DISSENTING OPINION OF JUDGE ODA

Interpretation of "intervention" under Article 62 of the Statute — Jurisprudence of the Court: four previous rulings on applications for permission to intervene under Article 62, in 1981, 1984, 1990 and 1999 — Development of the institution of "non-party intervention" — Participation of intervening State either as a party or a non-party — Whether State seeking to intervene must prove in advance that its interest will be affected by the decision in the case, or whether the burden should be placed on the parties to the principal proceedings to show that the interest of the third State will not be affected by the decision in the case — Whether the existence of an interest of a legal nature can only be considered at the merits phase — Application of principles of intervention to the circumstances of this case — Refusal of access by the Philippines to the written pleadings of the Parties — Inability of the Philippines to know, at least until the second round of oral pleadings, how the respective claims of the Parties would relate to its own claim to sovereignty in North Borneo — Whether application to intervene should have been granted.

1. I voted against the operative part of the Judgment, as I firmly believe that the Philippine request for permission to intervene in the case between Indonesia and Malaysia should have been granted.

That vote has led me to express this dissenting opinion. I wish, however, to emphasize that my disagreement with the Court is limited at this time strictly to the issue decided in this Judgment, namely the Philippines right to intervene in these proceedings, and is not in any way indicative of my views in respect of the validity of any claim the Philippines might have to North Borneo or in respect of the merits in the principal case between Indonesia and Malaysia.

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2. My position in this case results from my interpretation of "intervention" under Article 62 of the Statute, an interpretation which may differ from the Court's in some respects. As my interpretation has remained consistent throughout the Court's entire jurisprudence on this subject, I believe it appropriate to begin with a brief sketch of the history of the Court's application of that provision.

3. Although Article 63 of the Statute concerning intervention when the construction of multilateral conventions is in question dates back to the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes, there was no provision dealing with intervention by a State having an interest which may be affected by the Court's decision

until 1920, when Article 62 was introduced into the Statute of the Permanent Court of International Justice. In fact, however, the inclusion of that provision did not by any means put an end to discussion of the role to be played by a third State permitted to intervene, or of the potential outcome of the intervention.

4. In the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, which, for all practical purposes, was the first case of intervention to come before the Court since Article 62 of the Statute of the Permanent Court of International Justice (which is practically identical to Article 62 of the present Court's Statute) was adopted in 1920, the Court on 14 April 1981 handed down a Judgment *unanimously* rejecting Malta's Application for permission to intervene. In my separate opinion appended to that Judgment (and I would point out that some commentators considered that separate opinion to be a *de facto* dissenting opinion) I concluded, after thorough examination of the drafting of Article 62 of the Statute of the Permanent Court, that a State could be permitted to participate in the principal dispute as a *non-party* and that a judicial link between that intervening State and the parties to the principal case was not required for such an intervention. As that proposition was not supported by the majority of the Court, I believe that this was probably the first time that the concept of *non-party intervention* was ever raised. In that opinion I stated:

> "In my view . . . the Court's reasoning places too restrictive a construction upon the first paragraph of Article 62. I regret that the institution of intervention is afforded so narrow a focus on essentially the first occasion of its application." (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment, I.C.J. Reports 1981*, p. 23, para. 1.)

5. In the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case, the second case in the Court's jurisprudence dealing with intervention under Article 62, the Court in its Judgment of 21 March 1984 rejected Italy's Application for permission to intervene but, this time, *by eleven votes to five*. Five judges, including myself, were of the opinion that Italy's Application for permission to intervene should have been granted. My dissenting opinion appended to the Court's Judgment in that case states as follows:

> "It seems that the Court presupposes *a priori* the scope of the kind of intervention it deems genuine (a procedure which I do not think is correct), and then draws the conclusions that Italy's application does not fall into this category" (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, pp. 90-91, para. 2)

and

> "I have thus elaborated my point that Italy's application falls within the purview of the institution of intervention provided for

> under the Statute, and that Italy is justified in considering that it has an interest of a legal nature which may be affected by the decision in the case. I made almost the same argument in the case of the Maltese intervention three years ago, based on almost the same reasoning." (*I.C.J. Reports 1984*, p. 113, para. 43.)

