

## DECLARATION OF JUDGE ODA

I wish to put on record that I do not share the views of the Chamber concerning the effect of Nicaragua's intervention as expressed in paragraphs 421-424 of the Judgment.

What does it mean when the Chamber states :

“The binding force of the present Judgment for the Parties, as contemplated by Article 59 of the Statute of the Court, does not . . . extend also to Nicaragua as intervener” (para. 421);

“[A] State permitted to intervene under Article 62 of the Statute, but which does not acquire the status of party to the case, is not bound by the Judgment given in the proceedings in which it has intervened” (para. 423);

“[T]he right to be heard, which the intervener does acquire, does not carry with it the obligation of being bound by the decision” (*ibid.*);

“[T]his Judgment is not *res judicata* for Nicaragua” (para. 424)?

Does this mean that Nicaragua is not bound to comply with the decisions of the Court to the effect that

“[T]he waters [of the Gulf of Fonseca] . . . were . . . held in sovereignty by the Republic of El Salvador, the Republic of Honduras, and the Republic of Nicaragua, jointly, and continue to be so held . . .” (para. 432 (1));

“[T]he waters at the central portion of the closing line of the Gulf, that is to say, between a point on that line 3 miles (1 marine league) from Punta Amapala and a point on that line 3 miles (1 marine league) from Punta Cosigüina, are subject to the joint entitlement of all three States of the Gulf . . .” (*ibid.*);

“[T]he legal situation of the waters outside the Gulf is that, the Gulf of Fonseca being an historic bay with three coastal States, the closing line of the Gulf constitutes the baseline of the territorial sea; the territorial sea, continental shelf and exclusive economic zone of El Salvador and those of Nicaragua off the coasts of those two States are also to be measured outwards from a section of the closing line extending 3 miles (1 marine league) along that line from Punta Amapala (in El Salvador) and 3 miles (1 marine league) from Punta Cosigüina (in Nicaragua) respectively; but entitlement to territorial sea, continental shelf and exclusive economic zone seaward of the central

portion of the closing line appertains to the three States of the Gulf, El Salvador, Honduras and Nicaragua; and that any delimitation of the relevant maritime areas is to be effected by agreement on the basis of international law” (para. 432 (3))?

In my view, Nicaragua, as a non-party intervener, will certainly be bound by this Judgment in so far as it relates to the legal situation of the maritime spaces of the Gulf. I have already expressed my views on the effect of Judgments of the Court upon intervening States in my separate or dissenting opinions appended respectively to the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment (I.C.J. Reports 1981, p. 22)* and the *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment (I.C.J. Reports 1984, p. 90)*, the sense of which I do not need to repeat here. By the foregoing, however, I do not intend to lend my accord to the findings reached by the Chamber on the legal situation of the maritime spaces, in respect of which I append a dissenting opinion to the Judgment.

(Signed) Shigeru ODA.