Loc. cit.*, p. 32.)

What then was "the very subject-matter of the decision" in that case? The first submission in the Italian Application was

> "(1) that the Governments of the French Republic, Great Britain and Northern Ireland and the United States of America should deliver to Italy any share of the monetary gold that might be due to Albania under Part III of the Paris Act of January 14th, 1946, *in partial satisfaction for the damage caused to Italy by the Albanian law of January 13th, 1945.*" (*I.C.J. Reports 1954*, p. 22, emphasis added.)

Thus the circumstances of the *Monetary Gold* case were such that a decision would determine a question of the international responsibility of Albania vis-à-vis Italy. As the Court put it:

> "To adjudicate upon the international responsibility of Albania without her consent would run counter to a well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent." (*I.C.J. Reports 1954*, p. 32.)

55. Thus the Court's finding was that, while the presence in the Statute of Article 62 might impliedly authorize continuance of the proceedings in

the absence of a State whose "interests of a legal nature" might be "affected", this did not justify continuance of proceedings in the absence of a State whose international responsibility would be "the very subject-matter of the decision". The Court did not need to decide what the position would have been had Albania applied for permission to intervene under Article 62.

56. If in the present case the legal interests of Nicaragua would form part of "the very subject-matter of the decision", as Nicaragua has suggested, this would doubtless justify an intervention by Nicaragua under Article 62 of the Statute, which lays down a less stringent criterion. The question would then arise, however, whether such intervention under Article 62 of the Statute would enable the Chamber to pronounce upon the legal interests of Nicaragua which it is suggested by Nicaragua would form the very subject-matter of the decision. The Chamber will therefore first consider whether Nicaragua has shown the existence of an "interest of a legal nature which may be affected by the decision", so as to justify an intervention; and if such is the case, will then consider whether that interest may in fact form "the very subject-matter of the decision" as did the interests of Albania in the case concerning *Monetary Gold Removed from Rome in 1943.*

* *

57. Article 62 of the Statute contemplates intervention on the basis of an interest of a legal nature "which may be affected by the decision in the case". In the present case however, what is requested of the Chamber by the Special Agreement is not a decision on a single circumscribed issue, but several decisions on various aspects of the overall dispute between the Parties, as indicated in paragraphs 30 to 33 above. The Chamber has to consider the possible effect on legal interests asserted by Nicaragua of its eventual decision on each of the different issues which might fall to be determined, in order to define the scope of any intervention which may be found to be justified under Article 62 of the Statute.

58. If a State can satisfy the Court that it has an interest of a legal nature which may be affected by the decision in the case, it may be permitted to intervene in respect of that interest. But that does not mean that the intervening State is then also permitted to make excursions into other aspects of the case. This is recognized by Nicaragua; it claims only that its interests of a legal nature may be affected by the decision of the Chamber on the "legal situation of the islands and maritime spaces", but not by the decision on the land frontier, and accordingly states in its Application "that it has no intention of intervening in those aspects of the procedure relating to the land boundary which is in dispute between El Salvador and Honduras" (Application, "Preliminary Statements"). Since the scope of any permitted intervention has to be determined, the Chamber has to consider the matters of the islands, the situation of the waters within the

Gulf, the possible delimitation of the waters within the Gulf, the situation of the waters outside the Gulf, and the possible delimitation of the waters outside the Gulf.

59. Whether all of these matters are indeed raised by the wording of Article 2, paragraph 2, of the Special Agreement is itself disputed between the Parties to the case. Accordingly, the list of matters to be considered must in this phase of the proceedings be entirely without prejudice to the meaning of Article 2, paragraph 2, as a whole, or of any of the terms as used in that Article. The Chamber clearly cannot take any stand in the present proceedings on the disputes between the Parties concerning the proper meaning of the Special Agreement: it must determine the questions raised by Nicaragua's Application while leaving these questions of interpretation entirely open.

60. In its Application for permission to intervene, Nicaragua gave a list (set out in paragraph 37 above) of considerations supporting its contention that it has an interest of a legal nature which may be affected by the decision of the Chamber. No further or more specific indication was given in the Application either of the legal interest or interests claimed to exist or of the way in which the future decision of the Chamber might affect that interest. During the hearings, the Agent of Nicaragua explained that

> "In describing the legal interests Nicaragua wants to protect in this case, we have considered it unnecessary to allege or claim a specific right inside the Gulf of Fonseca. It is enough to indicate ... that both Parties, among other questions that affect our interests, are asking the Chamber to define or clarify the general or overall status of the whole Gulf of Fonseca in which Nicaragua plainly has rights that are even recognized according to their respective convenience by the Parties ... On the other hand, if the Chamber were to consider the request of Honduras and proceeded to delimit the waters inside the Gulf, it is obvious from looking at any chart that no such delimitation is possible without affecting our interests, if this delimitation involves the whole of the Gulf of Fonseca."

61. There was in this connection some argument before the Chamber on the question of the extent of the burden of proof on a State seeking to intervene: how far such a State needs to demonstrate the elements required in order to satisfy Article 62. Nicaragua was of the view that it need only show a "provisional standard of proof"; and that it would be "inappropriate for the applicant to go too far on the question of the validity of the interests it claims". The Parties to the case took issue with these arguments. In the Chamber's opinion, however, it is clear, first, that it is for a State seeking to intervene to demonstrate convincingly what it asserts, and thus to bear the burden of proof; and, second, that it has only to show that its interest "may" be affected, not that it will or must be affected. What needs to be shown by a State seeking permission to inter-

vene can only be judged *in concreto* and in relation to all the circumstances of a particular case. It is for the State seeking to intervene to identify the interest of a legal nature which it considers may be affected by the decision in the case, and to show in what way that interest may be affected; it is not for the Court itself — or in the present case the Chamber — to substitute itself for the State in that respect.