Thus, it would appear that the concept of *non-party intervention* had gained some support in the Court.

6. In 1990, after these two cases in which the Court had rejected requests by third States for permission to intervene, a Chamber of the Court formed in 1987 to deal with the case concerning the *Land, Island and Maritime Frontier Dispute* granted such permission to Nicaragua. This marked the first time in the entire history of the Court that such intervention was allowed. The Chamber, consisting of three of the five dissenting judges in the previous case and two judges *ad hoc*, *unanimously* found on 13 September 1990 that the object of Nicaragua's intervention, to inform the Court of the nature of Nicaragua's legal rights which were at issue in the dispute, indeed accorded with the function of intervention and could not be regarded as improper (*I.C.J. Reports 1990*, p. 91). In the view of the Court, there could be no doubt as to the importance of the general principles of consensual jurisdiction, so that no State but the parties to the proceedings might involve itself in those proceedings without the consent of the original parties. Yet the Court stated that:

> "It . . . 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." (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, I.C.J. Reports 1990*, p. 135, para. 100.)

The Court went on to say that:

> "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" *(ibid.)*.

Nicaragua, which had been given copies of the written pleadings submitted by El Salvador and Honduras, considered that it had an interest of a legal nature which might be affected by the decision in the case; the Court granted Nicaragua permission to intervene on the question of the legal régime of the waters of the Gulf of Fonseca. The real discussion only began at that point: by Order dated 14 September 1990 (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), I.C.J. Reports 1990*, p. 146), the Court authorized Nicaragua to present a written statement and El Salvador and Honduras to submit their written observations on that statement. Nicaragua was then given the opportunity to plead orally as a *non-party* during the

merits phase of the case. This was the first time in the Court's history that a State was accorded permission to intervene under Article 62 of the Statute.

7. In the case concerning *Land and Maritime Boundary between Cameroon and Nigeria* the Court, in its Order of 21 October 1999, *unanimously* granted Equatorial Guinea permission to intervene (Application by Equatorial Guinea for permission to intervene, *I.C.J. Reports 1999 (II)*, p. 1029). Equatorial Guinea in its Application had specified that it did "not seek to be *a party* to the case before the Court (*ibid.*, emphasis added). In accordance with that Order, Equatorial Guinea, in the merits phase of the case, submitted its written statement and the Parties presented their respective observations in it. Equatorial Guinea will now be allowed to participate as a *non-party* in the oral proceedings in the merits phase of the principal case, scheduled for the spring of 2002. It should be noted that the President of the Court at that time was one of the five dissenting judges in the case of Italy's intervention in 1984.

8. My position remained unchanged throughout these four cases (which, practically speaking, represent the entire jurisprudence of the Court on the subject of intervention): Article 62 of the Court's Statute should be interpreted liberally so as to entitle a State, even one not having a jurisdictional link with the parties, which shows "an interest of a legal nature which *may* be affected by the decision in the case" (emphasis added) to participate in the case as a *non-party*, not necessarily on the side of either the applicant State or the respondent State in the principal case. The institution of "non-party intervention" has developed greatly over the past 20 years and it is perhaps an exaggeration to say that the Court's *established* jurisprudence limits intervention to participation *as a party*.

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9. One should keep in mind the manner in which "intervention" has been considered by the Court as a whole or by individual members. After having participated in the three cases involving requests for permission to intervene — Malta's, Italy's and Nicaragua's — I formulated my view of "non-party intervention" under Article 62 of the Statute, where a jurisdictional link between the intervening State and the parties to the principal case is not required, and where the intervening State (after having had full access to the pleadings of the parties) should be allowed to participate, but *not* as a *party*, by presenting its written observations and then joining in the oral proceedings in the principal case. I enunciated that view in a lecture given to the Hague Academy of International Law in 1993. In the interest of efficiency, it would be appropriate to quote from that lecture:

"*2. Intervention in cases involving third States' interest of a legal nature — application of Article 62*

. . . . . .

