

## DECLARATION OF JUDGE TLADI

The Court has found, correctly, that Guatemala has an interest of a legal nature that may be affected by a judgment of the Court in the present case, and for that reason, has permitted Guatemala to intervene. Having described the arguments of Guatemala, Belize and Honduras, at paragraph 39 the Court states:

“The Court observes that the operative clause of its judgment on the merits in the present case will address the question of sovereignty over the cays. The Court’s determination may thus affect Guatemala’s interest of a legal nature, in so far as it claims sovereignty over the same territory in its case with Belize.”

Later, at paragraph 40, it states:

“For the Court to answer the question before it in the present case, it must necessarily decide whether Belize or Honduras (or neither) has sovereignty over the cays. Consequently, any judgment rendered on the merits may have a direct bearing upon Guatemala’s interest, since it is one of the claimants to sovereignty over the same maritime features in a separate case before the Court.”

The Court decides not to explain why Guatemala’s legal interest may be affected by its judgment. Perhaps the Court does not provide an explanation because, in its view, it is obvious that Guatemala’s legal interests may be affected. While I agree fully that Guatemala’s interests of a legal nature may be affected — in fact I would say *will* be affected — by a judgment granting sovereignty to either Belize or Honduras, I am afraid “it is obvious” does not, on its own, qualify as legal reasoning. The Court ought to have explained why its judgment on the merits in the present case may affect the interests of Guatemala.

I agree that the reason is obvious, but that obvious reason ought to have been spelt out: Guatemala’s interests of a legal nature will be affected if the Court recognizes the sovereignty of either Belize or Honduras because territorial title is, by its nature, opposable to all, which is to say that title to territory cannot be valid only relative to a particular State.

I recognize that this may raise the question whether, contrary to Article 59, a judgment rendered by the Court on sovereignty binds States that were not party to the case. The answer to that question is “no”. The reasoning that sovereignty is opposable to all States does not concern the binding character of the judgment, i.e. it is not the judgment that is opposable to all, it is the title itself. The fact that the title is recognized in a judgment does not alter the fact that title has its own objective, independent existence separate from the judgment recognizing it. It is that objective, independent title, and not the judgment, that is opposable to all. The Court ought to have spelt this out.

(Signed) Dire TLADI.

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