62. It needs, moreover, to be recalled in this connection that the present case raises a further problem, namely that the Parties to the case are in dispute about the interpretation of the very provision of the Special Agreement — paragraph 2 of Article 2 — which is invoked in Nicaragua's Application. This means that the legal interests of Nicaragua have to be assessed, in relation to the issues in the case, under two different possible situations: an eventual finding by the Chamber in favour of El Salvador's view of the meaning of Article 2, paragraph 2; or an eventual finding in favour of the view of Honduras. This difficulty is not only one for the Chamber in considering the present Application — for obviously, as mentioned above, it must not in any way anticipate its decision of these matters on the merits — but also for Nicaragua in framing its Application, even though it was given access to the pleadings under Article 53, paragraph 1, of the Rules of Court. Nevertheless, there needs finally to be clear identification of any legal interests that may be affected by the decision on the merits. A general apprehension is not enough. The Chamber needs to be told what interests of a legal nature might be affected by its eventual decision on the merits.

63. Nicaragua has presented a particular argument whereby it would apparently be dispensed from producing evidence of the existence of the legal interests on which it relies, by reason of the assertions of the Parties. This argument has at times been denominated "equitable estoppel" and at times "recognition"; in its clearest form it was put forward at the hearings as follows:

> "In the submission of the Government of Nicaragua the assertions of fact and law on the part of El Salvador and Honduras in the course of these proceedings constitute recognition of the existence of major legal interests pertaining to Nicaragua which form an inherent part of the parcel of legal questions placed in front of the Chamber by the Special Agreement."

So far as Nicaragua relies on estoppel, the Chamber will only say that it sees no evidence of some essential elements required by estoppel: a statement or representation made by one party to another and reliance upon it by that other party to his detriment or to the advantage of the party making it. The indications to be found in the pleadings of the views of the Parties as to the existence or nature of Nicaraguan interests within or without the Gulf, no doubt amount to some evidence which the Chamber can take into account. None of these however amounts to an admission, recognition or statement that, in the view of the Party concerned, there are

interests of Nicaragua such that they may be affected by the decision of the Chamber in the case.

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64. The Chamber will now turn to consideration of the several specific issues in the case which may call for decision, as indicated in paragraph 58 above, in order to determine whether it has been shown that such decision may affect a Nicaraguan interest of a legal nature.

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65. So far as the decision requested of the Chamber by the Parties is to determine the legal situation of the islands, it is not clear whether Nicaragua has advanced, or now maintains, a contention that its legal interests may be directly affected by the decision of the Chamber as to sovereignty over individual islands. Nicaragua referred in its Application to the title of the Special Agreement and to Article 2, paragraph 2, thereof, which refer both to the islands and to the maritime spaces *(Que determine la situación jurídica insular y de los espacios marítimos).* During the hearings, counsel for Nicaragua stated that, Nicaragua's sovereignty over the Farallones being expressly recognized by the Parties, Nicaragua has in principle no direct interest in the determination of the legal situation of the other islands in the Gulf. It was however also stated on behalf of Nicaragua during the hearings that, insofar as the decision concerning sovereignty over the islands might have repercussions on a decision concerning delimitation of the waters of the Gulf, Nicaragua is legitimately and directly interested in the islands as a circumstance of possible relevance for the delimitation of maritime areas within and without the Gulf.

66. The Chamber concludes that, insofar as the dispute relates to sovereignty over the islands, it should not grant permission for intervention by Nicaragua, in the absence of any Nicaraguan interest liable to be directly affected by a decision on that issue. Any possible effects of the islands as relevant circumstances for delimitation of maritime spaces fall to be considered in the context of the question whether Nicaragua should be permitted to intervene on the basis of a legal interest which may be affected by a decision on the legal situation of the waters of the Gulf. The Chamber therefore turns to that question.

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67. It is El Salvador's case that, as between El Salvador, Honduras and Nicaragua, there exists "a régime of community, co-ownership or joint

sovereignty" over such of the waters of the Gulf of Fonseca "as lie outside the area of exclusive jurisdiction", an "objective legal régime" on the basis of the 1917 Judgement of the Central American Court of Justice. The nature of that régime, as conceived by the Central American Court, appears sufficiently for present purposes from the extracts from the 1917 Judgement in paragraphs 27 and 28 above. On that basis, El Salvador considers that the juridical situation of the Gulf does not permit the dividing up of the waters held in condominium. El Salvador also contends that the Special Agreement does not confer jurisdiction to effect any such delimitation.

68. Honduras on the other hand contends, *inter alia*,

— that "the Gulf's specific geographical situation creates a special situation between the riparian States which generates a community of interests" which in turn "calls for a special legal régime to determine their mutual relations";
— that the community of interests "does not mean integration and the abolition of boundaries" but, on the contrary, "the clear definition of those boundaries as a condition of effective co-operation";
— that each of the three riparian States "has an equal right to a portion of the internal waters";
— that the maritime spaces to be delimited have "the status of internal waters because the Gulf of Fonseca is an historic bay"; but that nevertheless it would not be correct "to rule out the application to such delimitation of the principles and rules that have gradually been identified in international case-law over the past twenty years" for the delimitation of maritime spaces.

69. Honduras considers that Nicaragua has demonstrated a legal interest which would be affected by the decision on the question whether the waters of the Gulf are subject to a condominium, observing that it is inconceivable that the waters could be a condominium as regards two of the riparian States, but not as regards the third. It therefore does not oppose an intervention limited to the protection of Nicaragua's legal interest in this question.

70. El Salvador, however, denies that Nicaragua has a case for intervention even in this matter. It argues that the Chamber is not called upon "to attribute to the waters of the Gulf an objective legal régime valid *erga omnes* and thereby applicable to Nicaragua without its having been able to make its voice heard"; and that the question to be decided is whether the régime of a condominium,

> "which was declared applicable between El Salvador and Nicaragua in a Court decision having the force of *res judicata* between the two countries, can be regarded as applicable to Honduras. Whatever decision the Chamber reaches on this issue the juridical situation of Nicaragua will remain unchanged, in its relations both with El Salvador and with Honduras."