(c) *Some reflections on intervention under Article 62*

116. After having reviewed the three latest applications for permission to intervene, all of which were related to maritime delimitation or the status of maritime areas — a coincidence which is not without a certain significance — I would like to make a few general observations on intervention under Article 62, in other words, intervention made in cases where a third State considers it has an interest of a legal nature which may be affected by the decision in that case. I shall consider, *first*, whether or not there has to be a jurisdictional link between the intervening State and the original litigant States in the principal case and, *second*, whether or not the judgment of the Court in the principal case should also be binding upon the intervening State.

117. It is tenable that a jurisdictional link between the intervening State and the original parties to the case would be required if the intervening State were to participate as a full party and that, in such a case, the judgment of the Court would undoubtedly be binding upon the intervening State. Probably, in fact, this third State would in such circumstances also be entitled to bring a separate case on the same subject before the Court. Conversely, it may be true that participation in the proceedings, as a full party by a third State which has no jurisdictional link with the original parties, and which remains immune from the binding force of the judgment, would be clearly tantamount to introducing through the back door a case which could not otherwise have been brought to the Court because of lack of jurisdiction. This seems impermissible, because the jurisdiction of the International Court of Justice is based on the consent of sovereign States and is not otherwise compulsory.

118. In my view, however, the situation where a right *erga omnes* is at issue between two States, but a third State has also laid a claim to that right, is a hypothesis which here merits special consideration. For instance, in a case of sovereignty over an island, or the delimitation of a territorial boundary dividing two States, with a third party also being in a position to claim sovereignty over that island or over the territory which may be delimited by that boundary, or in a case in which a claim to property is in dispute, an unreasonable result could be expected if a jurisdictional link were required for the intervention of the third State. If this link is deemed at all times indispensable for intervention, the concept of intervention in cases before the ICJ will inevitably die out and its purpose be defeated. The overall cause of international justice would not be served.

Accordingly, if the third State does not have a proper jurisdictional link with the original litigant States, the possibility of its intervention should not be excluded, though its position in the case would then not be that of a party within the meaning of the term in municipal law. The role to be played by the intervening State in such circumstances must be circumscribed. It may assert a concrete claim against the original litigant States, but that claim must be confined to the scope of the original application or special agreement in the principal case. Even then, the intervening State could not seek a judgment of the Court which directly upholds its own claim.

119. Neither — in other words — would the potential scope of the judgment be expanded: the Court would still be bound to give judgment only within the scope of the original application or special agreement. The intervening State would have to be content with whatever advantage it could glean from the post-judgment situation. What is more, it would not, surely, escape the binding force of the judgment in the area concerning which its intervention was allowed.

The intervening State will thus have been able to protect its own rights merely in so far as the judgment declines to recognize as countervailing the rights of either of the original two litigant States. On the other hand, to the extent that the Court gives a judgment positively recognizing rights of either of the litigant States, the intervening State will certainly lose all present or future claims in conflict with those rights. In this light, it does not seem tenable to argue that, unless the intervener participates on an equal footing with the original litigant States, it would derive an unreasonable benefit from its intervention without putting itself in any disadvantageous position.

120. In this connection, I would like to reiterate my doubt as to whether the Chamber of the Court for the *Land, Island and Maritime Frontier Dispute* case was correct to state, in its 1992 Judgment on the merits, that

> '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 in the proceedings in which it has intervened' (*ICJ Rep. 1992*, p. 609).

Being unable to agree with the conclusion of this judgment, I took the view that

> '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' (*ibid.*, p. 620).

I may add that to maintain the contrary would appear to suggest that an intervener under Article 62 should be free to adopt a less responsible position than an intervener under Article 63, and would

thus be given an advantage over the original parties. The mere fact that an intervener may arguably not be regarded as a party within the meaning of Article 59 cannot suffice to override the requirements of equity which are evident here. At the same time, it is important that any would-be interveners should know where they stand before applying for permission to intervene.

