

DECLARATION OF JUDGE AL-KHASAWNEH

I concur in finding that the Application filed by Honduras to intervene in the proceedings, either as a party or a non-party, cannot be granted (Judgment, para. 76). I am likewise in basic agreement with the reasoning on which this finding was reached.

Nevertheless, I feel compelled to append this brief declaration in order to express my strong doubts regarding the need, the wisdom and the practical utility of distinguishing between the concepts of a “right” and “an interest of a legal nature” (*ibid.*, para. 37).

I have already had occasion in the context of the present case, but in respect to another Application, to state my views fully on these matters (*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Application by Costa Rica for Permission to Intervene*, *Judgment*, *I.C.J. Reports 2011 (II)*; dissenting opinion of Judge Al-Khasawneh, pp. 379-383, paras. 18-29) and no purpose would be served by repeating them in their entirety. Suffice it to say that, to my mind, an interest of a legal nature is nothing other than a right. The unfortunate expression “an interest of a legal nature” was concocted, as a compromise, in 1920 by the Advisory Committee of Jurists but has since been used interchangeably with the expression “right”, legal reasoning not admitting of a hybrid concept which is neither a right nor an interest. To draw normative consequences from such an alleged distinction in terms of the requirements of proof and the degree of protection afforded by law is not justified in my opinion. Moreover, even if one were to agree *arguendo* that “an interest of a legal nature” may sometimes be different from a “right” it does not follow that this will always be the case. When the two are not different, i.e., when a State alleges — as is so often in requests for intervention — that its interests of a legal nature are its rights to exercise sovereignty, the question arises as to what standard of proof and what degree of protection should apply. This serves to demonstrate that the distinction is unfounded in logic and we have already seen that it was never followed in the practice of the Court. In the event, this attempt to define and clarify the concept of “an interest of a legal nature” has not brought us nearer to comprehending this concept. It has rather made it even more obscure.

(Signed) Awn Shawkat AL-KHASAWNEH.