71. The Chamber however notes that El Salvador in its pleadings has specifically claimed the existence of an "objective legal régime" of condominium in the waters of the Gulf (paragraph 67 above). Further, the fact that this régime was found to be applicable by the Central American Court of Justice in a case in which Nicaragua was the respondent party, appears to the Chamber to reinforce Nicaragua's assertion of a legal interest which may be affected by any decision in this matter. As appears from the above quotation, El Salvador's argument starts from the proposition that the 1917 Judgement of the Central American Court is *res judicata* between El Salvador and Nicaragua. The Chamber has noted above (paragraph 28) that in 1917 Nicaragua informed the States of Central America that it did not accept that Judgement. That very question of *res judicata*, even though not directly in issue before the Chamber since El Salvador does not contend that Honduras was a party to the case and as such bound by the decision, underlies the asserted opposability of the Judgement to Honduras, so that a decision on such opposability may affect the interests of Nicaragua.

72. Quite apart from the question of the legal status of the 1917 Judgement, however, the fact is that El Salvador now claims that the waters of the Gulf are subject to a condominium of the coastal States, and has indeed suggested that that régime "would in any case have been applicable to the Gulf under customary international law". Nicaragua has referred to the fact that Nicaragua plainly has rights in the Gulf of Fonseca, the existence of which is undisputed, and contends that

> "The condominium, if it is declared to be applicable, would by its very nature involve three riparians, and not only the parties to the Special Agreement."

In the opinion of the Chamber, this is a sufficient demonstration by Nicaragua that it has an interest of a legal nature in the determination whether or not this is the régime governing the waters of the Gulf: the very definition of a condominium points to this conclusion. Furthermore, a decision in favour of some of the Honduran theses would equally be such as may affect legal interests of Nicaragua. The "community of interests" which is the starting-point of the arguments of Honduras is a community which, like the condominium claimed by El Salvador, embraces Nicaragua as one of the three riparian States, and Nicaragua must therefore be interested also in that question. Nicaragua contends that in this respect

> "any decision taken by the Chamber — whether in deciding in favour of one Party or the other or by deciding otherwise — is necessarily a decision whose very subject-matter would be the determination of the rights of the three riparian States in respect of the Gulf of Fonseca, and of the waters outside the Gulf".

The Chamber, therefore, finds that Nicaragua has shown to the Cham-

ber's satisfaction the existence of an interest of a legal nature which may be affected by its decision on these questions; and that this is so notwithstanding the fact that, as its Agent explained at the opening hearing, Nicaragua has "considered it unnecessary to allege or claim a specific right inside the Gulf of Fonseca".

73. On the other hand, while the Chamber is thus satisfied that Nicaragua has a legal interest which may be affected by the decision of the Chamber on the question whether or not the waters of the Gulf of Fonseca are subject to a condominium or a "community of interests" of the three riparian States, it cannot accept the contention of Nicaragua that the legal interest of Nicaragua "would form the very subject-matter of the decision", in the sense in which that phrase was used in the case concerning *Monetary Gold Removed from Rome in 1943* to describe the interests of Albania (see paragraphs 52-56 above). So far as the condominium is concerned, the essential question in issue between the Parties is not the intrinsic validity of the 1917 Judgement of the Central American Court of Justice as between the parties to the proceedings in that Court, but the opposability to Honduras, which was not such a party, either of that Judgement itself or of the régime declared by the Judgement. Honduras, while rejecting the opposability to itself of the 1917 Judgement, does not ask the Chamber to declare it invalid. If Nicaragua is permitted to intervene, the Judgment to be given by the Chamber will not declare, as between Nicaragua and the other two States, that Nicaragua does or does not possess rights under a condominium in the waters of the Gulf beyond its agreed delimitation with Honduras, but merely that, as between El Salvador and Honduras, the régime of condominium declared by the Central American Court is or is not opposable to Honduras. It is true that a decision of the Chamber rejecting El Salvador's contentions, and finding that there is no condominium in the waters of the Gulf which is opposable to Honduras, would be tantamount to a finding that there is no condominium at all. Similarly, a finding that there is no such "community of interests" as is claimed by Honduras, between El Salvador and Honduras in their capacity as riparian States of the Gulf, would be tantamount to a finding that there is no such "community of interests" in the Gulf at all. In either event, such a decision would therefore evidently affect an interest of a legal nature of Nicaragua; but even so that interest would not be the "very subject-matter of the decision" in the way that the interests of Albania were in the case concerning *Monetary Gold Removed from Rome in 1943*. As explained above (paragraph 56), it follows from this that the question whether the Chamber would have power to take a decision on these questions, without the participation of Nicaragua in the proceedings, does not arise; but that the conditions for an intervention by Nicaragua in this aspect of the case are nevertheless clearly fulfilled.

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74. If the Chamber were not satisfied that there is a condominium over the waters of the Gulf of such a kind as to exclude any delimitation, it might then be called upon, if it were satisfied that it has jurisdiction to do so, to effect a delimitation. The Chamber has therefore at the present stage to consider whether a decision as to delimitation of the waters of the Gulf might affect an interest of a legal nature appertaining to Nicaragua, in order to determine whether Nicaragua might be permitted to intervene in respect of this aspect of the case also. It does not, however, have to consider the possible effect on Nicaragua's interests of every possible delimitation which might be arrived at; it is for the State seeking to intervene to show that its interests might be affected by a particular delimitation, or by delimitation in general. Honduras has already indicated in its pleadings how, in its view, the delimitation should be effected. El Salvador, consistently with its position, has not indicated its views on possible lines of delimitation. Nicaragua, for its part, has not given any indication of any specific line of delimitation which it considers would affect its interests.

75. Honduras contends that Nicaragua has demonstrated no legal interest which may be affected by a decision on a delimitation line within the Gulf as between Honduras and El Salvador. It observes that

> "Such a delimitation line is proposed by Honduras, not by El Salvador, and the Honduran proposal is careful to avoid any encroachment into areas within the Gulf which might be claimed by Nicaragua. Moreover, whatever the Honduran proposal might be, the Court itself has all the powers necessary to ensure that any line of delimitation which it might draw would not be to the prejudice of Nicaragua's interests."