3. Case of the interpretation of the principles and rules of international law — impact of Article 63 upon Article 62

121. If an interpretation of a multilateral convention given by the Court is necessarily of concern to a State which is a party to that instrument, though not a party to the case, there seems to be no convincing reason why the Court's interpretation of the principles and rules of international law should be of less concern to a State. If, therefore, the interpretation of an international convention can attract the intervention of third States under Article 63 of the Statute, it may be asked why the interpretation of the principles and rules of international law should exclude a third State from intervening in a case.

Lack of jurisdiction is not a sufficient reason for preventing a State from intervening as a non-party in a principal case in which the application of the principles and rules of international law is at issue, for the interpretation given by the Court of those principles and rules will certainly be binding on the intervening State. What is more, as in the case of Article 63, the provisions of Article 59 do not in reality guarantee a State which has *not* intervened in the principal case any immunity from the subsequent application of the Court's interpretation of the principles and rules of international law.

122. I am not of course suggesting that such an intervention would fall within the meaning of Article 63 of the Statute. I am simply saying that such a type of intervention — that is, non-party intervention in the case in which a jurisdictional link is absent, but the interpretation given by the Court is binding — was introduced under Article 63. If such a type of intervention is therefore possible, Article 62, if looked at in the light of Article 63, can be viewed as comprehending this form of intervention as well, providing that the interest of a legal nature is present. That is to say, intervention under Article 62 encompasses the hypothesis where a given interpretation of principles and rules of international law is sought to be protected by a non-party intervention. In this hypothesis, the mode of intervention may be the same as under Article 63, so that the third State neither appears as a plaintiff or defendant nor submits any specific claim to rights or titles against the original litigant States. I have in mind the *Passage through the Great Belt* case or the *Jan Mayen* case, as examples.

123. Objections may be raised that the States which may be

affected by the interpretation of such principles and rules by the Court will be without number and that, if an interpretation of the principles and rules of international law can open the door of the Court to all States as interveners, this will invite many future instances of intervention. This problem should be considered from the viewpoint of future judicial policy, and more particularly from the viewpoint of the economy of international justice. Yet this cannot be the reason why a request for intervention which is actually pending should be refused when the requesting State claims that its legal interest may be affected by the Court's rulings on the principles and rules of international law. The possibility of an increasing number of cases invoking Article 63 may likewise not be avoided. The fact that in the past Article 63 has been rarely invoked does not guarantee that the situation will remain unchanged in the future, if I take note of the pending case concerning the *Application of the Genocide Convention*. Thus the problem is related not only to Article 62, but also to Article 63.

However, unlike Article 63, dealing with the case of interpretation of an international convention, Article 62 comprises certain restrictions. Paragraph 2 of Article 62 provides that '[i]t shall be for the Court to decide upon this request'. This means that the Court has certain discretionary powers to allow or to disallow any requesting State to intervene in the litigation. Still more important is the restriction of paragraph 1 of Article 62. This paragraph requires the State requesting intervention to show that 'it has an interest of a legal nature which may be affected by the decision in the case'. Thus any danger of expansive application of Article 62 will certainly be restricted by the Court's exercising its discretionary power, more particularly to determine whether the requesting State has such an interest." (Oda, "The International Court of Justice Viewed from the Bench (1976-1993)", *Recueil des cours de l'Académie de droit international de La Haye*, Vol. 244, 1993, pp. 83-87.)

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10. Having examined the institution of "non-party intervention", I shall now turn to how that institution operates, and should operate in practice, under Article 62 of the Statute, the only provision in the Statute relating to "intervention", which provides:

"1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request."

As I interpret it, this provision means that a State which has "an interest of a legal nature which may be affected by the decision in the case" should be given a chance to participate either as a *party* (on the side of either the applicant or the respondent) or as a *non-party* in the discussion

on the merits by presenting its observations in writing and taking part in the oral proceedings in the merits phase of the case.

11. Where participation as a *non-party* should be permitted, which is the case here, it is not for the intervening State — which in the present case learned of the subject-matter of the dispute only through the Special Agreement of 31 May 1997 by means of which the dispute was brought to the Court — to prove in advance that its interest will be affected by the decision in the case. Without participating in the merits phase of the case, the intervening State has no way of knowing the issues involved, particularly when it is refused access to the written pleadings. Rather, if a request for permission to intervene is to be rejected, the burden should be placed on the parties to the principal case to show that the interest of the third State will not be affected by the decision in the case.

