

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE LAND, ISLAND AND
MARITIME FRONTIER DISPUTE

(EL SALVADOR/HONDURAS)

ORDER OF 28 FEBRUARY 1990

APPLICATION FOR PERMISSION TO INTERVENE

1990

COUR INTERNATIONALE DE JUSTICE

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TERRESTRE, INSULAIRE ET MARITIME

(EL SALVADOR/HONDURAS)

ORDONNANCE DU 28 FÉVRIER 1990

REQUÊTE À FIN D'INTERVENTION

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CASE CONCERNING THE LAND, ISLAND AND
MARITIME FRONTIER DISPUTE

(EL SALVADOR/HONDURAS)

ORDER

APPLICATION FOR PERMISSION TO INTERVENE

Present: President RUDA; *Vice-President* MBAYE; *Judges* LACHS, ELIAS, ODA, AGO, SCHWEBEL, Sir Robert JENNINGS, BEDJAQUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, PATHAK; *Registrar* VALENCIA-OSPINA.

The International Court of Justice,

Composed as above,

After deliberation,

Makes the following Order:

Having regard to Articles 26, 27, 48 and 62 of the Statute of the Court,

Having regard to Articles 81, 83, 84, 85 and 90 of the Rules of Court,

Having regard to the Special Agreement concluded on 24 May 1986 between the Republic of El Salvador and the Republic of Honduras for the submission of a land, island and maritime frontier dispute between the two States to a chamber of the Court consisting of three Members of the Court and two judges *ad hoc* chosen by the Parties,

Having regard to the Order made by the Court on 8 May 1987 whereby it decided to accede to the request of the Governments of El Salvador and

Honduras to form a chamber of five judges to deal with the case, and further declared that a Chamber to deal with the case was duly constituted by that Order, with the composition therein stated, and having regard to the Order made by the Court on 13 December 1989 following the death of one of the judges *ad hoc* sitting in the Chamber whereby the Court declared the Chamber to be composed as therein stated; and

Whereas 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;

Whereas the Government of Nicaragua contends that its request for permission to intervene is a matter exclusively within the procedural mandate of the full Court, "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)";

Whereas the Parties to the case were informed by letter of 14 December 1989 that the Court had decided to afford the Parties the opportunity of submitting to the Court their observations on the question thus raised, i.e., whether the Application for permission to intervene is to be decided by the full Court or by the Chamber, and that the procedure contemplated by Article 83, paragraph 1, of the Rules of Court remained reserved pending settlement by the Court of that preliminary question; whereas such observations were received in the Registry on 12 January 1990; whereas copies of these observations were transmitted to Nicaragua which was informed that it might submit its own further observations on the question, and whereas Nicaragua submitted such observations on 1 February 1990; and whereas the Court, having considered all the observations submitted, concluded that it was sufficiently informed of the views of the States concerned, without there being any need for oral proceedings, which the Rules of Court did not require in this context, and which neither Nicaragua nor the Parties had requested;

Whereas under Article 26, paragraph 2, of the Statute the Court has power to form a chamber to deal with a particular case, and consequently to regulate matters concerning its composition; whereas it is for the tribunal seised of a principal issue to deal also with any issue subsidiary thereto; whereas a chamber formed to deal with a particular case therefore deals not only with the merits of the case, but also with incidental proceedings arising in that case (cf. *Frontier Dispute, Provisional Measures, Order of 10 January 1986, I.C.J. Reports 1986*, p. 3; *Elettronica Sicula S.p.A. (ELSI), I.C.J. Reports 1989*, p. 42, para. 49);

Whereas the rule of law that "every intervention is incidental to the proceedings in a case" (*Haya de la Torre, I.C.J. Reports 1951*, p. 76), applies equally whether the intervention is based upon Article 62 or Article 63 of the Statute;

Whereas 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;

Whereas furthermore a State which has submitted a request for permission to intervene on which a decision has not yet been taken “has yet to establish any status in relation to the case” (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application to Intervene, Judgment, I.C.J. Reports 1981*, p. 6, para. 8), and therefore a State requesting such permission must, for the purposes of the decision whether that request should be granted, take the procedural situation in the case as it finds it;

Whereas in its Application for permission to intervene Nicaragua states 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),

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);

Whereas, in the first place, 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; whereas, in the second place, while Nicaragua contemplates a limitation of the mandate of the Chamber, its request to that effect is put forward only “in the alternative”; whereas the Court is thus not called upon to pronounce on any of these questions;

Whereas the mention in the Application of these questions, which are

thus contingent on the decision whether the application for permission to intervene is to be granted, cannot lead the Court to decide in place of the Chamber the anterior question whether that application should be granted;

THE COURT,

by twelve votes to three,

Finds that it is for the Chamber formed to deal with the present case to decide whether the application for permission to intervene under Article 62 of the Statute filed by the Republic of Nicaragua on 17 November 1989 should be granted.

IN FAVOUR: *President* Ruda; *Vice-President* Mbaye; *Judges* Lachs, Oda, Ago, Schwebel, Sir Robert Jennings, Bedjaoui, Ni, Evensen, Guillaume and Pathak;

AGAINST: *Judges* Elias, Tarassov and Shahabuddeen.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-eighth day of February, 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 El Salvador, the Government of Honduras and the Government of Nicaragua, respectively.

(*Signed*) José María RUDA,
President.

(*Signed*) Eduardo VALENCIA-OSPINA,
Registrar.

Judge ODA appends a declaration to the Order of the Court.

Judges ELIAS, TARASSOV and SHAHABUDEEN append dissenting opinions to the Order of the Court.

(*Initialled*) J.M.R.

(*Initialled*) E.V.O.