At the hearings it was explained that, for the delimitation claimed,

> "Honduras has proposed a method which divides the Gulf into a western and eastern section . . . It has been the aim of Honduras to confine the relevant area for the purposes of a delimitation with El Salvador to the western sector of the Gulf."

Honduras relied on what it asserted to be the reasonable assumption that "there can be no justifiable claim by Nicaragua to any part of the waters of this western sector". This argument was, in counsel's contention, reinforced by the fact that "as between Honduras and Nicaragua, the waters of the Gulf are in large part already delimited" by the 1900 Commission, which delimitation would debar Nicaragua from making claims in the western half of the Gulf. El Salvador also contends that if, contrary to its own arguments on the competence of the Chamber under the Special Agreement, the Chamber proceeds to effect a delimitation,

"Nicaragua has rights in the Gulf and in the Pacific, but in the light of the geographical and legal situation, these rights would not be affected by any such decision in the present case".

76. As for the arguments advanced by Nicaragua which might touch on this question of delimitation, the most general may be seen in its presentation, as a consideration supporting its assertion of a legal interest, of the "essential character of the legal principles, including relevant equitable principles, which would be relevant to the determination of the questions placed on the agenda by the Special Agreement" (Application, para. 2 *(d)*). The Chamber does not however consider that an interest of a third State in the general legal rules and principles likely to be applied by the decision can justify an intervention. Even when, as in the case of Malta's Application for permission to intervene in the case between Libya and Tunisia, the State seeking to intervene "does not base its request for permission to intervene simply on an interest in the Court's pronouncements in the case regarding the applicable general principles and rules of international law", but "bases its request on quite specific elements" in the case (*I.C.J. Reports 1981*, p. 17, para. 30), the interest invoked cannot be regarded as one which "may be affected by the decision in the case" (*I.C.J. Reports 1981*, p. 19, para. 33). The consideration urged in paragraph 2 *(d)* of the Application is thus insufficient to show the existence of an interest of a legal nature.

77. With specific reference to delimitation, Nicaragua's Application refers to:

"The leading role of coasts and coastal relationships in the legal régime of maritime delimitation and the consequence in the case of the Gulf of Fonseca that it would be impossible to carry out a delimitation which took into account only the coasts in the Gulf of two of the three riparian States" (para. 2 *(f)*);

but the "role of coasts and coastal relationships" in maritime delimitation again involves general legal rules and principles. The contention that in the Gulf of Fonseca "it would be impossible to carry out a delimitation which took into account only the coasts in the Gulf of two of the three riparian States" would be more convincing were it not for the fact that in 1900 a maritime boundary was defined in the Gulf between Nicaragua and Honduras. In any event, the question is whether a legal interest of Nicaragua would be "affected" by such maritime delimitation. It occurs frequently in practice that a delimitation between two States involves taking account of the coast of a third State; but the taking into account of all the coasts and coastal relationships within the Gulf as a geographical fact for the purpose of effecting an eventual delimitation as between two riparian States — El Salvador and Honduras in the instant case — in no way signifies that by such an operation itself the legal interest of a third riparian State of the Gulf, Nicaragua, may be affected. In any case, it is for the Applicant State in the present proceedings to demonstrate to the satisfac-

tion of the Chamber that this would be actually the case in the present instance. This Nicaragua has failed to do. As for the other arguments advanced by Nicaragua, in paragraph 2 *(g)* of its Application, in support of its position, these appear to the Chamber to refer to altogether too remote a contingency to justify an intervention in the present proceedings.

78. Paragraph 2 *(c)* of the Application advances "The geographical situation in the Gulf of Fonseca and the adjacent maritime areas" as a consideration supporting the contention that Nicaragua has an interest of a legal nature which may be affected by the decision. Setting aside for the moment the question of the "adjacent maritime areas", the essential difficulty in which the Chamber finds itself, on this matter of a possible delimitation within the waters of the Gulf, is that Nicaragua did not in its Application indicate any maritime spaces in which Nicaragua might have a legal interest which could be said to be affected by a possible delimitation line between El Salvador and Honduras. The area in which such maritime spaces could exist is in any event limited, in view of the delimitation effected in 1900 with Honduras. In the oral proceedings counsel for Nicaragua did refer to "the fact that it will be necessary to join some point on the closing line of the Gulf with the western terminus of the line of 1900"; an observation which, while at any rate focusing consideration on a particular area of the Gulf waters, still failed to make any case that the Nicaraguan interest involved would be affected by the Honduran proposed delimitation line. The Agent of Nicaragua also suggested that the Chamber might, in making any delimitation within the Gulf between El Salvador and Honduras, have to take account of "navigation routes in a Gulf whose mouth is less than 20 miles wide and the reasonable security interests of the riparians", but this consideration is too general to justify intervention in relation to a decision on delimitation in the present case.

79. Accordingly the Chamber is not satisfied that a decision in the present case either as to the law applicable to a delimitation, or effecting a delimitation, between Honduras and El Salvador, of the waters of the Gulf (except as regards the alleged "community of interests"), would affect Nicaragua's interests. The Chamber therefore considers that although Nicaragua has, for purposes of Article 62 of the Statute, shown an interest of a legal nature which may be affected by the Chamber's decision on the question of the existence or nature of a régime of condominium or community of interests within the Gulf of Fonseca, it has not shown such an interest which might be affected by the Chamber's decision on any question of delimitation within the Gulf. This finding also disposes of the question, referred to in paragraph 66 above, of the possible relevance of a decision in the island dispute.

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80. The Chamber now turns to the question of the possible effect on Nicaragua's legal interests of its future decision on the waters outside the Gulf, referred to by Nicaragua as "the adjacent maritime areas". In respect of these waters the Parties to the case are again divided as to the meaning of Article 2 of the Special Agreement. Honduras claims that

> "In requesting the Court to determine 'the legal situation in the ... maritime areas', the Parties have necessarily endowed the Court with competence to delimit the zones of territorial sea and the exclusive economic zones pertaining to Honduras and El Salvador respectively."