The Court may in some cases uphold objections by the parties to the principal case showing "with a particular clarity" (the expression appearing in the Judgment, paragraphs 59 and 78) that the alleged interest of the intervening State is far removed from the subject-matter of the case. For example, where a State is situated far from the scene and has no historical or administrative connection with the parties, it can be shown in advance that that State has no interest in any territorial or boundary issues which will be affected. That is not the case here. The two islands in issue lie close to North Borneo, although whether or not geographically and historically they are a part of North Borneo is a matter to be decided by the Court.

12. In fact, in the case of Equatorial Guinea's intervention (in the case between Cameroon and Nigeria), the two parties to the principal case appear to have been unsure whether the intervening State's interests would be affected by the decision in the case and thus did not oppose Equatorial Guinea's Application for permission to intervene. The Court granted the request for permission to intervene solely because the parties to the principal case did not object — but *not*, it is crucial to note, because of any view the Court might have held on the question of whether or not the interest of the third party would be affected. In that case, the Court made no statement on whether or not there was an interest of a legal nature that might be affected by the decision in the case.

The question of whether, in fact, an intervening State does or does not have an interest of a legal nature can only be considered in the merits phase. After having heard the views of the intervening State in the main case, the Court may, after all, find in some cases that the third State's interest will not be affected by the decision in the case. This is the meaning of "non-party intervention" and this is quite different from another type of intervention in which a third State wishes to participate in the principal case on the side of the applicant State or of the respondent State to argue the subject-matter. This type of intervention also falls

within the purview of Article 62 of the Statute, as I mentioned in paragraph 8 above.

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13. The present proceedings have been dealt with in a way widely at variance with the foregoing. The Philippines learned of the subject-matter of the dispute between Indonesia and Malaysia (in other words, the question of sovereignty over Ligitan and Sipadan) specified in Article 2 of the Special Agreement of 31 May 1997. The Philippines did not know, and still does not know, how the two Parties will present their position concerning sovereignty over the two islands and those positions may affect the Philippines interest. At best, the Philippines could speculate that its interests in North Borneo *might* be affected depending on what Indonesia and Malaysia will say in the principal case about the two islands but was certainly not in a position to ascertain which of the "treaties, agreements and any other evidence furnished by the Parties" would be used by them as the basis for requesting "[t]he Court . . . to determine . . . whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia".

As a result of the objections by Indonesia and Malaysia, the Philippines was refused access to the Parties' written pleadings and thus was not (and still is not) in a position to know whether or not its interests may, in fact, be affected by the decision of the Court in the principal case. In seeking permission to intervene, all the Philippines could do, as it did in its Application, was to make known its claim to sovereignty in North Borneo, which *may be* affected by the decision in the case.

14. The burden is not on the Philippines but on Indonesia and Malaysia to assure the Philippines that its interests will not be affected by the Judgment the Court eventually renders in the principal case. Is it really reasonable — or even acceptable — for Indonesia and Malaysia to require the Philippines to explain how its interest *may* be affected by the decision in the case, while they conceal from it the reasoning supporting their claims in the principal case? In this respect, I fail to understand the Court's reasoning when it states that:

> "a State which, as in this case, relies on an interest of a legal nature other than in the subject-matter of the case itself necessarily bears the burden of showing with a particular clarity the existence of the interest of a legal nature which it claims to have" (Judgment, para. 59).

and that

> "the interest of a legal nature invoked by the Philippines in order to

be permitted to intervene in the case must be shown with a particular clarity, since it does not relate to the actual subject-matter of the case" (Judgment, para. 78).

In my view the Court seems to confuse this kind of intervention with that involving a request for permission to intervene either as an applicant State or as a respondent State in the principal case.