Consistently with its interpretation of Article 2 of the Special Agreement, Honduras asks the Chamber to endorse the delimitation line advanced by Honduras for the waters outside the Gulf as "productive of an equitable solution". El Salvador interprets the Special Agreement as not authorizing the Chamber to effect any delimitation; it contends furthermore that there is no connection between the rights of Honduras as a coastal State within the Gulf having a right of access to the high seas, and any claim by Honduras to a territorial sea and exclusive economic zone beyond the closing line of the Gulf. El Salvador also refers to the Farallones, belonging to Nicaragua, and to certain islands claimed by El Salvador, and contends that "These islands and the waters associated with them effectively deprive Honduras of direct contact with the Pacific through the mouth of the Gulf of Fonseca."

81. Both Parties contend that Nicaragua has no legal interest which may be affected by the decision on the "legal situation" of the maritime spaces outside the Gulf. El Salvador observes that if its interpretation of the Special Agreement is accepted, Nicaragua's rights vis-à-vis El Salvador will subsist unaffected; but contends that even if the Chamber were to decide that Honduras has rights over the waters outside the Gulf, and to delimit them by its Judgment, it could do so "without Nicaragua being a party to the proceedings". Both Parties deny that the carrying out by the Chamber of their respective interpretations of Article 2 could affect Nicaragua's legal interests. The State seeking to intervene is, however, of the view that its own legal interests in these waters must be affected by a decision of the Chamber on the basis of either interpretation of Article 2.

82. Whether a State is entitled to a territorial sea, continental shelf, or exclusive economic zone is a question to be decided by application of the principles and rules of the law of the sea on those matters. As observed above (paragraph 76), an interest in the application of general legal rules and principles is not the kind of interest which will justify an application for permission to intervene. In the present case, the legal régime within the Gulf — whatever it may be found by the Chamber to be — will no doubt also be relevant to any decision delimiting the waters outside the Gulf; but

this, in the view of the Chamber, tends solely to strengthen Nicaragua's claim to intervene in relation to the legal régime of the maritime spaces inside the Gulf, not to justify an intervention in relation to the legal situation of the maritime spaces outside.

83. This question furthermore cannot be considered separately from the question set by the Honduran thesis, according to which the Chamber is required by the Special Agreement to effect a maritime delimitation in the area outside the Gulf. As already observed (paragraph 74 above), the Chamber does not have to consider the effects of every possible delimitation, but merely to consider whether the State seeking to intervene has shown the existence of a legal interest, and has shown that that interest may be affected by a delimitation decision. Honduras moreover has in its pleadings produced a proposed scheme of delimitation, and has charted it; and in the context of the present proceedings Honduras has expounded this scheme to the Chamber, and shown how it is designed to avoid entirely any impingement upon waters outside the Gulf which might conceivably be claimed by Nicaragua. Counsel for Honduras explained that only part of the Honduran coast had been taken into account for that delimitation, the remainder of the Honduran coast being ignored "because it is relevant to some future delimitation between Honduras and Nicaragua"; and that

> "by the same reasoning we have limited the relevant maritime area to the east by a line drawn from [a point midway along the closing-line] perpendicular to the general direction of the coast, out to 200 miles, . . .".

He concluded that

> "The result is that Nicaraguan claims, both in respect of the closing-line and the maritime areas outside, are untouched. *Provided,* provided only, that you can assume that Nicaragua has no plausible claim to the waters beyond the mid-point of the closing line, . . . or to the waters west of the perpendicular projected from that mid-point."

84. In these incidental proceedings, and before hearing argument on the merits, the Chamber cannot pass upon Honduras's demonstration concerning its proposal for delimitation of the waters outside the Gulf; but that demonstration did call for some indication in response, by the State seeking to intervene, of how those proposals would affect a specific interest of that State, or what other possible delimitation would affect that interest. Nicaragua has responded to this scheme of Honduras, but again very much in general terms. At the hearings, the Agent of Nicaragua simply said that "Outside the Gulf of Fonseca, it is plain from looking at

any chart and from the graphics presented by the Parties in their written pleadings" — and he referred specifically to the charts showing Honduras's proposed delimitation — "that no such demands can be made in the Pacific Ocean without affecting the legal interest of Nicaragua to a significant extent." The Chamber does not find the matter so plain. Nicaragua was shown by Honduras both a proposed delimitation line and a proposed line marking off what Honduras calls the "relevant maritime area". The charted proposition of Honduras thus gave Nicaragua the opportunity to indicate how the Honduran proposals might affect "to a significant extent" any possible Nicaraguan legal interest in waters west of that Honduran line. This Nicaragua did not do. Nicaragua failed to indicate how this delimitation, or any other delimitation regarded by it as a possible one, would affect an actual Nicaraguan interest of a legal nature, and the Chamber therefore cannot grant Nicaragua permission to intervene over the delimitation of the waters outside the Gulf closing line.

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85. Having found that Nicaragua has shown an interest of a legal nature which may be affected by certain of the decisions which may be required by the Special Agreement, the Chamber has now to turn to the question of the object of Nicaragua's Application for permission to intervene in the case. A statement of the "precise object of the intervention" is required by Article 81, paragraph 2 *(b)*, of the Rules of Court; and it is clear from previous decisions of the Court that it is bound to consider "the object of the Application and the way in which that object corresponds to what is contemplated by the Statute", and to satisfy itself that the object of the intervention corresponds to what is envisaged by the Statute (*I.C.J. Reports 1984*, p. 18, para. 28).

86. Nicaragua's indication, in its Application for permission to intervene, of the object of its intervention in the present case, already quoted in paragraph 38 above, was as follows:

> "The intervention for which permission is requested has the following objects:
>
> *First*, generally to protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available.
>
> *Secondly*, to intervene in the proceedings in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute. This form of intervention would have the conservative purpose of seeking to ensure that the determination of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua . . ."

That indication should be read in the light of the statement of the Agent of Nicaragua at the hearings that

> "if the Chamber should feel that the Application of Nicaragua goes too far or remains too limited, Nicaragua would be willing to adjust to any procedure indicated by the Chamber. The only thing that Nicaragua seeks is to protect its legal interests and it will do so in any way the Statute allows."

It has been contended, in particular by El Salvador, that Nicaragua has not stated the "precise object" of its intervention in compliance with Article 81, paragraph 2 *(b)*, of the Rules of Court, and that its stated object is not a proper object, and that for these reasons Nicaragua's Application should not be accepted.

87. El Salvador complains that although Nicaragua states that its object is to "protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas", and to "inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute", it does not sufficiently indicate what those rights are claimed to be, how they may be affected, or what substantive purpose Nicaragua seeks to achieve. In order to be permitted to intervene, a State does not have to show that it has rights which need to be protected, but merely an interest of a legal nature which may be affected by the decision in the case. This matter of legal interests has however been dealt with and decided by the Chamber in the earlier part of this Judgment (paragraphs 72, 79 and 84); so it is in relation to those Nicaraguan interests of a legal nature which the Chamber has found to exist that the Chamber must now examine the declared object of the intervention. Nicaragua's substantive purpose appears to be to inform the Chamber of its rights or interests, and to protect them "by all legal means available", i.e., to prevent them being affected by the Chamber's decision, or to ensure that a decision affecting them is only taken after Nicaragua has been heard.

88. In its written observations on the Application for permission to intervene, El Salvador referred to this aspect of the Application and argued that

> "[The] differing descriptions of the object of the intervention, oscillating between the purpose of protecting its rights by all legal means available and the conservative purpose of merely informing the Chamber of its rights, constitute an attempt to avoid the dilemma confronting a State seeking to intervene . . . If the object of the intervention is to inform the Court of its rights or claims, Nicaragua will have a full opportunity to do so (as Italy did) in the oral proceedings to be convened in accordance with Article 84, paragraph 2, of the Rules, without any need to allow its intervention. If, on the other hand, the object of the application is to protect its claims by all legal means, including that of seeking a favourable judicial pronouncement on these claims, then such a purpose will signify the introduc-

tion by Nicaragua of additional disputes, requiring a valid link of jurisdiction, which does not exist."

89. It appears to the Chamber that the consequence of that argument would be that intervention, not merely in the present case but in most cases, would have to be refused, if not for the one reason, then for the other, and that the purposes of Article 62 of the Statute would thus be frustrated. The Chamber cannot accept such a position. In the first place, with regard to the stated object of informing the Court of a third State's rights, it is evident that if it were necessary for a State which considered that its legal interests might be affected by the decision in a case to give an exhaustive account of these interests in its application for permission to intervene, or at the hearings held to consider whether permission to intervene should be granted, there would be no point in the institution of intervention and in the further proceedings to which it should give rise under the Rules of Court. It is true that in the circumstances of the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, the Court found itself able to take into account, in its decision on the merits, information about Italian claims presented to it during the proceedings on Italy's unsuccessful application to intervene. But the reason for the refusal of permission to intervene in that case was not that the Court was already sufficiently informed of Italy's interests by those proceedings. Nor was it a finding that Italy had not sufficiently indicated the interests to be protected or presented them in an inappropriate manner.

90. So far as the object of Nicaragua's intervention is "to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute", it cannot be said that this object is not a proper one: it seems indeed to accord with the function of intervention. It is true that Nicaragua in its Application went on to state that it has "the conservative purpose of seeking to ensure that the determinations of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua . . .". The expression "trench upon the legal rights and interests" is language not to be found in Article 62 of the Statute, which refers to the possibility that an "interest of a legal nature" might be "affected" by the decision. If "trench upon" was intended perhaps to go further than the language of the Statute, then it should be borne in mind that it would hardly be possible, given Article 59 of the Statute and indeed the decision in the case concerning *Monetary Gold Removed from Rome in 1943* (paragraphs 54-55 above), for a decision of the Court to "trench upon" the legal right of a third State. It seems to the Chamber however that it is perfectly proper, and indeed the purpose of intervention, for an intervener to inform the Chamber of what it regards as its rights or interests, in order to ensure that no legal interest may be "affected" without the intervener being heard; and that the use in an application to intervene of a perhaps somewhat more forceful expres-

sion is immaterial, provided the object actually aimed at is a proper one. Nor can the Chamber disregard in this connection the indication by the Agent of Nicaragua, quoted in paragraph 86 above, that Nicaragua seeks to protect its legal interest solely in such way as the Statute allows.

91. Secondly, as to the other aspect of the dilemma alleged by El Salvador, it does not seem to the Chamber to follow that for a State to seek by intervention "to protect its claims by all legal means" necessarily involves the inclusion in such means of "that of seeking a favourable judicial pronouncement" on its own claims. Counsel for El Salvador recognized that Nicaragua was not seeking to introduce an additional dispute. He observed however that

> "Nicaragua does not declare as one of its objects that it seeks to join the proceedings as a party and to be bound as such by the Court's decision";

and he suggested that its statements in this connection are equivocal. It was also suggested that Nicaragua's reference, in paragraph 24 of its Application, to a possible new case to be brought by agreement

> "suggests strongly that Nicaragua recognizes that its participation in the case in any meaningful sense is dependent upon the consent of the principal Parties";

and El Salvador contends that a jurisdictional link is a requirement for intervention. However, in the course of the oral proceedings Nicaragua made very clear through counsel that it "is not claiming to introduce, via its intervention, a new dispute in addition to that of the Parties"; and the same point is made in paragraph 8 of the Application. Counsel for Nicaragua also recognized that "intervention under Article 62 of the Statute of the Court was not intended" for that purpose.

92. In the light of these statements, it appears to the Chamber that the object stated first in Nicaragua's Application, namely "generally to protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available", is not to be interpreted as involving the seeking of a judicial pronouncement on Nicaragua's own claims. The "legal means available" must be those afforded by the institution of intervention for the protection of a third State's legal interests. So understood, that object cannot be regarded as improper.