15. I note with surprise, and some dismay, that Malaysia, in its "Observations on the Application for Permission to Intervene by the Government of the Republic of the Philippines" dated 2 May 2001, made reference at least 13 times to its own Memorial in the principal case and even referred twice to Indonesia's Memorial, neither of which had been provided to the Philippines. In its "observations", Malaysia raised objections to the Philippine Application for permission to intervene, commenting on "treaties, agreements and any other evidence" which, Malaysia simply speculated, the Philippines might rely on in contending that its interest might be affected. In fact, in referring to its interest in North Borneo, the Philippines in its Application of 13 March 2001 had merely alluded in very general terms to "treaties, agreements and any other evidence" and had not stated any more specific view on them.

In contrast, Indonesia was more prudent and made no reference whatsoever in its observations to either its own or Malaysia's written pleadings. At the time it filed its Application for permission to intervene, and at least until the second round of oral pleadings, the Philippines could not have known how the respective claims of Indonesia and Malaysia to the two islands in question would relate to its own claim to sovereignty over North Borneo. In fact there was no basis, other than the Special Agreement of 31 May 1997 between Indonesia and Malaysia, on which the Philippines could even speculate on the position of Indonesia and Malaysia or the essence of their respective claims.

16. In the first round of the oral pleadings, the Philippines (which was required to make its presentation before either Indonesia or Malaysia), having been refused access to the written pleadings, referred to certain "treaties, agreements and any other evidence" that it speculated might be employed by the Parties to the principal case. In the two rounds of oral pleadings that followed the initial presentation by the Philippines, Indonesia and Malaysia, while still keeping the Philippines in the dark as to the content of those documents, argued freely on the relevance or irrelevance to the principal case of those "treaties, agreements and any other evidence" referred to by the Philippines.

Having heard only the first round of the oral pleadings by Indonesia and Malaysia (which were presented after the Philippine first oral pleadings), the Philippines had a vague idea of the views taken by these two

States of the "treaties, agreements and any other evidence" to which it itself had initially referred in its first oral pleading. Furthermore, the Philippines could not be certain that Indonesia and Malaysia, in the oral pleadings, exhausted their arguments concerning the "treaties, agreements or any other evidence". In fact, they confined themselves to commenting solely on those "treaties, agreements and any other evidence" referred to by the Philippines in its oral argument. The whole procedure in this case strikes me as being rather unfair to the intervening State. I believe that the argument concerning "treaties, agreement and any other evidence" could not, and should not, have been made until the Philippines had been afforded an opportunity to participate in the principal case, just as Nicaragua was given in the 1992 case before the Chamber.

I submit that all the arguments (expounded in the oral pleadings at public sittings held on 25-29 June 2001) on the merits of the "treaties, agreements and any other evidence" on the basis of which the Court will determine whether Indonesia or Malaysia has sovereignty over Pulau Ligitan and Pulau Sipadan should have been made in the merits phase of the principal case and that the Philippines should have been allowed to participate as a *non-party*, as Nicaragua and Equatorial Guinea were allowed to do in the two most recent cases involving intervention.

17. I do not believe that the Philippines had to convince the Court that "specified legal interests may be affected in the particular circumstances of this case" (Judgment, para. 93) or that the Philippines had to demonstrate to the Court "an entitlement to intervene in the pending case between Indonesia and Malaysia" (Judgment, para. 94) before the Court could grant it permission to intervene. If the Court "remains cognizant of the positions stated before it by Indonesia, Malaysia and the Philippines in the present proceedings" (Judgment, para. 94), why has the Court not given the Philippines an opportunity to argue its case on an equal footing with Indonesia and Malaysia in the merits phase of the principal case?

The Parties to the principal case and the Court would have nothing to lose by allowing the Philippines to intervene as a *non-party* in the present case and, in particular, the legitimate interests of the Parties to the principal case would not be jeopardized, even if it becomes clear at the merits stage that the Philippine interest *is not* affected by the decision of the Court.

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18. In conclusion, I fear that the Court has arrived at the present Judgment without properly appreciating the meaning of "non-party intervention" under Article 62 of the Court's Statute. That concept has

greatly evolved in the Court's jurisprudence over the past 20 years of its history, particularly since Nicaragua's intervention in 1990 and that of Equatorial Guinea in 1999.

(Signed) Shigeru ODA.