* *

93. The Chamber has now further to consider the argument of El Salvador that for Nicaragua to intervene in these proceedings between El

Salvador and Honduras, it must in addition show a "valid link of jurisdiction" between Nicaragua and those two States. The requirement of Article 81, paragraph 2 *(c)*, of the Rules of Court, for the statement in an application for permission to intervene of "any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case", and Nicaragua's attitude to this, have been referred to above (paragraph 39). In its Application, Nicaragua does not assert the existence of any basis of jurisdiction other than the Statute itself, and expresses the view that Article 62 does not require a separate title of jurisdiction. Nicaragua also recalls, in paragraph 24 of the Application, that it has a valid and unconditional declaration of acceptance of jurisdiction under Article 36, paragraph 2, of the Court's Statute; but it does not rely on that declaration in the present proceedings. El Salvador and Honduras have also made declarations under that Article, but they contain reservations which, according to those States respectively, would prevent their being invoked to seise the Court of the matters the subject of the present case.

94. The question is whether the existence of a valid link of jurisdiction with the parties to the case — in the sense of a basis of jurisdiction which could be invoked, by a State seeking to intervene, in order to institute proceedings against either or both of the parties — is an essential condition for the granting of permission to intervene under Article 62 of the Statute. In what follows, therefore, the expression "jurisdictional link" or "link of jurisdiction" is used in this sense. The question has been raised in previous cases before the Court in which permission has been sought to intervene under Article 62. In the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, the Court found it unnecessary to decide the question, since it had reached the conclusion that, for other reasons, Malta's request for permission to intervene was not one to which it could accede (*I.C.J. Reports 1981*, p. 20, para. 36). In the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, the Court again found it possible "to reach a decision on the present Application without generally resolving the vexed question of the 'valid link of jurisdiction'" (*I.C.J. Reports 1984*, p. 28, para. 45). It did so however by stating two alternative lines of argument, one on the basis that such a link would be required, and one on the basis that it would not, and observing that in the circumstances of the case before it, "either of two approaches . . . must result in the Court being bound to refuse the permission to intervene requested by Italy" (*I.C.J. Reports 1984*, p. 22, para. 34). Although that Judgment contains a number of valuable observations on the subject, the question remains unresolved. Since in the present case the Chamber has reached the conclusion that Nicaragua has shown the existence of an interest of a legal nature which may be affected by the decision, and that the intervention of Nicaragua has a proper object, the only remaining question is whether a jurisdictional link is required; and since it is conceded that no such link exists, the Chamber is obliged to decide the point.

In order to do so, it must consider the general principle of consensual jurisdiction in its relation with the institution of intervention.

95. There can be no doubt of the importance of this general principle, upon which the State seeking to intervene has itself, in its Application, laid considerable emphasis. As the Permanent Court of International Justice expressed it, the Court operates

> "bearing in mind the fact that its jurisdiction is limited, that it is invariably based on the consent of the respondent and only exists in so far as this consent has been given" (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 16).

Thus the pattern of international judicial settlement under the Statute is that two or more States agree that the Court shall hear and determine a particular dispute. Such agreement may be given *ad hoc*, by Special Agreement or otherwise, or may result from the invocation, in relation to the particular dispute, of a compromissory clause of a treaty or of the mechanism of Article 36, paragraph 2, of the Court's Statute. Those States are the "parties" to the proceedings, and are bound by the Court's eventual decision because they have agreed to confer jurisdiction on the Court to decide the case, the decision of the Court having binding force as provided for in Article 59 of the Statute. Normally, therefore, no other State may involve itself in the proceedings without the consent of the original parties.

96. Nevertheless, procedures for a "third" State to intervene in a case are provided in Articles 62 and 63 of the Court's Statute. The competence of the Court in this matter of intervention is not, like its competence to hear and determine the dispute referred to it, derived from the consent of the parties to the case, but from the consent given by them, in becoming parties to the Court's Statute, to the Court's exercise of its powers conferred by the Statute. There is no need to interpret the reference in Article 36, paragraph 1, of the Statute to "treaties in force" to include the Statute itself; acceptance of the Statute entails acceptance of the competence conferred on the Court by Article 62. Thus the Court has the competence to permit an intervention even though it be opposed by one or both of the parties to the case; as the Court stated in 1984, "the opposition [to an intervention] of the parties to a case is, though very important, no more than one element to be taken into account by the Court" (*I.C.J. Reports 1984*, p. 28, para. 46). The nature of the competence thus created by Article 62 of the Statute is definable by reference to the object and purpose of intervention, as this appears from Article 62 of the Statute.

97. Intervention under Article 62 of the Statute is for the purpose of protecting a State's "interest of a legal nature" that might be affected by a decision in an existing case already established between other States, namely the parties to the case. It is not intended to enable a third State to

tack on a new case, to become a new party, and so have its own claims adjudicated by the Court. A case with a new party, and new issues to be decided, would be a new case. The difference between intervention under Article 62, and the joining of a new party to a case, is not only a difference in degree; it is a difference in kind. As the Court observed in 1984,

> "There is nothing in Article 62 to suggest that it was intended as an alternative means of bringing an additional dispute as a case before the Court — a matter dealt with in Article 40 of the Statute — or as a method of asserting the individual rights of a State not a party to the case." (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, I.C.J. Reports 1984*, p. 23, para. 37.)

98. It is noteworthy that intervention is dealt with in Chapter III of the Court's Statute, which is headed "Procedure". This approach was adopted by the Court also when it drew up and revised its Rules of Court, where intervention appears in Section D of the Rules, headed "Incidental Proceedings". Incidental proceedings by definition must be those which are incidental to a case which is already before the Court or Chamber. An incidental proceeding cannot be one which transforms that case into a different case with different parties.

99. Intervention cannot have been intended to be employed as a substitute for contentious proceedings. Acceptance of the Statute by a State does not of itself create jurisdiction to entertain a particular case: the specific consent of the parties is necessary for that. If an intervener were held to become a party to a case merely as a consequence of being permitted to intervene in it, this would be a very considerable departure from this principle of consensual jurisdiction. That the incidental jurisdiction conferred by Article 62 of the Statute is circumscribed by the general principle of consensual jurisdiction over particular disputes was stated by the Court in its Judgment on the Italian Application to intervene in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, when the Court was careful not to adopt a position in which

> "it would be admitting that the procedure of intervention under Article 62 would constitute an exception to the fundamental principles underlying its jurisdiction; primarily the principle of consent, but also the principles of reciprocity and equality of States. The Court considers that an exception of this kind could not be admitted unless it were very clearly expressed." (*I.C.J. Reports 1984*, p. 22, para. 35.)

It is therefore clear that a State which is allowed to intervene in a case, does not, by reason only of being an intervener, become also a party to the case. It is true, conversely, that, provided that there be the necessary consent by the parties to the case, the intervener is not prevented by reason of

that status from itself becoming a party to the case. That the competence given to the Court in Article 62 of the Statute is not extendable to making an intervener a party to the case unless the parties to the case have consented to the change appears also to be the view of Nicaragua, which stated during the oral proceedings that "Article 62 is a part of the incidental jurisdiction and there is no compelling logic requiring its provisions to be seen as an 'exception' to the principle of consent". There is furthermore in international law no process for joinder of a new party, or parties, whether as appellant or respondent, by move of the Court itself. The Court referred in 1984 to "the absence in the Court's procedures of any system of compulsory intervention, whereby a third State could be cited by the Court to come in as party..." (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, I.C.J. Reports 1984*, p. 25, para. 40) and again to the fact that the Court does not possess the power "to direct that a third State be made a party to proceedings" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), I.C.J. Reports 1984*, p. 431, para. 88).

100. It thus follows also from the juridical nature and from the purposes of intervention that the existence of a valid link of jurisdiction between the would-be intervener and the parties is not a requirement for the success of the application. On the contrary, the procedure of intervention is to ensure that a State with possibly affected interests may be permitted to intervene even though there is no jurisdictional link and it therefore cannot become a party. Article 81, paragraph 2 *(c)*, of the Rules of Court states that an application under Article 62 of the Statute shall set out "any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case"; the use of the words "any basis" (and in French the formula "toute base de compétence qui... existerait") shows that a valid link of jurisdiction is not treated as a *sine qua non* for intervention (cf. also *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application to Intervene, I.C.J. Reports 1981*, p. 16, para. 27).

101. The Chamber therefore concludes that the absence of a jurisdictional link between Nicaragua and the Parties to this case is no bar to permission being given for intervention.

* *

102. Since this is the first case in the history of the two Courts in which a State will have been accorded permission to intervene under Article 62 of the Statute, it appears appropriate to give some indication of the extent of the procedural rights acquired by the intervening State as a result of that permission. This is particularly desirable since the intervention permitted relates only to certain issues of the many submitted to the Chamber. In the first place, as has been explained above, the intervening State does not

become party to the proceedings, and does not acquire the rights, or become subject to the obligations, which attach to the status of a party, under the Statute and Rules of Court, or the general principles of procedural law. Nicaragua, as an intervener, has of course a right to be heard by the Chamber. That right is regulated by Article 85 of the Rules of Court, which provides for submission of a written statement, and participation in the hearings. Time-limits will be fixed for a written statement by Nicaragua, and observations thereon by the Parties, in accordance with Article 85, so soon after the delivery of the present Judgment as the appropriate consultations can be held.

103. The scope of the intervention in this particular case, in relation to the scope of the case as a whole, necessarily involves limitations of the right of the intervener to be heard. An initial limitation is that it is not for the intervener to address argument to the Chamber on the interpretation of the Special Agreement concluded between the Parties on 24 May 1986, because the Special Agreement is, for Nicaragua, *res inter alios acta.*

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104. Nicaragua has disclaimed any intention of involving itself in the dispute over the land boundary. The Chamber has found that Nicaragua has not shown the existence of any interest of a legal nature which may be affected by its decision on "the legal situation of the islands". As regards the decision required of the Chamber concerning the legal situation of the maritime spaces within the Gulf, the Chamber has indicated (paragraph 72 above) that Nicaragua has a legal interest which may be affected by a decision as to the legal régime of those waters, i.e., a decision in favour of the contention of El Salvador, that the waters of the Gulf are subject to a régime of condominium, or a decision in favour of the contention of Honduras, that there exists a "community of interests" between the three States in the waters of the Gulf. Nicaragua has not demonstrated to the satisfaction of the Chamber the existence of an interest of a legal nature which may be affected by any decision of the Chamber delimiting the waters of the Gulf of Fonseca between El Salvador and Honduras, or by any decision as to the legal situation of the maritime spaces outside the Gulf, including any decision on entitlement or on delimitation between El Salvador and Honduras, and intervention in those respects has not been justified. The Chamber therefore finds that Nicaragua should be permitted to intervene but solely in respect of the Chamber's consideration of the legal régime of the maritime spaces within the Gulf of Fonseca, and to participate in the proceedings in the case in accordance with Article 85 of the Rules of Court.

* * *

105. For these reasons,

THE CHAMBER,

Unanimously,

1. *Finds* that the Republic of Nicaragua has shown that it has an interest of a legal nature which may be affected by part of the Judgment of the Chamber on the merits in the present case, namely its decision on the legal régime of the waters of the Gulf of Fonseca, but has not shown such an interest which may be affected by any decision which the Chamber may be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf, or any decision as to the legal situation of the islands in the Gulf;

2. *Decides* accordingly that the Republic of Nicaragua is permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in the present Judgment, but not further or otherwise.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirteenth day of September, one thousand nine hundred and ninety, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Nicaragua, the Government of El Salvador, and the Government of Honduras, respectively.

(Signed) José SETTE-CAMARA,
President of the Chamber.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judge ODA appends a separate opinion to the Judgment of the Chamber.

(Initialled) J.S.C.
(Initialled) E.V.O.